DLA Piper LLP (US)
550 South Hope Street
Suite 2400
Los Angeles, California 90071-2618
www.dlapiper.com

Andrew Brady
Andrew.Brady@dlapiper.com
T 213.694.3108
F 310.595.3406

January 17, 2020

Honorable Member of the City of Los Angeles
Planning and Land Use Management Committee
C/O PLUM Committee Clerk
200 North Spring Street, Room 272
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: CF 19-1603: 806 West Adams Boulevard (758 – 832 West Adams Boulevard; 2610 South Severance Street); Case Number: ENV-2018-2454-CE (Related Case: ZA-2018-2453-CU-DB-SPR-1A)
Applicant's Response to CEQA Appeal

Honorable Members of the Planning and Land Use Management ("PLUM") Committee:

This letter addresses the appeal ("Appeal") filed by the North University Park Community Association ("NUPCA") and the Adams Severance Coalition ("ASC") (collectively "Appellant") against the 806 W. Adams Blvd. project ("Project"). The Appeal challenges the Letter of Determination and Corrected Letter of Determination (collectively "CPC LOD") issued by the City of Los Angeles ("City") Planning Commission ("CPC") on November 20 and December 11, 2019, respectively, on California Environmental Quality Act ("CEQA") grounds.[1] Among other determinations, the CPC LOD denied the Applicant's appeal on CEQA grounds, finding the appeal failed completely to demonstrate any CEQA violation by the City in adopting a Categorical Exemption for the Project. The Appeal here raises the same failed arguments raised in the prior appeal to the CPC. These arguments were properly rejected by the CPC, and should be rejected by the PLUM Committee for the same reasons, as further set forth below.

I. The Project Validly Qualifies for a CEQA Exemption

a. Background Information on the Project

The Project is a 102-unit urban infill residential development on a 2.8 acre site at 806 W. Adams Boulevard in the University Park neighborhood of the South Los Angeles Community Plan area ("Property"). The height of the Project at 45 feet is consistent with the applicable RD1.5 zoning designation for the Property – no Density Bonus are other incentives for additional height were sought.[2] The density of 102

[1] The original LOD contained a few minor typographical errors, including misidentifying the total number of units and parking spaces in the Project. These typographical errors were
[2] Los Angeles Municipal Code ("LAMC") § 12.21.1.

units is consistent with the applicable code density for the RD1.5 zone, which has a density of one unit per 1200 square feet of lot area, with a 22.5 percent by-right density increase under the Density Bonus ordinance due to the fact that the Project proposes to provide 6 percent of its base units as Very Low Income affordable units.[3] The Project's Floor Area Ratio ("FAR") is 1.75:1, well under the code-allowed FAR of 3:1.[4] The Project setbacks comply with the setbacks applicable to residential uses in the RD1.5 zone, with the exception of one requested Density Bonus incentive for a 20 percent reduction in the rear yard setback, going from 15 to 12 feet, to which the Project is entitled under the Density Bonus ordinance.[5] The proposed parking is consistent with the City and state Density Bonus provisions, where the state law mandates that a city "shall not" impose a parking ratio of greater than 2.5 spaces per dwelling unit on projects that qualify for a Density Bonus, which the Project complies with by proposing 2.5 parking spaces per unit.[6] The Project also exceeds code requirements for open space, bicycle parking, and trees.[7]

b. The City Correctly Adopted a Class 32 CEQA Categorical Exemption for the Project and the CPC's Correctly Denied of the Appellant's Prior CEQA Appeal

CEQA's Class 32 categorical exemption for "infill development" ("Class 32 Exemption") applies to proposed developments within city limits on sites of five or fewer acres substantially surrounded by urban uses, where the site has no habitat value for special status species, can be adequately served by all required utilities and public services, and the project would not have significant traffic, noise, air quality, or water quality impacts.[8] On May 17, 2019, the Zoning Administrator ("ZA") determined the Project is exempt from CEQA under the Class 32 Exemption based on substantial evidence in the record, including, as relevant here, the City's own staff report analysis and an expert historic resources consultant technical report prepared by City-certified historic resource consultant Historic Resources Group ("HRG"), dated May 22, 2018. The ZA also specifically determined that none of the exceptions to Categorical Exemptions under CEQA Guidelines Section 15300.2 applied, including that no significant impacts would be caused by the

[3] LAMC §§ 12.09.1-B.4; 12.22-A.25(c).
[4] LAMC § 12.21.1-A.1.
[5] LAMC §§ 12.09.1-B; 12.22-A.25(f)(1).
[6] Gov't Code § 65915(p).
[7] LAMC §§ 12.21-A.4; 12.21-G.
[8] CEQA Guidelines, § 15332(b)-(e).

