

Hold the Hill, Build the Park

November 17, 2025

Project PRJ-1107880 Emerald Hills

One of the last remaining, truly spectacular urban hilltop park sites, should not be squandered on a housing project rooted in political ineptness, corruption and shielded from corrective planning from the now infamous Footnote 7.

The Radio Towers site is an opportunity to provide residents of all of San Diego with a world class park and begin to balance the inequitable distribution of public parkland in San Diego. The Southeast San Diego communities are notoriously underserved and have been so for decades. The Radio Towers Park site provides the best option to correct those historic inequities. To do this, the Emerald Hills housing project must not be approved.

The proposed housing project would impact the surrounding community because it lacks adequate current and proposed neighborhood infrastructure. A low impact park site would be the best use of this location and would not degrade the surrounding neighborhoods like the overbuilt housing project.

For these reasons, we are asking the Planning Commissioners to deny approval of the proposed housing project which will provide the opportunity for the creation of the Radio Towers Park.

Hold the Hill and Build the Park for current and future generations of San Diego residents.

Ken Hunrichs, Marie Hunrichs

Residents of Encanto

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March 3, 2025

Via Email

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City of San Diego, City Council
c/o Diana J.S. Fuentes, Interim City Clerk
202 C Street, Second Floor
San Diego, CA 92101

Re: *Objections and Correction Regarding the Effect of Repeal of “Footnote 7” in Development Regulations Table 131-04D for the RS-1-2 Residential Zone in the Southeastern San Diego and Encanto Neighborhoods Community Planning Areas March 4, 2025, City Council, Agenda Item No. 330, Subitem-B: (0-2025-86)*

To the Honorable City Council President Joe LaCava and Members of the San Diego City Council:

This office has been hired by and represents the Chollas Valley Community Planning Group (“CVCPG”).

This comment letter **generally supports** the proposed action and staff report in Item 330, Subitem-B to repeal and remove footnote 7 (“Footnote 7”) from Development Regulations Table 131-04D for the RS-1-2 Residential Zone in the Southeastern San Diego and Encanto Neighborhoods and re-establish the minimum lot size for the RS-1-2 zones to 20,000 square feet.

However, this comment letter also **objects and advises** that the City Council must correct statements in Item 330’s staff materials that are both misguided and misstatements of law, because the effect of the repeal of Footnote 7 – on existing and unapproved “applied for” projects in the subject *Southeastern San Diego and Encanto Neighborhoods Community Planning Areas* – requires that unapproved “applied for” projects must comply with the corrected revised zoning.

A. UNAPPROVED “APPLIED FOR” PROJECTS DO NOT HAVE VESTED RIGHTS UPON THE REPEAL OF FOOTNOTE 7

City Council should repeal of Footnote 7 based on the reasons as stated in the Staff Report, which are supported and elaborated on in this comment letter. However, CVCPG requests that City correct a misinterpretation and determination of the non-effect (no retroactivity) of the repeal of Footnote 7 on any projects for housing that are currently applied for but for which a building permit has not been issued, and construction has not commenced, including, but not limited to, the two below identified projects.

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1. Klauber Development Project

The Klauber Development Project (“Klauber Project”) is an application for a Neighborhood Development Permit, Site Development Permit and Tentative Map for the subdivision of one lot into 25 lots and the development of 25 single-story, single-family homes in the RS-1-2 zone. This project was recently found to have a density inconsistent with local planning and is being re-evaluated at 23 single family homes. However, the Klauber Project still exceeds the density of the RS-1-2 zone and cannot be approved with the repeal of Footnote 7. The applicant will have no vested rights to continue with this application as discussed below.

2. 5702 Old Memory Lane Development Project

The 5702 Old Memory Lane Development Project (“Old Memory Lane Project”)¹ seeks Neighborhood Development Permit, Vesting Tentative Map, And Site Development Permit seeks approval for 131 single family residential homes in the RS-1-2 zone. While the Old Memory Lane Project seeks a vesting tentative map vested rights are not obtained until City “approves or conditionally approves a vesting tentative map.” (Government Code § 66498.1, subd. (b).) Until such a time, this Project does not have vested rights and cannot be approved with the repeal of Footnote 7 because it will exceed allowed density in the RS-1-2 zone.

B. CORRECTING THE MISINTERPRETATION OF VESTED RIGHTS FOR APPLICATIONS MADE PURSUANT TO FOOTNOTE 7

1. Not All Development Applications Have Obtained Vested Rights

In the City Attorney Memo: “Legality of Footnote 7 in San Diego Municipal Code Table 131-04D and Proposed Amendment” that issued from the City Attorney on January 22, 2025 (“Memo MS 59”), the City Attorney asserts that, as a general matter of law “Pursuant to state law, development applications that have been deemed complete are entitled to proceed under the law and policies in effect at the time the application was deemed complete. This is known as a “vested right.” (Id. at p. 4.)

The assertion that – repeal of Footnote 7 would not apply to *any* development applications finally applied for, regardless of whether they have an approval or building permit – is contrary to longstanding California and federal law. The longstanding general rule of vested rights (grandfathering) is that *until and unless a permit and approval is granted, a change in zoning DOES NOT inure to the benefit or detriment of a pending application.* (*Stubblefield Constr. Co. v. City of San Bernardino (Stubblefield)*, (1995) 32 Cal.App.4th 687, 707-708.)

¹ The Klauber and Old Memory Lane Projects are hereinafter referred to as “Projects.”

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A property owner must perform substantial work and incur substantial liabilities in good faith reliance upon a permit to acquire vested rights. (*Avco Community Developers, Inc. v. South Coast Regional Com. (Avco)*, (1976) 17 Cal.3d 785, 791.) The California Supreme Court in *Avco*, held that no vested right exists based solely on an application or preliminary approval. A landowner cannot rely on prior zoning laws when applying for a building permit unless a vested right is established. (*Id.*)

The term “permit” means a building permit. (*Avco* at p. 793.) “[A] builder must comply with the laws which are in effect at the time a building permit is issued, **including the laws which were enacted after application for the permit.**” (*Avco* at p. 795, bold added.)

The Supreme Court and subsequent California cases have applied this rule in a number of ways.

1. **An applicant has no vested right to develop their property in accordance with the zoning in existence at the time they submitted their review of plans application.** (*Stubblefield, supra*, 32 Cal.App.4th at p. 708.)
2. **Preparatory work (demolition, grading etc.) done in anticipation or preparation of the issuance of a building permit does not confer a vested right.** (*Avco Community, supra*, 17 Cal.3d at p. 793.)
3. **City cannot create a policy that applications under Footnote 7 are not bound to zoning changes because City may not infringe on its right to exercise police power in the future.** (*Discovery Builders, Inc. v. City of Oakland*, (2023) 92 Cal.App.5th 799, 811.)²
4. **Due Process is not implicated in denying an applicant who has not obtained a building permit vested rights.** (*Stubblefield, supra*, 32 Cal.App.4th at p. 708, citing *Usery v. Turner Elkhorn Mining Co.*, (1976) 428 U.S. 1, 15. [rejections of development projects and refusals to issue building permits do not ordinarily implicate substantive due process.].)

The below defined Staff Slideshow cites the Housing Crisis Act of 2019 – SB 330 (Government Code 66300) (*Id.* at p. 15.) However, Government Code 66300 does not contain any provision providing an exception to the general rule for vested rights:

[D]oes not allow a city to change the general plan (community plan) land use designation or zoning of a property to a less intensive use or reduce the intensity of land use within an existing land use designation, or zoning below what was allowed under the land use designation and zoning, as in effect on January 1, 2018, in a manner that would result in a net loss of residential capacity.

² Subject to certain exceptions such as development agreements under Government Code 65865 for land that is intended to be annexed under specific requirements and regulations.

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The application of Government Code 66300 is limited to the reduction in density in a plan, use designation, or zoning below what was in effect January 1, 2018. The history of footnote 7 is that it was added in 2020, well after the effective date of 66300. Therefore, Government Code 66300 does not provide a legislative exception to the general rule of vested or grandfathered rights.

Memo MS 59 addresses “Statutory vested rights” as being when “a **development agreement** has been entered into, a vesting tentative map has been applied for, or an application is made pursuant to the Housing Crisis Act of 2019.” (Id. at p. 7 citing Cal. Gov’t Code §§ 65864-65869.5, 66498.1; Cal. Stats. 2019, ch. 654 (Sen. Bill 330) [Government Code 66300], bold added.) However, these are limited categories of vested rights, and a development agreement is clearly NOT applicable to ALL development projects.

Development agreements under Government Code 65865 are not applicable to all development projects and are limited. Vesting tentative maps similarly are limited to projects that fit the qualifications under the Subdivision Map Act and Government Code § 66498.1.³ Finally, the Legislative Counsel’s Digest of the Housing Crisis Act of 2019 (“Act”) is specific for “housing development project[s] for very low, low-, or moderate-income households or an emergency shelter. . .” The above two Projects – Klauber and Old Memory Lane are not such projects and, regardless, they are excepted because they require subdivisions. Government Code section 66300 simply does not create a legislated premature vested right for the above two Projects.

