APPLICATIONS

APPEAL APPLICATION
Instructions and Checklist

PURPOSE

This application is for the appeal of Los Angeles Department of City Planning determinations, as authorized by the LAMC. For California Environmental Quality Act Appeals, use form CP13-7840. For Building and Safety Appeals and Housing Department Appeals, use form CP13-7854.

RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

APPELLATE BODY

Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.

☐ Area Planning Commission (APC) ☐ City Planning Commission (CPC) ☑ City Council

☐ Zoning Administrator (ZA)

CASE INFORMATION

Case Number: CPC-2024-4111-DB-PR-VHCA; ENV-2024-4112-HES

APN: 5077-004-033 and 5077-004-025

Project Address: 550 South Shatto Place; 3119 West 6th Street

Final Date to Appeal: April 17, 2025

APPELLANT

Check all that apply.

☑ Person, other than the Applicant, Owner or Operator claiming to be aggrieved

☐ Representative ☐ Property Owner ☐ Applicant ☐ Operator of the Use/Site

APPELLANT INFORMATION

Appellant Name: Supporters Alliance for Environmental Responsibility ("SAFER")

Company/Organization: Lozeau Drury LLP (representing Appellant)

Mailing Address: 1123 Park View Drive Suite 300

City: Covina **State:** CA **Zip Code:** 91724

Telephone: 510-836-4200 **E-mail:** richard@lozeaudrury.com

Is the appeal being filed on your behalf or on behalf of another party, organization, or company?

☑ Self ☐ Other: _____

Is the appeal being filed to support the original applicant's position? ☐ **YES** X ☐ **NO**

REPRESENTATIVE / AGENT INFORMATION

Name: Kylah Staley

Company/Organization: Lozeau Drury LLP

Mailing Address: 1939 Harrison Street Suite 150

City: Oakland **State:** CA **Zip Code:** 94612

Telephone: 510-836-4200 **E-mail:** kylah@lozeaudrury.com

JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part? ☐ **Entire** ☑ **Part**

Are specific Conditions of Approval being appealed? ☑ **YES** ☐ **NO**

If Yes, list the Condition Number(s) here: Project Review, Environmental Findings, and all remaining entitlements

On a separate sheet provide the following:

☑ Reason(s) for the appeal

☑ Specific points at issue

☑ How you are aggrieved by the decision

APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true.

Appellant Signature: Kylah Haley **Date:** 4/4/2025

GENERAL NOTES

A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

The appellate body must act on the appeal within a time period specified in the LAMC Section(s) pertaining to the type of appeal being filed. Los Angeles City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.

THIS SECTION FOR CITY PLANNING STAFF USE ONLY

Base Fee: $172

Reviewed & Accepted by (DSC Planner): Jason Chan

Receipt No.: 200235128920 **Date:** 4/4/25

☐ Determination authority notified ☐ Receipt Number

GENERAL APPEAL FILING REQUIREMENTS

If dropping off an appeal at a Development Services Center (DSC), the following items are required. See also additional instructions for specific case types. To file online, visit our Online Application System (OAS).

APPEAL DOCUMENTS

1. Hard Copy

Provide three sets (one original, two duplicates) of the listed documents for each appeal filed.

☐ Appeal Application

☐ Justification/Reason for Appeal

☐ Copy of Letter of Determination (LOD) for the decision being appealed

2. Electronic Copy

☐ Provide an electronic copy of the appeal documents on a USB flash drive. The following items must be saved as individual PDFs and labeled accordingly (e.g., "Appeal Form", "Justification/Reason Statement", or "Original Determination Letter"). No file should exceed 70 MB in size.

3. Appeal Fee

☐ *Original Applicant.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(a) of Chapter 1 or LAMC Section 15.1.1.F.1.a. (Appeal Fees) of Chapter 1A as applicable, or a fee equal to 85% of the original base application fee. Provide a copy of the original application receipt(s) to calculate the fee.

