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February 2, 2015

TO: Jose Huizar, Chair
Planning and Land Use Management Committee

FROM: Ken Bernstein, AICP
Manager, Office of Historic Resources

SUBJECT: CEQA Appeal of ENV-2005-8131-MND-REC1

BACKGROUND

The proposed project consists of a renovation and conversion to condominiums of an existing three-story, 18-unit apartment building and the development of a four-story, 14-unit condominium building on the abutting vacant lot, creating a 32-unit condominium complex. The property is located at 849-859 S. Lucerne Blvd. in the Windsor Village HPOZ, which was adopted in 2010. The HPOZ consists of approximately 300 single family homes and apartment buildings that are representative of the Arts and Crafts architectural styles popularized in the 1910s, the Period Revival architectural styles popularized in the 1920s through 1940s and the Early Modern architectural styles popularized of the 1910s through the 1950s. The Windsor Village Preservation Plan provides design guidelines addressing rehabilitation projects, additions and new construction. Physical changes to the exterior of a property are required to be reviewed by the appointed Country Club Park-Wilshire Park-Windsor Village HPOZ Board and/or Department of City Planning Staff, pursuant to the provisions of Los Angeles Municipal Code Section 12.20.3.

A Mitigated Negative Declaration (MND) was issued on December 20, 2005 (Environmental Case No. ENV-2005-8131-MND) for the proposed project in accordance with the California Environmental Quality Act (CEQA) pursuant to the City of Los Angeles CEQA Guidelines. A reconsideration was requested on May 6, 2013 by the Applicant in conjunction with a request to modify a Tentative Tract approval for the project (TT-63468-CC-M1) to accommodate an additional dwelling unit in the new building. The requested reconsideration was granted (Case No. ENV-2005-8131-MND-REC1) on June 13, 2013, stating that the only significant change in the Environmental Setting had been the adoption of the Windsor Village Historic Preservation Overlay Zone (Ord. No. 181373, adopted on October 20, 2010), which includes the subject site and surrounding properties. The request for the additional dwelling unit was subsequently withdrawn, resulting in no change to the original project description as evaluated in 2005.



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The current CEQA Appellant participated in an earlier appeal of the CCMP case decision to the Central Area Planning Commission (APC). The APC voted 3-1 on August 26, 2014 to grant a portion of the appeal (conditioning an increased setback on the south wall of the project), sustain the approval of the CCMP subject to modified Conditions of Approval, and adopt the MND addendum. The Appellant is now appealing the adoption of the initial MND and the addendum as environmental review for the project.

The new building proposed for the project has four stories above grade and the existing building has three. The height of the new building is approximately 4' higher than the existing building. The new building observes the front and rear yard setbacks with a step-back in the front on the southerly side, adjacent to a two-story historic apartment building with a deep front yard setback. In addition, each story is progressively stepped back on the westerly (side), northerly (rear) and southerly (front) elevations to further distance the upper stories from neighboring properties. The CMP conditioned that the south wall setback shall be increased from seven feet to nine for a 24'-11" portion of the south wall. The new façade of the existing building and the new building will have elements of Streamline Moderne style, including window style and groupings, balcony style and smooth stucco finish. The existing 18-unit building's garage is on-grade, providing 23 spaces. The new 14-unit building will provide 47 subterranean spaces for a total of 70 spaces. Vehicular access will be provided by the existing driveway of the 18-unit building and the new driveway to be located on the southerly side of the building for the 14-unit building. Both buildings will have a flat roof with parapet similar to other Streamline Moderne style multi-family buildings in the area. The building takes advantage of changes in topography to emphasize the building entrance, which helps to break down the massing of the front façade. In addition, each floor is articulated with indentations to provide visual breaks in the façade. These elements, combined with the landscaping at the ground floor, will help to soften the appearance of the overall structure and minimize the profile from the street and rear neighbors.

CEQA APPEAL POINTS AND STAFF RESPONSE

The Appellant contends that the CEQA review was inadequate in several respects. In summation, the major appeal points can be placed into three broad categories: 1) The original MND and subsequent addendum are now, and have always been, insufficient; 2) the creation of the Windsor Village HPOZ constituted a substantial change that required a new environmental evaluation for the project; and 3) The addendum to the original MND violated CEQA guidelines. This section responds to the main points raised in section III of the appeal, in the order they are raised.

Appellant's contention 1: Rather than an addendum to the original MND, under CCR §15162(a)(2) a new environmental review was required for the project because the creation of the Windsor Village constituted a "substantial change" with respect to the circumstances under which the project was being developed. The creation of the Windsor



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Village HPOZ is a “substantial change” within the CEQA context because the addendum uses the language “significant change in the Environmental Setting” when referring to it.