The Staff Report dated February 26, 2025, did NOT contain any report or advisement regarding the effect that City’s repeal of Footnote 7 would have on recent or prior project applications made that attempted to apply the improvident and wrong Footnote 7 zoning standards to the *Southeastern San Diego and Encanto Neighborhoods Community Planning Areas*. On February 28, 2025, staff uploaded and made available a background and informational slideshow (“Staff Slideshow”) with an incorrect statement regarding the effect of rescinding Footnote 7. To wit, Page 16 of the Staff Slideshow states:

When a housing development application is deemed complete it must be reviewed and processed under the rules and regulations in effect at the time of submittal.

Any changes to the regulations after the application is deemed complete do not apply, even if the changes occur before the building permit is issued.

(Id., bold in original)

³ This section may apply to the Old Memory Lane Project but, regardless, the zoning change in the repeal of Footnote 7 will precede any approval of a vesting tentative map and therefore the applicant will not have vesting rights.

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The statements made on this slide of the Staff Slideshow are partially correct and incorrect. The first statement is generally correct. Projects are reviewed under the laws in place at the time the applications are deemed complete. However, a change and repeal of zoning regulations under Footnote 7 does apply to projects that have not been approved and permitted. Thus, the statement on page 16 of the Staff Slideshow is an incorrect statement and application – as a matter of law. Assuming the subject Staff Slideshow is a result of the Memo MS 59, the comment letter further objects and responds below to that memorandum.

2. The City Attorney Did Not Evaluate Multiple Arguments that Footnote 7 is Invalid

Memo MS 59 specifically declined to address many of the community concerns, shared by CVCPCG, of the legality of the implementation of Footnote 7, including but not limited to (1) process followed to amend Table 131-04D to add Footnote 7 and effectively rezone areas from RS-1-2 to RS-1-7; (2) possible conflict with the Encanto Community Plan regarding park spaces; (3) possible conflict with the Equity, Environmental Justice Element(s) of the City's General Plan; and (4) violation of the California Environmental Quality Act (CEQA). (Memo MS 59 at 3, fn. 2.)

3. Footnote 7 Likely Violates Fair Housing, Equal Protection and Due Process Requirements

Memo MS 59 further fails to acknowledge that, despite the presumed correctness of legislative actions and land use regulations (Id. at p. 3 citing *Village of Euclid, Ohio v. Ambler Realty Co.*, (1926) 272 U.S. 365, 395), City cannot take action in violation of separate and preemptive federal and state laws.

The Fair Housing Act ("FHA") (42 U.S.C. § 3601 et seq.) and California Fair Employment and Housing Act ("FEHA") (Gov. Code § 12900 et seq.), prohibits discrimination in housing policies and practices. A zoning ordinance, even if presumed valid, can be challenged under the FHA and FEHA if it has a disparate impact on protected classes. (*Sisemore v. Master Fin., Inc.*, (2007) 151 Cal.App.4th 1386, 1423.)

A disparate impact does not require a discriminatory intent or motive, rather it is based on a challenge of a "disproportionately adverse effect on minorities [or other protected class]" that is not justified by a legitimate rationale. (*Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, (2015) 576 U.S. 519, 524.) "A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin." (24 C.F.R. § 100.500.)

A disparate impact is established when a facially neutral practice causes a disproportionate adverse impact on a protected class. (*Darensburg v. Metro. Transp. Comm'n*, (9th Cir. 2011) 636 F.3d 511, 519; *see also Villafana v. Cnty. of San Diego*, (2020) 57 Cal.App.5th 1012, 1018.) In such a case City would be required to justify the implementation of Footnote 7, but even so, it is a violation if there is a less discriminatory alternative. (*Id.*)

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As noted in the Staff Report, City must affirmatively further fair housing and take meaningful actions to address significant disparities in housing needs and access to opportunities. (Id. at p. 3.) Central to this is the removal of segregated living patterns with integrated and balanced communities to eliminate racially and ethnically concentrated areas of poverty. Footnote 7 *only* applies to Encanto and Southeastern San Diego Community Planning areas, with the acknowledged caveat that Southeastern San Diego Community does not have lots zoned RS-1-2 and therefore as a practical matter *only* applies to Encanto. (Memo MS 59 at p. 2, and fn. 1.)

Considering Encanto's racial diversity and lower median household income compared to other San Diego neighborhoods with similarly high levels of RS-1-2 zoned lots (La Jolla), singling out Encanto for extremely high-density development is a suspect and a prima facie case of disparate impact under federal and California fair housing laws.

Further, the implementation of Footnote 7 (as a footnote) and the failure to follow proper planning practices raises questions of equal protection and due process under the United States and California Constitutions. (Staff Report at p. 4.)

5. Vested Rights Cannot be Obtained for an Unconstitutional and Unlawful Zoning Ordinance

Based the limitations of the Memo MS 59, and admissions that Footnote 7 only applies and affects the racially diverse Encanto area (and specifically not other more affluent and less diverse neighborhoods with RS-1-2 zoned lots), the legality and validity of the implementation of Footnote 7 is doubtful. Because of this, applications relying on Footnote 7 have not obtained vested rights because Footnote 7 was a discriminatory and unlawful action and void. (*Millbrae Ass'n for Residential Survival v. City of Millbrae*, (1968) 262 Cal.App.2d 222, 246.) Further, any permit that is not obtained in good faith reliance on the validity of Footnote 7 cannot impart vested rights. (*Autopsy/Post Servs., Inc. v. City of Los Angeles*, (2005) 129 Cal.App.4th 521, 526–527.)

5. The Enactment of Footnote 7 is Nullified by Legal Infirmities and Political Influence Nullify any Equitable Considerations for the Klauber and 5702 Old Memory Lane Projects

As stated above, CVCPG clearly states how the law does not meet or nullifies any state vesting laws for the Klauber or 5702 Old Memory Lane Projects.

In addition, there is a significant timing issue and implication of campaign contributions and lobbying by land use practitioners for the Klauber and 5702 Old Memory Lane projects beginning in 2021, on or about the time when the Footnote 7 anomaly was instituted, that result in direct benefits for those project applicants, and consulting staff, involved in the alleged illegality and improvidence arising from Footnote 7.

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It is also remarkably apparent that City officials, including DSD leader Gary Geiler, helped bury and hide the Footnote 7 anomaly by agreeing in 2022 and 2021 to place it in the zoning code table as a footnote rather than include it in the base-layer zoning maps. (Email chain April 29, 2020; confirmed again in April 20, 2021 email chain.)

Therefore, notwithstanding state standards for vesting and date-of-application limitations, there are multiple equitable and factual considerations that clearly weigh against Klauber and/or 5702 Old Memory Lane Projects getting any inappropriate or illegal protected status from the repeal of the improvident Footnote 7.

C. CONCLUSION

CVCPG requests that City Council adopt staff's recommendation to repeal the enactment of Footnote 7, but disavow and not adopt or endorse staff's interpretation that exiting "applied for" projects will and cannot be affected by City's instant action under its zoning authority.

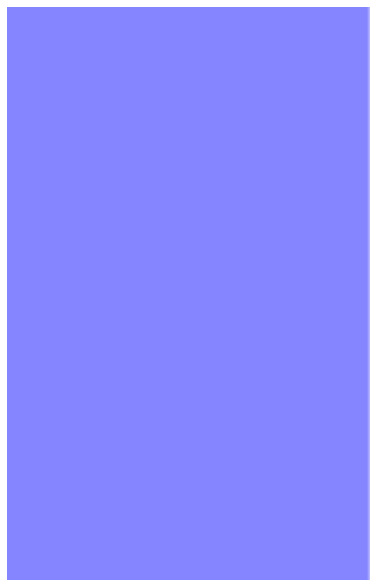
Should you have any questions or would like this letter or any of the supporting materials or attachment in any other form, please do not hesitate to contact my office.

Sincerely,



Craig A. Sherman

cc: all Councilmembers (via email)



TELEPHONE (619) 702-7892

Via Email

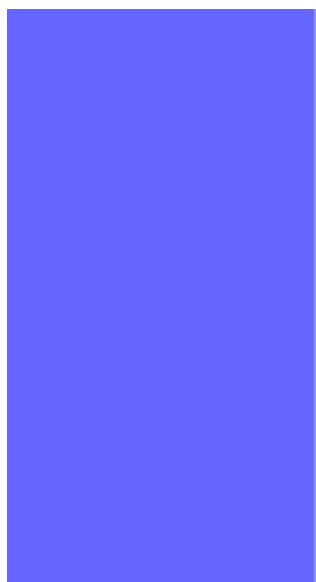
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July 14, 2025

FACSIMILE (619) 702-9291



Re: *Objection to Klauber Project*

July 15, 2025, City Council, Agenda Item No. 332

To the Honorable City Council President Joe LaCava and Members of the San Diego City Council (“City Council”):



This office has been hired and represents the Chollas Valley Community Planning Group (“CVCPG”).