☐ *Aggrieved Party.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(b) of Chapter 1 or LAMC Section 15.1.1.F.1.b. (Appeal Fees) of Chapter 1A as applicable

4. Noticing Requirements (Applicant Appeals Only)

☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per the LAMC for all Applicant appeals. See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.

SPECIFIC CASE TYPES
ADDITIONAL APPEAL FILING REQUIREMENTS AND / OR LIMITATIONS

DENSITY BONUS (DB) / TRANSIT ORIENTED COMMUNITES (TOC)

Appeal procedures for DB/TOC cases are pursuant to LAMC Section 13B.2.5. (Director Determination) of Chapter 1A or LAMC Section 13B.2.3. (Class 3 Conditional Use) of Chapter 1A as applicable.

- Off-Menu Incentives or Waiver of Development Standards are not appealable.
- Appeals of On-Menu Density Bonus or Additional Incentives for TOC cases can only be filed by adjacent owners or tenants and is appealable to the City Planning Commission.

☐ Provide documentation confirming adjacent owner or tenant status is required (e.g., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, driver's license, bill statement).

WAIVER OF DEDICATION AND / OR IMPROVEMENT

Procedures for appeals of Waiver of Dedication and/or Improvements (WDIs) are pursuant to LAMC Section 12.37 I of Chapter 1 or LAMC Section 10.1.10. (Waiver and Appeals) of Chapter 1A as applicable.

- WDIs for by-right projects can only be appealed by the Property Owner.
- If the WDI is part of a larger discretionary project, the applicant may appeal pursuant to the procedures which govern the main entitlement.

[VESTING] TENTATIVE TRACT MAP

Procedures for appeals of [Vesting] Tentative Tract Maps are pursuant LAMC Section 13B.7.3.G. of Chapter 1A.

- Appeals must be filed within 10 days of the date of the written determination of the decision-maker.

NUISANCE ABATEMENT / REVOCATIONS

Appeal procedures for Nuisance Abatement/Revocations are pursuant to LAMC Section 13B.6.2.G. of Chapter 1A. Nuisance Abatement/Revocations cases are only appealable to the City Council.

Appeal Fee

☐ *Applicant (Owner/Operator).* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1 or LAMC Section 15.1.1.F.1.a. (Appeal Fees) of Chapter 1A as applicable.

For appeals filed by the property owner and/or business owner/operator, or any individuals/agents/representatives/associates affiliated with the property and business, who files the appeal on behalf of the property owner and/or business owner/operator, appeal application fees listed under LAMC Section 19.01 B.1(a) of Chapter 1 shall be paid, at the time the appeal application is submitted, or the appeal application will not be accepted.

☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b) of Chapter 1 or LAMC Section 15.1.1.F.1.b. (Appeal Fees) of Chapter 1A as applicable.

Justification/Reason for Appeal

550 South Shatto Place Project

(CPC-2024-4111-DB-PR-VHCA, ENV-2024-4112-HES)

I. REASON FOR THE APPEAL

SAFER appeals the Los Angeles City Planning Commission's Project Review and Environmental Findings as to the 550 South Shatto Place Project (CPC-2024-4111-DB-PR-VHCA, ENV-2024-4112-HES) ("Project"), as the Project's reliance on the 2021-2029 Housing Element Environmental Impact Report No. ENV-2020-672-EIR; SCH No. 2021010130 (Program EIR) is a violation of the California Environmental Quality Act ("CEQA"). The City of Los Angeles ("City") must fully comply with CEQA prior to *any approvals* in furtherance of the Project. Therefore, the City of Los Angeles ("City") must set aside the approval of the Project and prepare an initial study for the Project to determine the appropriate level of environmental review to undertake pursuant to CEQA.

II. SPECIFICALLY THE POINTS AT ISSUE

For the specific reasons set forth in the attached comment letter dated March 11, 2025, the Project is not consistent nor is it within the scope of the Housing Element Programmatic EIR on which the Project relies. Because proper CEQA review must be complete *before* the City approves the Project's entitlements (*Orinda Ass'n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 ["No agency may approve a project subject to CEQA until the entire CEQA process is completed and the overall project is lawfully approved."].), the Planning Commission's approval of the Project was in error. Additionally, by failing to properly conduct environmental review under CEQA, the City lacks substantial evidence to support its finding that the Project was adequately described in the Housing Element EIR.

