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June 10, 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-2019-4921-CE, FOR PROPERTY LOCATED AT 1600 – 1614 EAST VENICE BOULEVARD; CF 21-0141

The project involves the demolition of the existing three apartment buildings (nine dwelling units) and the construction of a new four-story, maximum 41-feet, 49,948 square foot multi-family apartment building consisting of 77 units. One level of subterranean parking is proposed consisting of 43 parking spaces. The project will grade and export 8,800 cubic yards of earth. The project reserves seven (7) units for Extremely Low Income occupancy for a period of 55 years.

On April 20, 2020, the Director approved DIR-2019-4920-TOC for the construction of the proposed project. The Director determined, under Environmental Case No. ENV-2019-4921-CE that the project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, Article 19 Section 15332 (Class 32), and that there is no substantial evidence demonstrating that an exception to a categorical exemption, pursuant to Section 15300.2, applies.

On May 4 and 5, 2020, the Director’s Determination was appealed to the City Planning Commission by two separate aggrieved parties (Mickey Ramos and 35 Additional Persons, represented by Kate Scanlon-Double; and Allen Sarlo). On December 17, 2020, the City Planning Commission conducted a public hearing to consider the appeal and denied the appeal with a 6-1 vote. The Letter of Determination of the City Planning Commission was issued on January 5, 2021.

On January 20, 2021, a CEQA appeal was filed by an aggrieved party (Erica Moore, represented by Kate Scanlon-Double; “Appellant”) to the City Council (Case No. ENV-2019-4921-CE-1A). The appeal in its entirety is located within Council File 21-0141. Below is a summary of the appeal points with a staff response to each point.

APPEAL ANALYSIS

Appeal Point 1: The Appellant contends that the Transit Oriented Communities (TOC) Guidelines is not authorized by Measure JJJ and that the project fails to meet the criteria for Tier 2 TOC incentives. The Appellant further contends that the Decisionmaker errs in granting a reduced front yard setback, an increased height for the project, and reduced parking. Finally, the Appellant contends that there are procedural problems with the TOC Referral Form, and appeal instructions are misleading and due process rights are violated.

Staff Response: The Appellant's contention regarding the TOC Program is not related to CEQA, but rather to the entitlements related to the case. However, for informational purposes, the following background information is provided.

Voter approved Measure JJJ was officially adopted by the Los Angeles City Council as Ordinance No. 184,745 on December 13, 2016. Measure JJJ included the Transit Oriented Communities (TOC) Affordable Housing Incentive Program. The TOC Guidelines, adopted September 22, 2017 and amended on February 26, 2018, establish a tier-based system with varying development bonuses and incentives based on a project's distance from different types of transit. The largest bonuses are reserved for those areas in the closest proximity to significant rail stops or the intersection of major bus rapid transit lines. Required affordability levels are increased incrementally in each higher tier. The incentives provided in the TOC Guidelines describe the range of bonuses from particular zoning standards that applicants may select.

As detailed in the Director's Determination and City Planning Commission Determination, the project is consistent with the TOC Program. In accordance with the TOC Guidelines, the subject property was first determined to be located within a TOC Affordable Housing Incentive Area. The subject property is located within 2,640 feet from the intersection of a Regular plus Rapid Bus, each having service intervals of less than 15 minutes. Therefore, the subject property is located within a TOC Affordable Housing Incentive Area and may qualify for TOC Incentives.

As specified in the TOC Guidelines, the subject property was determined to be in a specific Tier (1-4) based on the shortest distance between any point on the lot and a qualified Major Transit Stop. The subject site is within 2,640 feet from the intersection of two Rapid buses: Metro Rapid Line 733 and Santa Monica Rapid Line 3. Therefore, the subject site is eligible for TOC Tier 2 Incentives. Eligible housing projects may utilize Tier 2 incentives, because of intersection of two rapid bus lines. The action of the CPC with regard to land use and procedures is final.

Further, the Appellant has not presented substantial evidence that the project meets any of the exceptions contained in Section 15300.2 of the CEQA Guidelines and has not presented substantial evidence that the project does not meet any of the qualifying criteria for the Class 32 categorical exemption for infill development. The City has determined that the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

Appeal Point 2: The Appellant contends the Decision Maker is negligent in describing the proposed project as three-story building. The Appellant asserts that the Decision Maker errs in misidentifying Exceptions to Categorical Exemptions.

Staff Response: The Director's Determination, Finding No. 3 (Environmental Review Findings), contains a typographic error in describing the project as a three-story multi-family structure. The project is correctly described as a four-story multi-family structure in the rest of the Director's

Determination and the City Planning Commission's action. Further, the Environmental Review Findings discusses all required Exceptions to be considered for a Class 32 Exemption. The determination of Categorical Exemption still applies.