This comment letter is in opposition to the Klauber Development Project (“Klauber Project”), listed as Agenda Item No. 332 on the City Council’s July 15, 2025 meeting agenda. CVCPG respectfully requests that the City Council DENY the Klauber Project because it is subject to CEQA review, inconsistent with the Encanto local plan and does not meet the criteria for approval of a tentative map (“Tentative Map”), site development permit (“SDP”), or neighborhood development permit (“NDP”).

I. SUMMARY OF ARGUMENTS IN OPPOSITION

A. The Claimed CEQA Exemption is not Appropriate or Applicable

CEQA Guidelines section 15183 may only be utilized as an exemption where the Klauber Project is consistent with the development density established by existing zoning, community plan, or general plan policies for which a PEIR was certified. (Id., subd. (a).) The zone for the Klauber Project site (1362 Klauber Avenue, San Diego, California 92114) studied in the 2015 Encanto Neighborhoods Community Plan EIR (“Encanto PEIR”)¹ was the RS-1-2 zone, with a minimum lot size of 20,000 sq. ft, designed to retain a rural character within the zone. (Encanto PEIR Fig. 3.7-2 [Exhibit A].) Further, under the undisputed authority of the California Supreme Court case *Communities for a Better Environment v. South Coast Air Quality*

Despite the fact that the basis of the proposed CEQA exemption is consistency with the Encanto PEIR, a copy is not provided in the materials for Item 332.



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Management Dist. (Communities for a Better Environment), (2010) 48 Cal.4th 310, even where an applicant may have vested a right, does not change the level of CEQA review. (*Id.* 324–325.) This is because CEQA is concerned informing decision-makers and members of the public of the *environmental effects* of a project. CEQA does not determine whether a project may or may not be approved, but the failure to perform CEQA subjects any approvals to rescission by a court of law solely based on the failure to perform CEQA review.

B. The Applicant Does Not Have Vested Rights for any Part of the Project or Project Approvals

The Klauber Project does not have a vested right to utilize footnote 7 (“Footnote 7”) of Table 131-04B of the San Diego Municipal Code (“SDMC”), with Footnote 7 being repealed on April 24, 2025. This Comment Letter addresses and disproves each of the grounds relied upon by Staff to argue for a “statutory” vested right for the Klauber Project. Without specific statutory vested rights, the general rule of vesting applies, and no rights can vest until the issuance and reliance by the Applicant on a building permit.

C. The Klauber Project is Inconsistent with the Encanto Community Plan

The Klauber Project is fundamentally inconsistent with multiple adopted goals and policies of the Encanto Community Plan (“Encanto Plan”). The site is specifically designated in Table 7-2 of the Encanto Plan for acquisition as a 3-acre public park, described as “two undeveloped parcels with gently rolling slopes” a designation the Project would erase through grading and private subdivision. The proposal also conflicts with adopted policies requiring preservation of the area’s large-lot, rural single-family character (RS-1-2 zoning), and fails to provide safe pedestrian or ADA-accessible connectivity to transit, in violation of the Plan’s mobility and urban design objectives. Further, the mass grading, removal of hillside and conversion of the natural landscape into a stylistically repetitive and car-centric housing development violates policies of protecting open space and watersheds in the Encanto area.

For all the above reasons, and for reasons presented in other written and oral comment, CVCPG requests that City Council deny the Tentative Map, SDP, and NDP, and further find that the project cannot be exempted from CEQA pursuant to CEQA Guidelines section 15183.

II. THE KLAUBER PROJECT IS NOT EXEMPT UNDER CEQA GUIDELINES § 15183

A. The Klauber Project is not Exempt Under § 15183 Because Vested Rights are Irrelevant to the Determination of the Type and Level of CEQA Review

The RS-1-2 zone requires a minimum lot size of 20,000 sq. ft. (Attachment 7, Attachment - CEQA Section 15183 Consistency Review Checklist “Consistency Checklist,” pp. 1-2.) The Klauber Project does not meet these minimum lot sizes. (Consistency Checklist, p. 2.) Instead, the Consistency Checklist assumes that the applicable minimum lot size is 5,000 sq. feet, based



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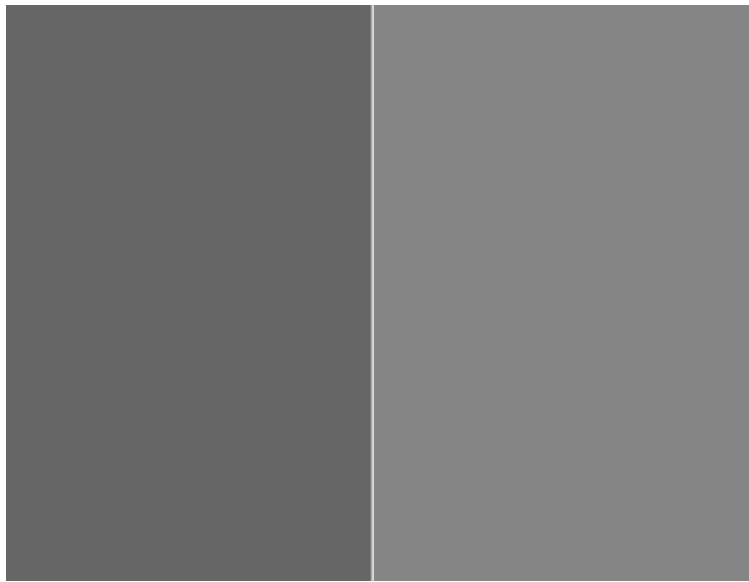
on the repealed “Footnote 7” to San Diego Municipal Code (“SDMC”) Table 131-04D. (Consistency Checklist, p. 2 [“Pursuant to footnote 7 . . . in place at the time the project was deemed complete, the minimum lot size in the Encanto Neighborhoods and Southeastern San Diego Community Planning Areas is 5,000 square feet . . .”].)

The Staff Report, and the MS 59 Memo that it relies on (Attachment 12), similarly conflate land use vesting principles with CEQA obligations. The Staff Report states that “The City Council subsequently repealed footnote 7 to Table 131-04D on April 24, 2025, yet the proposed project is subject to the regulations in effect on April 27, 2022, which included footnote 7. **Thus, the project was analyzed using footnote 7.**” (Staff Report, p. 7, bold added.) Memo MS 59 asserts: “Pursuant to state law, development applications that have been deemed complete are entitled to proceed under the law and policies in effect at the time the application was deemed complete. This is known as a “vested right.” (Attachment 12, p. 7.)

Under California law, a vested right is the narrow and legally defined ability of a landowner to proceed with development under existing regulations, even if those regulations later change. (*Avco Community Developers, Inc. v. South Coast Regional Com.*, (1976) 17 Cal.3d 785, 791–793; *Communities for a Better Environment*, *supra*, 48 Cal.4th 310, 324–325.)

However, CEQA is an informational statute, not a land use entitlement statute. (*Association of Irrigated Residents v. Cnty. of Madera*, (2003) 107 Cal.App.4th 1383, 1392.) It is an informational law whose core purpose is to ensure that public agencies and the public are fully informed about a project’s potential environmental impacts before any discretionary approval is granted. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 394.) “The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project. . .” (*Nat. Res. Def. Council, Inc. v. City of Los Angeles*, (2002) 103 Cal.App.4th 268, 271; *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, (1988) 47 Cal.3d 376, 404.) The failure to comply with the information disclosure provisions may be a prejudicial abuse of discretion. (*Id.*)

Even if Staff were correct – that the Klauber Project has some vested right under the repealed Footnote 7² under CEQA – a “vested right” does not eliminate the duty to realistically assess environmental impacts. The Consistency Checklist, the Staff Report, and MS 59 Memo fail to address the California Supreme Court’s ruling in *Communities for a Better Environment*, where the Supreme Court rejected the argument that existing entitlements excuse environmental analysis. (*Id.* (2010) 48 Cal.4th 310, 324-325.) As the Supreme Court explained:



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Even if environmental review were to indicate that the project's adverse effects could be mitigated only by a condition . . . [and] vested rights precluded imposition of that condition, CEQA would still demand an analysis of the project's true effects. That a particular mitigation measure may be infeasible or

As discussed below, CVCPG disputes' the argument that the referenced affordable housing law applies to the Klauber Project and repeal of Fn. 7.



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precluded, as by the applicant's vested rights, is not a justification for not performing environmental review; **it does not excuse the agency from following the dictates of CEQA and realistically analyzing the project's effects.** After proper analysis, the agency might decide to disapprove the project because of its inmitigable adverse effects or to approve it with a finding of overriding considerations. [Citation.] In short, **an applicant's vested rights might constitute a valid reason to forgo particular mitigation measures, but are not an excuse to avoid realistic CEQA analysis.**

(Communities for a Better Environment, supra 48 Cal.4th 310, 324-325, bold added.)

