

RECOMMENDATION REPORT

Case File No.: 17-0415

Council Area: Council District 4 – Council Member David E. Ryu

Community Plan Area: Hollywood

Certified NC: Bel Air-Beverly Crest

GPLU: Low II Residential

Zone: R1-1-HCR

Original Owner/Applicant: Sol Shaolian

Project Location: 2239 North Laurel Canyon Boulevard, Los Angeles, CA 90046

Project Description: Construction of a two-story single-family residence with a basement constituting a residential floor area of 1483 sq. ft. and floor area of 1560 sq. ft,¹ a 20x20 sq. ft. , two car garage and two retaining walls on a 4275.9 sq. ft. lot, with associated grading (including 968 cubic yards of soil to be exported and 0 cubic yards to be imported), and the construction of retaining walls and related improvements. The project includes removal of two City protected trees (California Black Walnut), which required issuance of a Permit to Remove Protected Trees and Replant.

APPELLANT: Laurel Canyon Association, Inc. submitted letters of appeal dated April 11, 2017 (Report Attachment (“RA”) 7) and January 25, 2018 (RA 8).

REQUESTED ACTION: 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 January 26, 2017, City staff 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 3, Category 1 (new construction of small structures – single family residence not in conjunction with the building of two or more units) (RA 5).

Appellant also challenges the February 3, 2017 Permit to Remove Protected Trees and Replant (Permit No. 1-95600781), issued by the Director of Street Services, concerning the Project. (RA 6).

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 sections 15303 and 15332, and there is no substantial evidence demonstrating that any exception to the categorical exemptions listed in CEQA Guidelines section 15300.2 applies and instruct the Bureau of Street Services to file a CEQA Notice of Exemption reflecting this determination.

¹ See Building Permit 14010-20000-04118 submitted by the Applicant September 2, 2016 (RE 3). The prior January 11, 2016 Protected Tree Report submitted by Bardez Landscape Services, Inc. noted a proposed 2-story single family residence consisting of 1643 square feet of living space, which is superseded by the home currently-permitted.

3. **Determine** that the City of Los Angeles Municipal Code does not provide Appellant a legal right to appeal the decision to issue a protected tree permit and that Appellant’s sole right to appeal exists pursuant to CEQA.
4. **Sustain** the Director of Street Services’ approval of the Permit to Remove Protected Trees and Replant (Permit No. 1-95600781) dated February 3, 2017.

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REPORT ATTACHMENTS

1. October 19, 2015, December 23, 2014, and October 10, 2017 Geology and Soils Report Approval Letters
2. January 11, 2016, Protected Tree Report
3. September 2, 2016, Building Permit No. 14010-20000-04118 (residence)
4. September 2, 2016, Building Permit No. 14010-20000-04119 (garage)
5. January 26, 2017, Notice of Exemption
6. February 3, 2017, Protected Trees and Replant Permit (No. 1-95600781)
7. April 11, 2017, appeal letter
8. January 25, 2018, supplemental appeal letter
9. June 18, 2018, Declaration of Bonnie Thorne and SMMC Exhibits
10. June 19, 2018, Declaration of Betty Dong and Project/SMMC Map

A. PROJECT DESCRIPTION

1. BACKGROUND

The project site consists of an undeveloped 4,275.9 sq. ft. lot, located at 2239 Laurel Canyon Boulevard within the Hollywood Community Plan. The subject property is zoned R1-1-HCR and has a Low II Residential General Plan Land Use Designation. The property is also located in a Very High Fire Hazard Severity Zone. Other surrounding properties are zoned R1-1-HCR and RE40-1-HCR some of which are developed with single-family residences.

At the time of the relevant application, Applicant Sol Shaolian was the owner of two neighboring lots (2239 Laurel Canyon Boulevard and 2243 Laurel Canyon Boulevard) one of which is the subject of this appeal (2239 Laurel Canyon Boulevard). The subject site is a vacant, rectangular shaped lot located within a hillside area of the City of Los Angeles. The site terrain is upsloping from Laurel Canyon Boulevard to the rear of the property.

2. PROJECT SUMMARY

As detailed in Building Permit No. 14010-20000-04118 submitted by the Applicant on September 2, 2016, Applicant seeks to construct a 2-story, single-family residence with a basement constituting a residential floor area of 1483 sq. ft. and floor area of 1560 sq. ft. (RA 3). Also on September 2, 2016, Applicant submitted Building Permit No. 14010-20000-04119 for a 20 x 20 foot garage (RA 4).

A January 11, 2016 Protected Tree Report issued by Bardez Landscape Services, Inc. (RA 2) concluded that the Project would require removal of 2 Southern California Black Walnut Trees which are Protected Trees pursuant to City of Los Angeles Municipal Code, Chapter IV (Public Welfare), Article 6 (Preservation of Protected Trees) (Protected Tree Ordinance). The Protected Tree Ordinance required the Applicant to apply for and be granted a permit to remove the 2 Protected Trees as part of the Project.