Appeal Point 3: The Appellant claims that the project does not qualify for a Categorical Exemption due to the cumulative effects of surrounding past, current, and future projects. The Appellant states that the City errs in claiming no comparable pending projects have been identified within a 500-foot radius of the subject site. The Appellant notes that the cumulative impact does not come from TOC or Density Bonus Project only, but also comes from multi-family dwelling buildings in general, as well as any significant increase in density that would affect traffic or parking. The Appellant also argues the City's list of comparable projects by the City is arbitrary and incomplete because it failed to include three specific projects. The cumulative impact of anticipated projects must take into account the State mandated increase of housing that will be built in Venice. The Decision Maker errs by not considering this mandated housing increase.

Staff Response: The appellant contends there are cumulative impacts of related projects that would affect traffic and parking. The Cumulative Impact Exception to a Categorical Exemption per CEQA applies when the cumulative impact of **successive projects of the same type in the same place** over time is significant (**emphasis added**).

The Appellant cites five addresses for consideration as comparable projects around the Major Transit Stop at the intersection of Venice Boulevard and Lincoln Boulevard, as provided below:

1. 1015 East Venice Boulevard – 56 dwelling unit project (DIR-2017-4421-TOC)
2. 1808-1816 South Lincoln Boulevard - 50 dwelling unit project (DIR-2019-1133-TOC-CDO)
3. 1503 Venice Boulevard – 31 dwelling unit project (By-Right)
4. 2422 South Lincoln Boulevard – No proposed project has been identified as of the preparation of this report
5. 2467 South Lincoln Boulevard - 40 dwelling unit project (CPC-2019-6069-CU-DB-CDP-CDO-SPP-MEL-WDI)

The above cited projects are typical of residential development in the area and are located as far as 3,000 feet away from the subject site. These projects and any new development in the area would be subject to regulations already in place for new residential construction.

In regard to the traffic, as outlined in the Director's Determination, a traffic study prepared by Overland Traffic Consultants dated September 3, 2019, was reviewed by the Department of Transportation (LADOT). LADOT issued a Traffic Assessment, dated February 4, 2020, indicating that the analysis conducted adequately describes the project-related impact of the proposed development and that the project would generate a net increase of 341 trips. The Traffic Assessment concluded that the project would not create a significant transportation impact. The project is required to comply with existing regulations and no mitigation measures are required. As provided in the Traffic Assessment, such requirements include the preparation of a construction work site traffic control plan and review of site access and internal circulation by LADOT. The Appellant has not presented substantial evidence that the project would result in

cumulative traffic impacts, nor have they provided expert testimony to support their allegations. Further, the Appellant has conceded that they have not read the traffic study.

In regard to parking, The above cited projects are typical of residential development in the area and comply with the requirements for parking outlined in the Los Angeles Municipal Code. Additionally, pursuant to California Public Resource Code, section 21099(b)(3), "the adequacy of parking for a project shall not support a finding of significance," for CEQA analysis and therefore the adequacy of parking for a project, in and of itself, is not an environmental impact. Furthermore, the Transit Oriented Communities Program requires that the City not require more than one-half parking space per unit. As proposed, the 77-unit project is providing 43 parking spaces, in lieu of the required 117 spaces.

An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. Instead, the burden of proof shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category. (San Francisco Beautiful v. City and County of San Francisco (2014) 226 Cal.App.4th 1012, 1022-23.) Upon careful consideration of the Appellant's points, the Appellant has not met its burden, as there is no evidence in the record to conclude that the project meets any of the exceptions contained in Section 15300.2 of the CEQA Guidelines.

The Appellant has not presented substantial evidence that the project meets any of the exceptions contained in Section 15300.2 of the CEQA Guidelines and has not presented substantial evidence that the project does not meet any of the qualifying criteria for the Class 32 categorical exemption for infill development.

Appeal Point 4: The Appellant contends that the project will have an adverse impact on utilities. The Appellant asserts that a community-wide, cumulative impact analysis of infrastructure resources (i.e. police, fire, water, sewage, parks, etc) is needed. The Appellant asserts that the City's findings regarding the existing infrastructure lack factual support and do not provide a legitimate as the basis for the Class 32 Categorical Exemption.

Staff Response: The proposed project's impacts on required utilities and public services have been reviewed pursuant to the CEQA Guidelines in the justification for ENV-2019-4921-CE, included in the Director's Determination and the City Planning Commission's action. Further, the Appellant has not presented substantial evidence that the project meets any of the exceptions contained in Section 15300.2 of the CEQA Guidelines and has not presented substantial evidence that the project does not meet any of the qualifying criteria for the Class 32 categorical exemption for infill development.

