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September 20, 2019

**ORIGINAL VIA U.S. MAIL**

**VIA EMAIL apceastla@lacity.org**

President Rudy Espinosa  
East Los Angeles Area Planning Commission  
City of Los Angeles  
200 N. Spring Street, Room 272  
Los Angeles, CA 90012

Re: 300 Crane Boulevard  
DIR-2017-3280-SPP-1A  
ENV-2017-3281-CE

Dear President Espinosa and Honorable Commissioners:

This office represents the applicant Manuel Bradley Zavaleta (“Applicant”) regarding the pending appeal of the above-referenced cases. **On behalf of our client, we respectfully request that the Commission follow Staff’s recommendation to grant the appeal in part, in order to accept the revised Project plans and adopt the revised conditions of approval and findings. The balance of the appeal should be denied.**

**I. Rebuttal to Appeal Points.**

Substantial evidence does support that the Project complies with all legal requirements. Specifically:

**A. The Project Complies with the Specific Plan’s 45-Foot Height Limit.**

The Mount Washington/Glassell Park Specific Plan (the “Specific Plan”) does not define “grade” or otherwise establish height limits in reference to another point of reference. As such, the LAMC controls this issue. LAMC § 12.03 provides that for projects located in the Hillside Area, “Grade” is defined as “the Elevation, at the perimeter of a Building or Structure, of the finished or natural surface of the ground, whichever is lower...” In this case, as shown on A.14 of the Project plans dated 2/12/18, the finished floor elevation adjacent to the home is 97.19 feet, which is lower than the natural grade. See Sheer A.05.1. As such, under LAMC § 12.03, the height of the home is measured

from 97.19 feet. As shown on Sheet A.14, the Project clearly complies with the applicable height limit.

**B. The Project Complies with the Applicable FAR Restriction.**

Pursuant to the equation provided in the Specific Plan, the maximum FAR for the subject property is 0.474:1. See calculation on Sheet DIR.01. The Appellant first makes the argument that the City failed to determine if the FAR restrictions contained in the Baseline Hillside Ordinance (“BHO”) are more restrictive than the Specific Plan, and therefore should have applied. However, no such comparison is necessary. The Department of City Planning, in consultation with the City Attorney’s Office, has published a matrix showing where the Specific Plan prevails over the BHO. That matrix, included on Sheet DIR.02 of the Project plans, shows that the FAR restrictions of the Specific Plan prevail over those of the BHO.

The Appellant next claims that the Project exceeds the FAR allowed by the Specific Plan because the floor area calculation excludes the square footage of the exterior walls. However, the Specific Plan defines “Floor Area” as “that area in square feet confined within the exterior walls of a building of a One-Family Project, including the areas of stairways, shafts, covered automobile parking areas and basement storage areas, and excluding uncovered outdoor decks.” (Emphasis added.)

The Appellant’s claims regarding the inclusion of the floor area of the uncovered outdoor decks and basement mechanical room are likewise specious. Second story balcony projections do not result in a covered deck for purposes of FAR as there are no wall enclosures. And, the Specific Plan definition of Floor Area is silent as to spaces used for mechanical equipment. As such, it is beyond the scope of Project Permit Compliance review. Without conceding or admitting to the correctness of Appellant’s arguments or position, and purely for purposes of expediency, the Project has been modified to remove the basement mechanical room.

**C. The Project Plans Show a 5-Foot Street Dedication.**

Sheet A.05 of the Project Plans show a 5-foot street dedication. As per the Department of Public Works Bureau of Engineering Letter dated June 4, 2018, the Department. has waived the requirement of a 5-foot street dedication to widen the street and as such, the extension of the Project’s planter/retaining/slough walls (as outlined in LADBS Document No. P/BC 2017-002) into the dedication area is necessary and appropriate.

**D. The Project Complies with the BHO’s Limitations Regarding Retaining Walls.**

As shown on Sheet A.05.1 of the Project plans, the Project consists of two retaining walls with a maximum height of 10 feet each, consistent with the requirements of LAMC § 12.21 C.8. Perhaps confusing the section drawings on Sheet A.05.1 for separate retaining walls, the Appellant makes

various objections to certain wall numbers. However, there are no such wall numbers on the plans and as such, the Appellant's objections thereto are unintelligible.

**E. The Tree Report for the Project is Accurate.**

The Applicant submitted a Tree Report dated August 11, 2017, prepared by Shelley Sparks, a Professional ISA Certified Arborist with Harmony Gardens, in connection with the Project (the "Report"). Based upon a survey of the site conducted on August 10, 2017, the Report details that no protected trees exist on the Property.

Citing an April 10, 2015 tree report prepared by Leonard Markowitz, the Appellant claims that the Report is inaccurate. However, the Markowitz tree report relied on by the Appellant is actually for a different property, as confirmed by the letter prepared by Mr. Markowitz dated August 22, 2019. As the Markowitz tree report does not relate to the subject property, the Appellant's arguments regarding that report are irrelevant.

The Appellant has made numerous claims that it was the Applicant that submitted the 2015 tree report to the file. However, a review of the file for the Project reveals that the only copies of the subject report that exist in the file are attached to letters by the Appellant, and never by Applicant. The 2015 tree report is not found as a stand-alone document in the Department of City Planning file, nor is there any copy of that 2015 report with a wet, original stamp of this case file number. According to Mr. Markowitz, this document appears to be a forgery.

