

CITY OF LOS ANGELES
INTRERDEPARTMENTAL CORRESPONDENCE

DATE: October 3, 2018

TO: Public Works and Gang Reduction Committee
Attention: Office of the City Clerk
City Hall, Room 395

FROM: *For H. Hagekhalil*
Adel H. Hagekhalil, P.E.
Director and General Manager
Bureau of Street Services

SUBJECT: **CASE FILE NO: 18-0707 – RECOMMEND THE CITY COUNCIL DENY THE APPEAL BY UNITED NEIGHBORHOODS FOR LOS ANGELES AND THE EASTSIDE NATURE ALLIANCE DATED JULY 27, 2018**

RECOMMENDATIONS:

1. DENY the appeal.
2. Determine, based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to State CEQA Guidelines section 15301, and there is no substantial evidence demonstrating that any exception to the categorical exemptions listed in CEQA Guidelines section 15300.2 applies.
3. Determine, based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to City of Los Angeles CEQA Guidelines, Article III, Section 1, Class a, Category 1 (existing facilities), subpart (3) (operation, repair, maintenance or minor alteration of sidewalks) not subject to any exception.
4. Direct, the Bureau of Street Services to file a CEQA Notice of Exemption based upon the exemption determinations stated above at Recommended Action Nos. 2 & 3.
5. Sustain the Board of Public Work's July 18, 2018 action approving a tree removal permit request to remove 18 trees located on North Cherokee Avenue between Lexington and Fountain Avenue for the reconstruction of an off-grade sidewalk, and the planting of 36 replacement trees.

AHH/TT:me

RECOMMENDATION REPORT

To: Public Works/Gang Reduction Committee and the City Council

Re: Administrative CEQA appeal of environmental findings concerning a sidewalk repair undertaken pursuant to the Willits Settlement Agreement Sidewalk Repair Program.

Council File No.: 18-0707

Case No: BPW-2018-0550, Willits Settlement Sidewalk Repair Program Nos. 1267, 1276 and 1450

Council Area: Council District 4 – Council Member Ryu

Project Site: North Cherokee Avenue between Lexington and Fountain Avenues, Sidewalk Repair Program Site Nos. 1267, 1276 and 1450

Project Description: As an independent project pursuant to the funding approved by the *Willits* Settlement Sidewalk Repair Program, the City proposes to undertake reconstruction of sidewalk conditions at the Project Site which included the removal and replacement of street trees. The Project is proposed to replace sidewalks due to uplift and disruption by the roots of adjacent street trees.

APPELLANTS: United Neighborhoods for Los Angeles and the Eastside Nature Alliance

REQUESTED ACTION: *De novo* review of the City's compliance with the California Environmental Quality Act (CEQA), appealed pursuant to Public Resources Code 21151(c) by Appellant, concerning the City's approval of the Project.

On July 18, 2018, the Board of Public Works adopted staff's recommendation, amended to require the 28 replacement trees on North Cherokee to be Box Fern Pine trees, rather than Pink trumpet trees as indicated in the Report, and issued a Notice of Exemption for the Project, finding the Project is categorically exempt from the requirements of CEQA pursuant to City of Los Angeles CEQA Guidelines, Article III, Section 1, Class a, Category 1 (existing facilities), subpart (3) (operation, repair, maintenance or minor alteration of sidewalks) not subject to any exception (Report Attachments ("RA") 1 & 2).

Appellant challenges the Board's July 18, 2018 Project Approval alleging failure to comply with the requirements of CEQA (RA 3).

RECOMMENDED ACTIONS:

1. **DENY** the appeal.
2. **Determine** based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to State CEQA Guidelines section 15301, and there is no substantial evidence demonstrating that any exception to the categorical exemptions listed in CEQA Guidelines section 15300.2 applies.
3. **Determine**, based on the whole of the administrative record, that the Project is exempt from CEQA pursuant to City of Los Angeles CEQA Guidelines, Article III, Section 1, Class a, Category 1 (existing facilities), subpart (3) (operation, repair, maintenance or minor alteration of sidewalks) not subject to any exception.

4. **Direct**, the Bureau of Street Services to file a CEQA Notice of Exemption based upon the exemption determinations stated above at Recommended Action Nos. 2 & 3.
5. **Sustain** the Board of Public Work's July 18, 2018 action approving a tree removal permit request to remove 18 trees located on North Cherokee Avenue between Lexington and Fountain Avenue for the reconstruction of an off-grade sidewalk, and the planting of 36 replacement trees.