III. HOW YOU ARE AGGRIEVED BY THE DECISION

Members of appellant Supporters Alliance for Environmental Responsibility ("SAFER") live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated.

IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION

The Los Angeles City Planning Commission found that the Project was adequately described in, and within the scope of the 2021-2029 Housing Element Environmental Impact Report No. ENV-2020-6762-EIR; SCH No. 2021010130 (EIR) despite a lack of substantial evidence in the record to support such a conclusion. The City should have prepared a CEQA document to analyze and mitigate the Project's environmental impacts. The City is not permitted to approve the Project's entitlements until proper CEQA review has been completed.

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BY E-MAIL
March 11, 2025

VIA EMAIL

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Re: Comment on the 550 South Shatto Place Project (CPC-2024-4111-DB-PR-VHCA, ENV-2024-4112-HES) Los Angeles Planning Commission Meeting, Agenda Item No. 7

Dear President Lawshe, Honorable Members of the Planning Commission, and Ms. Carter:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), regarding the 550 South Shatto Place Project (CPC-2024-4111-DB-PR-VHCA, ENV-2024-4112-HES), which proposes the development of a new eight-story, 262,638 square-foot mixed-use building with 318 dwelling units over two subterranean levels of parking, located at 514-550 Shatto Place, Los Angeles, CA (APN: 5077-004-033, 5077-004-025) ("Project"), to be heard as Agenda Item 7 at the Planning Commission's March 10, 2025 meeting.

INTRODUCTION

The City's Planning Department staff claims that the potential environmental effects of the Project already have been fully addressed by the 2021-2029 Housing Element ("HE"), and the 2021-2029 Housing Element Environmental Impact Report No. ENV-2020-672-EIR; SCH No. 2021010130 (Program EIR)("HE EIR"), certified on November 24, 2021, and will have no significant environmental effects not examined in the Program EIR. The City staff contends that the Program EIR adequately describes the

activity for the purposes of CEQA; pursuant to CEQA Guidelines Section 15162, no substantial changes to the project analyzed in the Program EIR are proposed as part of this Proposed Housing Project.

The City's position is non-sensical. First, the Project does not qualify for density bonuses, concessions and waivers under the Density Bonus Law (DBL). The Project seeks to exceed height, density and setbacks allowed by zoning by seeking concessions and waivers under the DBL. However, the Project seeks no density bonus at all. The Project includes ***fewer*** units of housing than allowed by existing zoning. Existing zoning, without any density bonuses, allows construction of 333 units of housing on the Project site. The Project developer proposes to construct only 318 units of housing - 15 ***fewer*** than allowed by existing zoning. Thus, no density bonus, concessions or waivers are allowed. The very purpose of the DBL is to allow additional density (more units of housing) if developers provide certain percentages of below-market-rate (BMR) housing. Concessions and waivers are intended to provide waivers of height, density and setbacks to allow construction of housing at the higher densities allowed by the DBL. However, in this case, the developer seeks ***no density bonus whatsoever***. In fact, the developer is not even building the density of housing allowed by existing zoning. The developer only seeks the concessions and waivers under the DBL with no additional density. This turns the DBL on its head. No concessions or waivers should be allowed for the Project at all since the Project provides no additional density.

Second, the HE EIR was a programmatic EIR prepared for the entire City of Los Angeles. The HE EIR applies "to the entire geographic area located within the boundaries of the City of Los Angeles (City), which encompasses 467 square miles." (Housing Element Draft EIR ("HE DEIR") 2-1.) The HE EIR analyzed "the construction and operation of 420,327 housing units." (HE DEIR 2-2.) Given the extremely broad scope of the HE EIR, it was done at a very high level of abstraction, and did not consider any specific projects. It clearly did not consider the 550 South Shatto Project at all, and the Project is not even mentioned in the HE EIR.[1] Since the Project was not analyzed (or even mentioned) at all in the HE EIR, the City cannot rely on the HE EIR to avoid all CEQA review for the Project. Indeed, if this argument were accepted, no residential project in the City of LA would ever require CEQA review.

