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December 4, 2020

Planning and Land Use Management Committee
Los Angeles City Council
c/o City Clerk, Room 395
200 North Spring Street
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: Response to Appeal of Planning Director Approval CEQA # ENV-2019-5389-CE

Dear Chair Harris-Dawson and Honorable Councilmembers:

We represent 5806 Lexington, LLC ("Applicant"), owner of the property located at 5806-5812 W. Lexington Avenue ("Property") in the above-referenced land use applications approved by the City of Los Angeles' Planning Director on July 23, 2020 (the "Decision"). The administrative record regards two buildings on the same street processed together as one project under the California Environmental Quality Act (CEQA). This case relates to Case No. DIR-2019-5388-DB, CEQA # ENV-2019-5389-CE, Appeals filed on February 19, and 27, 2020 denied by the City Planning Commission on April 23, 2020.

I. DESCRIPTION OF PROPERTY

The subject site encompasses two (2), rectangular interior lots totaling 15,000 square feet on Lexington Avenue. The property is improved with a single-family dwelling with associated accessory structures on each of the two (2) lots; all of which are proposed to be demolished.

The project meets density, height, setbacks, parking and open-space requirements. The City's Planning and Engineering Divisions have vetted the project. The design and landscaping has been reviewed to ensure the project meets the City's design guidelines. The project has been conditioned to ensure affordable units comply with all relevant regulations, that parking is consistent with the City's Municipal Code, and that open space and any rooftop or podium landscaping meet with City requirements.

The City examined multiple areas of potential environmental impacts, including, potential traffic, noise, air quality and water quality. The City determined that there is "no substantial evidence that the proposed project, and/or the requested incentives, will not have a specific adverse impact on public health and safety or the physical environment, nor on any Historical Resource." (Director's Determination, July 23, 2020, pp. 1, 15.)

On August 7, 2020, the designee of the City's Planning Director under the Director's Determination approved (with relevant findings) the Project exempt from the CEQA under the categorical exemption for urban infill development (Director's Determination, p. 1 and 14 Cal. Code Regs. § 15332) and found no substantial evidence of any exceptions to the exemption related to "location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies." (Director's Determination, p. 1 and 14 Cal. Code Regs. § 15300.2

II. APPELLANTS' ARGUMENTS

To aid the City's review of the appeals, we have grouped the Appellants' statements and arguments in the appeals by category and offer responses and comments as necessary. None of the statements and arguments made the Appellants provides an adequate basis for overturning the Decision.

A. CEQA Arguments (including Cumulative Impacts)

1. The Project was not improperly "piecemealed"

This is Appellants' first attempt to convolute the process. CEQA is a state statute regulating the approval of a project based upon procedural and informational guidelines. CEQA asks the lead agency to determine if the project would have any significant effects on the environment. City staff, concerned that opponents might try to claim that two buildings being constructed close together were separate projects elected to consider both buildings as one project. Despite Appellants' mischaracterization of the number of housing units being developed, the total between the two buildings consists of 38 units. The City utilized a Class 32 Categorical Exemption (14 Cal. Code Regs. § 15332) considering the impacts of both building and all 38 units.

2. The Project does qualify for a Categorical Exemption and no "unusual circumstances" were present.

Categorical exemptions apply to "classes of projects" that the Secretary of the Natural Resources Agency, with the authorization of the Legislature, has determined are exempt because they do not have a significant effect on the environment. *World Business Academy v. California State Lands Commission* (2018) 24 Cal.App.5th 476.

A project may have a significant effect on the environment if it "has the potential to degrade the quality of the environment, ... or to achieve short-term, to the disadvantage of long-term, environmental goals"; is "cumulatively considerable," such that its incremental effects "are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects"; or "will cause substantial adverse effects on human beings, either directly or indirectly." (Cal. Pub. Res. Code § 21083, subds. (b)(1)-(3).) The term "cumulatively considerable" refers to the consideration of impacts both past and present. (*Id.* at 498).

To overcome the categorical exemption, any significant effect must be attributable to unusual circumstances. Neither CEQA nor the Guidelines define "unusual circumstances." (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 820; see generally Guidelines §§ 15350-15387 [definitions].) The party challenging an agency's finding that an exemption applies bears the burden of producing evidence supporting that claim. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1105.) In the context of the unusual circumstances exception, that typically requires a two-part showing: "(1) 'that the project has some feature that distinguishes it from others in the exempt class, such as its size or location' and (2) that there is 'a reasonable possibility of a significant effect [on the environment] due to that unusual circumstance.' (*Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1105.)"

