

March 14, 2014

Via Email and Federal Express

Los Angeles City Council
Planning and Land Use Management
Committee
City of Los Angeles
200 North Spring Street, Room 395
Los Angeles, CA 90012

Re: Council File 14-0035, 14-0035S1; 522 S. Venice Boulevard; Case Nos. VTT-70870-SL-1A, ZA 2013-1420-CDP-1A, ENV-2009-2489-REC2; March 18, 2014 PLUM Committee Hearing on Kalnel Appeal

Honorable Members of the PLUM Committee:

We are writing on behalf of our client, Kalnel Gardens LLC (“Kalnel”), to respectfully request that you: (a) Overturn the decisions of the West Los Angeles Planning Commission (“WLAAPC”) in Case Nos. VTT-70870-SL-1A, ZA 2013-1420-CDP-1A and ENV-2009-2489-REC2 and; (b) reinstate the September 20, 2013 approvals of such cases previously issued by the Deputy Advisory Agency and Associate Zoning Administrator. Our request is based on the previous decisions and record of action of the City of Los Angeles in related cases DIR 2011-588(DB)(SPP)(MELLO) and ENV-2009-MND-REC2 (which are hereby incorporated by reference as if fully set forth herein), the written evidence we have previously submitted (including, without limitation, Kalnel’s appeals of the WLAAPC decisions), the written evidence submitted herewith, and such other evidence as we may introduce at the hearing of March 18th.¹

¹ We very much appreciate the hard of work of the Planning Department’s staff on this matter and its recommendation against the appeals granted by the WLAAPC. See footnote 7, below. Mr. Tokunaga has communicated that when he and Mr. Vasquez appear before your committee on March 18th, they will appear as representatives of the WLAAPC – not as the Deputy Advisory Agency or Associate Zoning Administrator for the Planning Department, which did not support the action of the WLAAPC. See March 14, 2014 Abshez Declaration (“Abshez Declaration”), **Exhibit A** (*March 11, 2014 e-mail from Jim Tokunaga to Allan Abshez*).

If upheld by the City Council, the decisions of the WLAAPC in the above referenced cases will result in the City's violation of Government Code Sections 65590, 65915, 65589.5, Los Angeles Municipal Code ("LAMC") Section 12.22.A.25, as well as Kalnel's rights pursuant to DIR 2011-588(DB)(SPP)(MELLO) and ENV-2009-MND-REC2. Accordingly, the September 20, 2013 approvals by the Advisory Agency and Associate Zoning Administrator should be reinstated.

A. The City's Approval of a Specific Plan Compliance Permit, Density Bonus, Density Bonus Incentives, Mello Act Approval, and Mitigated Negative Declaration for Kalnel's Project

As a result of the City's settlement in *Venice Town Council v. City of Los Angeles, et al.*, 47 Cal.App.4th 1547, 55 Cal.Rptr. 465 (1996), in May 2000 the City adopted the Interim Administrative Procedures for Complying with the Mello Act, which requires projects of 10 units or more in the Coastal Zone to include below-market housing.² Pursuant to such requirements, Kalnel's project at 522 S. Venice included two very low income units (or 18% very-low income units). Kalnel's compliance with this City requirement entitled Kalnel's project to: (1) density bonuses or other incentives pursuant to Government Code Section 65590; (2) a 35% density bonus pursuant to Government Code Section 65915 and LAMC Code Section 12.22.A.25; and (3) three incentives or concessions pursuant to Government Code Section 65915 and LAMC Code Section 12.22.A.25.