Before issuing Applicant a permit to remove the Protected Trees, City staff issued a January 26, 2017 Notice of Exemption finding that the entire Project was exempt from the requirements of CEQA pursuant to City of Los Angeles CEQA Guidelines, Article III, Section 1, Class 3, Category 1 (new construction of small structures – single family residence not in conjunction with the building of two or more units) (RA 5). On February 3, 2017, the Director of Street

Services issued a Permit to Remove Protected Trees and Replant (Permit No. 1-95600781) concerning the Project (RA 6).

B. PROCEDURAL SUMMARY

On April 11, 2017, Appellant submitted an appeal of the January 26, 2017, Notice of Exemption and the February 3, 2017, Protected Trees and Replant Permit (RA 7). On January 25, 2018, Appellant submitted a supplement to its appeal (RA 8). This staff report makes recommendations concerning both appeals.

C. TREE PERMIT FINDINGS

To the extent the appeals challenge the February 3, 2017 Protected Trees and Replant Permit on grounds other than an alleged failure to comply with CEQA, City staff recommends the Committee recommend the City Council deny the appeals as without legal basis. The City's Protected Tree Ordinance, at Municipal Code section 46.05, provides the right to appeal a determination concerning a protected tree removal permit application solely to the permit applicant. Appellant is not the permit applicant here, thus, has no standing to challenge the permit pursuant to the terms of the Protected Tree Ordinance. Appellant's challenge, thus, is based solely upon its CEQA arguments.

D. CEQA FINDINGS

City staff recommends the City Council determine that the Project is exempt from the requirements of CEQA for the following reasons:

1. State CEQA Guidelines section 15303 (Class 3) states that the following types of projects are considered Class 3 projects exempt from the requirements of CEQA: "One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption." Here, the Project is a single family residence in a residential zone, in an urbanized area. It is exempt from the requirements of CEQA pursuant to CEQA Guideline section 15303.

2. State CEQA Guidelines section 15322 (Class 32) states that the following types of projects are considered exempt from the requirements of CEQA:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

(e) The site can be adequately served by all required utilities and public services.

The proposed Project meets all of the requirements to qualify for a Class 32 CEQA exemption and is therefore exempt.

3. No substantial evidence exists demonstrating that any exception to the applicable categorical CEQA exemptions listed at CEQA Guidelines section 15300.2 applies.

E. APPEAL POINTS AND STAFF RESPONSES

The appeals of the Director of Street Services' approval of the Permit to Remove Protected Trees and Replant contends the following:

1. Appeal Point No. 1: Piecemealing

Appeal Assertion

The City has engaged in a piecemeal review of the Project. For example, the City reviewed the applicants' grading permit applications separately and concluded that a haul route permit was not required because less than 1000 cubic yards was being exported from each parcel. However, there is no question that cumulatively more than 100 [sic] cubic yards is being exported from both parcels, which triggers the requirement for a haul route permit, which is a discretionary process. A public hearing and environmental review under CEQA is required for each haul route permit. I understand that the City has decided to revoke the permits for 2243 Laurel Canyon Boulevard to ensure no hauling occurs while 2239 Laurel Canyon Boulevard is being developed. However, this does not solve the City's legal dilemma because it is still "reasonably foreseeable" that 2243 Laurel Canyon Boulevard will be developed. The "Project" still consists of two homes notwithstanding the fact that the building and grading permits for 2243 Laurel Canyon Boulevard must be considered (proposed removal of 4 protected trees). Together with the removal of the two protected trees at 2239 Laurel Canyon Boulevard, the threshold for utilizing an exemption has been surpassed. At a minimum, the City must conduct a Mitigated Negative Declaration (MND) for the Project.

Staff Response

Under CEQA, an agency must analyze a future expansion or other action as part of an initial project review if (1) it is a reasonably foreseeable consequence of that initial project and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the two proposals are not the same "project" and the lead agency may analyze them separately. Piecemealing therefore occurs when actions that are components of the "whole of a project" are impermissibly segmented into smaller components for purposes of environmental review, thus avoiding or understating the potential effects of the project as a whole. Consequently, separate "acts" are determined to be part of a single project for the purpose of CEQA review when one activity is an integral part of another, or where one act is dependent on the completion of another. Where, however, an agency finds a lack of causation or "independent utility" for separate actions to occur, it need not analyze those action together as one project.

The two identified single-family residential projects discussed by Appellant are not components of a single CEQA project. Neither single-family home is dependent on the completion of the other, because each single-family home may be constructed, occupied and/or sold irrespective

of the status of the other proposed single-family home. Similarly, neither single-family residence is an integral part of the other for the same reasons. For example, there is no proposed shared driveway, garage or other component of one project which causes the need for construction on the other parcel. Both single-family residence projects can be implemented independently and therefore have independent utility such that the potential environmental effects of each project do not require consideration as one project.

