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August 10, 2022

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:

CEQA APPEAL SUMMARY, 950-962 ½ South Berendo Street; CF No. 22-0485

Project Background

On March 24, 2022, the Director of Planning issued a Class 32 Categorical Exemption (City Planning Case No. ENV-2021-9707-CE) for a project (Case No. DIR-2021-9706-TOC-HCA) consisting of the construction of a new 8-story, 77-unit apartment building on one parcel comprised of one lot, under the Transit Oriented Communities (TOC) Affordable Housing Incentive program. Pursuant to the TOC Guidelines, the applicant is proposing to utilize Base Incentives for density, floor area ratio (FAR), and parking and three Additional Incentives for (1) a 30% reduction in the northerly and southerly side yard setbacks; (2) a 30% reduction in the easterly rear yard setback; and (3) a 25% reduction in Open Space. The building is proposed to be 92 feet 4 inches (at its highest point), built to eight stories and one roof deck. Of the 77 units proposed, 33 will be studios, 31 will be one-bedroom units, and 13 will be two-bedroom units. Eight (8) of the units will be set aside as Extremely Low Income (ELI) units. The project proposes one level of at-grade parking and one level of subterranean parking containing 39 automobile parking spaces, 60 long-term bicycle spaces, and five short-term bicycle spaces.

On April 21, 2022, a California Environmental Quality Act (CEQA) appeal was filed by Enrique Velasquez of the Coalition for an Equitable Westlake/Macarthur Park, on the Categorical Exemption, for consideration by the Planning and Land Use Management (PLUM) Committee.

The appeal challenges the Director of Planning's determination that the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32, Infill Development) and that none of the exceptions to a categorical exemption apply to the project. The CEQA Guidelines provide that a Class 32 CE may not be used if any of five (5) exceptions apply: (a) cumulative impacts; (b) significant effect; (c) scenic highways; (d) hazardous waste sites; and (e) historical resources. Specifically, the Appellant states that the Project does not qualify for an exemption due to the cumulative effects of surrounding past, current and future projects.

Staff Recommendation

Staff recommends that the PLUM Committee recommend for Council Action to deny the submitted appeal and sustain the Director's determination, based on the whole of the administrative record, that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Article 19 (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 Summary

The following statement is summarized from the submitted appeal and responded to below.

APPEAL POINT: Insufficient evidence that the project would not result in cumulative impacts.

The Appellant contends that the City did not provide sufficient evidence that the cumulative impact exception does not apply to the proposed Project. The Appellant submits a list of past projects, current projects and future projects spanning back to January 1, 2017 that contribute towards the cumulative impacts of the project that must be considered. The Appellant lists 17 projects within a 0.6-mile radius of the subject project. The Appellant states that many projects have already been approved and describes the area within the 0.6-mile radius of the project as "heavily populated, and is a high pedestrian and car traffic area."

STAFF RESPONSE:

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." 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.)

Here, the Appellant has not met its burden as there is no evidence in the record to conclude that there will be a cumulative adverse impact caused by the proposed project and other projects in this area. A list of past, current or future projects, even if found to be accurate, by itself does not represent substantial evidence of any type of cumulative impact. Speculation that significant cumulative impacts will occur simply because other projects may be approved in the same area is insufficient to trigger this exception and 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). The Appellant has not submitted any substantial evidence that validates the assertions that the cumulative impact exception applies. Other than the assertion that the area is heavily populated and is a high pedestrian and car traffic area, the Appellant does not state which cumulative effects are actually at issue. For example, automobile delay, as described solely by level of service or similar measures of vehicular capacity or traffic congestion, cannot constitute a significant environmental impact for purposes of CEQA. (Public Resources Code § 21099.)

As demonstrated in the Justification for the Class 32 Categorical Exemption dated March 23, 2022, (Attachment) the proposed project and other projects in the vicinity 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.

The Class 32 CE and associated justification analysis address all environmental impacts related to traffic, noise, air quality or water quality and cumulative impacts. Additionally, the project will be required to comply with all state, regional, and local laws as part of regulatory compliance. Therefore, the CE adequately addresses all impacts relative to the proposed project at 950-962 ½ South Berendo Street.

CONCLUSION

Based on the information in the record, and considering the Appellant's arguments for appeal, Staff finds that the project meets the requirements for a Class 32 Categorical Exemption. Therefore, it is recommended that the City Council affirm that the project is categorically exempt from CEQA, deny the appeal of the Director of Planning's Determination, and sustain the Director of Planning's Determination approving the Transit Oriented Communities and Housing Crisis Act case for the proposed apartment building.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Jaime Espinoza
City Planner

HB:RO:JE