The exemption of CEQA Guidelines §15183 is only applicable where the project is "consistent with the development density established by existing zoning, community plan, or general plan

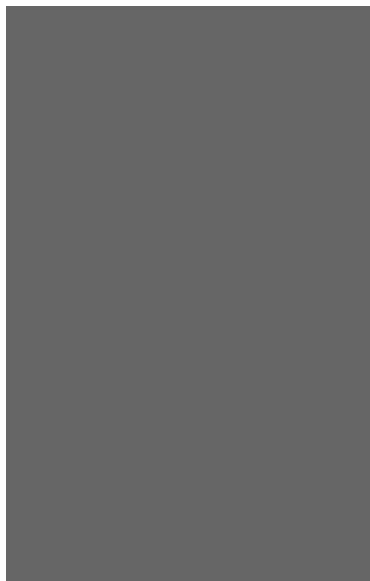
policies for which an EIR was certified. . . (Id., subd. (a).) Here, the exemption does not apply because the Klauber Project is not consistent with the RS-1-2 zoning in effect at the time of any and all prior CEQA review, and this inconsistency undermines any claim or argument of the Applicant or City that the project's impacts were previously analyzed in the 2015 Encanto Neighborhoods Community Plan EIR ("Encanto PEIR").

The Encanto PEIR analyzed buildout based on adopted zoning and community plan land use designations, including density limits specific to the RS-1-2 zone, which requires a minimum lot size of 20,000 square feet. (Encanto PEIR Fig. 3.7-2 [Exhibit A].) The proposed subdivision of just 5.66 acres creates lot sizes of "approximately 5,650 square feet to 14,388 square feet" (Consistency Checklist, p. 2), which are well under the minimum 20,000 sq. ft. required in the RS-1-2 zone and precludes the application of the exemption under CEQA Guidelines § 15183. Therefore, City cannot find that the Klauber Project exempt and CEQA analysis is required to address potentially significant impacts before the tentative map and permits for it can be approved.

Even assuming there is some alleged or argued valid vested right, fulfilling CEQA requirements does not prevent ultimate approval of the project; however, it does mandate that no approval can occur until CEQA is fully complied with. (*Communities for a Better Environment, supra*, 48 Cal.4th at p. 325 ["an applicant's vested rights might constitute a valid reason to forgo particular mitigation measures, but are not an excuse to avoid realistic CEQA analysis."].)

Further, the Encanto PEIR analyzed future growth and land use impacts based on the zoning map adopted with the Community Plan Update, which designated the Klauber Project area as RS-1-2, which is designated as "Residential-Very Low." (Encanto PEIR Figure 3.3-2 [Exhibit B].) As stated in the Encanto PEIR for the category Residential-Very Low:

Very Low density residential is intended for areas with predominantly single- family residential development on large lots (40,000 SF or greater), in a "rural-



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feeling” setting and on hillsides. Single-family homes are oriented with significant front, rear and side yards, with a [sic.] the lowest density range of 0 to 4 du/ac. (Id.)

The Encanto PEIR *did not* study or anticipate a radical change in a very low density on large lot sizes wholly inconsistent with the “rural-feeling” setting of the Klauber Project site. In fact, the Encanto PEIR considered that subsequent projects would not be exempt from further CEQA review and that “If additional analysis is required, it can be streamlined by tiering from this PEIR pursuant to CEQA Guidelines, Sections 15152, 15153, and 15168 (e.g., through preparation of a Mitigated Negative Declaration, Addendum, or Focused EIR).” (Encanto PEIR, p. 1-2.) This admission of the need for additional analysis is, at a minimum, what is required here; a project-specific CEQA document to evaluate the site-specific and cumulative impacts of the increased density of the Klauber Project inconsistent with the RS-1-2 zone, which were not contemplated, disclosed, or mitigated in the 2015 PEIR.

B. The Klauber Project Will Have Potentially Significant Impacts Requiring Study Notwithstanding CEQA Guidelines § 15183

Even where a local agency may invoke CEQA Guidelines section 15183, the following types of impacts require examination in an initial study or other analysis:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(CEQA Guidelines § 15183, subd. (b).)

The Klauber Project has multiple undeniable potentially significant impacts that the Consistency Checklist fails to properly consider and for which there is no substantial evidence to support its determinations.



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As an initial matter, the Encanto PEIR did not contemplate or consider the lot sizes of approximately 5,650 square feet to 14,388 square feet within the RS-1-2 zone, making the Klauber Project peculiar for substantially all of the potentially significant impacts. On that basis, CVCPG challenges the determination of the Consistency Checklist for any potentially significant impact as requiring further CEQA study. Further, there are specific factors that were not studied in the Encanto EIR and require further study.

1. The Klauber Project Intends to Massively Grade the Hillside on the Project Site

The Klauber Project “proposes 16,000 cubic yards of cut to a depth of 30 feet.” (Consistency Checklist pp. 29, 46.) This is a potentially significant impact on multiple levels:

1. Visual Resources and Community Character

Includes 16,000 cubic yards of cut and 73,000 cubic yards of fill, plus construction of 15- to 30-foot-high cuts and large retaining walls that will permanently modify the original landform of the site. (Consistency Checklist, p. 46.) City’s own Zoning and Parcel Information Portal (ZAPP) identifies the project site as containing steep slopes (greater than 25%)³. (Exhibit C.)

2. Paleontological Resources

The project proposes 16,000 cubic yards of cut to a depth of 30 feet, which far exceeds the CPU PEIR’s threshold of 1,000 cubic yards in high sensitivity formations. (Consistency Checklist p. 29.) This level of disturbance is much greater than the baseline used to define “significant

impact” in the PEIR, raising the possibility that even with standard mitigation (MM-PALEO-1), site-specific impacts may not be sufficiently addressed by the PEIR.

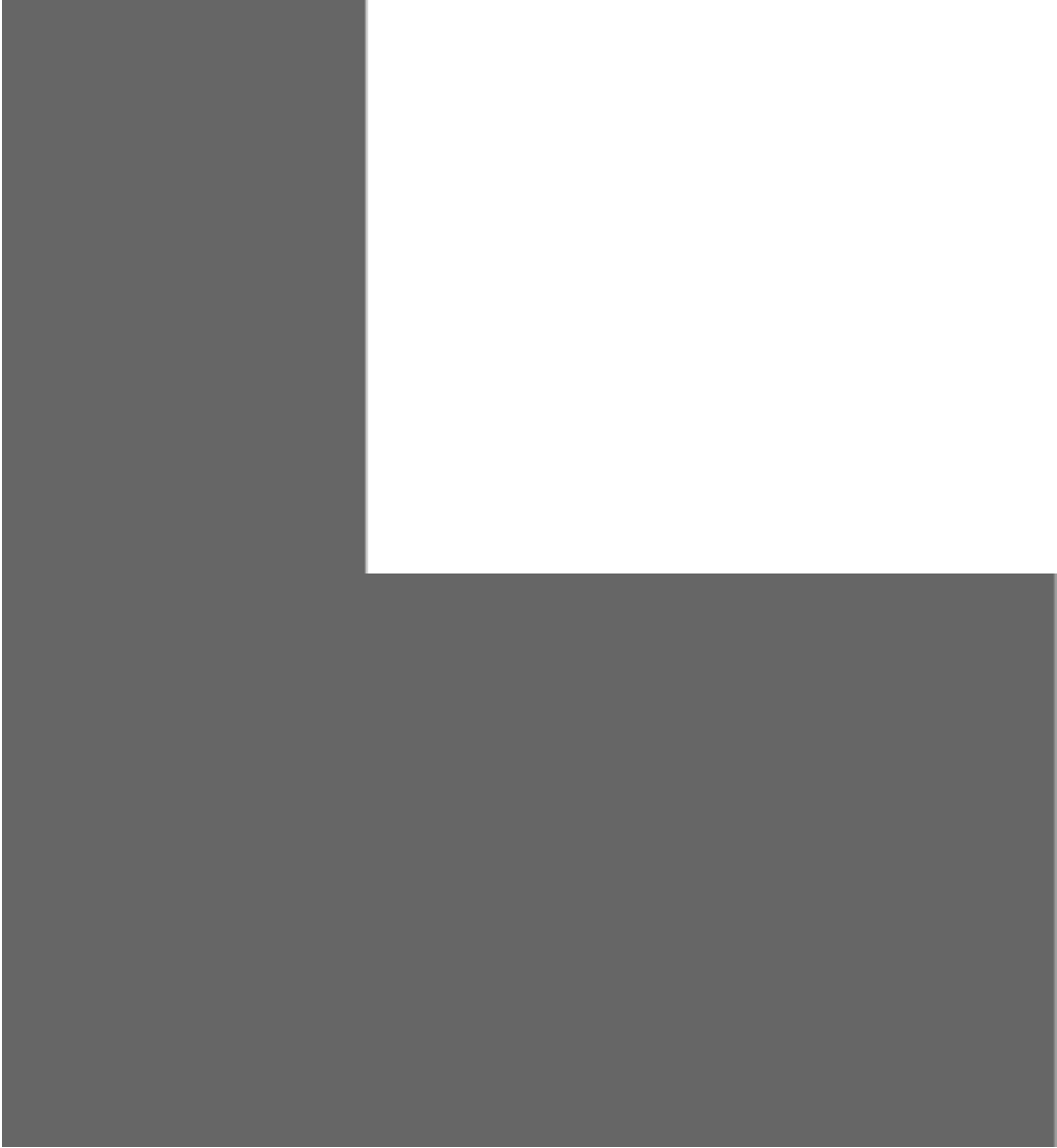
3. Hydrology and Water Quality

The Consistency Checklist admits that the Klauber Project will create 2.6 acres of impervious area for a 100% increase. (Consistency Checklist, pp. 23-24.)