Here, as Appellant points out, the permitting process for 2243 Laurel Canyon Boulevard was halted, because the Applicant abandoned the application. It is therefore unclear whether the previously proposed residential home at 2243 Laurel Canyon Boulevard will be proposed in the future. Similarly, it is also unclear at this time whether the same size of home will be proposed and the timing of its construction is unknown. Even assuming that future development of 2243 Laurel Canyon Boulevard remains “reasonably foreseeable” the analysis of that parcel’s development may be considered as part of the potential for cumulative impacts. It does not mean the City has improperly piecemealed its analysis of the project at issue in the appeal. Staff is unaware of any substantial evidence in the record demonstrating that the potential development of 2243 Laurel Canyon Boulevard is an integral part of the project at issue in this appeal, or that development of the 2243 Laurel Canyon Boulevard parcel would result in potentially significant adverse cumulative impacts, mainly because the development, if it is revived, would occur after construction of the project at issue.

CEQA Guidelines Section 15303 states that, “in urbanized areas, up to three single-family residences may be constructed or converted under” the Class 3 single-family home exemption. The Project site is located in an urbanized area where development has occurred in the past. Even if construction on the second property were to occur concurrently with construction on the Project site, the Class 3 exemption would still apply since only two single-family homes would be under construction.

City staff recommends that project piecemealing be rejected as a reason to preclude the City’s reliance on the CEQA exemptions identified by this report because the argument is not supported by the record.

2. Appeal Point No. 2: Unusual Circumstances

(a) Appeal Assertion: Unusual Circumstances Generally

Appeal Assertion

While it is accurate that single-family homes are generally exempt from CEQA, this particular Project is not exempt because there are “unusual circumstances.”

Staff Response

The Proposed Project qualifies for Categorical Exemptions under CEQA. As the lead agency, the City of Los Angeles determined, after review of the whole record, that the project qualifies because the proposed project is for the construction and location of a new single-family residence in a residential zone (R1-1-HCR). Moreover, the site is located in an urbanized area. Specifically, the Hollywood Community Plan area of the City of Los Angeles. As a single-family residence, the project qualifies as a “small facility or structure” for the Class 3, New Construction of Small Structures Exemption under CEQA Guidelines, § 15303, subdivision (a).

Additionally, the project is consistent with the applicable general plan designation (Low II Residential) and all applicable general plan policies, as well as with the applicable zoning designation (R1-1-HCR) and regulations. The Project site is less than five acres (~0.98 acres), is located within the city limits of the City of Los Angeles and substantially surrounded by urban (residential) uses. Additionally, the site can be adequately served by all required utilities and public services. The site has no value as habitat for endangered, rare, or threatened species due to the nearby residences, frequent vehicle traffic, and relatively steep slopes. Lastly, no evidence exists in the record that development of one single-family residence on the site will have any significant effects relating to traffic, noise, air quality, or water quality. Thus, the proposed single-family residence Project also qualifies for the Class 32, In-Fill Development Projects Exemption under CEQA Guidelines, § 15332.

The appeal appears to reference CEQA Guidelines, § 15300.2, subdivision (c) which prohibits a project from being found exempt where “there is a reasonable possibility that an activity will have a significant effect on the environment due to unusual circumstances.” The City reviewed the proposed project in relation to possible exceptions to reliance on the Categorical Exceptions and found that none applied to the project, including the unusual circumstances exception. Staff has found no reasonable possibility that construction of the single family home will have a significant effect on the environment because no usual circumstances exist to trigger the exception, and appellant has submitted no substantial evidence, as defined by CEQA, showing that the project involves any unusual circumstance dissimilar to other projects to construct one single family hillside residence, which is Appellant’s legal burden to demonstrate. Substantial evidence is limited, to facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (CEQA Guidelines, § 15384.) Appellant did not include any substantial evidence demonstrating unusual, site-specific circumstances as a part of the appeal application. Additionally, specific Regulatory Compliance Measures (RCMs) embedded in the Los Angeles Municipal Code address the concerns raised by the Appellant in relation to the proposed project.

(b) Appeal Assertion: Unusual Circumstances, Traffic

Appeal Assertion

Here, there are clearly “unusual circumstances,” namely, the location of the Project next to Laurel Canyon Boulevard, a high traffic road used by upwards to 65,000 commuters on a daily basis.

Staff Response

As stated above, City staff recommends a finding that there are no unusual circumstances triggering the exception, and that there is no substantial evidence that developing a single-family home at this location as proposed would have a significant impact on the environment. The City agrees that Laurel Canyon Boulevard, like many similar roadways in the City, is highly trafficked. “In context, the City considers the site more commonplace than unusual.” (*Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 272.) Moreover, the construction of one single-family home on the site would not add significantly to the existing traffic on Laurel Canyon Boulevard. Thus, developing a new single family home on a high traffic road is not an unusual circumstance in the City, as all forms of development take place on high traffic roads throughout the City. City staff recommends the City Council determine that the location of the project next to Laurel Canyon Boulevard is not an unusual circumstance triggering the exception.