Third, the Project is inconsistent with the HE EIR. The HE EIR assumed that development in the area would be consistent with the General Plan and zoning. The Project exceeds the Floor Area Ratio (FAR) allowed by zoning by almost 3 times (4.29:1 FAR in lieu of the otherwise required 1.5:1 FAR): exceeds the height and number of stories allowed by zoning (eight (8) stories and 96 feet in lieu of the otherwise required six (6) stories and 75 feet in the CR-1 Zone); and fails to comply with setback requirements. Since the Project does not comply with height, density and setback requirements assumed in the HE and HE EIR, the City may not rely on those documents. (*Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819).

[1] HE EIR analyzed 54 representative projects. The 550 Shatto Place Project was not one of them. (HE DEIR 4-5)

Fourth, even if the City could rely in some manner on the HE EIR, there are significant impacts specific to the 550 Shatto Project that were not analyzed in the HE EIR and that must be analyzed in a Project-level EIR, including impacts to historic resources, vapor intrusion risks from contaminated soil, impacts related to increased height and density above levels analyzed in the HE EIR, and others.

Fifth, the HE EIR concluded that the Housing Element would have numerous impacts that were significant and unmitigated, and that would require analysis at the Project level. The HE EIR explained that impacts related to air quality, soil contamination, biological resources, traffic, and many others could not be analyzed until specific projects were proposed at specific locations, at which time environmental review would be necessary. An EIR is required to analyze and mitigate these impacts. (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125.)

For all of the above reasons, the City should deny the requested concessions and waivers under the DBL; the City should require preparation of a CEQA document to analyze and mitigate the Project's environmental impacts; and the City should deny any Project approvals.

DISCUSSION

A. Density Bonus Law Does Not Apply Because the Project Seeks no Density Bonus at All, and is Building Below the Density Allowed by Existing Zoning.

The CPC Staff Report states:

> The subject property has a total lot area of 66,418 square feet, and as such, the permitted base density on the subject property is 333 units. A 35% density bonus entitles the project to an increase of 117 units for a total of 450 residential units. However, the applicant is not utilizing the Density Bonus Affordable Housing Incentives Program for an increased density, the project will provide a total of 318 units. (Staff Rpt. p. A-6)

Despite providing fewer units of housing than allowed by existing zoning, the developer seeks numerous concessions and waivers under the DBL, including:

a. Floor Area Ratio (FAR). The project shall be permitted a maximum FAR of 4.29:1.
b. Height. The project shall be permitted a maximum height of 96 feet and eight (8) stories.
c. Rear Yard. The project shall be permitted a 10-foot rear yard.
d. Open Space. The project shall be permitted a maximum of 25 percent reduction in the required open space.

e. Side Yards. The project shall be permitted five-foot easterly and westerly side yards.
f. Tree Reduction. The project shall be permitted a maximum of 29 percent reduction in the required on-site trees.
g. Building Passageway. The project shall be permitted a 10-foot passageway.

However, the developer is entitled to no concessions or waivers since the Project will provide less density than allowed by existing zoning. Therefore, no concessions or waivers are necessary to construct the Project at the increased density allowed by the DBL.

The South Coast Association of Governments (SCAG), which includes Los Angeles, states:

> Background on Density Bonus Law (DBL). Originally enacted in 1979, California's Density Bonus Law (Gov. Code §§65915 - 65918) allows a developer to ***increase density on a property above the maximum set under a jurisdiction's General Plan land use plan.*** In exchange for the increased density, a certain number of the new affordable dwelling units must be reserved at below market rate (BMR) rents. Qualifying applicants can also receive reductions in required development standards. Greater benefits are available for projects that reach higher percentages of affordability (with unlimited density available for certain transit-adjacent, 100-percent BMR projects). Besides granting rights to housing and mixed-used developments to increase density, the law provides three provisions that require local governments to grant qualifying projects: 1) incentives (or concessions) that provide cost reductions; 2) ***waivers of development standards that would physically preclude the development of a project at the density permitted*** and with the incentives granted, and; 3) reductions in parking requirements.