On September 6, 2013, the City issued its decisions in cases DIR 2011-588(DB)(SPP)(MELLO) and ENV-2009-MND-REC2 (the "Mitigated Negative Declaration").³ In such decisions, the City:

- Approved a Specific Plan Project Permit Compliance for Kalnel's project, finding that Kalnel's project substantially complies with the applicable regulations, findings, standards and provisions of the Venice Coastal Zone Specific Plan, that the project complies with the Director's Interpretation of the Venice Specific Plan in DIR-2008-DI-1A,⁴ and that the "project is compatible in scale

² See Abshez Declaration, **Exhibit B** (*Venice Town Council Settlement Agreement*) and **Exhibit C** (*Interim Administrative Procedures for Complying with the Mello Act*; Section 5, at page 19).

³ See Abshez Declaration, **Exhibit D** (*September 6, 2013 Approval of DIR 2011-588(DB)(SPP)(MELLO) and Mitigated Negative Declaration*).

⁴ See Abshez Declaration, **Exhibit E** (*January 26, 2009 Venice Coastal Specific Plan Director of Planning Specific Plan Interpretation and February 12, 2010 City Planning Commission approval of such Interpretation*).

and character with the existing neighborhood and that which is allowed in the Venice Coastal Zone Specific Plan for the North Venice Subarea.”

- Approved a Density Bonus authorizing 15 total dwelling units (5 duplexes and 5 single family homes) within a 10 lot small lot subdivision, with two of the units set aside for very-low income households.
- Approved, as the first “On-Menu” Density Bonus incentive for the project pursuant to Government Code Section 65915 and LAMC Code Section 12.22.A.25(f)(5), a 35% height increase over the applicable height limit under the Venice Specific Plan for a Flat Roof of 33.75 feet and Varied Roofline of 40.5 feet.
- Approved, as the second “On-Menu” Density Bonus incentive for the project pursuant to Government Code Section 65915 and LAMC Code Section 12.22.A.25(f)(7), a total by-right base density (exclusive of the density bonus) of 11 units.⁵
- Found that the Kalnel project complies with the City’s Interim Administrative Procedures for Complying with the Mello Act and the Mello Act.
- Adopted the Mitigated Negative Declaration as the project’s environmental clearance under CEQA, finding that with the imposition of the mitigation described therein, there is no substantial evidence that the project will have a significant effect on the environment.

The City’s decisions in case DIR 2011-588(DB)(SPP)(MELLO) and the City’s adoption of the Mitigated Negative Declaration became final without appeal or any action by the City Council to reconsider such actions, and a Notice of Determination for the Mitigated Negative Declaration was thereafter approved by the City on October 29, 2013.⁶

⁵ The Kalnel project is entitled to a third incentive pursuant to Government Code Section 65915 and LAMC Code Section 12.22.A.25 that Kalnel has not yet utilized, but which Kalnel reserves.

⁶ See Abshez Declaration, **Exhibit F** (*October 29, 2013 Notice of Determination for Mitigated Negative Declaration*).

B. The Advisory Agency and Associate Zoning Administrator's Approval of the Vesting Tentative Map and Coastal Development Permit for Kalnel's Project

On September 20, 2013, the Deputy Advisory Agency and Associate Zoning Administrator approved Case Nos. VTT-70870-SL-1A and ZA 2013-1420-CDP-1A respectively, and readopted the Mitigated Negative Declaration. VTT-70870-SL-1A is the 10 lot Small Lot Subdivision for Kalnel's project that was expressly contemplated by the City's September 3, 2013 approval of DIR 2011-588(DB)(SPP)(MELLO) (the "Vesting Tentative Map"). ZA 2013-1420-CDP-1A is the Coastal Development Permit for Kalnel's project expressly contemplated by DIR 2011-588(DB)(SPP)(MELLO) (the "Coastal Development Permit").