(c) Appeal Assertion: Unusual Circumstances, Hillside Instability

Appeal Assertion

Moreover, the hillsides along Laurel Canyon Boulevard have a history of instability. In fact, a recent landslide caused the closure of Laurel Canyon Boulevard for an extended period of time, causing a major disruption to the entire City.

Staff Response

Staff has considered the location of the project and determined that the project may be constructed and occupied safely. The Los Angeles Department of Building and Safety (LADBS), for example, requires that projects in hillside areas and areas prone to landslide abide by building standards enshrined in the California Building Code and the City's Building Code. LADBS confirms that the project would comply with these standards by issuing a Geology and Soils Report Approval Letter, found at Report Attachment 1. Because the Project has a Geology and Soils Report Approval Letter, there is no substantial evidence that the Project would cause a landslide or have a significant impact in the event of a landslide. Staff recommends the City Council determine that general hillside instability (throughout the larger area) is not a unique circumstance of the project triggering an exception to reliance by the City on the categorical exemptions.

(d) Appeal Assertion: Unusual Circumstances, Environmentally Sensitive Habitat

Appeal Assertion

Moreover, the Project is unusual in that it is located in an environmentally sensitive habitat. The Project abuts a large undeveloped 11.95 acre parcel (APN No. 5567-030-012). Wildlife regularly frequents the area. There is a wildlife corridor that would be impeded should the Project be approved without appropriate mitigation measures. Animals frequently traverse the site in order to gain access to water and other food. Residents have observed wildlife for years using these parcels.

Staff Response

In context, neither the proposed project's adjacency to a large undeveloped parcel, nor the observance of wildlife on or near the site qualify as unusual circumstances triggering the exception to the categorical exemptions. All forms of development occur on or adjacent to undeveloped parcels of all sizes throughout the City. Similarly, the majority of hillside parcels are frequented by wildlife due to the areas low density, and such wildlife is frequently observed by residents. Neither fact establishes that the project site is located in environmentally sensitive habitat, nor the existence of unusual circumstances. Further, there are no known or potential wildlife corridors on or near the project site as documented by biological surveys or mapping created by biologists or an agency such as Department of Fish and Wildlife. The Santa Monica Mountains Conservancy Map identified by Appellant, moreover, does not establish any reliable information regarding wildlife or wildlife habitat and the Map shows the subject Project is not adjacent to a wildlife corridor as claimed by Appellant (See Appeal Point No. 5 Below).

As such, City Staff recommends the Council determine there is no substantial evidence of unusual circumstances associated with the proposed project or the project site that would result in significant impacts to the environment. Therefore, Council should determine that the Project remains categorically exempt, and there is no substantial evidence demonstrating that an exception pursuant to CEQA Guidelines, Section 15300.2 applies.

3. Appeal Point No. 3: Growth Inducing Impacts

Appeal Assertion

CEQA mandates that a public agency consider, among other impacts, a project's potential growth-inducing impacts. (CEQA Guidelines Section 15126(d), Section 15126.d(d); Napa Citizens for Honest Government v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 368.) Here, the construction of this home - the first in decades off of Laurel Canyon Boulevard - is likely to result in the development of many new homes along the same stretch of the Boulevard. The environmental effects construction could therefore be cumulative and potentially growth-inducing.

Staff Response

Because the Project site is zoned for R-1 (one-family zone) development, it was anticipated that the property would be developed accordingly with a single-family home. The Project is located in an area where single-family homes already exist, and the area is served by a sewer system which need not be expanded to accommodate the single family home at issue. The Project would therefore not result in the extension of any major infrastructure into the area. City Staff recommends the Council determine there is no substantial evidence that significant growth would occur as a result of the construction of this single-family home.

4. Appeal Point No. 4: CEQA Location Exception, Generally (Guideline 15300.2 (a))

Appeal Assertion

The Project is not eligible for the "single family home" exemption because of its location.

CEQA Guidelines Section 15300.2 - labeled "Exceptions" - outlines six situations where an exemption may not be used. The Project is not eligible for an exemption due to its location.

"(a) 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 to 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.

Staff Response

First, because this Project qualifies for a Class 32 exemption, urban infill, CEQA Guidelines Section 15300.2 (a) does not apply to the proposed Project because this provision can only operate as an exception to a Class 2 through 6 and 11 CEQA exemption.

Second, the location exception does not preclude the City from relying on a Class 3 CEQA exemption applicable to single family homes such as this Project. Similar to the unusual circumstances exception, discussed above, the City considered the possible application of the location exception when determining that the project was categorically exempt. City Staff recommends the Council determine that the proposed single-family home project is not located in a particularly sensitive environment and that there are no environmental resources of hazardous or critical concern that are designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies that the proposed single-family home may impact.