Staff response 1: A substantial change in circumstances, as referred to in CCR §15162(a)(2), is one that produces “new significant environmental effects or a substantial increase in severity of previously identified significant effects.” The creation of the Windsor Village HPOZ produced neither. The creation of the HPOZ did not change the allowable land use of any of the parcels within its boundaries. The basic potential environmental impact of building a new structure according to the zoning regulations has not changed. More specifically, the project in question has not changed. A 14-unit building was originally proposed and a 14-unit building is what was approved. The allowed land use at the time of the original MND and the allowed land use at the time of the addendum are the same; the only difference is the review imposed by the HPOZ. The creation of the overlay zone is a change in the environmental setting, but the appellant fails to provide any fair argument that this change brings with it “new significant environmental effects” in relation to the impacts caused by construction of a 14 unit building.

Appellant’s contention 2: The original MND was insufficient in that it did not identify significant impacts and did not cite necessary mitigation measures, specifically in regards to aesthetics and the “historic nature” of the neighborhood.

Staff response 2: As defined in PCR §21068 a “Significant effect on the environment” is a “substantial, or potentially substantial, adverse change in the environment.” CCR §15064 (a)(1) explains that “substantial evidence” must be present to determine if a project may have a significant effect. CCR §15064(f)(5) goes on to define substantial evidence as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” When the original MND was published there was no fair argument nor substantial evidence proffered to assert an impact to the aesthetics of the area or to a potential historic district. With the appeal at hand the appellant has not provided any evidence or fair argument that the project has a significant effect upon the now-designated historic resource (the Windsor Village HPOZ). Neither does the appellant provide any evidence or fair argument that the project significantly affects aesthetics.

At the time of the original MND no district or neighborhood-level historical resource had been identified in the area, nor had any potential resource been identified or surveyed. Subsequent to the creation of the HPOZ the proposed project became subject to the guidelines of the Windsor Village Preservation Plan and HPOZ board and staff review, the purpose of which is to prevent impacts to the district. Chapter 9 of the Preservation Plan deals with residential infill. The Certificate of Compatibility determination letter issued for the project details the compatibility of the structure through a point-by-point review of chapters 9.3- Setting, Location, and Site Design, 9.4- Massing and Orientation, 9.5- Roof Forms, 9.6- Openings, and 9.7 Materials and Details, and finds that the project conforms to the Preservation Plan guidelines.



CCR §§15064.5(4) explains that a lead agency must identify feasible measures to mitigate or avoid significant adverse changes to the significance of an historical resource, and that adopted measures be enforceable through permit conditions or other measures. The Windsor Village Preservation Plan, the Certificate of Compatibility approval process, and the Conditions of Approval are the enforceable means through which impacts are avoided. Absent substantial evidence to the contrary, a project that conforms to the Preservation Plan would be considered to avoid significant adverse changes to the Windsor Village HPOZ historical resource.

Furthermore, CCR §§15064.5(b)(1) explains that a substantial adverse change in the significance of an historic resource means “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.” CCR §§15064.5(b)(2) then defines materially impaired as: “Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource...

- (A)...that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or
- (B)...that account for its inclusion in a local register of historical resources...or”
- (C)...that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for the purposes of CEQA.”

The Windsor Village Preservation Plan context statement notes that although the district is largely a low-density residential neighborhood, zoning in the northern part above Francis Avenue, where the proposed project is situated, has allowed multi-family development for the majority of the district’s period of significance. In particular during the post-war boom period of 1946-1962, the majority of development in the area north of Francis Avenue was multi-family, and combining lots to accommodate larger development was common. Constructing the proposed project would not materially alter any of the characteristics of the Windsor Village HPOZ that led to its establishment as a designated historical resource.

The proposed project also does not reach a threshold of significance for the impairment of aesthetics as defined by the City of Los Angeles CEQA Thresholds Guide § A.1. In considering if a project could have a potential impact the Guide advises to “Evaluate the degree to which the introduction of new features or the loss of existing aesthetic elements would alter, degrade, or contrast with the existing valued aesthetic character of the area.” Examples of potential contrast include:

- The project’s architectural style, building materials, massing, or size would contrast with adjacent development, such that the value or quality of the area is diminished;



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- The project would cause or contribute to a change in the overall character of the area (e.g., from residential to commercial, single-family to multi-family, etc.) and/or new development would contrast with existing architectural styles or themes; and

The proposed project is situated within an area dominated by multi-family, multi-story structures. The proposed project is just four feet higher than the existing three-story building on the site, and the yard setback on the southern side is consistent with the two-story contributing apartment building there. Each story is progressively stepped back on the westerly (side), northerly (rear) and southerly (front) elevations to provide distance from neighboring buildings. And the project would feature elements of the Streamline Moderne style - a style found within the HPOZ and from the period of significance - including window style and groupings, balcony style and smooth stucco finish. For these reasons, and others discussed in the Certificate of Compatibility, and without substantial evidence to the contrary, the project has been determined not to diminish the value, quality, or character of the area in the realm of aesthetics to a significant extent.