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REPORT ATTACHMENTS

1. July 18, 2018 Journal of Board of Public Works
2. July 9, 2018 Report to Board of Public Works and Transmittals 1-6.
3. July 27, 2018 Project Approval Appeal
4. SRP Sites Nos. 1267, 1276 and 1450 Project Summary
5. February 8, 2017 Photographs of N. Cherokee Ave Project
6. March 20, 2018 Photographs of N. Cherokee Ave Project
7. March 13, 2018, Guidelines for Street Tree Removal and Replacement Evaluation for Categorical Exemption, 1244 N. Cherokee Ave; March 13, 2018, Guidelines for Street Tree Removal and Replacement Evaluation for Categorical Exemption, 1255 N. Cherokee Ave.
8. June 17, 2015 Board of Public Works Street Tree Replacement Policy
9. SRP Site Nos. 1267, 1276 and 1450 Project Scope Memo
10. ZIMAS Parcel Profile for 1225 and 1223 N. Cherokee Avenue
11. June 6, 2007 Actions of the Board of Public Works: (a) Requested approval of proposed revisions to policies regarding landscaping and trees on public property; (b) Report Transmittal 1, Proposed Revisions; and (c) Journal showing Board adoption of the Report.

A. PROJECT DESCRIPTION

The Project will replace defective sidewalks due to uplift and disruption by the roots and root crowns of adjacent street trees. The Project includes 7700 square feet of sidewalk and driveway aprons, 18 tree removals and 36 tree replacements, and 504 linear square feet of root barriers. (RA 4, Project Summary of Arsen Voskerchyan, P.E., Senior Civil Engineer, Sidewalk Division, Los Angeles Bureau of Engineering).

On March 27, 2018, a Bureau of Street Services (BSS) tree surgeon inspected the Project site and identified 11 Ficus trees between 1240 to 1254 N. Cherokee Ave. (RA 2, Board Report transmittal 2). On March 27, 2018, the same tree surgeon inspector identified an additional 7 Ficus trees between 1225 to 1251 N. Cherokee Ave on the Project site. (Id). The inspection report concluded: "All trees are in a 4' parkway..trees have impacted 5' sidewalk creating an off grade condition approximately 4"-10"..trees have low clearance 7'-9' over street side with signs of been hit in the past..Tree has outgrown its grow space provided..Root prune is not an option..Trees Critical root zone will be impacted." (Id).

Photographs of the sidewalks and trees are provided attached to the Board Report (RA 2, at Board Report transmittal 4). Additional Project site photographs are shown at RA 5 and 6.

The City's inspection showed the trees have outgrown their growing space and defective sidewalks are prevalent throughout the Project Site. (RA 2, page 3). The Report found that required root pruning to allow the trees to remain would significantly and adversely affect the trees' health and roots' structural integrity leaving them potentially such that sidewalk reconstruction will require tree removal. (Id.)

BSS staff conducted environmental reviews pursuant to the requirement of the California Environmental Quality Act, recommending the Board find that (1) the Project qualifies as operation, repair, maintenance or minor alteration of existing street, sidewalk, and gutter, involving negligible or no expansion of use beyond that previously existing; and does not involve the removal of a scenic resource, thus is exempt from the requirements of CEQA pursuant to Article III, Section 1, Class 1 (a) (3) (existing facilities -sidewalk repair or maintenance) of the City of Los Angeles Environmental Quality Act Guidelines (2002); and (2) that none of the exceptions to the use of a categorical exemption as set forth in the City's CEQA Guidelines or Section 15300.2 of the State CEQA Guidelines apply. (RA 7).

B. PROCEDURAL SUMMARY

At a publically-noticed meeting held July 18, 2018, the Board of Public Works considered a staff recommendation to adopt the above repair, maintenance or minor alteration of existing sidewalk CEQA exemption and approve the sidewalk repair project, including issuance of a street tree removal and replacement permit subject to requirement of the Board's street tree replacement policy. (RA 1, 2 & 8). The Board adopted the staff recommendations, approving the project and determining the project categorically exempt from the requirements of CEQA. (Id). On July 27, 2018, Appellant noticed an appeal of the CEQA determination pursuant to Public Resources Code 21151(c). (RA 3). The City agreed to stay the Project pending the City Council's final resolution of this Appeal.