5. Appeal Assertion Point 5: CEQA Location Exception, Santa Monica Mountains Conservancy Map (Guideline 15300.2 (a))

Appeal Assertion

As explained in the CEQA Guidelines, “a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.” CEQA Guidelines Section 15300.2 (a). An exemption does not apply 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.

In this case, the Class 3 single family home exemption cannot be used because the Project is located in Habitat Linkage Zone Number 53. The Santa Monica Mountains Conservancy (“SMMC”) adopted Habitat Linkage Planning Maps in May of 2017. These maps were officially adopted by the Conservancy (a state agency) pursuant to Public Resources Code Section 33211(c). The maps are intended to identify an environmental resource of critical concern. The Staff Report and Resolution adopted by the SMMC in conjunction with the Project clearly states that the maps were created for environmental impact analysis purposes and that the habitat linkage between the 405 and Griffith Park is of regional scientific significance.

The following animals been seen by residents in the area at one time or another: (1) Coyotes, (2) Deer, (3) Frogs, (4) Hawks, (5) Owls and (8) Snakes. Moreover the property is connected via a wildlife corridor to Habitat Linkage Zone No. 54 where a previously unidentified mountain lion was spotted on October 26, 2017 - only the second mountain lion (besides P-22) known to reside in this area of the Santa Monica Mountains.

The Laurel Canyon Mountain Lion’s prey (deer) frequent the property in question and reside within Habitat Linkage zone No. 53.

The property’s value as habitat for flora and fauna cannot be disputed. The entire area serves as a refuge for area wildlife. Refuges such as this are important elements of the urban landscape and their value cannot be dismissed. Developments like the proposed Project displace ‘urban wildlife’ into residential backyards and city streets, and habitat disruption can result in an imbalance on food chain populations and lead wildlife to seek both food and shelter in residential areas and to stray into city streets and public areas.

The future viability of hundreds of California’s wildlife species are dependent on the maintenance of biologically functional and contiguous oak and walnut woodland ecosystems at local and bioregional scales. The untouched oak/walnut woodland is incredibly important to the local wildlife, as the development is located within an established Habitat Linkage Zone

comprised of over ten acres. The bottom line is that the Project may impact on an environmental resource of critical concern.

The SMMC's Habitat Linkage Zone Planning Map builds on the Santa Monica Mountains Comprehensive Plan which was adopted in 1979. The property is subject to the Plan because it is located within the Santa Monica Mountains Zone. The Zone was established by the Legislature via the Santa Monica Mountains Conservancy Act, which is codified at Section 33001 of the Public Resources Code.

In sum, the use of the Class 3 single-family home exemption cannot be used for this project both because it is located within the Santa Monica Mountains Zone and within Habitat Linkage Zone Number 53. Environmental review pursuant to CEQA is required because the mountains are an environmental resource of critical concern that have been designed and precisely mapped pursuant to state law.

Staff Response:

First, CEQA Guideline 15300.2 (a), the location exception, does not apply to a Class 32 exemption, urban infill projects which is applicable to this Project and provides no basis to find the Project is not exempt from the requirements of CEQA.

To the extent Appellant asserts CEQA Guideline 15300.2 (a) precludes the City from relying on a Class 3 CEQA exemption (single family home), that contention is also without merit.

The City obtained records from the SMMC via request for public records seeking all documentation concerning the SMMC Eastern Santa Monica Mountains Habitat Linkage Planning Map (SMMC Map) (RA 9). All of the documents SMMC provided in response are found at Report Attachment 9.

No evidence exists that the SMMC Map, as adopted by the SMMC and as submitted by Appellant, identifies an environmental resource of critical concern, much less designates and precisely map such resources. The Conservancy's resolution adopting the map, while describing the area as having "regional scientific significance" admits that there has been "limited ground truthing" for the map. (Santa Monica Mountains Conservancy, Agenda Item 13, Resolution 17-1 (January 23, 2017) p. 1) (RA 9 at p. SMCCPRA_007). Further, the Executive Director's Memorandum to the Conservancy about the Map admits that the "map's delineations are not definitive in all areas" and that many of the delineations "were not ground-truthed" but instead were largely based on "Google Earth areal and street view photography." (Santa Monica Mountains Conservancy, Memorandum from Joseph T. Edmiston, Executive Director, Re: Agenda Item 13 (January 23, 2017) pp. 1-2) (RA 9 at p. SMCCPRA_005-6). No facts identify any evidence regarding any species or biological communities studied or considered in connection to the map, nor any biological surveys or habitat connectivity studies performed regarding the delineations of the map when the map was created and adopted by the SMMC Board. The record, thus, demonstrates that the SMMC approved a map unsupported by any evidence created by or reviewed by any biologist, wildlife expert, or any person qualified to verify the conditions the map purports to represent.

