

Communication from Public

Name: Jordan Sisson
Date Submitted: 11/18/2022 05:26 PM
Council File No: 22-1055
Comments for Public Posting: see attached.



LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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November 18, 2022

VIA MAIL, EMAIL & ONLINE: <https://cityclerk.lacity.org/publiccomment/?cfnumber=22-1055>

City Council, City of Los Angeles (clerk.cps@lacity.org)
Holly L. Wolcott, City Clerk (CityClerk@lacity.org)
Candy Rosales, Deputy City Clerk (Candy.Rosales@lacity.org)
200 N. Spring St., Room 360
Los Angeles, CA 90012

**RE: 1840 W. ADAMS BLVD. CEQA APPEAL (COUNCIL FILE NO. 22-1055);
DCP CASE NOS. VTT-83081-SL-HCA-2A, ENV-2020-3308-CE);
REQUEST TO CITY CLERK TO RETRACT DEEMED DENIED MEMO;
NOTICE OF INTENT TO FILE CEQA ACTION**

Dear Hon. City Councilmembers and City Clerk Wolcott:

On behalf of USC Forward (“**Appellant**”), this office provides this letter to the City of Los Angeles (“**City**”) regarding the above-referenced “**Appeal**” filed pursuant to the Los Angeles Municipal Code (“**LAMC**” or “**Code**”) § 11.5.13 and the California Environmental Quality Act (“**CEQA**”). The Appeal challenges the proposed demolition of a single-story commercial unit and construction of a four-story, 96-bed, and 96-bath structure located at 813-815 West Olympic Boulevard (“**Project**”). In furtherance of the Project, the applicant sought City approval of a Vesting Tentative Tract Map No. 83081-SL-HCA to subdivide the Project site into ten new small lots (“**VTT**”) via a Class 32/Class 15 Categorical Exemption from CEQA (“**CE**”). On October 11, the Planning and Land Use Management Committee voted to grant the Appeal—in effect overturning the VTT and CE approvals (collectively “**Project Approvals**”).

Recently, Appellant has learned of the City Clerk Memorandum dated October 14, 2022 (“**Memo**”) claiming Appellant’s Appeal, as well as the independently-filed CEQA appeal by the West Adams Neighborhood Association (“**WANA**”), have been “deemed denied” due to the City Council’s failure to act on the VTT by October 14, 2022 when it canceled City Council meetings due to racist audiotapes.¹ Additionally, we are now aware that the applicant has filed a CEQA Notice of Exemption (“**NOE**”) on October 25, 2022—thus, triggering a 35 day period to sue.² We were given zero notice of the Memo or NOE and had to find it ourselves through internet searches.

For the reasons discussed below, *we request the City Clerk retract the Memo, that the City retract the NOE, and process the Appeal. Otherwise, absent a tolling agreement between the parties (i.e., applicant, City, applicant), Appellant provides notice pursuant with Pub. Res. Code § 21167.5 of its intent to file a lawsuit challenging the Project Approval on the grounds of non-compliance with CEQA and other applicable zoning laws (“Action”).*

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¹ See https://clkrep.lacity.org/online/docs/2022/22-1055_misc_10-14-22.pdf.

² See L.A. County Registrar-Recorder/County Clerk (accessed 11/18/22) (search File No. 2022233074, Project Title Tripalink Co-Living Townhomes), <https://apps.lavote.net/CEQA/Search/Results#res>.

First, the City Clerk must retract the Memo given the deadline to act on the VTT was tolled and extended due the COVID emergency. Deputy City Attorney Ernesto Vasquez made it clear that the COVID state of emergency has tolled VTT deadlines in this case. In July 2022, during WANA's appeal of the VTT at the South L.A. Area Planning Commission ("ACP"), the applicant made similar claims that WANA's VTT appeal was 'deemed denied' by operation of law because APC did not act within the timeframes under the Code.³ However, according to Deputy City Attorney Ernesto Vasquez, timelines to act under the Code have been tolled due to the COVID emergency.⁴ Mr. Vasquez, who serves as counsel to both Central L.A. and South L.A. APCs, made these statements just three weeks before the South L.A. APC heard WANA's original appeal and in direct response to the concerns raised about appeals being considered deemed denied.⁵ It is arbitrary and capricious for the City to now deem Appellant's Appeal denied by operation of law when it has already rejected similar arguments on the record that make it clear that deadlines have been extended. The COVID state of emergency has not been lifted and is in effect until 2023.⁶ This type of situation is where courts step in and estop arbitrary procedural barriers imposed by government.⁷

