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March 2, 2023

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:

SUPPLEMENTAL REPORT REGARDING CLASS 1, CLASS 3, & CLASS 32 CATEGORICAL EXEMPTION FOR THE PROPERTY LOCATED AT 666 AND 672 NORTH WALTHER WAY (CASE NO. ENV-2022-267-CE); CF 22-1527

At its meeting on February 7, 2023, the Board of Building and Safety Commissioners approved a haul route application to export 2,800 cubic yards of earth from the above-referenced property, subject to the conditions specified in the Board of Building and Safety Commissioners' report dated February 1, 2023 and found that the project was categorically exempt from the California Environmental Quality Act. Subsequent to the Building and Safety Board of Commissioners action, an appeal of the decision to the City Council was filed. In the Appellant justification letters dated November 23, 2022 and February 17, 2023, the Appellant alleges that the project does not qualify for the Class 1, Class 3, or Class 32 Categorical Exemptions (CE) due to significant effect on the environment due to construction noise and air quality impacts. The Appellant is arguing the unusual circumstances and cumulative impact exceptions as identified in CEQA Guidelines Section 15300.2 apply. Petitioner also claims that the City failed to analyze the cumulative environmental impacts of the Project.

Once the City has made its determination that a categorical exemption applies, the burden is on the challenging party to produce evidence showing that one of the exceptions applies to take the project out of a categorical exemption. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022-23.)

No Unusual Circumstances

As referenced in the City's Justification for Project Exemption ("CEQA Justification"), the proposed project is for construction of a new two-story 4,690 square-foot single-family dwelling, with five-car garage, 5,770 square foot basement, and a swimming pool/spa. The project includes the excavation of approximately 2,550 cubic yards of cut and fill and the export of approximately 2,800 cubic yards of soil. The project is in an area zoned and designated for such development (RA-1

and designated for Very Low I Residential use). As supported by the administrative record, the project site is of a similar size and slope to the surrounding properties and will be within the regulations of the LAMC. There is nothing unusual about this type of construction project and the level of grading proposed for this type of residential project.

Construction Noise

In its appeal letter dated February 17, 2023, the Appellant alleges that the project's grading and construction activity will exceed the City's Noise Ordinance (Ord. No. 161,574) Los Angeles Municipal Code (LAMC) Section 112.05 based upon the Appellant's assumptions as to the construction equipment used for the project. Appellant's allegations about the construction or equipment to be used, or the effectiveness of any regulatory compliance measures, are not supported by direct evidence, data, or other substantial evidence that this specific project will exceed the allowable decibel limits. Argument, speculation, unsubstantiated opinion or narrative does not constitute substantial evidence, as provided in CEQA Guidelines Section 15384, which defines substantial evidence as follows:

(a) "Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Air Quality

The Appellant claims that the project will result in excessive dust and release of air particulates affecting air quality. As discussed in the City's CEQA Justification, interim thresholds were developed by DCP staff based on CalEEMod model runs relying on reasonable assumptions, consulting with AQMD staff, and surveying published air quality studies for which criteria air pollutants did not exceed the established SCAQMD construction and operational thresholds. Therefore, the project would not have significant impacts to Air Quality. Here, the Appellant has not submitted any evidence to support its allegations.

Cumulative Impacts

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.) Simply listing another project 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.) Here, the Appellant claims there are cumulative impacts of successive projects in the area citing 645 North Walther Way as not being evaluated as part of the environmental analysis. Although not included as part of the analysis at time of the report, this fact was clarified and considered by the Board of Building and Safety Commissioners (BBSC). At the hearing and now

a part of the administrative record, Staff addressed the concern of construction and traffic confirming only one hauling truck would be allowed on Walther Way and Bonhill, thereby requiring both projects to coordinate their hauling activity. Additionally, as discussed in the City's CEQA Justification, the proposed project, as well as the other project, will be governed by an approved haul route under LAMC requirements, which will regulate the route hauling trucks will travel and the times at which they may leave the property, thereby further reducing any potential travel impacts to less than significant.

As noted above, the Appellant has not met its burden, as there is no substantial evidence in the administrative record which supports their assertions that the project does not qualify for a Class 1, Class 3, or Class 32 Categorical Exemption (CE) due to significant effect on the environment based on arguments and speculation that the unusual circumstances and cumulative impacts exceptions set forth in CEQA Guidelines Section 15300.2 apply.

Other Appeal Points Non CEQA Related

The Appellant's concerns related to improper noticing and danger to the public health safety and welfare of the community will be addressed by Los Angeles Building and Safety (LADSB) staff at time of hearing.

Conclusion

Staff recommends that the Planning and Land Use Management Committee recommend for City Council to deny the appeal and determine that based on the whole of the administrative record, as supported by the CEQA Justification prepared and found in the environmental case file, Case No. ENV-2022-267-CE, and the Letter of Determination by the Board of Building and Safety Commissioners dated February 9, 2023, the project is categorically exempt under CEQA pursuant to Section 15301 (Class 1), Section 15303 (Class 3) and Section 15332 (Class 32) of the CEQA Guidelines), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

Sincerely,

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Director of Planning

Theodore L. Irving
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Principal City Planner

VPB:TI:JO:nv