City staff has not identified any federal, state, or local laws that grant SMMC the legal authority to require the City's use of SMMC's habitat or wildlife corridor map(s) as part of the City's planning and environmental review process or conferring any land use authority upon the SMMC. The SMMC Act, Pub. Res. Code, §§ 33203-33204, limits SMMC's power over the

City's planning process. The SMMC Act does not authorize SMMC to regulate private property, nor does it supersede or limit a local government's exercise of the police power, over private property or derived from any other provision of existing law. (*Id.*, § 33008, subd. (c).) The sole power conferred upon the SMMC by this State legislation, is the authority to acquire and manage land in trust for the purposes set forth by the SMMC Act.

Moreover, the Santa Monica Mountains Comprehensive Plan divided the Santa Monica Mountains into six subareas, and the project site is located in Subarea 1: City of Los Angeles East of San Diego Freeway. (Santa Monica Mountains Comprehensive Planning Commission, Santa Monica Mountains Comprehensive Plan (1979) p. 61.) The Plan describes this subarea as "predominantly residential" and states that the "major planning objectives in this subarea are to establish substantial public parks with adequate access ... and to maintain the quality of the currently low-density residential areas." (*Ibid.*) These objectives contrast those of other subareas, such as subarea 4, where the Plan recommends "[c]onservation, open space, compatible recreation, and rural densities" because "development is concentrated in a few, relatively small places." (*Id.* at p. 67.) The proposed single-family home does not trigger the location exception, and is categorically exempt because it is within the "predominantly residential" Subarea 1 and will not adversely affect "the quality of the currently low-density residential areas."

Additionally, the project site (APN No. 5567029026 at 2239 Laurel Canyon Blvd.) and the surrounding lots have been planned for residential use since the 1960s. (Los Angeles County Assessor's Map 5567-29 (February 27, 1965) Tract 8799.) The time to challenge that planning decision has long since passed. The SMMC Map submitted by Appellant ignores the long standing zoning designations without explanation.

The records provided by the SMMC at Report Attachment 9 do not demonstrate that any wildlife expert or biologist was involved with creating the SMMC Map purporting to identify wildlife and wildlife corridors. As such, no evidence exists to conclude that the SMMC Map depicts any environmental resource, and no evidence to conclude that it depicts any environmental resource of hazardous or critical concern. Moreover, no evidence exists of what types of wildlife exists within any mapped area because the SMMC has never identified or explained such information. No facts exist showing what wildlife utilizes which habitat areas or alleged corridors. At best, the SMMC asserts that wildlife exists and that wildlife corridors exist. SMMC made no effort to identify what types of wildlife may use which mapped corridors or habitat areas – in an expansive region between the 405 Freeway to the 101 Freeway in Los Angeles County. In no respect does the SMMC Map precisely map anything as required before CEQA Guideline 15300.2 (a) could apply.

City Staff has attempted to locate the Project on the SMMC Map and submits a PDF of the City's efforts at Report Attachment 10, which is a declaration provided by the City's Geographic Information Systems Chief, Ms. Betty Dong. Exhibit A to Ms. Dong's declaration contain printouts of a map she prepared utilizing SMMC Map data provided by the SMMC showing where the Project site falls on the SMMC maps. The map print-outs created by Ms. Dong demonstrate that the Project site is not located within or adjacent to any wildlife corridor shown on the SMMC Map. Appellant's assertion that, "the property is connected via a wildlife corridor to Habitat Linkage Zone No. 54," is unsupported by fact. The SMMC Map, instead, merely depicts the Project site as within an undefined "habitat block" which the SMMC Map treats the same way as all habitat areas it maps between the 405 Freeway and the 101 Freeway. The SMMC Map does not indicate how this Project could impact any particular environmental condition identified by substantial evidence.

For all these reasons, City Staff recommends the Council determine that the map does not constitute substantial evidence of “designated and precisely mapped” environmental resources of hazardous or critical concern that the proposed single-family house may impact. (See CEQA Guidelines, § 15300.2, subd. (a).) Based upon such a determination, Location exception does not apply and the proposed project is categorically exempt.

6. Appeal Assertion Point 6: CEQA Location Exception, Very High Fire Hazard Severity Zone (Guideline 15300.2 (a))

Appeal Assertion

As noted above, CEQA specifically excepts a project such as this from the single-family home exemption “where the project may impact on an environmental resource of hazardous or critical concern” where officially designated. Here, the property has been officially mapped in a “Very High Fire Hazard Severity Zone” due to its location in a fire-prone hillside area of the City.

Further, the property has been officially mapped in a fault zone and liquefaction zone as evidence by the City’s ZIMAS.

Staff Response

First, CEQA Guideline 15300.2 (a), the location exception, does not apply to a Class 32 exemption (urban infill projects), an exemption which is applicable to this Project and provides no basis to find the Project is not exempt from the requirements of CEQA.

To the extent Appellant asserts CEQA Guideline 15300.2 (a) precludes the City from relying on a Class 3 CEQA exemptions (single family home), that contention is also without merit.

