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VIA E-MAIL

Honorable Members of the Los Angeles City Planning Commission
Los Angeles City Planning Department
200 North Spring Street, Room 272
Los Angeles, CA 90012
Email: cpc@lacity.org

**Re: Appeal to VTTM No. 73718: 1756-1760 North Argyle Avenue; 6210-6224 West Yucca Street
Applicant Request for Rescission or Modification of Sidewalk Easement Conditions**

Honorable Members of the City Planning Commission:

On behalf of project applicant Riley Realty LP ("Applicant"), this letter addresses the Bureau of Engineering – Specific Conditions Nos. 1, 2, and 7, and Bureau of Engineering – Standard Condition S-3(i) set forth in the Advisory Agency's August 19, 2020 action approving Vesting Tentative Tract Map ("VTTM") No. 73718 for the mixed-use development project located at 1756-1760 North Argyle Avenue and 6210-6224 West Yucca Street ("Project"). The Advisory Agency's approval of the Project is reflected in a Letter of Determination issued on August 24, 2020 ("LOD").

The referenced conditions of approval improperly require the Project to dedicate easements for sidewalk widening and the construction of sidewalk improvements within the Project site where the existing public right-of-way ("ROW") already meets or exceeds the applicable Mobility Plan standard. In such a circumstance, the Los Angeles Municipal Code ("LAMC") expressly prohibits any such dedication. (LAMC Section 12.37-A.5 ["No dedication shall be required where the existing right-of-way is equal to or greater than the street standard, even where the improved sidewalk does not meet the standard dimension"].)

In addition to violating the LAMC, because the public ROW already meets Mobility Plan standards, the conditions requiring easements to add *additional* public ROW also constitute an unlawful exaction lacking a "nexus and proportionality" under state and federal constitutional law. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 835–842; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.) These constitutional takings clause requirements mandate that exactions such as the sidewalk easements here bear a reasonable relationship to the impacts of a project. (Id.) No such reasonable relationship can be established here, where the mandated sidewalk easements on the Project site are not needed to make the adjacent streets compliant with applicable street standards.



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The Advisory Agency's VTTM determination for the Project has been appealed in its entirety by three appellants.¹ In considering these appeals, the Applicant requests that the City Planning Commission ("CPC") eliminate Bureau of Engineering – Specific Conditions Nos. 1, 2, and 7, and Bureau of Engineering – Standard Condition S-3(i) from the Project's conditions of approval. In the alternative, if the City wishes to establish a full-width sidewalk, the conditions should be revised to eliminate the easements and require a widening of the sidewalk into the existing public ROW, where sufficient space presently exists to accommodate a full-sized, Mobility Plan-compliant sidewalk and road.

A. BOE Conditions Requiring Sidewalk Easements and Widening

Pursuant to a report dated August 13, 2020, BOE requested sidewalk easements and sidewalk improvements located along the Project frontages of Argyle Avenue and Yucca Street. In the LOD, the Advisory Agency adopted BOE's recommended conditions in Specific Condition Nos. 1 and 2.

BOE – Specific Condition No. 1 states:

"That a 5-foot wide public sidewalk easement be provided along Argyle Avenue to complete a 12-foot sidewalk including a 10-foot by 10-foot or 15-foot radius property easement line return at the intersection with Yucca Street in accordance with Local Street Standards of LA Mobility Plan." (Emphasis added.)

BOE – Specific Condition No. 2 states:

"That a 6-foot wide public sidewalk easement be provided along Yucca Street to complete a 12-foot wide sidewalk area in accordance with Local Street Standards of LA Mobility Plan. Additional public sidewalk easement shall be provided at the location of the drop-off to complete a 12-foot sidewalk area." (Emphasis added.)

In addition, Bureau of Engineering – Specific Condition No. 7² also requires that the Project construct a new 12-foot full-width concrete sidewalk along Argyle Avenue and Yucca Street within the required easement. Bureau of Engineering – Specific Condition No. 7 states:

"That the following improvements be either constructed prior to recordation of the final map or that the construction be suitably guaranteed:

¹ The Advisory Agency's determination approving VTTM-73718 has been appealed by: (1) LA Tenants Union, Hollywood Chapter; (2) AIDS Healthcare Foundation; and (3) J.H. McQuiston.

² The improvement condition set forth in Bureau of Engineering – Specific Condition is also set forth verbatim in Bureau of Engineering – Standard Condition S-3(i).



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- a. Improve Argyle Avenue adjoining the subdivision by the construction of a new 12-foot full-width concrete sidewalk with tree wells including any necessary removal and reconstruction of existing improvements.
- b. Improve Yucca Street adjoining the subdivision by the construction of a new 12-foot full-width concrete sidewalk including the new public sidewalk easement area with tree wells including any necessary removal and reconstruction of existing improvements. A full-width meandering concrete sidewalk shall also be provided at the drop-off area all satisfactory to the City Engineer.”