In its decision approving the Vesting Tentative Map, the Deputy Advisory Agency found, consistent with City's previous finding in DIR 2011-588(DB)(SPP)(MELLO), that the proposed 10-lot subdivision complied with the Venice Coastal Zone Specific Plan as well as all the requirements of the Small Lot Subdivision Ordinance. As the Deputy Advisory Agency stated in its October 16, 2013 Staff Report to the WLAAPC:⁷

"The project as designed is in compliance with the provisions of the Small Lot Ordinance. The project meets the minimum 600 square-foot lot size, lot coverage of less than 80%, and minimum lot width requirement of 16 feet. The provisions of the Small Lot Ordinance do not require a front, side, or rear yard between lots within an approved small lot subdivision. A five-foot setback is required where the small lot abuts a non-small lot property. There will be at the very minimum a 5-foot building setback between the subdivision and the adjoining properties to the east. The project is also consistent with the density bonus requirements of the RD1.5 Zone, as modified by the density bonus approval."

(emphasis added)

In its decision approving the Coastal Development Permit, the Associate Zoning Administrator made all requisite findings under the Coastal Act. As the Deputy Advisory Agency and Associate Zoning Administrator advised the WLAAPC:

In approving the Coastal Development Permit (ZA 2013-1420-CDP), a finding must be made that the development is in conformity with Chapter 13 of the California Coastal Act of 1976, which provides that 'new residential, commercial, or industrial

⁷ See Abshez Declaration, **Exhibit G** (October 16, 2013 Appeal Recommendation Report from Deputy Advisory Agency and Associate Zoning Administrator to WLAAPC at page 8).

development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.’ In approving the Coastal Development Permit the Associate Zoning Administrator found that the proposed development is consistent with the above referenced policy as it is a redevelopment of an existing developed site in a mixed residential and commercial neighborhood. Further, the project has been evaluated by the Bureau of Engineering, the Department of Building and Safety, the Fire Department, and the Department of Transportation, which determined that the project can be accommodated by the existing infrastructure and public services.’⁸

C. The WLAAPC’s Disapprovals of the Vesting Tentative Map and the Coastal Development Permit were Improper

In improperly overturning the Deputy Advisory Agency’s approval of Vesting Tentative Map and the Coastal Development Permit, the WLAAPC disapproved Kalnel’s project based on the number of units and height expressly granted to the project in DIR 2011-588(DB)(SPP)(MELLO) by the City pursuant to the City’s own density bonus law (LAMC Code Section 12.22.A.25) as well as state law (Government Code Section 65915). Thus, the WLAAPC’s decision, if upheld by the City Council, will result in the City depriving Kalnel of the density bonus rights and incentives to which Kalnel is lawfully entitled pursuant to Government Code Sections 65590, 65915, LAMC 12.22.A.25, the City’s final approval of DIR 2011-588(DB)(SPP)(MELLO) and the Mitigated Negative Declaration.

The remainder of the WLAAPC’s findings in disapproving the Vesting Tentative Map and Coastal Development Permit do not cite any objective standards or criteria with which Kalnel’s project does not comply (indeed, as the City previously found, the Kalnel project complies with all such standards), but rather pertain to wholly subjective judgments about the project’s compatibility and suitability. Such subjective judgments cannot lawfully provide the basis for disapproving Kalnel’s project under California law.⁹

⁸ See Abshez Declaration, **Exhibit G** at page 9.

⁹ Moreover, such findings are expressly contradicted by the City’s final action and findings of September 3, 2013 in DIR 2011-588(DB)(SPP)(MELLO).

D. The WLAAPC's Disapproval of the Vesting Tentative Map and Coastal Development Permit Based on Traffic and Safety Grounds was Improper

In improperly overturning the Deputy Advisory's approval of the Vesting Tentative Map and the Coastal Development Permit, the WLAAPC ignored that the City had already adopted of the Mitigated Negative Declaration and had already found that substantial evidence that Kalnel's project will not result in significant traffic and safety impacts. The WLAAPC also ignored substantial evidence that the project will improve traffic and safety conditions; specifically the following facts and expert opinion as summarized at page 8 of the Deputy Advisory Agency's October 16, 2013 staff report to the WLAAPC:

“As a condition of approval of the tract, the Bureau of Engineering is requiring that a 7-foot wide strip of land be dedicated along Mildred Avenue adjoining the subdivision to complete a 27-foot half right of way dedication. The street dedication will be utilized to make improvements on Mildred Avenue. Currently, there is no sidewalk on the north side of Mildred Avenue. The Bureau of Engineering is requiring improvements on Mildred Avenue by requiring the construction of a new concrete curb, gutter, and an 8-foot sidewalk. All encroachments (walls, fences, and shrubs) must be removed from the site. This will help alleviate hazards on the street as existing shrubs on the site block traffic views and pedestrians must currently walk on the street. The developer is also being required to complete a full width sidewalk on Venice Boulevard.

The Department of Transportation (DOT) is requiring that driveway and vehicular access to the project be limited to Mildred Avenue, which is a local street with slower travel speeds. DOT discourages driveways off of Major Highways with higher travel speeds, in this case Venice Boulevard, if there is a local street serving the property. Although there were requests by the public to move the driveway to Venice Boulevard, the driveway location approved by the Advisory Agency is as recommended by the Department of Transportation. The project with a total of 15 dwelling units is significantly below the threshold for DOT to require a traffic study. For condominiums the threshold is 48 dwelling units.”¹⁰

The WLAAPC's decision fails to address such facts and expert opinion, but merely states that “information by the community raised a fair argument that a potential impact exists.” However, no substantial evidence whatsoever is presented in support of this finding. CEQA expressly provides that “argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous... is not substantial evidence. Substantial evidence shall

¹⁰ See Abshez Declaration, **Exhibit G** at page 8.

include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Public Resources Code Section 21082.2.

In addition to the lack of any substantial evidence to support the WLAAPC findings regarding purported potential traffic and safety impacts, the WLAAPC decision also fails to cite any objective, adopted safety standards that Kalnel’s project would potentially impact, and fails to show why the WLAAPC’s disapproval of Kalnel’s project is the only feasible way to avoid such potential impacts. If there were substantial evidence of a potential impact to any objective, adopted safety standard (which there is not), the proper course under California law is for the WLAAPC to study the impact and identify feasible mitigation measures.

Furthermore, since the WLAAPC decisions were issued the Department of Transportation has further reviewed Kalnel’s project and issued a determination that no traffic study or technical memorandum is required. Specifically, on February 20, 2014, the Department of Transportation issued a further determination that:

“After taking into account the previous use, the project is expected to create a net increase of 86 daily trips, 7 net new AM peak hour trips and 9 net new PM peak hour trips... According to the Department’s Traffic Study Policies and Procedures, a technical memorandum is required when a project is likely to add 25 to 42 AM or PM peak hour trips, and the adjacent intersection(s) are presently estimated to be operating at Level of Service (LOS) E or F, and a traffic study is required when a project is likely to add 500 or more daily trips, or likely to add 43 or more AM or PM peak hour trips. Since the proposed project, as previously stated, is not expected to exceed the trip generation thresholds that would require a full traffic study or a technical memorandum, no further traffic impact analysis is required.”

(emphasis added).¹¹

Moreover, in addition to finding that no further traffic study is required, on March 12, 2014 LADOT approved the location and design of the project’s driveway as shown in the Vesting Tentative Map.¹²

For all of these reasons, the WLAAPC acted improperly in failing to adopt the Mitigated Negative Declaration and disapproving Kalnel’s project for purported traffic and safety reasons.

¹¹ See Abshez Declaration, **Exhibit H** (*February 20, 2014 LADOT Trip Generation Assessment for the Proposed Multi-Family Residential Project at 522 East Venice Boulevard*).

¹² See Abshez Declaration, **Exhibit I** (*March 12, 2014 LADOT Driveway Approval*).