The fact that the Project site is located in an area designated as a Very High Fire Hazard Severity Zone (VHFHSZ) is not substantial evidence that the Project would have a significant effect on fire hazards in the area. Because the property is located within a VHFHSZ, the Project must comply with brush clearance requirements as listed in LAMC Section 57.322.1 in order to prevent the spread or intensity of a fire. The Los Angeles Fire Department (LAFD) also maintains a set of brush clearance compliance measures which property owners must follow. Furthermore, projects in VHFHSZs must submit vegetation for landscaping to LAFD’s Brush Clearance Unit for verification against the list of prohibited plants in these areas. Appellant has not submitted any substantial evidence that the Project would have a hazardous impact if complying with these requirements. Additionally, VHFHSZs were established in 1999, and since then development has occurred in other areas of the City located in VHFHSZs, including Pacific Palisades, Silver Lake, Sherman Oaks, and Porter Ranch.

Related to the Project’s location in a fault zone and a liquefaction zone, LADBS requires that buildings adhere to seismic building standards. So long as a project has received a Geology and Soils Report Approval Letter from LADBS, which occurred here, there is no substantial evidence that a single-family home in a fault zone or liquefaction zone would have a significant impact on an environmental resource of hazardous or critical concern. Hence, City Staff recommends the Council determine this exception does not apply and the proposed project is categorically exempt.

7. Appeal Assertion Point 7: CEQA Scenic Resource Exception, (Guideline 15300.2 (d))

Appeal Assertion

The City also cannot deem this project exempt from CEQA because Laurel Canyon Boulevard is a designated scenic highway. The City has designated 69 scenic highways in the City. The City's designated scenic highways are listed in Appendix B of the City of Los Angeles Mobility Plan. Laurel Canyon Boulevard is listed on the City's inventory. Laurel Canyon Boulevard's "scenic feature or resource" is described as follows: "winding cross mountain road through [a] rustic area."

Staff Response

CEQA Guidelines Section 15300.2(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 a state scenic highway." The City agrees that Laurel Canyon Boulevard, along with 68 other roadways within the City, are listed as scenic highways in the City of Los Angeles Mobility Plan. But Laurel Canyon Boulevard is not officially designated as a state scenic highway, and thus does not trigger the exception. Nor has Appellant submitted any evidence that the proposed single-family home would "result in damage to scenic resources." Therefore, City Staff recommends the Council determine the Scenic Highways exception does not apply and the proposed project remains categorically exempt.

8. Appeal Point 8: Improper Specialized Conditions Mitigation Measures

Appeal Assertion

In evaluating whether a categorical exemption may apply, the City may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098.

The City has sought to deem this project "exempt" from City by way of an environmental mitigation measure namely, the planting of replacement trees on the property. However, the general requirement to plant replacement trees is not a regulatory compliance measure at all. Rather, it is a discretionary environmental mitigation measure. The City's Protected Tree Ordinance states as follows:

"The Board of Public Works or its authorized officer or employee may [r]equire as a condition of a grant of permit for the relocation or removal of a protected tree, that the permittee replace the tree within the same property boundaries by at least two trees of a protected variety included within the definition set forth in Section 46.01 of this Code, in a manner acceptable to the Board."

LAMC Section 46.02(c).

The Ordinance uses the word "may" – not "shall." This is significant. The tree replacements that are traditionally mandated by the Board of Public Works are discretionary environmental mitigation measures. They are not mandatory "regulatory compliance measures." The City

cannot use a mitigation measure to reach a determination that a project is exempt from CEQA. This is fundamental black letter CEQA law.

Further, the Grading Division has issued a Geology and Soils Report Approval Letter for the Project. This letter contains numerous conditions of approval. Many of these conditions are not simply applications of the California Building Code or existing City of Los Angeles regulations. The fact that the Geology Report contains specialized mitigation measures renders the application of a categorical exemption inappropriate and unlawful.

Staff Response

Los Angeles Municipal Code section 46.02 states that, “No person shall relocate or remove any protected tree ... without first having applied for and obtained a permit from the Board of Public Works or its designated officer or employee...” Subdivision (c) of Section 46.02 grants the Board or its authorized officer or employee the authority to “1. Require as a condition of a grant of permit for the relocation or removal of a protected tree, that the permittee replace the tree within the same property boundaries by at least two trees of a protected variety...” The Board of Public Works and City Staff have consistently required replacement of each removed Protected Tree at a 4:1 ratio, as was the case here.

The City’s consideration and approval of the tree removal permit, subject to certain conditions, was not the basis for concluding that the whole project was categorically exempt. (CEQA Guidelines, § 15378, subd. (c) [“The term “project” does not mean each separate government approval”].) The City’s approval of the Categorical Exemption(s) was without qualification. Specifically, the conditions of approval for the tree removal permit, imposed by the Division of Urban Forestry, designated by the Board of Public Works were not the basis of the conclusion that the proposed single-family home project is categorically exempt. (*Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 268.)