The *World Academy* court found that "whether a circumstance is unusual 'is judged relative to the *typical* circumstances related to an otherwise *typically exempt project,*' as opposed to the typicalcircumstances in one particular neighborhood." (*World Business Academy supra,* 24 Cal.App.5th 476 at 499). *Berkeley Hillside* clarified that a party can show an unusual circumstance by demonstrating that the project has some characteristic or feature that distinguishes it from others in the exempt class (*Berkeley Hillside*, supra 60 Cal.4th at p 1105.) "The presence of comparable facilities in the immediate area adequately supports [an] implied finding that there were no 'unusual circumstances' precluding a categorical exemption." *Walters, supra,*1 Cal.App.5th at 821.

Appellants' assertions that there are "cumulative" impacts to traffic circulation, noise, air quality, water quality and historic resources, are vague and amount to mere conjecture. Not only have Appellants failed to meet their burden of proof on these matters, they have failed to prove that there are any actual identified cumulative impacts at the project site resulting from the project. *See* e.g., *Berkley Hillside Preservation, supra*.) Not only are there numerous other housing projects of similar nature in the vicinity, Appellants fail to provide any substantial evidence of the project being distinguishable from other buildings in the exempt class in the City of Los Angeles.

Appellants have failed to meet their burden of proof regarding either the unusual circumstances or cumulative impacts exception to the in-fill exemption from CEQA, the in-fill exemption holds and the Director's Determination that the project is exempt from CEQA challenge. The project is consistent with CEQA.s' arguments related to any exceptions to the in-fill CEQA exemption or any analysis of alleged environmental impacts under CEQA are incorrect, without merit, lack substantial evidence and do not present a sufficient basis for granting the appeal.

B. The Project Underwent Proper Site Plan Review

Appellants continue to erroneously argue that the 38 units to be built at 5817-5823 and 5806-5812 Lexington Avenue require a Site Plan review in accordance with LAMC §16.05(C)(l)(b) which requires a site plan review for projects of more than 50 units. This code section refers to units that have multiple entrances from a single hallway. This is not the case with this project. Moreover, the units at the project do not have bar sinks. Finally, multiple bathrooms are common in most apartment units.

Multiple bathrooms are common in most apartment units. However multiple Kitchens are not. "Dwelling Unit is defined by LAMC 12.03 as: "**DWELLING UNIT:** A group of two or more rooms, **one of which is a kitchen,** designed for occupancy by one family for living and sleeping purposes. **(Amended by Ord. No. 107,884, Eff. 9/23/56.) (Emphasis added).** Appellants' argument falls flat when we recognize that only (1) one kitchen exists for each Dwelling Unit.

C. The Planning Department Properly Approved Lexington 2 As A TOC Project In The Hollywood Redevelopment Plan Area

"Preemption" is a concept rooted not only in our United States Constitution, but also in with the California Constitution, which Appellants fail to grasp that the City of Los Angeles Redevelopment Agency's rule-making authority is pre-empted by state law.

The general principles governing state statutory preemption of local land use regulation are well settled. "The Legislature has specified certain minimum standards for local zoning regulations (Cal. Gov. Code, § 65850 et seq.)" even though it also "has carefully expressed its intent to retain the maximum degree of local control (see, e.g., *id.,* §§ 65800, 65802)." (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 89, 2Cal.Rptr.2d 5138; 820 P.2nd 1023.)

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations *not in conflict with general laws.*" (Cal. Const., art. XI, § 7 (emphasis, italics added.) " 'Local legislation in conflict with general law is void. Conflicts exist if the ordinance duplicates [citations], contradicts [citation], or enters an area fully **occupied** by general law, either expressly or by legislative implication[citations].'" (*People ex rel. Deukmejian v. County of Mendocino* (1986) 36 Cal.3d 476, 484, 204 Cal.Rptr. 897, 683P.2d 1150, (quoting *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 807–808, 100 Cal.Rptr. 609, 494P.2d 681); accord, *Sherwin–Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897, 16 Cal.Rptr.2d 215, 844 P.2d 534.)

In 2019 the state of California enacted Senate Bill 330 ("SB330")—The Housing Crisis Act of 2019. Thereunder, California Government Code Section 65589.5 (Revisions to the Housing Accountability Act) subsection j.4. Section 65589.(j)(B)(2) (A)(4) provide:

> *For purposes of this section, a proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan.*

Appellants may not by *fiat* avoid State law (California Government Code 65589.5 *et seq.*), which is controlling and prevents the City or it's Redevelopment Agency from seeking to deny a project that meets the objective General Plan standards.

