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April 29, 2021

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) APPEAL OF CASE NO. ENV-2020-2195-CE-1A; COUNCIL FILE No. 21-0308

On February 8, 2021, the Director of Planning issued an exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332 (Class 32, Infill Development) for a Transit Oriented Communities Affordable Housing Incentive Program (TOC) project (Case No. DIR-2020-2194-TOC-HCA) consisting of the construction, use, and maintenance of a new, six-story, 21,480 square-foot residential building with 30 dwelling units, including three (3) dwelling units set aside for Extremely Low Income Households (or 10% of the proposed density).

On March 10, 2021, a CEQA appeal was filed by an aggrieved party (Margarita Lopez, Coalition for an Equitable Westlake/MacArthur Park, "Appellant") to the City Council (Case Number ENV-2020-2195-CE-1A; Council File Number 21-0308) challenging the Director of Planning's determination that the project is exempt from CEQA.

APPEAL SUMMARY

The Appellant states that the proposed project does not qualify for a Categorical Exemption due to an exception to the exemption (Attachment 1). The Appellant states that the Categorical Exemption does not apply to the proposed project due to cumulative impacts and alleges that a mitigated negative declaration or environmental impact report must be conducted. The Appellant lists 18 alleged development projects that are within a 1.2-mile radius of the project site on file with the City from 2017 to the date of the appeal filing.

APPEAL ANALYSIS

A local agency's determination that the project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. Instead, the burden shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category. (*Berkley Hillside Preservation v. City of Berkley* (2015) 60 Cal.4th 1086; *San Francisco Beautiful v. City and County of San Francisco*

(2014) 226 Cal.App.4th 1012, 1022-23.) Here, the Appellant has not met its burden as no facts were submitted in the administrative record to conclude that there will be a cumulative impact of successive projects of the same type in the same place, over time that is significant. The cumulative impact exception applies when the environmental impact at issue generally affects the environment in general and does not apply to activity that has an impact on only some particular persons. (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 799.) Speculation that significant cumulative impacts will occur simply because other development projects may be or were previously approved in the same area is insufficient to trigger this exception. Simply listing other projects occurring in the area that might cause significant cumulative impacts is not evidence that the proposed project will have adverse impacts or that the impacts are cumulatively considerable. (*Hines v. California Coastal Comm'n* (2010) 186 Cal.App.4th 830, 857.)

As demonstrated in the Class 32 Justification for Project Exemption Case No. ENV-2020-2195-CE (Attachment 2), the proposed project meets all criteria to qualify as an infill site under the Class 32 CEQA Exemption, California Environmental Quality Act & CEQA Guidelines Section 15332. Relevant to this matter, CEQA Guidelines Section 15300.2(b) states that a categorical exemption is inapplicable "when the cumulative impact of successive projects of the same type in the same place, over time is significant." CEQA Guidelines Sections 15065(a)(3) and 15064(h) state that a "cumulatively considerable" impact means that the incremental effects of an individual project are significant when viewed in connection with the effects of other related projects. The Appellant has submitted no evidence that there will be a cumulative adverse impact caused by the proposed project and other projects of the same type in the same place over time that is significant. Moreover, the Appellant does not state which cumulative effects are at issue or provide any supporting facts regarding those impacts.

As set forth in the administrative record, the proposed project and other projects in the vicinity area are subject to Regulatory Compliance Measures (RCMs) related to air quality, noise, hazardous materials, geology, and transportation. Numerous RCMs in the City's Municipal Code and State law provide requirements for construction activities and ensure impacts from construction related air quality, noise, traffic, and parking are less than significant. For example, the South Coast Air Quality Management District (SCAQMD) has District Rules related to dust control during construction, type and emission of construction vehicles, architectural coating, and air pollution. All projects are subject to the City's Noise Ordinance No. 144,331, which regulates construction equipment and maximum noise levels during construction and operation.

Additionally, the Appellant lists 18 projects that are within a 1.2-mile radius, which is equivalent to 6,336 feet. However, Appellant's 1.2-mile radius appears arbitrary and speculative in nature. The radius to be studied depends on the impact at issue. Here, the appellant has not identified which cumulative impacts, e.g., noise, aesthetics, dust, are at issue. Additionally, "in the same place" means the area where a particular project impact will occur, not the environment in general. See *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, 958.

It should be noted that none of the Appellant's listed projects are within a 500-foot radius of the subject property.

In conclusion, the Appellant has failed to provide substantial evidence demonstrating that the Class 32 Categorical Exemption for the Project is deficient. The CEQA Determination includes substantial evidence that the Class 32 Categorical Exemption applies to the proposed project and that no exceptions to the categorical exemption apply. Therefore, the Categorical Exemption adequately addresses all impacts relative to the proposed project at 316-322 South Catalina Street.

RECOMMENDATION

Staff recommends that the PLUM Committee recommend for City Council to **deny** the appeal and **determine** that based on the whole of the administrative record, as supported by the justification prepared and found in the environmental case file, ENV-2020-2195-CE-1A , the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332, Class 32, and there is no substantial evidence demonstrating that any exceptions contained in CEQA Guidelines, Section 15300.2 applies

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in blue ink, appearing to read "Oliver Netburn", is written over the typed name.

Oliver Netburn
City Planner

VPB:ON:MC

ATTACHMENT

Attachment 1: Appeal Justification
Attachment 2: Notice of Exemption and Class 32 Justification