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December 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:

APPEAL RESPONSE; COUNCIL FILE 21-1289

On July 28, 2021, the Advisory Agency determined that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Article 19, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption, pursuant to Section 15300.2, applies. In accordance with provisions of Section 17.06 and 17.15 of the Los Angeles Municipal Code (LAMC), the Advisory Agency also approved Vesting Tentative Tract Map No. VTT-82658-SL located at 2820 North Avenel Street for the subdivision of an 8,295.2-gross square-foot site into five (5) Small Lots, pursuant to LAMC 12.22 C.27, as shown on the map stamp-dated July 27, 2021. The Project involves the demolition of one (1) single family dwelling and one (1) duplex for the subdivision of one (1) lot into five (5) Small Lots and the construction of five (5) new three (3)-story residential units with a two (2)-car garage on each of the five (5) subdivided lots. The addresses associated with the site are 2820 North Avenel Street and 2820 ½ North Avenel Street.

On August 6, 2021, the Advisory Agency's determination was entirely appealed by one aggrieved party. The appeal points pertained primarily to the procedural due process, the approved density, the Subdivision Committee review, and the CEQA determination. The Appeal Report and all associated documents were presented to the Central Area Planning Commission (APC) at its meeting on September 28, 2021.

At its meeting on September 28, 2021, the Central Area Planning Commission (APC), following its consideration of the materials and oral testimony, denied the appeal and sustained the Advisory Agency's determination dated July 28, 2021, via Case No. VTT-82658-SL.

On October 21, 2021, David Wheatley filed an appeal on the Central Area Planning Commission decision to deny the appeal, via Case No. VTT-82658-SL-2A. The appeal filed by the Appellant mainly relies on the same arguments and information as presented in a previous letter and oral testimony to the City. Moreover, the appellant argues that the project is not

exempt from CEQA due to cumulative impacts and due to the removal of trees. Appeals were not filed by any other aggrieved parties.

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

David Wheatley, Appellant

A-1 *The Department of City Planning erred in complying with the public hearing noticing requirements.*

The case under Vesting Tentative Tract Map No. VTT-82658 was properly noticed in accordance with code requirements, which requires a 15-day noticing of a public hearing to occupants and owners within a 500-foot radius of the subject site when there is a Qualified Tenant living in the existing on-site dwelling units. The public hearing was conducted on June 22, 2021, and the hearing notices were issued on June 4, 2021 to the required mailing list, as provided on the certified mailing affidavit in the case file. The hearing notice was posted on-site on June 9, 2021, as provided on the posting affidavit in the case file. The Appellant argues that the hearing notice was erroneously published in a Spanish newspaper; however, the newspaper was utilized in conjunction with the posting affidavit, as visual evidence that the public hearing notice on-site posting occurred on June 9, 2021. Pursuant to the Los Angeles Municipal Code (LAMC) Section 17.06 A, the public hearing notice was not required to be published in a newspaper.

On July 28, 2021, the Letter of Determination was mailed in accordance with code requirements to the owner, applicant, representative, persons who signed in at the hearing, persons who requested notice in writing, the Council District Office, and the Neighborhood Council.

On February 25, 2021, the Director of Planning determined that the project is compliant with the Small Lot Design Standards, however this review is administrative and ministerial, and does not have noticing requirements. The applicant filed for Incidental Case No. ADM-2019-4141-SLD for the ministerial administrative review of the project plans for conformance with the Small Lot Design Standards, as required by the Small Lot Subdivision Ordinance (Ordinance No. 185,462) and LAMC Section 12.22 C.27(a)(2). The review is an administrative and ministerial review process, as noted by the "ADM" case prefix. There is no noticing requirement of the administrative review process in the code.

On August 6, 2021, the Advisory Agency's decision was entirely appealed via Case No. VTT-82658-SL-1A. LAMC Section 17.54 requires that notice is provided to the applicant and appellant when a subdivision appeal is heard by the Appeal Board (Area Planning Commission). This requirement was satisfied when a 10-day notice was issued to property owner, applicant, representative, appellant and interested parties on September 10, 2021, as noted on the certified mailing affidavit in the case file. The Central Area Planning Commission public hearing was conducted on September 28, 2021, and as such, the appeal case was properly noticed in advance of the meeting.

Therefore, the Advisory Agency did not err in complying with the public hearing noticing requirements for the original determination and the subsequent appeal.

A-2 *The appellant was not provided access to the administrative record.*

On July 28, 2021, the Advisory Agency approved Vesting Tentative Tract Map No. VTT-82658-SL for the subdivision of an 8,295.2-gross square-foot site into five (5) Small Lots in accordance with provisions of Sections 17.06, 17.15, and 12.22 C,27 of the Los Angeles Municipal Code (LAMC). Pursuant to LAMC 17.06, the Letter of Determination was appealable for a period of 10-days or until August 9, 2021.