C. CEQA DETERMINATIONS/FINDINGS

City staff recommends the City Council determine that the Project is exempt from the requirements of CEQA under both the State and City CEQA Guidelines.

D. APPEAL POINTS AND STAFF RESPONSES

The appeal contends the following:

1. Appeal Point No. 1: Improper Project Piecemealing

Appeal Assertion

The Tree Removal Permit is improperly being analyzed and exempted from CEQA even though it is part of the City's larger Sidewalk Repair Program, which is a "project" currently undergoing an environmental review process pursuant to CEQA. It is well established that CEQA forbids piecemeal review of the significant environmental impacts of a project. Bozung v. Local Agency Formation Com. ("Bozung") (1975) 13 Cal.3d 263, 283—284; Arviv Enterprises, Inc. v. South Valley Area Planning Com.(2002) 101 Cal. App. 4th 1333, 1340. Rather, CEQA mandates "that environmental considerations do not become submerged by chopping a large project into many little ones- each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." Bozung, 13 Cal.3d at 283—284. Thus, the term "project" as used for CEQA purposes is defined broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...." CEQA Guidelines § 15378(a).

CEQA requires that "[a]ll phases of a project must be considered when evaluating its impact on the environment." CEQA Guidelines § 15126. An EIR must analyze the environmental effects of other phases or future expansions of a project if (1) the other activities are reasonably foreseeable consequences of the initial project (Bozung, 13 Cal.3d at 283-284); (2) the other activities are a future expansion of the first activity that will change the scope of the first activity's impacts (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal. 3d 376, 396); or (3) the related activities are all integral parts of the same project. Sierra Club v. West Side Irrigation Dist. (2005) 128 Cal. App. 4th 690, 698, citing No Oil, Inc. v. City Dos Angeles (1987) 196 Cal. App. 3d 223.

By having issued a Notice of Preparation (NOP) and Initial Study that concluded that a full environmental impact report is necessary for the Sidewalk Repair Program (see attached at Exhibit A-B), the City has acknowledged that CEQA requires environmental review of the Sidewalk Repair Program project prior to its approval and implementation. Yet the City impermissibly and illegally has been approving components of the Sidewalk Repair Program project (such as this one) without any environmental review, claiming that such tree removals are exempt from CEQA. As the Initial Study for the Sidewalk Repair Program itself notes:

Minor repairs to existing sidewalks typically fit the definition of a Class 1 existing facility identified under Section 15301 (c). As the proposed Project consists of a long-term sidewalk repair program, with an expected consistent level of funding and activities, additional review under CEQA is required to analyze the impact of these activities collectively, over time. The proposed Project will potentially result in the removal of large quantities of mature street trees, as well as

temporary street and sidewalk closures during construction activities. (Initial Study at 2-4, attached as Exhibit B hereto)

By failing to analyze this Tree Removal as part of the Sidewalk Repair Program that this Tree Removal is being performed under, the City is improperly piecemealing CEQA environmental review.

Staff Response to Appeal Assertion No. 1

Appellants misunderstand and misstate the nature of the City's Sidewalk Repair Program. The Program, as it exists, arose out of the class settlement approved August 25, 2016 by Federal District Judge Consuelo Marshall approved in the case of *Willits v. City of Los Angeles*, United States District Court for the Central District of California, Case No. CV 10-05782 CMB ("Willits Settlement"). Prior to that date, on April 1, 2015, the City Council had approved the Willits Settlement. The Willits Action had asserted the City's sidewalks do not comply with requirements of the Americans with Disabilities Act or State mobility requirements. Pursuant to the Willits Settlement, the City's committed to spend \$1.36 billion over 30 years to improve City sidewalks on behalf of "All persons (including, without limitation, residents of and visitors to the City) with Mobility Disability" in order to meet the requirements of the ADA and State accessibility requirements. (Settlement at ¶¶ 5, 8 and ¶ 12.2.)

The Sidewalk Repair Program is a funding mechanism to undertake projects pursuant to the framework of the *Willits* Settlement Agreement. Funding does not trigger CEQA compliance. To the extent Appellants assert that the Council's approval of the Willits Settlement constituted project approval, it is outside the 180-day deadline to file a lawsuit challenging compliance with CEQA and is time barred.

The City has conducted environmental review as necessary before undertaking each sidewalk repair, such as the Project here on appeal. The Appeal here, moreover, identifies no other specific sidewalk repair from which Appellants assert the City has split environmental review.