5. Air Quality and GHG Emissions

The Consistency Checklist does not consider the grading and hauling of the significant cut and fill for the Klauber Project. (Id. pp. 39-40.) Including substantial truck traffic, equipment use, and pollution and dust generation. the Encanto PEIR did not analyze this volume of earth movement at the parcel level.

2. Consistency Checklist Fails to Acknowledge that the Klauber Project Site is in a High Severity Fire Zone





Which may further implicate and require Environmentally Sensitive Land Regulations for Steep Hillsides pursuant to SDMC § 143.0110.



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The Consistency Checklist only address only general fire protection. (Id., pp. 33-36.) The Klauber Project site lies within a Very High Fire Hazard Severity Zone. This designation

signifies that the area is subject to elevated wildfire risk. Although the Encanto PEIR acknowledged general fire hazards in the region, it did not analyze the site-specific risks of high-density subdivision on this particular hillside or emergency evacuation constraints because of the low density RS-1-2 zoning anticipated for the site.

The Klauber Project combination of location, density, topography, and access limitations presents a site-specific fire hazard condition that was not contemplated in the Encanto PEIR and cannot be adequately addressed by generalized policy references or standard mitigation measures.

III. THE ZONING AND DENSITY REGULATIONS UNDER FOOTNOTE 7 DO NOT APPLY TO THE KLAUBER PROJECT

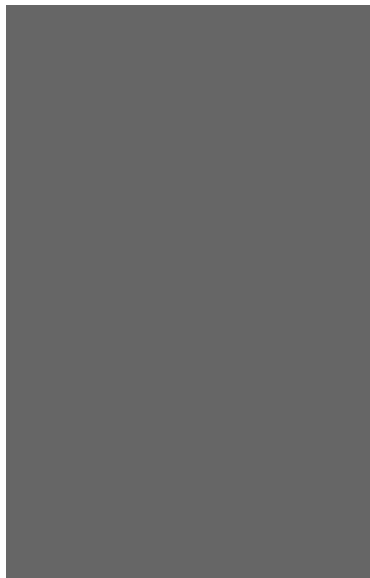
A. Memo MS 59 Does Not Identify a Valid Statutory Basis to Apply Footnote 7

The Staff Report relies on Memo MS 59 for the assertion that “Footnote 7 development applications deemed complete for housing and subdivision developments in areas utilizing Footnote 7 have a vested right to continue to rely upon Footnote 7. . .” (Staff Report, p. 2.) Memo MS 59 addresses “Statutory vested rights” as being when “a **development agreement** has been entered into, a vesting tentative map has been applied for, or an application is made pursuant to the Housing Crisis Act of 2019.” (Attachment 12, p. 7 citing Cal. Gov’t Code §§ 65864-65869.5, 66498.1; Cal. Stats. 2019, ch. 654 (Sen. Bill 330) [Government Code § 66300], bold added.) Memo MS 59 further asserts that “In addition, the Housing Accountability

Act prohibits a local agency from applying any ordinances, policies, and standards that were not in effect when a preliminary application for the project was initially submitted or once the project was deemed complete. Cal. Gov’t Code § 65589.5.” (Attachment 12, p. 7.) For the below reasons, the Memo MS 59 is incorrect and cannot be relied upon for Staff to assert that the Klauber Project has any statutory vested right to utilize Footnote 7 for purposes of density and zoning for the project site.

First, there is no development agreement for the Klauber Project made or entered under Government Code section 65865 and therefore this assertion of City is not applicable or relevant to the Klauber Project.

Second, vesting tentative maps are similarly limited to projects that fit the qualifications under the Subdivision Map Act and Government Code § 66498.1. There is no evidence or indication that the Applicant applied for a vesting tentative map that meets the requirements of Government Code section 66452 (*see* Government Code section 66424.5) – as present or evidenced in any of the staff report, proposed Resolution R-2025-666, or in any publicly available information on



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City's Acella site for the Tentative Map No. PMT-2567097 (Exhibit D.) Thus, the statutory vesting under Government Code § 66498.1 does not apply to the Klauber Project.

Further, even if the proposed Tentative Map for the Klauber Project qualified as a vesting tentative map, it would not create a vested right to utilize Footnote 7 for this Project because merely *filing* for a vesting tentative map does not confer vested rights. Pursuant to Government Code § 66498.1, subdivision (b) makes clear: “**When a local agency approves or conditionally approves a vesting tentative map**, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2 [or] with development in substantial compliance with the ordinances, policies, and standards in effect at the time the vesting tentative map is approved or conditionally approved.” (Id., bold added.) In other words, no statutory vested right exists prior to map approval. Because the Klauber Project’s tentative map has not been approved, any assertion of vested rights under this statute is premature and unsupported.

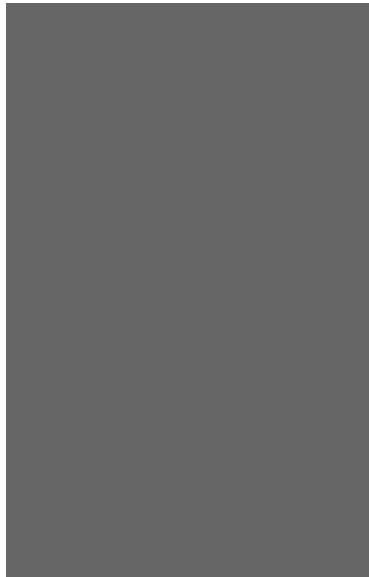
Third, the Legislative Counsel’s Digest for the Housing Crisis Act of 2019 (“Act”) is specific for “housing development project[s] for very low, low-, or moderate-income households or an emergency shelter. . .” The Klauber Project does not fit these criteria. Regardless, it is excepted from said Act because it requires a subdivision. Government Code section 66300 simply does not create a legislated premature vested right for the above two Projects.

Fourth, Memo MS 59 cites only generally to Government Code section 65589.5 suggesting or purporting that it grants a statutory vesting right as may be present under Government Code section 65589.5, subdivision (o)(1). Said subdivision states that “a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the information required by subdivision (a) of Section 65941.1 was submitted.” However, there are exceptions to this rule; namely that a housing development is not granted vesting rights where:

Subjecting the housing development project to an ordinance, policy, standard, or any other measure, beyond those in effect when a preliminary application was submitted is necessary to avoid or substantially lessen an impact of the project under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(Government Code section 65589.5, subdivision (o)(2)(C).)

The necessity of CEQA study precludes freezing in place the ordinances, policies, and standards at the time of application. City cannot utilize the statutory vested right of Government Code section 65589.5, subdivision (o)(1) to preclude its statutory exception under Government Code section 65589.5, subdivision (o)(2)(C). Here, the remarkably substantial change in minimum lot sizes from 20,000 sq. feet to 5,000 sq. feet is a zoning and land use density change that may result in multiple adverse environmental impacts that, at a minimum, must be studied. It is



incorrect and implausible position for City to argue that a statutory vesting right is in place simply in order to avoid the application of one of its statutory exceptions.

B. The Klauber Project Has Not Otherwise Acquired Any Vested Rights

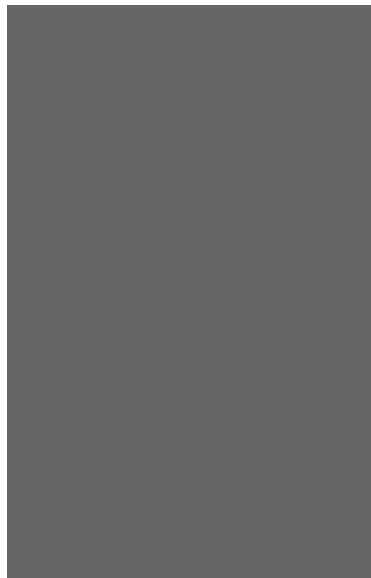
Under the general rule of vested rights, a property owner must perform substantial work and incur substantial liabilities in good faith reliance upon a permit to acquire vested rights. (*Avco Community Developers, Inc. v. South Coast Regional Com. (Avco)*, (1976) 17 Cal.3d 785, 791.) The California Supreme Court in *Avco*, held that no vested right exists based solely on an application or preliminary approval. A landowner cannot rely on prior zoning laws when applying for a building permit unless a vested right is established. (*Id.*)

The term “permit” means a building permit. (*Avco* at p. 793.) “[A] builder must comply with the laws which are in effect at the time a building permit is issued, **including the laws which were enacted after application for the permit.**” (*Avco* at p. 795, bold added.)