Finally, although there is no substantial evidence of a potential traffic or safety impact from Kalnel's project, and although the City's own expert agency – LADOT – has approved the design and location of the project's driveway and found that no traffic study is necessary, Kalnel retained the expert traffic, transportation and parking firm of Linscott, Law & Greenspan Engineers ("LLG") to study traffic conditions in the vicinity of the project's Mildred Avenue driveway.¹³ To prepare its study, which is submitted herewith, LLG examined City standards and criteria; conducted vehicle, pedestrian, and bicycle counts; prepared Critical Movement Analysis; analyzed the Ocean Avenue/Mildred Avenue intersection with HCM2010 software; consulted with LADOT; independently analyzed the location and design of the project's driveway; and reviewed the City's accident records for the Ocean Avenue/Mildred Avenue and South Venice Boulevard/Ocean Avenue intersections.

As an initial matter, LLG found that – contrary to the anecdotal claims of community members who testified before the WLAAPC – the intersections surrounding Kalnel project operate at acceptable conditions:

- Ocean Avenue/Venice Boulevard Intersection:

Weekday AM Peak Hour: *v/c* ratio = 0.339, LOS A

Weekday PM Peak Hour: *v/c* ratio = 0.527, LOS A

- Ocean Avenue/Mildred Avenue Intersection:

Weekday AM Peak Hour: *delay* = 14.5 seconds, LOS B

Weekday PM Peak Hour: *delay* = 11.0 seconds, LOS B¹⁴

Moreover, LLG's review of the actual accident data from the LADOT Traffic Control Records Division indicates that there is no substantial evidence that road conditions in the project vicinity are responsible for frequent accidents. For the most recent two-year reporting period (June 1, 2010 to May 31, 2012) only one accident was reported at Ocean Avenue/Mildred Avenue: A bicyclist traveling on the wrong side of the road. With respect to South Venice Boulevard/Ocean Avenue intersection, three accidents were reported during the same two-year period. However, such accidents were not the result of road configuration. Rather, "[t]hese three accidents involved a bicyclist traveling on the wrong side of the road, a motorist driving under the influence, and a motorist traveling too closely."

¹³ See March 13, 2014 Review of Site Access/Circulation/Driveway prepared by Linscott, Law & Greenspan Engineers submitted herewith.

¹⁴ Under LADOT's *Traffic Study Policies and Procedures*, Level of Service A, or LOS A equates to "excellent free flow conditions" and LOS B equates to "very good" conditions.

Finally, LLG concurs with LADOT that the design and location of the project's driveway is appropriate, and that the "additional dedication from the Applicant's property, the removal of the existing walls, fences and shrubs, and the construction of the sidewalk along the Mildred Avenue project frontage will improve sight lines in the project vicinity and provide safe circulation in the immediate vicinity of the project site. Pedestrians walking within the roadway width due to the lack of such walkway will be eliminated."

For all of these reasons, substantial evidence indicates that, as conditioned by the City's previous approvals, Kalnel's project will not result in significant traffic and safety impacts.

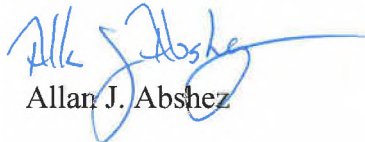
Accordingly, the WLAAPC's decisions should be overturned and the approvals of the Deputy Advisory Agency and Associate Zoning Administrator should be reinstated.

Conclusion

For all of the foregoing reasons, if upheld by the City Council, the decisions of the WLAAPC in the above referenced cases will result in the City's knowing and intentional violation of Government Code Sections 65590, 65915, 65589.5, LAMC Section 12.22.A.25, as well as Kalnel's rights pursuant to DIR 2011-588(DB)(SPP)(MELLO) and the Mitigated Negative Declaration; resulting in City liability for substantial damages to Kalnel. Accordingly, the decisions of the WLAAPC should be overturned and the approvals of the Advisory Agency and Associate Zoning Administrator should be reinstated.

We look forward to answering any further questions the Committee may have at the hearing.

Very truly yours,


Allan J. Abshez

AJA:fp

cc: Mr. Len Judaken