The Initial Study raised by Appellants in opposition to the Project has no bearing on the Project on appeal. In July 2017, the City issued a document entitled, "Initial Study/Environmental Checklist for the Sidewalk Repair Program." The Initial Study evaluates a potential proposed project to "continue, amend, and expand" the existing sidewalk program through a new ordinance and/or policy. *Id.*, pp. 2-5. The proposed new project could result in an environmental impact report that collectively evaluates two types of typical sidewalk repair projects if carried out over the next 30 years throughout the City. *Id.* at pp.2-7 through 2-10. No such new project, however, has been adopted or approved by any City elected body, appointed body, or other official. It is currently a concept and nothing more.

The fact that the City conducted environmental review for the challenged sidewalk repair Project while studying a potential new Project that might, but might not, involve future sidewalk repair projects does not demonstrate that the City has split one larger project into smaller component projects in order to avoid CEQA review. Staff recommends the contention on appeal be disregarded as without merit.

2. Appeal Point No. 2: State Categorical Exemption Does Not Apply

This Tree Removal Permit fails to facially qualify for the Category 1 categorical exemptions from CEQA as the Tree Removal is part of the City's larger Sidewalk Repair Program which the City itself is currently reviewing under CEQA.

Class 1 categorical exemptions apply to the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing . . . topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." 14 CCR 15301.

However, the Class 1 categorical exemption fails to apply since this Tree Removal involves an expansion of use. (See Exhibit B, Initial Study, p. 2-4.) Presently, the City is already well aware of the fact that it is conducting environmental review of the very program, the Sidewalk Repair Program, that this Tree Removal is being conducted pursuant to.

The City itself admitted in beginning of the CEQA environmental review process for the Sidewalk Repair Program, this Tree Removal does not fit under the guise of the Class 1 Existing Facilities exemption since the Tree Removal is part of a "long-term sidewalk repair program (] with an expected consistent level of funding and activities." (Initial Study at 2-4).

Staff Response to Appeal Assertion No. 2

State CEQA Guideline 15301, Class 1 Existing Facilities, provides an exemption to the following type of activities,

[T]he operation, repair, maintenance, permitting, . . . or minor alteration of existing public . . . structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination."

Guideline 15301 states, "The key consideration is whether the project involves negligible or no expansion of an existing use." The Guideline provides the following example of a Class 1 project at subpart (c):

Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

The Project is the repair of existing public highways and sidewalks and no evidence exists of an expansion of use of the sidewalks. Appellants seem to suggest that alleged planning for repairs of a group of sidewalks expands the use of the sidewalks. The CEQA exemption, by its very terms, is focus on whether there will be more than a negligible expansion of use. No evidence exists that repairing existing sidewalks will expand their existing use. Staff recommends the Council find the Project qualifies as exempt under the State CEQA Guidelines.

Likewise, no exception to this CEQA exemption exists pursuant to application of CEQA Guideline 15300.1, which excludes application of exemptions in the six categories addressed in order here.

(a) Precisely Mapped Resource of Critical or Hazardous Concern. Section 15300.1 (a) states,

Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on

the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

This exception is inapplicable to this Project analysis because a Class 1 CEQA exemption applies. Moreover, no evidence exists that the Project may impact a precisely mapped environmental resources of hazardous or critical concern.

(b) Cumulative Impact. Section 15300.1 (b) states,

Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

There is no evidence of successive projects of the same time, in the same place over time.

(c) Unusual Circumstance. Section 15300.1 (c) states,

Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

In assessing whether the unusual circumstances exception applies, an appellant must prove both unusual circumstances and a significant environmental effect that is due to those circumstances. Evidence of an unusual circumstances must show some feature of the project that distinguishes the project from other features in the exempt class. If an appellant shows that an unusual circumstance exists, the appellant then must also show there is a reasonable possibility of a significant effect due to that unusual circumstance.

Here, no evidence has been identified that the Project, the sidewalk repair and the tree removals and replacements required for the repair, are unlike other sidewalk repairs undertaken by the City. The author of this Report is the Chief Forester for the City of Los Angeles Urban Forestry Division for the BSS. The BSS currently includes 80 full-time employees funded to undertake work for sidewalk repairs. The author has been involved with the administration of each sidewalk repair in the City involving a street tree inspection since 2015 consisting of 60 plus miles of sidewalks, including this Project, and concludes that the scope of the tree work required by this Project is similar in nature to the scope of all of the other tree work required for sidewalk repairs the BSS has been involved with during that same time period.

