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VIA E-MAIL councilmember.huizar@lacity.org

The Honorable Jose Huizar, Chair
Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 410
Los Angeles, CA 90012

Re: Council File Nos. 14-0232 and 14-0232-S1
2003 S. Oak Street
PLUM Hearing Date: May 13, 2014
Support for Project Approval

Dear Councilman Huizar:

This law office represents Thomas Safran & Associates, the applicant in the above-referenced matter. The proposal is for the Norwood Elementary School Workforce Housing/Joint Parking Project located at 2003 S. Oak Street (the "Project"). The Project consists of the construction of a 29-unit two-and three-story multi-family residential affordable housing development, with private amenities and 72 underground parking spaces. The property is located within the University Park Historic Preservation Overlay Zone ("HPOZ"). As such, the following Project approvals were required:

1. Certificate of Compatibility pursuant to the HPOZ;
2. Zoning Administrator's Adjustment for reduced front yard setback; and
3. Site Plan Review.

The Planning Director approved the Certificate of Compatibility for the Project on July 18, 2013, and the Zoning Administrator approved the Adjustments and Site Plan Review on October 23, 2013. Both determinations were appealed, and a joint hearing on both appeals was heard by the South Los Angeles Area Planning Commission ("SLAAPC") on January 21, 2014. The SLAAPC denied both appeals and sustained the respective actions of the Zoning Administrator and the Director of Planning to approve the project. The SLAAPC also adopted the Mitigated Negative Declaration for the Project, ENV-2012-83-MND-REC1 ("MND"). The SLAAPC vote was unanimous.

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While the SLAAPC's determinations upholding the approvals of the Certificate of Compatibility, Zoning Administrator's Adjustment and Site Plan Review are not further appealable, a project opponent has appealed the adoption of the MND pursuant to State law. **On behalf of our client, we respectfully request that the City Council deny the pending Appeals¹ and uphold the adoption of the MND by the SLAAPC.**

A. State Law Provides for An Appeal of the MND to the City Council.

California Public Resources Code § 21151(c) provides:

"If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to [the California Environmental Quality Act ("CEQA")], that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any."

The State CEQA Guidelines provide that local lead agencies must provide for such CEQA appeals, and may establish procedures governing the appeals. A draft ordinance to implement Public Resources Code § 21151(c) in the City of Los Angeles has been prepared, but has not yet been adopted.

Nevertheless, despite the fact that the Certificate of Compatibility, Zoning Administrator's Adjustment and Site Plan Review approvals are not further appealable and have now become final, under State law the City Council is required to hear the pending appeals of the MND.

B. The MND Complies with CEQA.

The City of Los Angeles Department of City Planning is the Lead Agency under CEQA. An Initial Study is a preliminary analysis prepared by and for the City of Los Angeles as Lead Agency to determine whether an Environmental Impact Report or a Negative Declaration or Mitigated Negative Declaration must be prepared for a proposed project. In this case, the City correctly determined that an MND be adopted for the project (Case No. ENV-2012-0083-MND-REC1) and the MND was published in accordance with CEQA's mandatory 20 day public comment period.

¹ While only one MND is at issue, ENV-2012-83-MND-REC1, it constitutes the City's environmental review of two cases, DIR-2012-1217-CCMP and ZA 2012-1216-ZAA-SPR. As such, there are two pending appeals.

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Pursuant to CEQA Guideline 15064, an MND is prepared for a project when the Initial Study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and Initial Study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. "Substantial evidence" is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible, and of solid value. See Stanislaus Audubon Soc'y v. County of Stanislaus, 33 Cal.App.4th 144 (1995). Argument, speculation and unsubstantiated opinion or narrative do not constitute substantial evidence under CEQA. See Pub. Res. Code §§ 21080(e), 21082.2(c); 14 Cal. Code Regs. §§ 15064(f)(5), 15384.

As shown in the environmental analysis contained the City's Initial Study, the Project involves some potentially significant effects on the environment, but these potential effects will be reduced to less-than-significant by project revisions in the form of mitigation measures. With regard to some other impacts, the Initial Study shows that no substantial evidence indicates that the project would have a significant environmental effect. The record in this case supports the City's adoption of the MND. See Citizens for Responsible Development v. City of West Hollywood (1995) 39 Cal.App.4th 490, 498-499 [EIR not required on any project proposed to be carried out or approved unless substantial evidence in light of whole record supports fair argument that proposed project may have significant effect on environment and, in absence of such finding, adoption of mitigated negative declaration must be upheld].

The appeals in this case are based upon the sole claim that the Project lacks compliance with the University Park Preservation Plan ("UPPP"). As an initial matter, the Director of Planning expressly found that the Project is in compliance with the provisions and intent of the UPPP. The Director's Determination was sustained on appeal by the SLAAPC. That decision has now become final, and the appellant may not take a second bite at the apple with regard to that Determination by way of these appeals.

State law establishes the threshold of "substantial adverse change" for historical resources as demolition, destruction, relocation, or alteration activities that would impair the significance of the historic resource. Pub. Res. Code § 5020.1(q); see also 14 Cal.Code Regs. § 15064.5(b)(1). The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of a historical resource that convey its historical significance can be considered to materially impair the resource's significance. 14 Cal.Code Regs. § 15064.5(b)(4). Actions that affect a historic resource but do not result in a tangible, perceptible change are not environmental impacts subject to CEQA. Martin v. City & County of San Francisco (2005) 135 Cal.App.4th 392.

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Here, the Project will not physically harm any of the contributing buildings within the HPOZ area. The Project will be visible from adjacent historically significant properties. However, those properties will retain sufficient integrity and will continue to be contributors within the HPOZ. The Project site itself is a vacant LAUSD parking lot and is not a historic resource. As such, the Project will not result in the demolition or alteration of any kind of a historic resource.

As there is no substantial evidence that the Project may have a significant effect on the environment, the City's Initial Study correctly concluded that an MND be prepared for the Project, and these appeals must be denied. See Citizens for Responsible Development v. City of West Hollywood, supra, 39 Cal.App.4th at 499 [mandamus action challenging lack of EIR for proposed low-income housing project that would incorporate historic structures and demolish other buildings on property; MND upheld].

C. Conclusion.

As set forth above, the City's approval of the MND was consistent with the law, and the appeals must be denied.

The Project is a joint venture with LAUSD and will provide much needed low income housing. It has wide support from the community and from the First District Council Office. Copies of the letters and petition in support of the Project are enclosed. **Again, we respectfully request that the Council deny the appeals and uphold the approval of the MND.**

Thank you for your consideration of 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 

FRED GAINES

cc: Councilmember Gilbert A. Cedillo (Via Email)
Councilmember Mitchell Englander (Via Email)
Sharon Gin, Legislative Assistant (Via Email)
Gerald G. Gubatan, Planning Deputy, Council District 1 (Via Email)