**F. Project Grading Amounts Are Consistent with the Requirements of the BHO.**

Sheet DIR.01 of the Project plans show that 980 cubic yards of exempt and 730 cubic yards of non-exempt grading is proposed. LAMC § 12.21 C.10(f)(3) provides that exempt grading activities are not subject to the grading and/or earth transport limitations established in subsections (f)(1) and (2). As shown in the Earthwork Report dated April 26, 2018 prepared by a Professional Licensed Civil Engineer, by proposing 730 cubic yards of non-exempt grading, the Project complies with the 750 cubic yard limitation contained in the BHO.

The Appellant ignores the distinction between exempt and non-exempt grading quantities and suggests that a Zoning Administrator's Determination is needed to approve excess grading amounts. However, as the Project complies to code requirements, no discretionary approval by the Zoning Administrator is needed. The Project will require Haul Route approval by the Board of Building and Safety Commissioners for over 1,000 cubic yards of export from the site, but there is no legal requirement to obtain that approval prior to or concurrently with its discretionary Department of City Planning entitlement.

## **II. The Project is Categorically Exempt from CEQA.**

In approving the Project, the City found that the Project was categorically exempt from environmental review under CEQA pursuant to CEQA Guideline § 15303 and City CEQA Guidelines Article III, Section 1, Class 3 Category 1. This exemption applies to the construction of a single family home in urbanized areas, such as the Project site.

In categorical exemption cases, where the agency establishes that the project is within an exempt class, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in CEQA Guidelines section 15300.2. Fairbank v. City of Mill Valley (1999) 75 Cal.App.4th 1243, 1259. The most commonly raised exception is subdivision (c) of section 15300.2, which provides that an activity which would otherwise be categorically exempt is not exempt if there are “unusual circumstances” which create a “reasonable possibility” that the activity will have a significant effect on the environment. Id. “A challenger must therefore produce substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the project from the categorically exempt class. [Citations.]” Davidon Homes v. City of San Jose (1997) 54 Cal.App.4th 106, 115; Association for Protection Etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720, 728.

Here, the Appellant cites to the Project’s grading and location, being in a Very High Fire Severity Zone, a location subject to the Baseline Hillside Ordinance, and location within a Special Grading Area, to argue that there are “unusual circumstances” present. However, he fails to address the crucial element of the exception: he presents no evidence that any purported unusual circumstance leads to “a reasonable possibility that the [Project] will have a significant effect on the environment. . . .” Without this crucial element, there is no exception available and the Project is *de facto* categorically exempt. Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4<sup>th</sup> 1086, 1097.

We note that this Supreme Court case, and its follow-up decision after remand, holds that a large house built on a steep hillside lot is not within the “unusual circumstances” exception to CEQA categorical exemptions. The Court reasoned that even though that house would be larger than other houses in the area and would be located in an area designated as a potential landslide, there was a site-specific geological study, the house was a single-family residence in a residential zone, and was in-fill development. Berkeley Hillside Preservation, *supra*; Berkeley Hillside Preservation v. City of Berkeley (2015) 241 Cal.App.4<sup>th</sup> 943. The Supreme Court held that a proper “unusual circumstances” analysis looks at the conditions in the immediate neighborhood to determine whether the environmental effects of a proposed project are unusual or typical. Berkeley Hillside Preservation, *supra*, 60 Cal.4<sup>th</sup> at 1118-1119. Here, similar to the home considered in Berkeley Hillside Preservation, the Project is similar in size and massing to other homes in the neighborhood.

The Appellant next inserts a lengthy argument regarding the Project site's alleged habitat value for Southern California Black Walnuts and Toyon. However, as confirmed by the Project's Tree Report, neither resource exists on the property. One can assume that in making this argument, the Appellant was relying on the Markowitz tree report for another property, as discussed above.

The Appellant finally claims that the Project is not categorically exempt because the Project's Geology and Soils Report Approval Letter and geotechnical reports contain mitigation measures. However, CEQA case law is clear that "[a]n agency may rely on generally applicable regulations to conclude an environmental impact will not be significant and therefore does not require mitigation." San Francisco Beautiful v. City and County of San Francisco (2014) 226 Cal.App.4th 1012, 1033, citing Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 932–934; Association for Protection Etc. Values v. City of Ukiah, *supra*, 2 Cal.App.4th 734–736. The "mitigation measures" referred to in the Project's geotechnical reports are in fact Regulatory Compliance Measures.

### **III. Conclusion.**

As set forth above, the Director's Determination of Project approval and finding that the Project is categorically exempt from CEQA is well supported by the record in this case. The Appellant has provided no evidence to the contrary. The home has been designed to be as minimally impactful as possible, consistent with all requirements of the Specific Plan. As such, we respectfully request that the Commission follow staff's recommendation in this matter and approve the Project Permit Compliance Review for the Project as revised.

Thank you for your time and attention to this matter. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By



ALICIA B. BARTLEY

cc: Jane Choi (Via Email)  
Nicole Sanchez (Via Email)

# **DAY OF HEARING SUBMISSIONS**