Likewise, the Division Engineer of the City's Bureau of Engineering, Sidewalk Division has reviewed the construction methods and circumstances of this Project. The Division Engineer has 20 years' experience in design and construction management of street, storm drain, and sewer projects and is currently the Division Engineer managing the Sidewalk Repair Program undertaking work required by the Willits Settlement Agreement, including this Project. He has been involved with more than 100 plans for separate sidewalk repairs. He concludes that this Project is similar in kind and size to other sidewalk repairs undertaken by the City and does not involve significantly unique construction methods or circumstances compared to other sidewalk repairs generally. No unique circumstances were presented. (RA 9)

(d) Scenic Highways. Section 15300.1 (d) states,

A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

This exception to application of a CEQA exemption is limited to scenic resources within a highway officially designated as a state scenic highway. No evidence exists that the Project is located within such a highway. (RA 10).

(e) Hazardous Waste Sites. Section 15300.1 (e) states,

A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

No evidence exists that the Project is located within a hazardous waste site compiled by Section 65962.5

(f) Historical Resources. Section 15300.1 (d) states,

A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Public Resources Code section 21084.1 defines an historical resource as follows:

(i) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources.

(ii) Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant.

(iii) A resource locally-designated as significant.

No evidence exists that the Project impacts any of the above type of historical resources.

3. Appeal Point No. 3: City Categorical Exemption Does Not Apply

For similar, aforementioned reasons, the Tree Removal also fails to qualify for an exemption under the City's own regulations for Class 1 Categorical Exemptions. In fact, Article III, Section 1, Class 1, Category 3 expressly disqualifies tree removals from CEQA categorical exemptions, exempting "minor alteration of. . .sidewalks . . . except where the activity will involve removal of a scenic resource including but not limited to a stand of trees, . . . The Tree Removal is exactly the kind of scenic resources that the City's own regulations bar from being exempted. This is especially true given the location of this particular Tree Removal — this area of the City has very few trees. Removing the twelve (12) trees is not just an environmental issue, but an

environmental justice issue, given the well-documented systemic lack of tree cover in economically disadvantaged areas. (Lee at 231).

Staff Response to Appeal Assertion No. 3

City CEQA Guideline, Article III (a), defines a local CEQA exemption very similar to the CEQA Guideline 15301 Category 1 CEQA exemption discussed above. The City's Class 1 CEQA exemption states:

Class 1 consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.

Subpart 3 of the City's Class 1 CEQA exemption provides the following example of exempt projects:

Operation, repair, maintenance or minor alteration of existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, storage areas, parking lots, aircraft parking areas, wharves, railroads, runways, taxiways, navigable waterways, bridle trails, service roads, fire lanes and golf-cart paths. . .

Subpart 3 of the City's Class 1 CEQA exemption includes an exception, mirroring State CEQA Guideline's Section 15300.1 (d)'s exemption for projects that may impact a State scenic highway,

where the activity will involve removal of a scenic resource including but not limited to a stand of trees, a rock outcropping or an historic building.

Unlike the State CEQA Guideline, the City's scenic resources exception is not restricted to projects that may impact a State scenic highway.

The CEQA Guidelines for Street Tree Removal and Replacement Evaluation for Categorical Exemption consistently utilized by the Bureau of Street Services for projects involving street tree removals defines "stand of trees" as "(i) designated by the City based upon findings that it is unique and of importance to the public due to its unusual appearance, location, historical significance or other factor; or (ii) determined by the City that each tree is dependent upon the others for survival." (RA 7). The CEQA report for this Project demonstrates that no evidence exists that the Project involves a Stand of Trees. (Id).

The Bureau of Street Services conducted an inspection of the Project site and determined that no stand of trees is impacted and that the Project will not impact a scenic resource. (RA 2, Board Report transmittal 2) and (RA 7).

Neither does any evidence exist that the Project will impact a scenic resource. The City's 2006 CEQA Thresholds discuss scenic resources under the topic of "Aesthetics." The Thresholds explain that,

Urban features that may contribute to a valued aesthetic character or image include: structures of architectural or historic significance or visual prominence; public plazas, art or gardens; heritage oaks or other trees or plants protected by

the City; consistent design elements (such as setbacks, massing, height, and signage) along a street or district; pedestrian amenities; landscaped medians or park areas; etc. Aesthetic character may be purposely generated, nurtured or preserved, as is the case with City-designated scenic corridors and historical districts, or may exist without such cause or purpose, such as may be the case with certain retail districts or residential neighborhoods.