On August 4, 2021, the Appellant requested the entire administrative record. As the entire administrative record is only available in hard copy format, Planning Staff immediately sent the administrative record to City Planning's Records Management Office for the Appellant's in-person review. On August 5, 2021, the Records Management Office received the case file and offered the Appellant an in-person appointment for August 6, 2021, prior to the end of the appeal period.

Furthermore, on August 5, 2021, the Appellant was provided a digital copy of the Letter of Determination and the approved Vesting Tentative Tract Map No. 82658-SL. The Letter of Determination contains the proposed project description, Advisory Agency recommendations, and the findings for approval in accordance with the State Subdivision Map Act and California Environmental Quality Act (CEQA).

Subsequent to the filing of the appeal, the Appellant received access to the contents of the administrative record on August 13, 2021, as confirmed by the Records Management Office. Therefore, the Advisory Agency provided access to the administrative record to the Appellant.

A-3 *The Advisory Agency did not consider recommendations from the entire Subdivision Committee. The Department of Transportation did not submit recommendations and a representative was not present at the Advisory Agency's public hearing.*

In accordance with LAMC Sections 17.03 and 17.04, the tract map was distributed to and reviewed by the various city agencies of the Subdivision Committee that have the authority to make dedication, and/or improvement recommendations. Comments were received from the Bureau of Engineering, Department of Building and Safety - Grading Division, Department of Building and Safety - Zoning Division, Fire Department, Los Angeles Unified School District, Bureau of Street Lighting, Bureau of Sanitation, Department of Recreation and Parks, and Bureau of Street Services – Urban Forestry. Their comments are incorporated as Conditions of Approval in the Advisory Agency's Determination.

The Department of Transportation and the Department of Water and Power did not submit comments to the Advisory Agency, however, Condition Nos. 10 and 13 were incorporated in the Letter of Determination to capture the agencies' review prior to the issuance of building permits and/or recordation of the final tract map. Based on the above, the Advisory Agency did not err or abuse in her discretion in approving the Vesting Tentative Tract Map.

A-4 *The project did not provide an adequate tree plan for environmental review.*

As provided in the Advisory Agency Determination, the project is subject and conditioned to provide a tree report, replace on-site and street tree removals, and provide a landscape plan. This is a standard condition.

LAMC Section 17.06.C requires a tree report to be prepared by an expert and submitted to the case file for a Tentative Tract Map to identify any protected trees. The Applicant fulfilled this obligation by submitting a tree report prepared by Paul Lewis, Landscape Architect #3620 dated February 18, 2019, which included a survey and identification of existing trees on the subject site and along the public right-of-way. The tree report confirmed there are no protected trees on the subject site and eight (8) non-protected trees. The project proposes to remove seven (7) existing non-protected trees on-site for the construction of five (5) small lot structures as approved by the Advisory Agency.

The removal of non-protected on-site is not prohibited by the LAMC. However, the removal of parkway trees is subject to the review and approval of the Board of Public Works and shall be replanted at a 2:1 ratio as required by the Urban Forestry Division and identified in Condition No. 18 of the Advisory Agency Determination. Similarly, Condition No. SL-2 also requires a landscape plan be submitted to identify tree replacement on a 1:1 ratio by a minimum of 24-inch box trees for the unavoidable loss of desirable trees on the site. The applicant has submitted plans to the case file demonstrating that all setback and open areas not used for buildings, parking areas, driveway, pedestrian pathways, and utilities, will be landscaped in compliance with the Small Lot Design Standards. The applicant shall also prepare and record a Community Maintenance Agreement that is composed of all property owners, as required by Condition No. 20, to maintain all common areas such as trees, landscaping, trash, parking, community driveway, and walkways, to ensure that the site and landscaping is properly maintained.

Lastly, the Appellant did not submit substantial evidence into the record to demonstrate that the project will result in significant impacts. Based on the above, the Advisory Agency did not err or abuse in her discretion in approving the Vesting Tentative Tract Map

A-5 *The proposed project is not exempt from CEQA due to cumulative impacts.*

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-2019-4140-CE, 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.

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 a few 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.

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 2820 North Avenel Street and 2820 ½ North Avenel Street.

Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeal and sustain the Determination of the Central Area Planning Commission to sustain the Deputy Advisory Agency’s determination dated July 28, 2021 and 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

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effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in black ink, appearing to read 'Danalyne Dominguez', with a stylized flourish at the end.

Danalyne Dominguez
City Planning Associate

VPB:DK:VKJ:DD