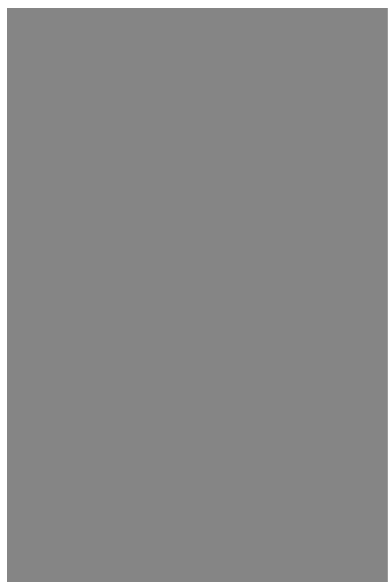
The Supreme Court and subsequent California cases have applied this rule in a number of ways.

2. **Preparatory work (demolition, grading etc.) done in anticipation or preparation of the issuance of a building permit does not confer a vested right.** (*Avco Community, supra*, 17 Cal.3d at p. 793.)
3. **City cannot create a policy that applications under Footnote 7 are not bound to zoning changes because City may not infringe on its right to exercise police power in the future.** (*Discovery Builders, Inc. v. City of Oakland*, (2023) 92 Cal.App.5th 799, 811.)⁴
4. **Due Process is not implicated in denying an applicant who has not obtained a building permit vested rights.** (*Stubblefield, supra*, 32 Cal.App.4th at p. 708, citing *Usery v. Turner Elkhorn Mining Co.*, (1976) 428 U.S. 1, 15. [rejections of development projects and refusals to issue building permits do not ordinarily implicate substantive due process.].)

Under vesting doctrine, the Applicant here has not obtained a building permit or any other permit for the Klauber Project and therefore no rights have vested.



1. An applicant has no vested right to develop their property in accordance with the zoning in existence at the time they submitted their review of plans application. (*Stubblefield, supra*, 32 Cal.App.4th at p. 708.)



Subject to certain exceptions such as development agreements under Government Code sec. 65865 for land that is intended to be annexed under specific requirements and regulations.

IV. THE KLAUBER PROJECT CONFLICTS WITH THE PLANS AND GOALS OF THE 2015 ENCANTO COMMUNITY PLAN

General and community plans act as the basis of all land use policy, governing future growth and development. (*Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d 553, 570; *Leshar Communications, Inc. v. City of Walnut Creek (Leshar)*, (1990) 52 Cal. 3d 531, 540.) “[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” (*Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806.) This doctrine is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” (*deBottari v. City Council*, (1985) 171 Cal.App.3d 1204, 1213.)

State law requires all local government land use approvals be consistent with the applicable general and specific plans. (Gov. Code §§ 65860, 66474; *Napa Citizens for Honest Government et al. v. Napa County Bd. of Supervisors*, (2001) 91 Cal.App.4th 342 355; *Leshar, supra* at p. 536 [a development approval (or other land use decision) is valid only “to the extent that it is consistent with the [City’s] General Plan, i.e., to the extent that it is compatible with the General Plan’s objectives, policies, general land uses and programs.”].) The Klauber Project is inconsistent even where it conflicts with one important or mandatory policy. *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino, supra*, 155 Cal.App.3d at p. 753 [project deemed inconsistent with the general plan because it conflicted with one important and mandatory policy in the conservation element].)

A. Klauber Project Impermissibly Conflicts with the Encanto Plan

1. Inconsistency with Planned Zoning and Density

Figure 2-1 of the Encanto Plan designates the Klauber Project site as RS-1-2 (including the entire surrounding area). (Id., p. 2-5.) The RS-1-2 zone is designated as “Residential – Very Low” (0–4 du/ac), that “Provides for single-family housing within the lowest density range.” (Id., Table 2-3, p. 2-9.) The “Very Low” density is intended to preserve the rural, large-lot, single-family residential character of the RS-1-2 zone and protect hillside areas and environmentally sensitive lands.

The Project’s proposed density exceeds this designation and is completely inconsistent with the intended zone, creating cookie-cutter mass development in the center of the zone, completely destroying the community character.



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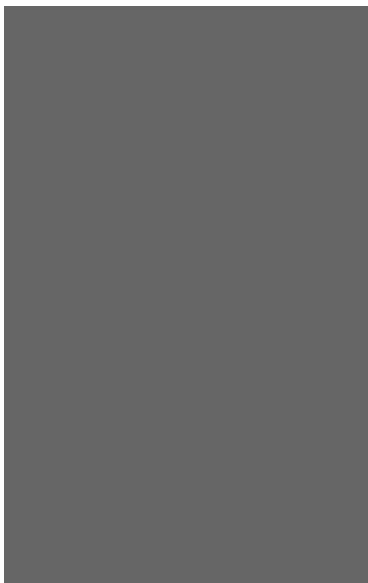
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In reality, the Klauber Project is essentially an urban design in a rural setting, but it doesn't even comply and is inconsistent with the Encanto Plan Urban Design policies through the proposed repetitious layout that lacks meaningful architectural variation or design sensitivity to surrounding residential patterns.

- **P-UD-20:** In new residential developments, repetitious use of identical style and type of dwellings should be avoided. Larger projects in particular result in greater visual prominence of development. Using a variety of structures can result in a more interesting appearance, and can also produce a wider range of housing costs.
- **P-UD-2:** Design buildings so that they contribute to a positive neighborhood character, provide diverse living, working and shopping environments, and relate to the community. Designs should be sensitive to scale, form and quality while respecting the context of well-established streets, landmarks, and areas that give a community a sense of place and history (refer to General Plan Policies UD-A.5; UD-A.7)
- **P-UD-4:** Design buildings that relate directly to the adjacent street, present an attractive and interesting façade to passersby, and appear inviting.
- **P-UD-5:** Create well-defined open spaces and common areas through building form. Arrange building spaces and dwelling units around a central, common and usable open space. For example, buildings can be clustered around courtyards, greenways, and plazas, or form the edge of a trail, creek or canyon.
- **P-UD-8:** Break down building scale and massing with a pattern and hierarchy of forms to help reduce the visual bulk of the development.

- **P-UD-9:** Incorporate smaller-scale architectural elements, such as bay windows, porches, projecting eaves, awnings, and similar elements, to add visual interest.
- **P-UD-16:** Link development to existing street and sidewalk patterns and adjacent development. Prohibit developments designed as an enclave or complex apart from the neighborhood.
- **P-UD-18:** Chain link fencing shall only be used where it cannot be seen from the public right-of-way.
- **P-UD-21:** Use of staggered setbacks, varied building heights, widths, shapes, orientations, and colors should be incorporated. Protected courtyards, verandas, facades and porches are also encouraged to promote building variety.
- **P-UD-22:** New residential development should be integrated with existing street and sidewalk patterns rather than being designed as an enclave or complex apart from the



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- neighborhood. Sidewalks should be provided comprehensively along all private streets and should link in a clear manner to existing pedestrian and bicycle ways.
 - **P-UD-26:** Preserve the existing single-family large lot development in areas where topographic conditions foster large lots and in areas located away from mass transit and transit corridors.
- Preserve large-lot, single-family neighborhoods in order to retain the rural atmosphere which is characteristic of Encanto Neighborhoods.

- Preserve the natural canyons and slopes of Encanto Neighborhoods as part of new residential development.

- **P-UD-50:** Provide on-site landscaping improvements that minimize heat gain and provide attractive and context sensitive landscape environments
- **P-LU-23:** Encourage infill residential developments within existing neighborhoods to be compatibly designed with neighborhood character and form

2. Failure to Preserve Planned Park/Open Space and Air Quality

The site of the Klauber Project is specifically designated as proposed park in the Encanto Plan. (Id., Figure 7.2, p. 7-7.) Table 7-2 specifies that three acres of the site are “two undeveloped parcels with gently rolling slopes” designated as “Acquire, design and construct a park with typical neighborhood park amenities.” The Klauber Project and mass grading of the site and destruction of the open space and gently rolling hills conflicts with the following policies:

This directly conflicts with the following Recreation, Conservation, and Air Quality Element policies:

- **P-RE-1:** Continue to pursue land acquisition for the creation of new public parks from willing sellers, as identified in Table 7-2.
- **P-RE-2:** Pursue park equivalencies as opportunities arise, and as identified in Table 7-2.
- **P-RE-7:** Implement recommendations contained in the Euclid + Market Land use and

Mobility Plan and the Chollas Creek Enhancement Program that serve park needs.

- **P-RE-10:** Preserve, protect, and restore canyons and hillsides as important visual amenities and limit public use to designated trails.
- **P-CS-15:** Require that hillside development complement the natural character including minimizing disturbance to topography and biological resources.



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- **P-CS-16:** Plan development to minimize grading related to topography and natural features.
- **P-CS-46:** Require new development retain significant and mature trees unless they are diseased and pose a threat to safety and welfare.

3. Pedestrian Connectivity / Path of Travel Deficiency

The Klauber Project lacks safe pedestrian access to transit, it is specifically designed as car centric, without consideration for non-car traffic. Again, despite its location in the RS-1-2 zone, it is built as a large urban project inconsistent with the Encanto Plan urban design policies and pedestrian environment and connectivity:

- **P-UD-80:** Require all developments exceeding one (1) acre in size to provide a comprehensive, internal circulation system of walkways, access ways and drives that are designed as “complete streets” and take into account all modes of travel, including bicycles.
- **P-UD-81:** Provide direct pedestrian connections to transit. This includes convenience and comfort factors for residents, such as direct access, widened sidewalks, shaded seating opportunities, and weather protection provided near public transit stops and trolley stations.
- **P-UD-92:** Design buildings and development to complement their natural landscape and follow the slope of hillsides, canyons and creeks with terraces, steps and multi-level landscapes and structures, rather than with expansive retaining walls and large flat areas.

