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September 13, 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:

APPEAL RESPONSE; COUNCIL FILE 21-0812

On March 12, 2021, the Director of Planning adopted Categorical Exemption No. ENV-2020-4250-CE and determined that based on the whole of the administrative record as supported by the justification prepared and found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies. The Project involves the demolition of one existing commercial building, one storage building, one two-story single-family dwelling and accessory buildings; and the construction, use, and maintenance of an eight-story, mixed-use building with two levels of subterranean parking, 76,650 square feet of floor area, consisting of 85 dwelling units and 1,137 square feet of commercial floor area. The addresses associated with the site are 4750 West Santa Monica Boulevard, 4750-4760 West Santa Monica Boulevard and 1033-1039 North New Hampshire Avenue.

On March 28, 2021, the Department of City Planning received one partial appeal of the Director of Planning's decision to conditionally approve a TOC Affordable Housing Incentive Program and Project Permit Compliance Review. One appeal point also pertained to the Project's qualification for a Class 32 (In-Fill Development Project) Categorical Exemption due to cumulative impacts surrounding past, present and future projects based upon a list of 42 projects within the project site. Subsequently, on June 8, 2021, the Department of City Planning received a letter from Doug Haines in support of the appeal. The letter in support also pertained to the approval of the TOC Affordable Housing Incentive Program, the Project Permit Compliance Review and added a claim that the Project will result in significant effects due to traffic, noise, construction and operational impacts and would therefore not qualify for a Class 32 (In-Fill Development Project) Categorical Exemption. The Appeal Report and all associated documents were presented to the City Planning Commission (CPC) at its meeting on June 10, 2021.

At its meeting on June 10, 2021, the City Planning Commission (CPC), following its consideration of the materials and oral testimony, denied the appeal and sustained the Planning Director's determination dated March 12, 2021, via Case No. DIR-2020-4249-TOC-SPP-VHCA.

On July 7, 2021, Eric Moore, on behalf of Citizens for Reasonable Development, filed an appeal on the Environmental Case No. ENV-2020-4250-CE. The appeal filed by the Appellant mainly rely on the same arguments and information as presented in a previous letter to the City. Appeals were not filed by any other aggrieved parties, other than the aforementioned.

A summary of the appeal points and staff's responses are provided as follows:

Appellant, Eric Moore – Citizens for Reasonable Development:

- A-1 *Limiting the appeal of TOC project determinations to adjacent and abutting owners and tenants is arbitrary, constitutes a denial of procedural and substantive due process, and is a violation of the language and intent of Measure JJJ.*

The Appellant raises a point that pertains to Measure JJJ and has no relevance the Director of Planning and The City Planning Commission's decision to determine that based on the whole of the administrative record as supported by the justification prepared and found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Per LAMC Section 12.22 A.31(e), enacted by voter initiative Measure JJJ, TOC projects follow the procedures outlined in LAMC Section 12.22 A.25(g) applicable to Density Bonus projects. LAMC Section 12.22 A.25(g) states that an appeal can only be filed by "an applicant or any owner or tenant of a property abutting, across the street or alley from, or having a common corner with the subject property aggrieved by the Director's decision." It was within the voters' and City's authority to utilize these procedures for Density Bonus and TOC projects. The City's Charter does not proscribe a different notice or appeal process. State Density Bonus law at Government Code Section 65915 does not proscribe notice, hearing or appeal. The procedures applicable to Density Bonus and TOC projects are consistently applied and were applied to this TOC project. The City followed the legally required process under LAMC Section 12.22.A.25(g) and 12.22.A.31(e) by providing notice of the instant project's initial determination and appeal per Code and then processing administrative appeals as required by the LAMC. In addition, the instant TOC project and its appeals will be considered at a public meeting of the City Planning Commission noticed under the Brown Act. Thus, any member of the public, regardless location of residence, may submit verbal or written comments on the instant TOC project and related appeals. As such, the City's appeal procedures comply with applicable laws.