The tree removal permit request was approved, subject to the payment of a fee, the planting of replacement trees, the applicant’s tree expert observing the removal of the protected trees, and the City performing a site inspection. These conditions were imposed “to address the ordinarily anticipated inconvenience and danger that arises when” trees are removed from private property, not to mitigate potential significant effects of the project. (*Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 268.) The determination that the single-family home project was categorically exempt, was not based on any of these conditions of approval. Rather the project was found exempt because the project “consist[s] of the construction and location of a number of new small facilities or structures.” (CEQA Guidelines, §15303.) Specifically, one single-family residence. Additionally, CEQA Guideline § 13332, Class 32 urban infill exemption equally applies.

Similar to the conditions of approval attached to the tree removal permit, and the conditions of approval in the Geology and Soils Report Approval Letter issued by the Grading Division of the Los Angeles Department of Building and Safety (RA 1), were imposed “to address the ordinarily anticipated inconvenience and danger that arises when significant construction activity occurs” in an urbanized hillside area of the City like Laurel Canyon. Further, Grading Division’s consideration and approval of the Geology and Soils Report was separate from the Division of Urban Forestry’s consideration and approval of the tree removal permit. Lastly, the fact that requirements were imposed on the applicant to take precautions for stability and earthquake safety reasons, does not mean that the project will have a significant impact on the environment.

City Staff recommends the Council determine the proposed single-family home project is categorically exempt because the conditions of approval attached to the tree removal permit, and the conditions of approval attached to the Geology and Soils Report Approval Letter are not mitigation measures imposed on the project.

9. Appeal Point 9: Improper Delayed Mitigation

Appeal Assertion

[M]any of the conditions of approval in the Geology and Soils Report Approval Letter simply “kick the can” down the road and defer required environmental analysis to another date. This does not comply with CEQA. Conditioning a project on another agency's future review of environmental impacts, without evidence of the likelihood of effective mitigation by the other agency, is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated. Sundstrom v. Cnty. of Mendocino (1988) 202 Cal.App.3d 296. Further, requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. PRC § 21080, subd. (c)(2)). See League for Protection of Oakland Architectural & Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896; Gentry v. City of Murrieta (1995) 36 Cal.App.4th 1359, 1396; Quall Botanical Ganlens Found., Inc. v. City of Encinitas (1994) 29 Cal.App.4th 1597, 1605, fn. 4; Oro Fino Gold Mining Corp. v. Cnty. of El Dorado (1990) 225 Cal.App.3d 872, 884; Sundstrom v. Cnty. of Mendocino, supra, 202 Cal.App.3d at p. 306, (condition requiring that mitigation measures recommended by future study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and flooding impacts was improper). Moreover, a condition that requires implementation of mitigation measures to be recommended in a future study may conflict the requirement that project plans incorporate mitigation measures before a proposed negative declaration is released for public review. PRC § 21080, subd. (c)(2); 14 Cal Code Regs § 15070(b)(1). Studies conducted after a project's approval do not guarantee an adequate inquiry into environmental effects. Such a mitigation measure would effectively be exempt from public and governmental scrutiny.

Staff Response

As stated above, the conditions of approval attached to the Geology and Soils Report Approval Letter were not mitigation measures imposed on the project. Thus, no matter when the conditions of approval apply, the City did not engage in improper deferral of mitigation.

The conditions of approval in the Geology and Soils Report Approval Letter do not require any future environmental analysis, nor do they condition approval of the Geology and Soils Report on another agency's future review. Where other agencies are noted in the conditions of approval, the Grading Division is simply notifying the applicant that other agencies with jurisdiction over the project (e.g., the State Division of Industrial Safety) may have additional requirements that the applicant will have to comply with.

City Staff recommends the Council determine the proposed single-family home project is categorically exempt because the conditions of approval attached to the Geology and Soils Report Approval Letter are not mitigation measures imposed on the project, nor do such conditions constitute improper deferral of mitigation.

CONCLUSION

Upon review and analysis of the issues raised by the Appellant, no errors or abuse of discretion by the Director of Street Services or his/her designees were found when issuing the challenged tree removal permit or challenged NOE. Additionally, two CEQA categorical exemptions apply, CEQA Guideline sections 15303 and 15302. Appellant has failed to provide any substantial evidence showing that the proposed project will have significant impacts on the environment due to unusual circumstances or any other factor identified by CEQA Guideline § 15300.2 which would create an exception to the City's reliance on both of these CEQA exemptions. As such, the appeal of the Permit to Remove Protected Trees and Replant (Permit No. 1-95600781) and appeal of the CEQA determination cannot be substantiated and should be denied by the City Council.

Respectfully Submitted,



Timothy Tyson

Chief Forester, Urban Forestry Division, Bureau of Street Services