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April 25, 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:

STAFF RECOMMENDATION REGARDING APPEALS OF CLASS 32 CATEGORICAL EXEMPTION (ENV-2020-1868-CE-1A) FOR PROPERTY LOCATED AT 500, 500 ½, 502, 502 ½, 508, 510, 510 ¼, 510 ½, 512, 512 ¼, AND 512 ½ SOUTH UNION AVENUE WITHIN THE WESTLAKE COMMUNITY PLAN AREA (CF 22-1526)

On November 3, 2022, the Director of Planning issued a Class 32 Categorical Exemption (Class 32 CE) for a Transit Oriented Communities (TOC) Project (Case No. DIR-2020-1867-TOC-HCA) consisting of the demolition of five (5) existing residential apartment buildings that contain 14 dwelling units for the construction, use, and maintenance of a seven-story, 85-unit residential apartment building. The project proposes the construction of five residential floors over two levels of parking containing 43 vehicle parking spaces, 66 long-term bicycle parking spaces, and 7 short-term bicycle parking spaces. Under the TOC Program, the project is provided Tier 3 Incentives due to the subject site being located within a half-mile of the Westlake / MacArthur Park Metro Station and will reserve eight (8) dwelling units for Very Low Income Households and four (4) dwelling units for Extremely Low Income Households for a total of 12 income-restricted units.

On November 30, 2022, the Department of City Planning received a California Environmental Quality Act (CEQA) appeal to the Los Angeles City Council for the Class 32 CE (Case No. ENV-2020-1868-CE) from Enrique Velasquez on behalf of the Coalition for an Equitable Westlake MacArthur Park.

The appeal challenges the Director of Planning's Determination that the project is exempt from CEQA pursuant to CEQA Guidelines Article 19, Section 15332, Class 32 and none of the exceptions to a Categorical Exemption apply to the project. According to CEQA Guidelines Section 15332, a Class 32 CE may be used for infill development projects within an urbanized area provided that the project meets the following criteria:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations;
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;

- (c) The project site has no value as habitat for endangered, rare or threatened species;
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- (e) The site can be adequately served by all required utilities and public services.

Additionally, the CEQA Guidelines provide that a Class 32 CE may not be used if any of the following five (5) exceptions apply: (a) cumulative impacts; (b) significant effect; (c) scenic highways; (d) hazardous waste sites; and (e) historical resources.

The appellant claims that the project, in conjunction with 16 other projects within a 0.6-mile radius of the subject site, will result in a cumulative impact in an area that is heavily populated with high pedestrian and vehicle traffic. The appellant does not provide any evidence to support their claims, stating that the City is responsible for providing substantial evidence to show that the project will not cause any significant environmental impacts. Due to this supposed deficiency of the City's Class 32 CE and the potential for cumulative impacts, the appellant contends that the project does not qualify for a Class 32 CE.

While 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. Therefore, 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.)

The appellant has not met his burden as there is no evidence in the record to conclude that there will be an adverse cumulative impact caused by the proposed project and other projects in the vicinity of the Project site. 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, significant effects, 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 for the record to support their assertions that the cumulative impact exception applies. Speculation and a list of "past projects, current projects, and future projects" do not serve to support the appellant's claims.

The Justification, prepared for the subject project (Case No. ENV-2020-1868-CE), shows that the proposed project is 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, and traffic 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

Therefore, the Class 32 CE issued by the Director of Planning on November 3, 2022 adequately addresses the impacts of the proposed project.

Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeal and sustain the Director of Planning's Determination that based on the whole of the administrative

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record as supported by the justification prepared and as 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 (Infill Development Project), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding 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

A handwritten signature in blue ink, appearing to read "Vanessa Soto". The signature is cursive and stylized, with a large initial "V" and "S".

Vanessa Soto, AICP

Senior City Planner

VPB:JC:VS:YL:EM