* * *

There is an extraordinary range of aesthetic characteristics and contrasts within the City of Los Angeles, including suburban neighborhoods, dense urban areas, the Port, airports, and hillside residential areas. Given the size and diversity of the City, there are no aesthetic standards that apply to all areas. However, the Community Plan and any applicable specific plan, local coastal plan, or redevelopment plan may contain specific guidelines and requirements related to aesthetics. General aesthetic requirements that apply to individual zoning districts or to types of land uses are provided in the Los Angeles Municipal Code (LAMC).

City CEQA Thresholds, pp. A.1-1 to A.1-2.

A review of the record shows that the Project site is not governed by any special land use/zoning, historic preservation overlay zone, other historic designation, or other historic survey information of the type that might trigger a scenic resource exception. (RA 10). No evidence exists that the Project impacts a City-designated cultural or historic landmark. Further, the Project site was inspected by City Staff and that same person concluded that removal of the trees as part of the Project would not impact aesthetic or scenic resources. (RA 2, Board Report transmittal 2) (RA 7) and (RA 10). As such, staff recommends a finding that the scenic resource exception to the City Class 1 CEQA exemption, imbedded into the language of the exception, does not apply, and that the City may rely upon a Class 1 CEQA exemption as defined by the City's CEQA Guidelines.

Appellants identify no facts rebutting the City's investigation. Nor have Appellants offered any evidence in support of their contention that the Project is located in an economically-disadvantaged portion of the City or made any legal connection between their allegations and the requirements of CEQA, or that the Project area is under-served by street trees or any legal connection between their allegations and the requirements of CEQA.

4. Appeal Point No. 4: Violation of City Public Land Landscape Policy

The Tree Preservation section of the City of Los Angeles Public Land Landscape Policy ("Tree Policy") specifically requires that, "The cutting down or removal of structurally sound trees by City forces, or by private parties under contract with the City, shall be prohibited. (Exhibit F, Tree Policy § 5.) Existing trees located on publicly controlled property shall not be removed unless necessitated by urgent reasons of safety, imminent death of the tree, unique requirements of individual trees, or to permit the installation of a greatly needed public facility. Before removal of existing trees is approved, a detailed investigation of all possible alternatives so as to retain the trees shall be made. Such alternates shall include, but are not limited to, the following;

- a. *Developing alternate alignments, especially for streets, sidewalks, and other hardscape, power and communications lines, storm drains, and sewers.*
- b. *Moving roadway alignments from one side of the right of way to the other, to avoid existing mature trees.*
- c. *Relocating tree to an appropriate nearby, neighborhood location, where appropriate, and in consultation with the local Neighborhood Council.*
- d. *Relocating sidewalks immediately adjacent to the roadway when location adjacent to the property line causes interference with trees.*
- e. *Relocating proposed buildings or other structures, including their structural elements, to avoid interference with existing trees."*

Furthermore, the Tree Policy requires that, "Whenever the removal of five or more trees, or any outstanding or protected tree specimen, especially a large, historical or significantly handsome tree, is proposed, the following procedure shall be followed:

The local Neighborhood Council, the Councilmember of the respective district, the Department of Public Works, the Forestry Division and the General Manager of the Department of Recreation and Parks, and the Community Forest Advisory Committee (CFAC) shall be consulted regarding possible alternatives."

Staff Response to Appeal Assertion No. 4

Appellants quote from an apparent draft document and present no evidence that it governed the actions of the City when the Board approved the Project or that it governs the actions of the City at this time. Instead, the City's public records demonstrate that the Board of Public Works acted on June 6, 2007 to adopt revisions to the Policies for the Installation and Preservation of Landscaping and Trees on Public Property and the policy that accompanied that action. (RA 11). The City is not required to comply with the requirements identified by Appellants and the record demonstrates the City complied with the requirements of all existing policies. (RA 1 & 2). Moreover, as this appeal is being determined by the City Council, Appellants have presented no argument that the City Council's actions are governed by a policy allegedly adopted by a subordinate governmental body, the Board of Public Works.

E. Conclusion

For the reasons set forth above, Staff recommends the City Council deny the Appeal, re-confirm and approve the Project, and find that the Project is exempt from the requirements of CEQA.

Respectfully Submitted,



Timothy Tyson
Chief Forester, Urban Forestry Division, Bureau of Street Services