Project due to "unusual circumstances" under Section 15300.2(c), and, under Section 15300.2(f). that the Project would not result in a "significant adverse change in the significance of a historical resource."[9]

The same Appellant here, NUPCA, appealed the ZA's CEQA determination to the CPC on May 29, 2019. Relevant to this CEQA appeal, this appeal argued that the City could not make Class 32 Exemption findings because, contrary to the conclusion of the ZA based on expert technical analysis, the Categorical Exemption under CEQA Guidelines Section 15300.2, subsection(f) applied, because the Project would allegedly have a "significant impact" on historic buildings and districts in the vicinity of the Property. Notably, the appeal did not argue the Property itself contains historic resources that would be impacted by the Project, but rather only nearby offsite historic resources. The Appeal here also does not assert that the Property contains any historic resources.

The CPC rejected the Appeal on all grounds in the CPC LOD, including on the grounds that the City appropriately adopted a Class 32 Exemption for the Project and that the Appellant failed to establish by substantial evidence that the Project would result in a significant adverse change to any historic buildings or districts located outside the Property but in its vicinity. The same Appellant here merely repeats the same failed arguments in this CEQA Appeal. For the same reasons, this Appeal should be denied.

c. The Appeal is Based Entirely On Baseless Arguments Regarding Alleged Project Impacts to Historic Resources

The Appeal focuses primarily on a single issue: the faulty assertion that, because the Project is located in the vicinity of historic districts and other historic resources, it would result in substantial adverse changes to those resources under CEQA. However, the Appeal and other supporting letters submitted to PLUM fail completely to establish any such impacts under the applicable legal tests.

i. <u>The Standard of Review Under CEQA for a Categorical Exemption Determination</u>

Under CEQA, Categorical Exemption determinations are evaluated under the substantial evidence standard of review, where so long as a city's exemption determination is supported by substantial evidence, the determination is sufficient – *contrary evidence is not relevant*.[10] The application of substantial evidence review in the context of a challenge to a lead agency's adoption of a Categorical Exemption means a

[9] 5/17/19 ZA LOD, at pp. 33.
[10] See *Great Oaks Water Co. v. Santa Clarita Valley Water Dist*. (2009) 170 Cal.App.4th 956, 967-968.)

reviewing body will determine "whether the administrative record contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached. All conflicts in the evidence are resolved in support of the agency's action and we indulge all reasonable inferences to support the agency's findings, if possible."[11] Thus, if the ZA and CPC conclusions with respect to the Class 32 Exemption for the Project are supported by substantial evidence, those decisions must be upheld – a reviewing body's "task is not to weigh conflicting evidence and determine who has the better argument."[12] Thus, where there is conflicting expert opinion, the City has the discretion to choose which expert opinion it will rely on – the Appeal's statement provided with no citation to authority that, where there is conflicting expert evidence, the City must choose the more conservative path, is simply incorrect.

ii. The CEQA Standard for a Substantial Adverse Change to a Historic Resource

Under CEQA, a significant impact to a historic resource only occurs where a project would cause "a substantial adverse change" in the significance of that resource.[13] The CEQA Guidelines define a "substantial adverse change in the significance of a historical resource" to mean "physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings such that the significance of the resource is materially impaired."[14] A substantial adverse change results in a "material impairment" when a project:

A. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

B. Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code (unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant); or

[11] *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th at 564, 570-571; *Great Oaks Water Co.* (2009) 170 Cal.App.4th 956, 973.
[12] *Laurel Heights Improv. Assoc. v. UC Regents* (1988) 47 Cal.3d 376, 393.
[13] Pub. Res. Code § 21084.1; CEQA Guidelines § 15064.5(b).
[14] CEQA Guidelines § 15064.5(b)(1).

C. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource 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 purposes of CEQA.[15]

If an impact on a historical resource does not involve a "substantial adverse change" in the significance of the resource, there is no significant impact, and the exception to Categorical Exemptions under CEQA Guidelines Section 15300.2(f) does not apply.[16]

iii. Under CEQA, Layperson Opinions on Technical Issues And Unsupported Expert Opinions Are Not Substantial Evidence

Under CEQA, "members of the public may provide opinion evidence where special expertise is not required, however, interpretation of technical … information requires an expert evaluation.'"[17] With respect to the highly technical analysis of the assessment of what constitutes a historic resource and what level of impacts would imperil a historic resource's status as a historic resource, "in the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence."[18] Further,"'[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence."[19] Under CEQA, even "expert" opinions with no factual basis are not substantial evidence.[20]

iv. The Appeal Fails to Establish Any Substantial Evidence of a Substantial Adverse Change to Historic Resources – But Even If It Did (It Does Not), the City Can Still Rely On the Substantial Evidence in the Record Showing No Such Impacts

The Appeal rests entirely on the false notion that the Project merely being in the general vicinity of historic resources would by itself result in a substantial adverse change to those nearby historic resources. This is not sufficient to demonstrate a substantial adverse change under CEQA. The Appeal does not even attempt to argue, and could not argue, that the Project would result in *any* physical impacts to nearby

[15] CEQA Guidelines § 15064.5(b)(2).
[16] *Citizens for Responsible Development in West Hollywood*, 39 Cal.App.4th at 501-502.
[17] *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690.
[18] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.
[19] *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.
[20] *Joshua Tree Downtown Business Alliance, supra,* 1 Cal.App.5th 677, 690.

historic resources, much less the kind of physical destruction or demolition of historic features or a historic setting that would constitute a substantial adverse change to an offsite historic resource under CEQA – it simply asserts in a conclusory manner that such impacts would occur. However, ""[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence."[21] This same failure is the reason the Appeal before the CPC was denied. Since this Appeal offers nothing more than the same unsubstantiated opinions, it too should be denied.

Contrary to the statements in the Appeal, a supplemental technical historical resource analysis for the Project, dated January 13, 2020, prepared by expert historical technical consultant HRG provides additional analysis of the Project's potential indirect impacts on various offsite resources located in the general vicinity of the Property, including seventeen different buildings and districts. This supplemental report fully confirms the prior expert and staff reports' analysis and conclusions that the Project would not result in a substantial adverse change to any historic resources located outside of the Property.[22] The analysis notes that the Property itself contains no historic resources – but is rather a largely empty lot that was the former site of a now demolished former school for the hearing impaired with one small remaining two-story office building built in the 1970's – the analysis notes that the Property has been substantially altered since the periods of significance for the surrounding historic resources.[23] The supplemental analysis concludes that "all district contributors, individually eligible properties, and historic districts will remain intact in their current locations; and no historical resources will be demolished or materially altered in an adverse manner such that they cannot convey their historical significance. Therefore, the Project will not result in significant direct or indirect impacts to any offsite historical resources."[24] This supplemental analysis thus provides further substantial evidence in support of the prior ZA and CPC determinations coming to the same conclusion. The Appeal, relying on the same invalid contrary arguments correctly rejected by the CPC, does nothing to undermine the City's well-supported conclusion.

As also addressed and rejected by the CPC, the Appeal also notes that the portion of Adams Boulevard that fronts onto the Property is a City designated "scenic highway." The Appeal expresses a general opinion that the Project may create unspecified "damage" to the listed scenic resources within W.

[21] *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.
[22] January 13, 2020 HRG Supplemental Report, at p. 4-5.
[23] Id., at p. 25.
[24] Id., at p. 34.

Adams Boulevard. As with the rest of its claims, the Appeal does not identify what alleged "damage" the Project would create to any scenic resources associated with Adams Boulevard. It merely speculates about unspecified damage. As stated, under CEQA, "[a]rgument, speculation, unsubstantiated opinion and narrative" do not constitute substantial evidence.[25]

The Project is, moreover, in no way inconsistent with the Scenic Highways Guidelines contained in the Mobility Plan – the very document that identifies the portion of Adams Boulevard that fronts the Project as a City scenic highway.[26] In those Guidelines, the Mobility Plan states that the following five factors are relevant to the maintenance of scenic highways: (1) Roadway Design and Alignment; (2) Parkway Planting/ Landscaping; (3) Signs/ Outdoor Advertising Restrictions; (4) Utilities (e.g. undergrounding of new or relocated utility facilities); (5) Opportunity for Enhanced Non-Motorized Circulation.[27] Consistent with these requirements, the Project would not affect the design or alignment of West Adams Boulevard, the earthwork, grading, planting and landscaping and utilities work required for the Project would not alter the Adams Boulevard parkway and trees, and as a residential project, the Project would not contain any outdoor advertising. Thus, the unspecified arguments in the Appeal regarding vague and generalized impacts to the scenic highway are wholly inaccurate. The Project would have no such impacts and the Appeal provides no facts to suggest otherwise.