- A-2 *The traffic VMT Calculator improperly identifies the existing use as a General Retail when the actual existing use is a vacant house with a permanent yard sale.*

The site comprises 3 parcels, the southernmost two parcels are developed with a single-family dwelling, a storage building, and accessory buildings. The Applicant submitted a Historic Resource Assessment Report dated January 2020 and permit research which demonstrates that the northernmost parcel was originally constructed as a residential structure in 1906 but was since converted into a multi-unit commercial building.

Furthermore, the Applicant submitted a trip generation analysis prepared by Crain and Associates on May 26, 2020 that was reviewed and approved by the Department of Transportation (LADOT). LADOT determined that the project does not exceed the net 250 daily vehicle trip threshold and would not require the preparation of a traffic study. As such, utilizing a General Retail use in the VMT calculator was appropriate, and the General Retail VMT credits were appropriate.

A-3 *The project's Noise and Vibration analysis acknowledges that construction noise will exceed the threshold for significant impacts.*

Noise impacts are considered significant impacts if the noise exceeds standards set in the local noise ordinance. The Noise Study prepared by Rincon Consultants indicates that the project will comply with the Noise Ordinance through the implementation of Regulatory Compliance Measures. The project would require the following noise-reducing practices during construction:

- Construction activities scheduled to avoid multiple pieces of equipment operating simultaneously
- Equipment to be retrofit with industrial grade mufflers, thereby reducing engine noise by at least 15 dBA
- Air compressors to be enclosed with materials capable of reducing noise levels by at least 10 dBA
- Construction areas for staging and warming up located away from residential uses
- Temporary noise barriers will be installed along southern and western boundaries, capable of reducing noise by 10-20 dBA.
- Project will comply with limitations on construction hours in LAMC 41.40 (7-9 M-F, 8-6 S, No Sun.)

Complying with these Regulatory Compliance Measures will ensure the project complies with the City's Noise Ordinance.

The Rincon Consultant Noise Study also showed that based on the analysis of potential construction-related vibration, vibration levels would be below the identified thresholds for building damage and human annoyance. The project does not include any substantial vibration sources. Therefore, the project would not expose local vibration sensitive receivers to excessive vibration levels and vibration impacts would be less than significant.

As such, the project does not exceed the thresholds of significance for either Noise or Vibration, therefore noise would not create an exception to the use of a Categorical Exemption Class 32.

A-4 *The project's cumulative impacts have not been properly studied, and when combined with the enormous number of other proposed TOC projects in the vicinity will have significant, adverse impact upon public health and safety.*

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-2020-4250-CE (Exhibit E), 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 42 projects that are within an unspecified radius, with 25 projects being located more than 1,500 feet from the subject property. Since the previous City Planning Commission hearing, the Appellant has noted 6 additional projects that are within an unspecified radius. The Appellant's unspecified 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. Furthermore, the applicant submitted a trip generation assessment report by Crain and Associates, a trip generation analysis memo by Department of Transportation, a tree report prepared by Leonard Markowitz, Certified Arborist #WE0342, a Historic Resource Assessment, a Noise and Vibration Study and an Air Quality Study by Rincon Consultants that demonstrated the proposed project will not have a significant impact upon the environment. Additionally, the applicant has submitted a memo from Rincon Consultants in response to the Appellant's cumulative impact

concerns. All technical studies and agency letters can be found in Case No. ENV-2020-4250-CE and Exhibit F.3.

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 Class 32 Categorical Exemption adequately addresses all impacts relative to the proposed project at 4750 West Santa Monica Boulevard.

Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeal and sustain the Determination of the City Planning Commission to determine that based on the whole of the administrative record as supported by the justification prepared and found in the environmental case file, the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32 (In-Fill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Danalynn Dominguez
City Planning Associate

VPB:DK:VKJ:DD