

## Andrea's Presentation on behalf of CVCPG/ and Melanie Gray

I'm Andrea Hetheru, Chair of Chollas Valley Community Planning Group and also speaking on behalf Of Appellant Melanie Gray. All letters and published comments by city officials and bodies with official recognition by the city of San Diego referenced in this presentation are entered into the record.

Given the invalidity of Footnote 7, our goal here today is to stop environmental determinations & development which are based **on** it. This footnote is located in San Diego Municipal Code, Chapter 13, Section 131.0431, Table 131-04D. **Footnote 7 is an attempt to effectively rezone areas within the neighborhoods of Encanto and Emerald Hills that are in the Chollas Valley Community Plan Area and to do so circumventing the legal process of re-zoning. This illegal footnote transforms these areas**

from being zoned as the second least dense in the city to the densest. This attempt at stealth rezoning and contravening the Community Plan was done in violation of the San Diego Municipal Code Chapter 12, Article 3, Division 2 and Chapter 13, Article 2 that specifies the process for re-zoning. These rezoning requirements are further set forth in the Rezone Process Information Bulletin 517 dated July, 2020. The ordinances are designed to ensure Constitutional Due Process, which Footnote 7 violates. Further, the attempted re-zoning---in the guise of a minor zoning modification--- is invalid because it violates California Government Code Section 65860 prohibiting zoning from being changed from that specifically stated in the Community Plan.

Footnote 7 was inserted into the Municipal Code in 2020 and amended in 2022. That the insertion of Footnote 7 was an incorrect act has been affirmed by Heidi Vonblum, Director of the City Planning Department in a letter dated October 21, 2024. In that letter, Ms. Von Blum states. **"We agree that the code amendment at issue here that was adopted in 2020**

**is not an amendment that we support.”** That statement by Ms. Vonblum was in response to a letter from the Community Planners Committee (CPC) of September 30, 2024, submitted to all city council members, the mayor, and the Director of the city Planning Department, affirming that Footnote 7 violates state and federal AFFH (Affirmatively Furthering Fair Housing) law as well as the Equal Protection Clause of our federal and state constitutions.

Heidi Von Blum told KPBS that she would not recommend the footnote if it came before her now. Ms. Von Blum said: **“Applying exceptions to generally applicable zoning regulations in specific communities, – in this case, in a community that is identified as a low resource area – is problematic and something that needs to definitely be evaluated.”** Ms. Von Blume also told KPBS that she asked the state for permission to reconsider the footnote given California SB 330's/ prohibition against reducing residential density unless that decrease in density is offset in one or more other areas.

**However,** since the footnote was placed into municipal code in violation of

state law, **state law** cannot bar its removal. Moreover, the aforementioned federal AFFH law and the Due Process Clauses of the federal and state constitutions supersede SB 330. There **is** no valid zoning code to **repeal**. There is only incorrect language to remove and **immediately** barred from reliance in development and environmental determinations.

The footnote is discriminatory in a manner prohibited by state and federal law because it specifically targets one predominately non-white community, Chollas Valley, while excluding all other communities in the city who have that same RS1-2 zone green space. The Southeastern Plan area is included in Footnote 7 but it has no areas designated as RS1-2.

The troubling public policy consequence of this targeting is potently expressed by the Community Planners Committee (CPC) in its letter of September 30, 2024. The letter states: **" This excerpt of code, herein referred to as Footnote 7, is limited in scope to two specific community planning areas in San Diego that are historically comprised of redlined neighborhoods. That to this day, continue to primarily consist of nonwhite residents and have been classified by the City as**

“Communities of Concern.” Both planning group areas, encompassing 16 individual neighborhoods, are designated by the state of California as low opportunity, with some parts experiencing high poverty, and almost all meet the state definition for segregation. Footnote 7 targets the RS-1-2 zone as outlined by their Community Plans and does not apply citywide. No similar footnotes exist for other Community Planning Areas or zones. Footnote 7 effectively nullifies zoning protections without regard for existing Community Plans or the California Environmental Quality Act as it pertains to findings effectuating elements of those community plans. There is more than reasonable cause to believe that Footnote 7 is an act of intentional racial targeting in violation of the Equal Protection clause of the Constitutions of the United States of America and the State of California, prohibitions against racial discrimination in United States Title VIII, AFFH mandates within Title VIII. and the state of California’s AB 686 law. We hold that Footnote 7 perpetuates racial biases in historically segregated communities, Encanto and Southeastern, by limiting residents' access

to the same zoning opportunities that predominantly white San Diego neighborhoods enjoy— namely, different density and housing size options which bolster economic opportunity. We urge, in the strongest terms, the immediate removal of Footnote 7 from Table 131-04D. All projects seeking to use Footnote 7 should be put on pause until a determination can be made as to whether this violates Title VIII. We demand, as the law requires, fair housing language in all future municipal code updates.”

Without Footnote 7, minimum lot size is 20,000 sq ft in the area for this project and others zoned in our community as RS1-2. With footnote 7 the minimum lot size is reduced to 5,000 sq ft, increasing the allowable density by 400%. This would never be done in La Jolla, a high resource and high opportunity area.

Equal Protection of the Laws --which the appellant and CPC submit has been violated with the insertion of Footnote 7 into municipal code is incorporated into Due Process—doing things correctly.

But, The City has argued that it complied with Due Process at least **procedurally** by giving us the notice of right to appeal. We don't even need to discuss the inadequacies of the City's notice of appeal rights or notice of hearing on this appeal because the City has abandoned that argument and now argues that all parties required by San Diego Municipal code received the original Notice of Application (NOA) for the project as required. San Diego Municipal Code requires that the Notice of Application be provided by:

informing by mail the recognized Planning Group of the area of the proposed development and informing all addressees and property owners within a 300ft radius of the subject property

In addition, Municipal code requires the following:

The Applicant must post the notice of application along the street frontage of the subject property. The Notice must be 6' sign measuring 2' by 3'. The notice must remain in place until the expiration of any appeal period as set forth in the land development code following the decision by the City. "If the

decision has been appealed, a new notice with the appeal hearing date must be posted.” Subsection (b) of section 11.0304 also requires that Applicant verify in writing on a form prescribed by the City that the notice has been posted in accordance with this section within 5 business days of the date on which the Applicant received the Notice from the City.”

We submit that **none** of the required elements of notice of application have been effected. **Not one.**

For all of the foregoing reasons, we submit that the appeal of the environmental determination of this project is upheld and that staff & the offices of council and the mayor review it without reliance on the invalid and infamous Footnote 7 so that the number of homes that can be placed on the proposed site is no more than 12.

We request that council upholds the appeal but does so on the basis of the invalidity of any measure of density or authorized density that is not in the Chollas Valley Community Plan. Council and the mayor should direct staff to give no recommendation of density based on the metric of dwelling units per acre---- as several residential zones could apply to that metric. Council should

direct staff to evaluate this and all projects that are designated as RS1-2 zoning with a density consistent with 20,000 sq ft lot sizes and all other elements associated with RS1-2 **zoning**.

All environmental and development determinations that rely on Footnote 7 should stop immediately.