Second, this is a CEQA appeal, and CEQA appeals cannot be 'deemed denied.' Under the Code, only some appeals may be considered "deemed denied" by the City's unconsented delay. (See e.g., LAMC § 17.06.4 [VTT appeals], § 17.54.A [preliminary Parcel Map appeals], § 11.5.7 subds., C.6(c) & F.7 [Project Permit Compliance Review appeal].) Here, neither the City's CEQA Procedures nor state law contains a 'deemed denied' or similar provision. (See LAMC § 11.5.13; see also Pub. Res. Code § 21151(c); CEQA Guidelines §15090(b).) If the City wanted CEQA appeals to be subject to a 'deemed denied' proviso, it would have codified such language (as it has done in other circumstances cited above). (See *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925, 935 [where Legislature uses language in other laws but not law at issue, its shows "it knew how to say so clearly" and "fact that the Legislature chose not to do so is evidence of its intent not to"].)

Third, the NOE must be retracted as premature. The CEQA Appeal should still be pending and a NOE cannot be filed until all appeals are done. (See e.g., *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418, 425 [a prematurely filed notice of CEQA exemption is "invalid"]; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963, fn. 16 [holding notice of CEQA exemption cannot be filed until after the project is approved, a "contrary conclusion would be tantamount to requiring opponents to bring challenges before a project is finally

³ See e.g., DCP (7/19/22) APC Meeting Additional Documents, PDF pp. 22, 25, <https://planning.lacity.org/dcpapi/meetings/document/addtdoc/63499>; APC Meeting (7/19/22) Meeting Audio for Item 6, https://planning.lacity.org/plndoc/Audio/South_LA/2021/07-19-2021/6_VTT_83081_SL_HCA_1A.mp3.

⁴ DCP (6/28/22) Central APC Agenda, p. 3 (Item 6 regarding appeal of Hollywood project), <https://planning.lacity.org/dcpapi/meetings/document/72240>; DCP (6/28/22) Central APC Meeting Audio, mm:ss 17:30-21:00, https://planning.lacity.org/plndoc/Audio/Central_LA/2022/06-28-2022/6_ZA_2019_5239.mp3.

⁵ Central APC Meeting Audio, supra fn. 4, mm:ss 05:30-07:15.

⁶ Office of Governor (10/17/22) Governor Newsom to End the COVID-19 State of Emergency, <https://www.gov.ca.gov/2022/10/17/governor-newsom-to-end-the-covid-19-state-of-emergency/>.

⁷ See e.g., *Shuer v. County of San Diego* (2004) 117 Cal.App.4th 476, 487 ("We find, however, that the sum total of county's actions ... negligently led [the plaintiff] to conclude that she had no administrative recourse. That being the case, county is estopped from asserting in its demurrer that [the plaintiff] failed to exhaust her administrative remedies."); *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1372 ("[C]ourts will not hesitate to estop the government from asserting a procedural barrier, such as the statute of limitations or a failure to exhaust remedies, as a defense to claims against it, where the government's affirmative conduct caused the claimant's failure to comply with the procedural requirement."); *J.H. McKnight Ranch, Inc. v. Franchise Tax Bd.* (2003) 110 Cal.App.4th 978, 991.

approved, lest they be barred by the statute of limitations. It would also thwart attempts to resolve disputes over a project.”.]

For these reasons, the City must retract the Memo, retract the NOE, and process Appellant's Appeal. If not, and if the City continues to assert the ‘deemed denied’ position, and absent a tolling agreement, Appellant will file an Action alleging that the City abused its discretion under CEQA by approving all the Project Approvals and will seek to have the Project Approvals set aside, along with such other relief as the Court deems proper including fees. We will use the transcript of the PLUM hearing and PLUM’s revised findings of fact granting the Appeal to prove the case.⁸

Because time is of the essence, please respond immediately to me at the number above. Thank you for your consideration.

Sincerely,

LAW OFFICE OF GIDEON KRACOV



Jordan R. Sisson
Attorney for Appellants

CC (email only):

LOS ANGELES COUNCIL DISTRICT 8

Hon. Marqueece Harris-Dawson (Councilmember.Harris-Dawson@lacity.org)

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⁸ Council File No. 22-1055 (10/12/22) Attachment to Communication - Revised Findings of Fact, https://clkrep.lacity.org/online/docs/2022/22-1055_misc_10-12-22.pdf.