The project site will be adequately served by all public utilities and services given that the property is located in an urban tract with water supply, sewage and waste disposal infrastructure, and power lines installed. The property was previously developed with a two-unit apartment, a three-unit apartment, and a four-unit apartment, which were constructed in 1946 and 1947. The subject site is served by the West Bureau of the Los Angeles Police Department, Battalion 4 of the Los Angeles Fire Department, and the Pacific Region of the Department of Recreation and Park. Venice Boulevard, Glencoe Avenue, and the rear adjacent alley are improved with existing utilities that service the lots in the area, including sewer lines. Both can be accessed by emergency vehicles. The project includes a street dedication to widen the pedestrian right-of-way. The project will also repair and replace any broken or off-grade asphalt, sidewalk, curb, or gutter. The project shall comply with any street light requirements required by the Bureau of Street Lighting. As such,

the proposed project will not result in significant impacts on the capacity of existing utilities and services.

Finally, the Appellant assertion regarding the need for a community-wide, cumulative impact analysis of infrastructure resources is a policy argument of what should be studied and is not a CEQA argument pertaining to the project.

Appeal Point 5: The Appellant asserts that the project will result in traffic impacts. The Appellant claims that “using the DOT algorithm, we extrapolated the car trips generated from the currently approved 202 New Dwelling Units are estimated at about 900 daily.” The Appellant states that the decisionmaker errs in not requiring remediation of the substandard and overburdened intersection of Walgrove Avenue and Venice Boulevard.

Staff Response: The Appellant has conceded that they have not read the traffic study and has not presented substantial evidence that the project would result in cumulative traffic impacts, nor have they provided expert testimony to support their allegations.

The proposed project’s traffic impacts have been reviewed pursuant to the CEQA Guidelines in the justification for ENV-2019-4921-CE, included in the Director’s Determination and the City Planning Commission’s action. Further, the Appellant has not presented substantial evidence that the project meets any of the exceptions contained in Section 15300.2 of the CEQA Guidelines and has not presented substantial evidence that the project does not meet any of the qualifying criteria for the Class 32 categorical exemption for infill development.

As stated in the Director’s Determination, a traffic study dated September 3, 2019, was prepared by Overland Traffic Consultants. The project trip rates used in the assessment were based on the those provided by the Institute of Transportation Engineers (ITE) and the Los Angeles Department of Transportation (LADOT). LADOT issued a Traffic Assessment, dated February 4, 2020, indicating that the analysis conducted adequately describes the project-related impact of the proposed development and that the project would generate a net increase of 341 trips. The project is required to comply with existing regulations and no mitigation measures are required. The Traffic Assessment concluded that the project would not create a significant transportation impact.

Appeal Point 6: The Appellant asserts that there are underlying procedural problems with the pre-application review (PAR).

Staff Response: The Appellant’s contention regarding the PAR (pre-application review) process is not related to CEQA. However, for informational purposes, the following background information is provided.

As detailed in the Director’s Determination and City Planning Commission Determination, the pre-application review serves as a referral to the Department of City Planning Development Services Center for case filing purposes and as a referral to other City agency for project status and entitlement needs purposes. Pursuant to LAMC Section 12.22-A,25(g), abutting and adjacent were notified and provided the opportunity to appeal the Transit Oriented Communities Determination. The appellant does not cite substantial evidence to make the claim that there are procedural problems with the PAR. Therefore, the right to appeal this project was not comprised. The action of the CPC with regard to procedures is final.

Appeal Point 7: The Appellant asserts that the appeal instructions are misleading and due process rights are violated.

Staff Response: The Appellant's contention regarding the appeal instructions is not related to CEQA. However, for informational purposes, the following background information is provided.

As detailed in the Director's Determination and City Planning Commission Determination, pursuant to the TOC Guidelines, applications for TOC Incentives shall follow the density bonus procedures outlined in LAMC 12.22 A.25(g). As such, upon making a decision, the Director shall transmit the determination to the applicant and to all owners of properties abutting, across the street or alley from, or having common corner with the subject property, and to the local Certified Neighborhood Council. The right to appeal this project was not compromised. The action of the CPC with regard to procedures is final.

RECOMMENDATION

Staff recommends that the PLUM Committee recommend for City Council to **deny** the appeal and **determine**, based on the whole of the administrative record, as supported by the justification found and prepared in the environmental case file, ENV-2019-4921-CE and as based on above, the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning


Juliet Oh
Senior City Planner

VPB:JO:JT:ES