Beyond that, the City has also concluded that development consistent with community plans would not have a substantial adverse change on City-designated scenic highways, including W. Adams Boulevard between Arlington Avenue and Figueroa Street.[28] As found by the ZA and CPC, the Project is consistent with the Low Medium II designation of the Community Plan and its policies that support locating new medium density housing and affordable housing in Transit Priority Areas on underutilized properties such as the Property in a manner that does not negatively impact any existing historic or scenic resources along Adams Boulevard. Thus, the City was correct in concluding the Project would not result in any substantial adverse changes to historic resources, supporting the City's adoption of a Class 32 Exemption for the Project. The claims to the contrary in the Appeal are meritless and should be denied.

[25] CEQA Guidelines § 15384(a).
[26] Mobility Plan 2035, at p. 170.
[27] Mobility Plan 2035, at p. 168.
[28] South Los Angeles and Southeast Los Angeles Community Plans Draft EIR, Section 4.1, Aesthetics, pages 4.1-8, 4.1-29.

v. The Appeal's Claim that it is based on Expert Opinion is Irrelevant and Unfounded

The Appeal also makes the unsupported claim that its unsubstantiated opinions about significant impacts on offsite historic resources are expert opinions. As an initial matter, as indicated above, the Appeal incorrectly states that, where there is conflicting expert opinion on a matter under CEQA, the City must choose the more conservative approach. This statement, made with no citation to authority, is incorrect. As stated above, in the context of a Categorical Exemption determination, so long as the City's decision is supported by substantial evidence in the record, the decision will be upheld regardless of whether there is substantial evidence in the form of expert opinion supporting a contrary conclusion – the City can make a choice as to which substantial evidence upon which it will base its decision.[29] Because the City's determination that the Project qualifies for a Class 32 Exemption, that is enough to support the determination with nothing more.

Moreover, even "expert" opinion with no factual basis is not substantial evidence – so the Appeal's factually baseless assertions regarding unspecified impacts to historic resources, even if they were expert opinion (they are not), would not constitute substantial evidence.[30] However, the Appeal does not establish any expert credentials for its unsupported allegations – merely being a member of a community association, working for USC, or claiming falsely to be a "preservation consultant" without any identified credentials is not sufficient to establish expertise in the highly technical realm of historic architecture. Thus, the assertion that anything in the Appeal is based on any valid expertise in historic architecture is unfounded. Rather, the appeal presents nothing more than "dire predictions by non-experts regarding the consequences of a project" that "do not constitute substantial evidence."[31] The fact that the City has based its decision on substantial evidence supporting the conclusion that the Project would not cause any significant impacts on historic resources is enough standing alone to support the City's determination, there is no substantial evidence raised in the Appeal that would suggest otherwise.

[29] *Laurel Heights Improv. Assoc., supra,* 47 Cal.3d at 393; *Great Oaks Water Co.,* 170 Cal.App.4th at 967-968.
[30] *Joshua Tree Downtown Business Alliance, supra,* 1 Cal.App.5th 677, 690.
[31] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.

vi. The Appeal Fails to Establish that the Unusual Circumstances Exception to Categorical Exemptions Applies Here

The Appeal also incorrectly claims that the ZA and CPC erred in finding that the Project will not "have a significant effect on the environment due to unusual circumstances" under the exception to Categorical Exemptions under CEQA Guidelines Section 15300.2(c). It claims the "unusual circumstance" here is the size of the Project and its close proximity to historic resources. This argument is totally incorrect under the applicable CEQA standard.

Whether an unusual circumstance exists in the first instance is reviewed under the aforementioned deferential "substantial evidence" test.[32] Relying on the plain language of Section 15300.2(c) of the CEQA Guidelines, the Supreme Court held in the leading case on the topic, *Berkeley Hillside Preservation*, "to establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project may have a significant effect on the environment."[33] Rather, a potentially significant effect must be "due to unusual circumstances" for the exception to apply.[34] Here, notably, the Appeal has put forth no valid substantial evidence that the Project would result in a significant impact to any historic resources, precluding the application of the unusual circumstances exception by itself. Accordingly, for this reason alone, this exception to the Class 32 Exemption adopted for the Project does not apply.