B. Applicable Mobility Plan Standards and Actual ROW for Argyle Avenue and Yucca Street

a. Argyle Avenue

Under Mobility Plan 2035, Argyle Avenue is listed as a *Local Street, Standard*, which mandates a total ROW width of 60 feet (meaning the half-ROW requirement is 30 feet) and a total road width of 36 feet, resulting in a requirement for 12-foot sidewalks on each side of the street.³ As reflected in the City’s official cadastral map, Argyle Avenue has an existing ROW width of 75 feet. (Central Index Map Nos. 148-5A-189; 150A189.) Accordingly, Argyle Avenue exceeds the applicable street standard.

In addition, the approved VTTM reflects that, relative to the Argyle Avenue centerline, there is 40 feet of ROW on the western side of Argyle Avenue, and 35 feet of ROW on the eastern, Project side of Argyle Avenue. Accordingly, *the 30-foot half-ROW requirement is exceeded on both sides of Argyle Avenue, with 5 feet to spare on the Project side.* The approved VTTM also shows that the sidewalk on the Project side of Argyle Avenue is currently 7 feet in width, which is why BOE is requesting a 5-foot easement and sidewalk widening to meet the 12-foot sidewalk standard. However, as the half-ROW exceeds the Mobility Plan standard by 5 feet, a 12-foot sidewalk could be constructed in the existing public ROW while still meeting the 30-foot half-ROW requirement under the Mobility Plan. Even then, the Argyle Avenue road would still be 51 feet wide, far exceeding the applicable Mobility Plan requirement for a 36-foot road.

b. Yucca Street

Similar to Argyle Avenue, Yucca Street is also listed as a *Local Street – Standard* under Mobility Plan 2035, which, as stated, mandates ROW width of 60 feet and a total road width of 36 feet. In accordance with the City’s official cadastral map, Yucca Street is indicated as having an existing ROW width of 56 feet, not inclusive of a small bulb out at the corner of Yucca Street and Vista Del Mar, which extends further into the street. (Central Index Map No.150A189.) As indicated in the approved VTTM, a 4-foot

³ Mobility Plan street requirements are per the NavigateLA website, found at <https://navigatea.lacity.org/navigatea/>.



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dedication has been provided on the north side of Yucca Street, *completing the required 60-foot public ROW. Yucca Street thus also meets the applicable street standard.*

In addition, as a result of 14 feet of prior dedications on the south, Project side of Yucca Street, the half-ROW on the Project side of Yucca is 36 feet. Thus, the Project side's half-ROW currently exceeds the Mobility Plan requirement by 6 feet. The VTTM also indicates that Yucca Street has a 6-foot sidewalk, which is the reason behind BOE's request for a 6-foot sidewalk easement and widening. However, as with Argyle Avenue, sufficient space exists within the half-ROW to accommodate this sidewalk requirement *and* maintain the required 36-foot road.

C. The City is Prohibited from Requiring the Project to Dedicate a 5-Foot Wide Public Sidewalk Easement Along Argyle Avenue and a 6-Foot Wide Public Sidewalk Easement Along Yucca Street.

As stated above, LAMC Section 12.37-A.5 states that “[n]o dedication shall be required where the existing right-of-way is equal to or greater than the street standard, even where the improved sidewalk does not meet the standard dimension.”⁴ Under the plain terms of the LAMC, BOE therefore may not require a dedication where the existing ROW is equal to or greater than the street standard, including where the sidewalk has not been improved to the required standard dimensions. Accordingly, consistent with LAMC Section 12.37-A.5, the City may not require the Project to dedicate a 5-foot easement along Argyle Avenue, or a 6-foot easement along Yucca Street, because the full ROW is already met on both streets. As a result, Mobility Plan-compliant sidewalks and roads could be maintained within the existing public ROWs without the need for any dedication.

Notably, the fact that BOE fashions its demand as an “easement” and not a “dedication” is of no import. Under California law, a dedication can take the form of a fee interest or an easement. (See Miller and Starr California Real Estate, § 22:31, Fee or Easement (4th ed.) [“A property owner can dedicate either a fee or easement whether the dedication is by statute or implied under the common law. Whether the public receives the fee title to the property dedicated, or merely an easement, depends on the facts in each case.” (footnotes omitted)].) BOE's demand for an easement is a dedication. Moreover, whether characterized as a fee dedication or an easement dedication, the same unlawful result occurs here: the Applicant is being required to build a public sidewalk on its own property where the existing public ROW

⁴ We would also note that LAMC § 12.37-A.6 would not apply here. It states “Where the existing improved roadway meets or exceeds the street standard, no dedication shall be required except as necessary to bring the abutting sidewalk dimension into compliance with the street standard as depicted in the most recent version of the Bureau of Engineering's standard plan number S470.” (LAMC § 12.37-A.6.) This provision does not apply because it applies only in situations where only the “roadway” meets the standard, but not the total ROW as in LAMC § 12.37-A.5. Here, on both Yucca and Argyle, the total ROW is met, so LAMC § 12.37-A.5 applies and prevents the City from being able to require a dedication to widen the sidewalk.