- **P-UD-94:** Terrace development down toward the creek and trolley corridor by providing upper-level step backs and decks, landscaped terraces and patios.
- **P-UD-95:** The area's natural base of hillsides, hilltops, canyons, ravines, streams, and vegetation is an important set of assets that should be protected in new development. Site plans should utilize existing topography and preserve existing vegetation, ravines, watercourses and topographic features.
- **P-UD-96:** Structures should be designed to fit into the hillside, complementing the land's natural character, rather than altering the hillside to fit the structure.
- **P-UD-97:** Sloping sites offer opportunities to create and emphasize unique characteristics such as outdoor decks, roof gardens, bay windows and/or terraces.

Because the Project is inconsistent with one or more of these fundamental goals and/or policies, it is inconsistent with the Encanto Community Plan. (*Bernardino Valley Audubon Society, Inc. v. County of San Bernardino*, (1984) 155 Cal.App.3d 738, 753.)



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B. The Klauber Project Impermissibly Conflicts with the San Diego General Plan

In addition to violating the Encanto Community Plan, the Klauber Project is fundamentally inconsistent with multiple adopted goals and policies of the City's General Plan, particularly in the areas of land use, conservation (*see* Exhibit E General Plan Fig. RE-1 [showing the Klauber Project site marked as park space]), urban design, mobility, and environmental justice. The General Plan is a charter for sustainable, and equitable growth, and the City cannot lawfully

approve a development that substantially undermines these principles. (Gov. Code § 65860; *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531.)

Approval of the Klauber Project would be inconsistent with core Land Use and Community Planning Element objectives that require compliance with the current RS-1-2 zoning and require that the Klauber Project not adversely effect the Encanto Plan:

LU-C.6: Review existing and apply new zoning at the time of a community plan update to assure that revised land use designations or newly applicable policies can be implemented through appropriate zones and development regulations.

LU-D.1: Require a General Plan and community plan amendment for proposals that involve: a change in community plan adopted land use or density. . .

LU-F.2: Review public and private projects to ensure that they do not adversely affect the General Plan and community plans. Evaluate whether proposed projects implement specified land use, density/intensity, design guidelines, and other General Plan and community plan policies including open space preservation, community identity, mobility, and public facilities.

The Mobility Element of City's General Plan, which emphasizes equitable, multimodal transportation access and safety particularly in disadvantaged and topographically challenged neighborhoods like Encanto. The General Plan sets clear expectations that new development must support walkability, connectivity, and ADA-compliant pedestrian infrastructure.⁵ The Klauber Project is inconsistent in this regard. It is designed as a car-dependent enclave, disconnected from the surrounding streets that violates the General Plan's mobility objectives:

ME-A-.4: Make sidewalks and street crossings accessible to pedestrians of all abilities.



a. Meet or exceed all federal and state requirements, including compliance with the Americans with Disabilities Act and the California Disabled Person Act.

It appears the proposed sidewalk on Klauber Street exceeds the maximum slope standards under ADA accessibility standard 403.3.



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ME-E.11: Locate and design new streets and freeways and, to the extent practicable, improve existing facilities to: respect the natural environment, scenic character, and community character of the area traversed; and to meet safety standards.

The Klauber Project additionally conflicts with the City's Urban Design Element. The site design disregards natural topography, imposes mass grading and large retaining walls, and isolates the subdivision from the surrounding neighborhood. These design decisions are directly contrary to the City's adopted policies for urban design:

UD-A.1: Preserve and protect natural landforms and features. . .

UD-A.3: Design development adjacent to natural features in a sensitive manner to highlight and complement the natural environment in areas designated for development. . .

☐ Minimize grading to maintain the natural topography, while contouring any landform alterations to blend into the natural terrain.

☐ Consider terraced homes, stepped down with the slope for better integration with the topography to minimize grading in sensitive slope areas.

☐ Utilize a clustered development pattern, single-story structures or single-story roof elements, or roofs sloped toward the open space system or natural features, to ensure that the visibility of new developments from natural features and open space areas are minimized.

☐ Protect views from public roadways and parklands to natural canyons, resource areas, and scenic vistas.

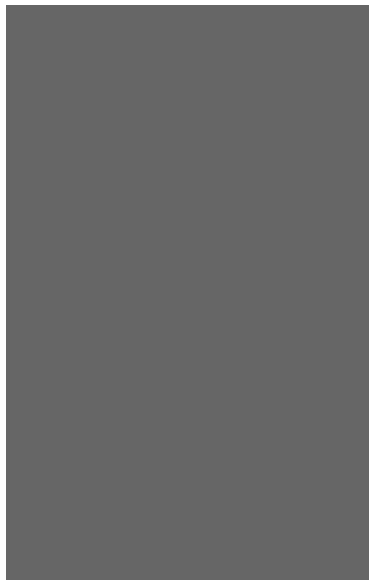
UD-A.8: Create street frontages with architectural and landscape interest to provide visual appeal to the streetscape and enhance the pedestrian experience.

UD-C.5: . . . Avoid closed loop subdivisions and extensive cul-de-sac systems, except where the street layout is dictated by the topography or the need to avoid sensitive environmental resources.

[] Discourage use of walls, gates and other barriers that separate residential neighborhoods from the surrounding community and commercial areas.

[] Encourage design features that integrate new development into the surrounding community.

UD-C.8: Provide useable open space for play, recreation, and social or cultural activities in multiple home as well as single-home developments.



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UD-D.2: Encourage high quality design of buildings and structures. The design and orientation of buildings within projects affect the pedestrian-and transit-orientation.

The Environmental Justice Element (“EJ Element”) of the General Plan is “critical in addressing and rectifying [] imbalances” that impact environmental justice impacted communities “EJ Communities” (General Plan, EJ Element, EJ-15.) Goals, objectives, policies of the EJ Element include the following: Inclusive Public Engagement in City Decisions; Promoting Healthy Food Access; Safe and Healthy Homes; Climate Change and Resilience; and Public Facilities and Infrastructure Prioritization. (General Plan, EJ-16.)

Here, the proposed project is a cookie-cutter development in an area that was previously “redlined” in historical maps. Redlining and other discriminatory housing practices were the impetus of the FHA and subsequent acts to combat housing discrimination, eliminate racial bias, undo historic patterns of segregation, and lift barriers that restrict access to foster inclusive communities and achieve racial equity, fair housing choice, and opportunity for all Americans. Redlined maps from 1936 are nearly identical to current socio-economic maps today (with limited exceptions). As depicted in Exhibits F-H, depicting the continued adverse and disproportionate impacts to the Encanto neighborhood, Encanto continues to feel the effects of the lack of environmental justice. Further, it remains clear that discrimination is not caused by private prejudice alone, but governmental decisions, whether overtly intentional, or not continued to propagate discriminatory outcomes including the current Klauber Project:

EJ-A.1: Reduce barriers to public participation through various flexible community engagement methods.

EJ-A.2: Apply diverse and inclusive engagement strategies to increase representative participation opportunities that reflect the local demographics.

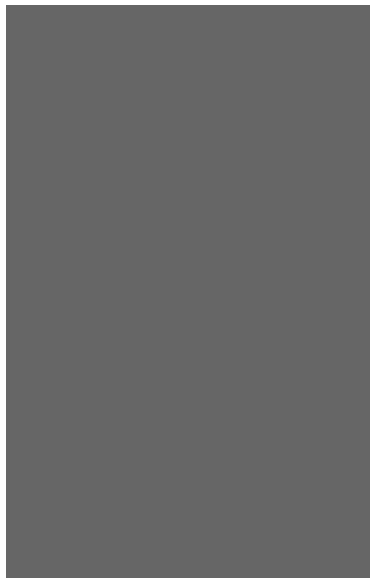
EJ-A.4: Implement best practices to make information easily accessible and transparent. **EJ-A.5:** Foster trust between City staff and community members through transparent decision-making processes.

EJ-A.8: Meaningfully incorporate public input into the decision-making process.

EJ-C.1: Improve and diversify opportunities for play in public spaces for people of all age groups, genders, and abilities.

EJ-C.3: Design public spaces to be inclusive, equitable and accessible to children of all age groups, genders and abilities and caregivers.

EJ-C.8: Prioritize programs and services that advance environmental justice in communities with the greatest needs.



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EJ-D.1 Support and prioritize programs and services expand urban agriculture to realize policy implementation, programs and services to realize environmental, economic, and public health benefits including increased access to fresh, healthy and local food, reduced energy used for food transportation and distribution, and increasing opportunities for economic development and local enterprise . . .

EJ-D.2: Allow urban agriculture uses in appropriate locations.

a. Allow urban agriculture uses in appropriate locations, that enhance neighboring uses

and the community.