(SCAG: Density Bonus Law, found at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scag.ca.gov/sites/main/files/file-attachments/density_bonus_law_-_what_are_incentives_concessions_and_waivers.pdf?1667860893)

The DBL states that the purpose of the law is "to include more total units in a project than would otherwise be allowed by the local zoning ordinance." The DBL states:

> (u) (1) The Legislature finds and declares that the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to ***include more total units in a project than would otherwise be allowed by the local zoning ordinance*** in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory

> incentives, rather than additional public subsidy. (Gov. Code sect. 65915(u)(1).
>
> (f) For the purposes of this chapter, "density bonus" means a ***density increase over the otherwise maximum allowable gross residential density***...[2]
>
> (r) This chapter shall be interpreted liberally ***in favor of producing the maximum number of total housing units***.

Since the developer in this case is providing fewer units than allowed by existing zoning, it does not qualify for any of the benefits of the DBL. By providing less housing than existing zoning would allow, the Project is certainly not providing the "maximum number of total housing units," as required by the DBL. In short, there should be no density bonus because there is no increase in density.

Since the Project does not qualify (or seek) any increased density, it should not receive any waivers or concessions from applicable zoning requirements such as height, density or setback. Also, the Project does not qualify for waivers or concessions under the plain language of the statute. The purpose of a "waiver" under the DBL is to waive "any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section." (Gov. Code 65915(e)). Since the developer in this case is not building at the "densities … permitted" by the DBL, and in fact is building at densities lower than allowed by existing zoning, no waivers should be granted at all.

The purpose of concessions is to provide, "identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs." Increasing height and density will increase Project costs, not decrease them. The increased height will allow for ground-floor commercial space, rather than housing. Building this space will be more expensive than not building it, and reserving this space for residential uses (which would also increase the number of residential units). Increase height and density will also allow the construction of larger, more expensive units, which will be more expensive to build than smaller, less expensive units. This is contrary to the DBL's goals of creating more affordable housing. While the Staff Report states that the commercial space and luxury condos will generate revenue to offset lower rents for BMRs, the statute says nothing about increased revenues[3] – only decreased costs. The luxury condos and commercial spaces increase, not decrease, costs. Therefore, the concessions must be denied.

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[2] Although the statutory language allows for no increase in density, it does not allow for less density that allowed by existing zoning, as in this case.

[3] If increased revenue could justify waivers or concessions, then a developer could demand a waiver in zoning prohibitions for casinos, strip-clubs, cannabis dispensaries or other businesses in the name of generating revenue to offset costs of BMRs. This was clearly not the intent of the legislature.

Since the Project does not qualify for treatment under the DBL, it must be rejected in its entirety since the Project as proposed depends on a large number of concessions and waivers.

B. **The 550 Shatto Project Was Not Addressed in the HE EIR and is a Separate Project From the Project Addressed in the HE EIR.**

The City states that it is relying on the HE EIR rather than conducing any CEQA review of this Project at all. This is improper because the HE EIR did not consider this Project. The 550 Shatto Project is an entirely different project than the overall Housing Element for the entire City of Los Angeles that was reviewed in the HE EIR. The HE EIR has no informational value to the proposed Project and is irrelevant to analyzing its environmental impacts. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 952-953.) As the Supreme Court explains, "[a] decision to proceed under CEQA's subsequent review provisions must thus necessarily rest on a determination — whether implicit or explicit — that the ***original environmental document*** retains some informational value." (*Friends of Coll. of San Mateo Gardens*, 1 Cal.5th at 951 (emphasis added).) Only if the original environmental document retains some informational value despite the proposed changes, changes in circumstances or new substantial information does the agency proceed to decide under CEQA's subsequent review provisions whether such changes or substantial new information will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects. (1 Cal.5th at 952.)