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already meets City standards and can accommodate a fully compliant road and sidewalk. LAMC Section 12.37 prohibits this outcome. The sidewalk conditions are unlawful and should be rescinded.

D. The City's Conditions for Sidewalk Easements Are Unlawful Exactions That Do Not Meet Constitutional Nexus and Rough Proportionality Requirements.

The United States and California Constitutions prohibit unlawful “takings” of private property by governmental entities without the payment of “just compensation” to the property owner. (U.S. Const., amend. V; Cal. Const., Art. I, § 19.) In order to avoid an unconstitutional taking of property without just compensation, a city imposed dedication, easement, or improvement condition requires the existence of an essential nexus between the condition and the interest to be furthered, and the condition must be roughly proportional to the impact of the proposed development. (*Nollan v. California Coastal Com'n* (1987) 483 U.S. 825, 835–842; *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391.) LAMC Section 12.37-A.7 acknowledges this requirement as having to be demonstrated in the absence of a code-based rationale for imposing a dedication or improvement, stating:

“Nothing herein shall preclude the decision maker on a discretionary entitlement from requiring a dedication or improvement greater than what is set forth in this section, if the decision maker determines that a greater dedication or improvement bears an essential nexus and rough proportionality to a project impact.” (Emphasis added.)

In analyzing whether an agency has adopted findings establishing an essential nexus and rough proportionality for a dedication, courts apply a “heightened scrutiny” standard “to ensure that a required development dedication is not a mere pretext to obtain or otherwise physically invade property without just compensation.” (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 881, 890.) This heightened standard is at its strongest when a physical invasion of real property is at issue, as is the case here. (*Id.*, at p. 875.) Under this standard, an agency has a heightened burden of establishing the validity of any conditions involving the relinquishment of an applicant's property rights. (*Id.*, at 881.)

The LOD does not even attempt to make a showing to justify BOE's sidewalk easement and improvement conditions, adopting no findings supporting the required easements. Rather, the LOD findings simply incorporate BOE's requested conditions into the Letter of Determination, stating only that “[p]ursuant to the letter dated August 13, 2020, Bureau of Engineering requires sidewalk easements along Argyle Avenue and Yucca Street...” (LOD, at pp. 89-90.) This unsupported reference does not meet the heightened standard for findings to establish a nexus and proportionality.

Not only has the City improperly failed to adopt any findings demonstrating a nexus and rough proportionality, the City could not meet its heightened burden here. (*Ehrlich*, 12 Cal.4th at 881.) First, the City cannot make the requisite nexus finding establishing a clear connection between the Project and a



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burden imposed on a legitimate state interest by the Project. (*Nollan*, 483 U.S. at 837.) While maintaining sidewalks of adequate widths is unquestionably a legitimate governmental interest, the City has not shown that the Project would impose a sufficient burden on this interest where the City already has sufficient ROW to provide a Mobility Plan-compliant sidewalk and road. Thus, here, as was the case in *Nollan*, the City improperly seeks to obtain “an easement to serve some valid governmental purpose, but without payment of compensation.” (*Id.*) As a result, in the absence of just compensation, BOE’s sidewalk easement and improvement conditions constitute unlawful exactions.

In addition to being unable to establish a nexus, the City could not adopt valid findings that the easement and improvement exactions are roughly proportional to the impacts of the Project. (*Dolan*, 512 U.S. at 391.) To make such a showing, a “precise mathematical calculation” is not required, but the City “must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” (*Id.*, at 391.) The City “must quantify its finding beyond a conclusory statement that the dedication could, [for example], offset some of the traffic demand generated by the development.” (*Id.*, at 375.) Here, the City could not validly make such a finding because the required sidewalk easement dedication is not related in any way to an impact of the Project: sufficient public ROW already exists to have a Mobility Plan-compliant road and sidewalk without an easement, and the Project does not contribute to or otherwise impact a substandard public ROW. Accordingly, there is no proportionality between the easements and an impact of the Project.

Indeed, avoiding unlawful exactions under the nexus and proportionality standards is the very reason LAMC Section 12.37-A.5 prohibits road and sidewalk dedications in this precise circumstance. Under that LAMC provision and state and federal constitutional law, the sidewalk easement and improvement conditions are unlawful and should be rescinded or, at minimum, revised to avoid an unlawful taking without just compensation.



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E. Conclusion

The Applicant respectfully requests that the CPC rescind Bureau of Engineering – Specific Conditions Nos. 1, 2, and 7, and Bureau of Engineering – Standard Condition S-3(i). In the alternative, if the City wishes to impose a condition to widen the sidewalks to meet the applicable Mobility Plan standard, that widening should be required to occur within the existing public ROW without easements on the Project site.

Best regards,

A handwritten signature in blue ink, appearing to be 'AB', with a long horizontal stroke extending to the right.

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