Moreover, Appellants fail to even provide any argument as to why the project conflicts with the Hollywood Redevelopment Plan other than to say it evades the will of the people. However, Ballot Measure JJJ clearly included a provision that would authorize the City to: "create an affordable housing program for developments near Major Transit Stops." Appellants' argument is misleading and disingenuous.

D. The Transit Oriented Communities (TOC) Guidelines Are **NOT** Illegal.

Appellants' arguments that the TOC Guidelines are illegal are jiggery-pokery. Appellants fill several pages complaining of the illegality of the TOC Guidelines; all without merit.

1. *Appellants argue: The TOC Guidelines illegally place limitations on the Zoning Code that can only be achieved by the City Council.*

This argument belies the well-understood legal process for adoption of municipal ordinances by initiative. Measure JJJ was legally adopted and represents the will of the people. "When ... the people phrased the foregoing sections pertaining to those powers in such broad, general and unambiguous language, the conclusion seems inevitable that thereby it was intended that legislation on every municipal subject should, unless expressly or by clear and necessary implication excluded by other sections, be subject to initiative actions through the adoption of ordinances by the people. After all, the people through their charter have a right to vest in the voters of the city the right and power to deal through initiative action with any matter within the realm of local affairs or municipal business, whether strictly legislative or not, as that term is generally used. (*Rossi v. Brown (1995)* 9 Cal.4th 688; *Hopping v. City of Richmond* (1915) 170 Cal. 605).

2. The TOC Guidelines Do Not Conflict With Labor's Objectives

Measure JJJ stated: "Shall an Ordinance 1) requiring 'certain' residential development projects provide for affordable housing and comply with prevailing wage, local hiring and other labor standards; '" (emphasis added).

Appellants confuse the word "certain" with the word "all." The plain meaning of the word "certain" is "some." Some does not mean all—all would mean "every project." Appellants' argument would make the word "certain" in the ballot Measure surplus age.

3. The TOC Guidelines Were Not Illegally Adopted.

Section 31of Los Angeles Municipal Ordinance 184745 adopted by the City of Los Angeles on December 13, 2016, gives the Planning Department authority to draft the TOC Guidelines. It is important to note that all the Guidelines must allow incentives or concessions in accordance with California Government Code section 65915 (State Density Bonus Law). Accordingly, to claim the incentives or concessions are illegal would once again be a *fiat to overriding* the State's housing laws, which Appellants may not do.

E. The City Has Not Failed To Determine Whether Or Not The Incentives Are Required To Provide For The Two Affordable Housing Units.

Once again, Appellants attempt an end run around State law. California Government Code section 65589.5 (The California Housing Accountability Act) specifically references California Government Code section 65941.1: "An applicant for a housing development project, as defined in paragraph (2) of subdivision (h) of Section 65589.5, shall be deemed to have submitted a preliminary application upon providing all of the following information about the proposed project to the city, county, or city and county from which approval for the project is being sought and upon payment of the permit processing fee. Further, Government Code Section 65491.1 (c) (3) states: "A checklist or form shall not require or request any information beyond that expressly identified in subdivision (a). Subdivision (a) of Government Code section 65491.1 in no way requires a developer to submit a financial proforma justifying the need for affordable housing. Appellants' argument is clearly contrary to State law.

F. Insufficiency of Notice

Appellants argue that they were denied due process due to a failure to receive notice of the Decision. Their argument, quite simply, is moot..

III. SUMMARY OF THE APPEAL

As stated previously, the project is consistent with General Plan/Community Plan policies, zoning regulations State Density Law and CEQA. The approval of this project is protected by the provisions of the Housing Accountability Act (Cal. Govt. Code § 65589.5) which prohibits the City from denying approval of the project unless it were to make findings that the project would have specific adverse impacts on public health or safety and there were no feasible means of mitigating such impacts to the physical environment. As noted above, the City did not and cannot make such given the project's overall consistency with the applicable plans, policies, and laws and the fact that it falls squarely within an exemption to CEQA.

The Applicant is proud to support affordable housing and provide on-site affordable housing as part of the project.

The project was properly approved and Appellants' statements do not support a different result. Appellants fail to meet their burden to demonstrate a sufficient reason to overturn the decision of the Planning Director. Accordingly, we respectfully request you deny the appeals and uphold the Decision of the Planning Director.

Should you have any questions or comments regarding this letter, please feel free to contact me at (213) 629-5300.

Sincerely,

T.E.

Todd Elliott
of TRUMAN & ELLIOTT LLP

cc: Alexander Troung, Los Angeles City Planning
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