Beyond that, as the Supreme Court has further made clear, the determination of what constitutes an unusual circumstance is dependent on the context of the project, and whether that circumstance is unusual for the type of project in the actual area in which the project occurs.[35] In *Berkeley Hillside Preservation*, the court held that the construction of a mansion-sized house on a hillside in Berkeley that required a large amount of excavation did not present an unusual circumstance because the area was zoned for large houses and excavation on hillsides is not an unusual occurrence in the hilly City of Berkeley.[36] Similarly, in *the Protect Telegraph Hill* case, the court rejected the arguments that the following

[32] *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114.
[33] Id., at 1105.
[34] Id.
[35] Id., at 1119.
[36] Id.

alleged circumstances were unusual for Telegraph Hill in San Francisco for a project that was consistent with city zoning standards and similar in size and scale to surrounding buildings: (1) the project was slightly larger than some but not all surrounding buildings but still within the standards applicable to its zoning, (2) the project would have effects on views, traffic and topography at a busy intersection, and (3) the project was subject to seismic activity.[37] The court rejected the arguments, noting that busy intersections and the risk if seismic activity are not unusual for San Francisco. The court also stated that "It would be odd at best for us to conclude a development project that conforms with zoning requirements on Telegraph Hill is in and of itself an unusual circumstance that requires CEQA review. We decline to do so."[38]

First, as with the Project in the *Protect Telegraph Hill* case, the Project is consistent with zoning standards for height, density, and setbacks – inclusive of a 22.5 percent increase in density and one 20 percent reduction in setbacks allowed under the Density Bonus law. Indeed, regarding the size of the Project, the Project utilizes a little more than *half* of the allowed FAR – meaning the Project is actually much smaller than the zoning code allows. This height, size and scale is also consistent with other buildings in the vicinity, including a four-story apartment building directly across Severance Street and the *much large*r four-story Automobile Club building on the same block along Adams Boulevard.

A Project that is consistent with zoning standards and the size and scale of surrounding buildings, some of which are larger than the Project, is certainly not unusual. As the court said in *Protect Telegraph Hill*, "it would be odd at best" to conclude otherwise. The fact that the Property is in an area with many surrounding historic resources is also not unusual – indeed all of the Appellant's arguments about the Project's alleged environmental impacts are based on the fact that the area surrounding the Project has numerous historic resources. Simply put, historic resources are not an unusual circumstance in this neighborhood and are generally not an unusual circumstance in the "urban infill" environments to which the Class 32 Exemption applies. The ZA and CPC were correct to find no unusual circumstances exist here, and certainly not any unusual circumstances leading to significant environmental impacts. The Appeal fails completely to demonstrate otherwise.

[37] *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th at 261, 270-272.
[38] Id., at 271.

d. The Appeal's Claims of Alleged Redevelopment Plan Issues Are Beyond the Scope of the CEQA Appeal

The Appeal's claims regarding the Project's consistency with the applicable Redevelopment Plan are not CEQA issues relevant in this CEQA Appeal to PLUM. The issues are beyond the scope of those properly raised in the Appeal and should be rejected. Additionally, as the Appeal mentions, the City took over all land use authority under the Redevelopment Plans from CRA/LA in November, 2019, after the Project's hearing before the CPC on October 10, 2019. Prior to the transfer of authority, since 2012 after the former CRA/LA was dissolved by state law, projects in Redevelopment Plan areas obtained consistency determinations from the CRA/LA successor agency as building permit clearances during the building permit "condition clearance process," not as part of the City's entitlement determination process at issue here. The Project will separately seek a clearance from the City for Redevelopment Plan compliance at the appropriate time in accordance with the City's new procedures for Redevelopment Plan clearances. Thus, the issue is not ripe for any determination until such time as the City makes a determination on the Project's consistency with the Redevelopment Plan, which has not yet occurred.

II. Conclusion

The Appeal does not put forth any arguments that would warrant reversing the City's adoption of a Class 32 Exemption for the Project. The Appeal should be denied.

Best regards,

Andrew Brady

AB:

cc. Leyla Campos (leyla.campos@lacity.org)
Henry Chu (henry.chu@lacity.org)
Jordann Turner (jordann.turner@lacity.org)