EJ-G.4: Identify areas with the greatest park needs and where the development of additional recreational value and parkland will have the greatest positive impact on community members.

As shown above, the Klauber Project conflicts with a broad spectrum of General Plan policies across multiple elements, including Land Use, Mobility, Urban Design, and Environmental Justice. Moreover, the failure to recognize state law (AB 686) regarding “Affirmatively Furthering Fair Housing” (AFFH) indicates a gross violation of General Plan elements EJ-A.5 & EJ-A.8 which are in place to AFFH This is especially true in recognition that the subject Encanto area is a low resource area as defined by CTCAC/HCD and City is required to “Promote and affirmatively further fair housing opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability” or other characteristics protected by the California

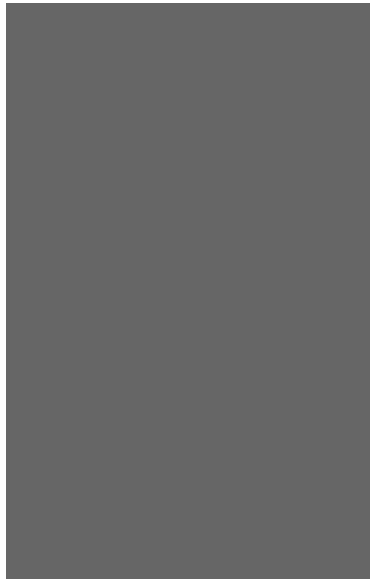
Fair Employment and Housing Act and any other state and federal fair housing and planning law. (Gov. Code § 65583, subd. (c)(5).)

Because consistency with the General Plan is a legal prerequisite to project approval, the City may not lawfully approve the Klauber Project unless and until these inconsistencies are resolved through a formal Community Plan amendment and corresponding environmental review.

V. CONCLUSION

CVCPG urges the City Council to deny the application and requested approvals of the Klauber Project or, at a minimum, mandate that a necessary and proper project-specific CEQA review be instituted and completed prior to any approval of any part of the Project.

Sincerely,



A handwritten signature in black ink, appearing to read "Andrew Murillo".

Craig A. Sherman

cc: Andrew Murillo, Development Project Manager (via email JMurillo@sandiego.gov)



Attachments (next page)



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Attachments:

Ex. A - Encanto PEIR Fig. 3.7-2 marked Ex. B – PEIR Fig. 3.3-2 marked

Ex. C – City ZAPP for Klauber Site

Ex. D – PMT-2567097

Ex. E – General Plan Fig. RE-1

Ex. F – General Plan Fig. EJ-3

Ex. G – General Plan Table EJ-1 marked Ex. H – General Plan Fig. EJ-5 marked

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August 18, 2025

Via Email and U.S. Certified Mail
cityclerk@sanidiego.gov

City of San Diego, City Council
c/o Diana J.S. Fuentes, City Clerk
202 C St., Second Floor
San Diego, CA 92101

Re: *Notice of Intent to Commence CEQA Lawsuit; Klauber Project*
A Decision Made July 15, 2025 at the City Council as Agenda Item No. 332

To Whom It May Concern:

PLEASE TAKE NOTICE, under California Public Resources Code section 21167.5, that Petitioner, Chollas Valley Community Planning Group (“CVCPG”), intends to immediately file a Petition for Writ of Mandate (“Petition”) under the provisions of the California Environmental Quality Act (“CEQA”) against the City of San Diego (“City”).

The Petition will be filed in San Diego County Superior Court and will allege, inter alia, that the City failed to comply with CEQA when it approved the Klauber Project (Project No. PRJ-0693289, at 1362 Klauber Avenue). The Petition will further allege that the City improperly relied on CEQA Guidelines section 15183 to exempt the Klauber Project from project-level environmental review, despite the Project’s inconsistencies with applicable zoning and community plan designations and the presence of site-specific impacts that were not analyzed in the prior Encanto Neighborhoods Community Plan Program EIR.

Among other things, the Petition will request that the court direct the City to vacate and rescind the Tentative Map, Site Development Permit, Neighborhood Development Permit, and CEQA determinations for the Klauber Project, and to otherwise comply with CEQA. The Petition will also seek Petitioner’s costs and attorneys’ fees.

Sincerely,



Craig A. Sherman

November 17, 2025

To: Chair Moden and San Diego Planning Commissioners

Re: November 20 Item 2 Emerald Hills – Project No. 1107880 (Radio Towers)

Dear Commissioners,

The Chollas Valley Community Planning Group opposes approval of the Neighborhood Development Permit, Site Development Permit, Neighborhood Use Permit, and Vesting Tentative Map, for the demolition of an existing broadcasting facility including broadcasting towers and outbuildings and the subdivision of the property into 130 lots consisting of 123 lots, at the 31.18 acre site located at 5702 Old Memory Lane, San Diego, 92114.

Our objections to the project are substantially the same as were presented for a previously considered project proposed at 1362 Klauber Avenue, San Diego, 92114. These objections, which are detailed in the attached documents, include but are not limited to:

- Allowance of the subdivision map based on the interpretation that the project was deemed complete before repeal of Footnote 7. This assertion disregards that it is the approval of project, not the date of application that determines vesting rights under State law, as evidenced by the discretionary approvals for the project that are being asked of the Planning Commission at the November 20 hearing.
- Violation of the 2015 Encanto Neighborhoods Community Plan, which identified the proposed development site as a potential community park. Despite this designation, the City made no attempt to purchase all or part of the land for the intended community purpose, nor was a community plan amendment developed to mitigate the loss of potential future park space. This is not just a loss for the Chollas Valley Community but for all residents of San Diego, which will forever lose access to one of the most remarkable vistas in the city.
- Failure to consider the potential impacts of the project, including increased traffic and safety concerns on 60th Street, both for daily neighborhood traffic and for fire evacuation.
- Failure to properly consider the Urban Design, Mobility, Environmental Justice, and Recreation elements of the Encanto Neighborhoods Community Plan and San Diego's General Plan.

Other objections include but are not limited to:

- Insufficient time to review hundreds of pages of project documents, which were only provided to the public on November 14, 2025, less than one week before the hearing.
- Failure to consult the community. The Staff Report cites a vote by CVCPG in October 2024; however, this vote was taken while Footnote 7 was still in effect, and in fact the project triggered the public discovery of Footnote 7 in the Municipal Code and the legally disputable process by which Footnote 7 was adopted. Engagement with the community would allow the developer, the community, and the City of San Diego to explore alternative uses of the site that would be acceptable to all parties.
- Flawed assertion in the Staff Report that the site has walkable access to the Encanto Trolley Station and Euclid Avenue Station, when in fact the path to those transit stops requires traversing a very hilly, narrow, unlit, and dangerous road, without sidewalks, in violation of recent revisions to San Diego's Municipal Code clarifying that transit must be reachable via sidewalks. (SDMC 113.0103, SDA definition.) Failure to properly assess the difficulty of reaching transit leads the Staff Report to vastly overestimate VMT reduction for the project.
- The project documentation does not include the Fire Marshal Report nor an evacuation plan as required by state and local law, even though the proposed site is within San Diego's Very High Fire Hazard Severity Zone.

We urge the Planning Commission to reject the project and direct the project owner to work with the community to come up with a more equitable development plan for the site.

Respectfully,

Saige Gonzales Walding

Chair, Chollas Valley Community Planning Group

Attachments:

Notice of Intent to Commence Lawsuit (Klauber Project)

Klauber Complaint

Letter from Land Use Attorney Craig Sherman

RADIO TOWERS HOUSING PROJECT

IMPACT ON SURROUNDING AREAS

Traffic Congestion | Outdated Infrastructure | Fire Hazard | Pedestrian Access | Hazardous Roadway



Johnson Magnet School
Traffic backs up here during school hours. Kelton is the shortest and most reasonable route to EB 94 for Emerald Hills. Was this area included in the Mobility Analysis?



Kelton Road Bridge
Traffic backs up here on Kelton Rd due to 3-way stop signs, especially when 94 traffic is busier than normal



Federal Boulevard
Commuter Traffic backs up here on Federal Blvd as 2 lanes merge into 1 to enter WB 94 traversing two outdated bridges. Was this on-ramp included in the Mobility Analysis?



60th St @ Radio Towers
Only a single point of entry/exit in a Very High Fire Hazard Severity Zone!



60th Street @ Radio Dr
Extremely steep slope along 60th St at Radio Drive. Many trucks spill and/or damage their loads due to the slope. I've also see numerous trucks stuck on this hill. Also, there is NO bike or pedestrian access on 60th St from Old Memory Lane to Broadway



Radio Canyon Entrance @ Gravity Way
Outdated and non-functional stormwater infrastructure

November 9, 2025 Planning Commission Meeting
Vice-Chair Matthew Boomhower

“If members of the public during public testimony are ***making threats that could be intended to influence a decision by an appointed board or body***, is that something they should be warned against?” Boomhower asked.

“Are you talking about threats of litigation?” (Asst. City Attorney) Neuffer replied.

“Potentially,” Boomhower said, “***or just, I don’t know, designating a project that a member of a board might have in process?***”