Appellant's contention 3: The creation of the Windsor Village HPOZ changed the land use within the boundaries of the zone which requires new mitigation measures be attached to the project and a new MND.

Staff response 3: Apart from the addition of the HPOZ suffix to the zoning designation, the allowable land use within the Windsor Village HPOZ remains unchanged from the time of the original MND. The parcels in question were zoned R3 when the HPOZ was established and are now R3-1-HPOZ. The HPOZ imposes a review upon all projects within its boundaries, which may or may not affect density of an individual project, but does not change the basic land use on any individual parcels. Since allowable land uses did not change there cannot be new impacts associated with a change of land use.

Appellant's contention 4: The length of time that has passed between the original MND and the addendum constitutes a "significant environmental change" that requires a new environmental review. Specifically there has been an increase in traffic and increased pressure upon infrastructure and public services.

Staff response 4: SB 1185 (2008), AB 333 (2009), AB 208 (2011), and AB 116 (2013) all passed by the State legislature amended the Subdivision Map Act by granting automatic extensions to tentative tract maps set to expire within the timeframes addressed in the bills. The tentative tract map for the project in question remains valid as per these extensions and the City's implementation of them. The environmental review associated with a tentative tract map remains valid as well, according to the amendments. Furthermore, the appellant has provided no substantial evidence that that the project's environmental setting has changed significantly in any way.



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Appellant's contention 5: The addendum improperly, and contrary to CEQA guidelines, defers the discussion and creation of necessary mitigation measures to future action, specifically mitigation measures necessary to protect historical resources.

Staff response 5: Mitigation measures are required for environmental effects that are found to be significant. The purpose of a mitigation measure is to reduce the impact of an environmental effect to a less than significant level. If there is no significant environmental impact there will be no mitigation measure. In this case, because the project is located within an HPOZ, it would not be approved by the Department of City Planning if it significantly and negatively impacted the historical resource of the HPOZ. The design of the project evolves according to the Windsor Village Preservation Plan through the CCMP process. The Certificate of Compatibility determination letter for the project details point-by-point the compatibility of the structure according to the Windsor Village Preservation Plan. Mitigation has not been deferred because the approval incorporates conformance with the Windsor Village Preservation Plan, which includes and expands upon the principals of the Secretary of the Interior's Standards. These findings were upheld by the Central Area Planning Commission on August 26, 2014.

Appellant's contention 6: A full EIR was the proper level of environmental review for the original project because there had been no studies of traffic or infrastructure in the area for some time.

Staff response 6: The purpose of the project's environmental review is to disclose and mitigate potentially significant environmental impacts the project could have. To assist in evaluating the significance of project impacts the City has developed the Los Angeles CEQA Thresholds Guide. This document sets guidelines for establishing thresholds of significance for several common impacts, including, for example, traffic generation. According to the guide, traffic generation reaches a level of significance when the proposed project generates and/or causes a diversion or shift of 500 or more daily trips or 43 or more p.m. peak hour vehicle trips on the street system, as according to appropriate trip generation rates. The project in question creates 15 new units which could not possibly generate enough trips to warrant a finding of significance. The size of the project general keeps it well below the standard thresholds for significance of any infrastructure-related impacts. In sum, the potential impacts of these 15 new units do not begin to approach the standard thresholds necessary to warrant an EIR. Furthermore, the appellant offers no fair argument or substantial evidence supporting their assertion.

Appellant's contention 7: A full EIR was the proper level of environmental review for the original project because State guidelines require community plans to be updated every five years, and since the MND was written in 2005 and Wilshire Community Plan written in 2001, State guidelines were violated.

Staff response 7: There is no such State guideline. The State only requires each city update its Housing Element once every eight years. There are no requirements for



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updating the Land Use Element, which in Los Angeles is comprised of the 35 community plans.

CONCLUSION

Staff recommends that the City Council deny the appeal and sustain the Mitigated Negative Environmental Declaration adopted for the project.