Reviewing the HE EIR, the City cannot reasonably claim that it addresses, *i.e.*, provides some informational value regarding the potential environmental impacts of the proposed 550 Shatto Project. A thorough review of the HE EIR confirms that no mention is made of any project at 550 Shatto Place. As a result, none of the EIR's discussion provides any information that would assist the City in determining the potential environmental impacts of the recently proposed Project.

The HE EIR analyzed at a very high level of generalization, the impacts of adding over 420,000 units of housing to the City of Los Angeles. While it analyzed 54 individual projects, 550 Shatto was not among them. (DEIR 4-5). The HE EIR states:

> The Los Angeles Citywide Housing Element 2021-2029 Update, Safety Element Update, and Rezoning Program (hereafter referred to as the "Housing Element Update" or "Project") will apply to the entire geographic area located within the boundaries of the City of Los Angeles (City), which encompasses 467 square miles (HE DEIR 2-1)
>
> The EIR will analyze the construction and operation of 420,327 housing units, which is the full RHNA number of 456,643 housing units minus 36,316 housing

> units that were already approved but have not been occupied at the time environmental review was started for the Proposed Project. (HE DEIR 2-2)

The HE EIR makes clear that it is a programmatic EIR, and that it does not analyze the impacts of specific projects, which review is only possible when specific projects are proposed. The HE EIR states:

> Degree of Specificity. An EIR on an individual development project will be more detailed in the specific effects of the project than will an EIR on the adoption of a long-range planning document, such as a general plan, general plan element, community plan or zoning ordinance because the effects of the individual development can be predicted with greater accuracy. An EIR on a project such as the adoption of a general plan and/or general plan element should focus on the secondary effects that can be expected to follow from the adoption, but need not be as detailed as the analysis on the specific construction project that might follow (CEQA Guidelines Section 15146). (HE DEIR 1-1)
>
> Future Use of the EIR and Subsequent Projects. Approval of the Proposed Project does not constitute a commitment to any specific development project. It is contemplated that future site-specific approvals may be evaluated with consideration of the EIR under CEQA rules for subsequent approvals, where applicable. (Id.)

Thus, the HE EIR makes clear that it is not analyzing the impacts of any specific projects, only the "secondary effects" of the Housing Element for the entire City of Los Angeles. It also makes clear that impacts for specific project can only be analyzed after projects are proposed, in "an EIR on an individual development project [which] will be more detailed in the specific effects of the project." The HE EIR also makes clear that EIRs are expected for "individual development projects."

Throughout the HE EIR, the document makes clear that analysis of project-specific impacts can only be done when particular projects are proposed. For example, the HE EIR states:

> "in the absence of detailed information regarding the specific development proposed it is not possible to preclude the possibility of multiple adjacent development projects that result in a local deterioration of air quality. Cumulative air quality impacts would be significant and unavoidable." (DEIR 4.2-65)
>
> "Additionally, without knowing all site-specific conditions and depending on circumstances, even applying mitigation measures, impacts may still occur. Therefore, impacts related to the Housing Element Update are significant and unavoidable." (DEIR 4.3-50)

Clearly, the HE EIR did not analyze such impacts, and a supplemental EIR is required to analyze these and other impacts at the project-level.

No mention of a project at 550 Shatto is found in the HE EIR. As a result, there is no information of any value in the HE EIR regarding the environmental impacts of the Project. "[T]he subsequent review provisions [PRC § 21166 and 14 Cal. Admin. Code § 15162] can apply only if the project has been subject to initial review; they can have no application if the agency has proposed a new project that has not previously been subject to review." (*Friends of Coll. of San Mateo Gardens*, 1 Cal.5th at 950.) Section 21166 and its accompanying implementing regulation 14 Cal. Admin. Code § 15162 do not apply to the newly proposed Project.

C. The City Must Abide by CEQA's Tiering Requirements and Prepare a New EIR for the Proposed 550 Shatt Project.

The HE EIR cites several tiering provisions that may apply to subsequent projects, including CEQA Guidelines section 15152. Just because tiering is appropriate does not mean that a specific development project is deemed to be the same project as the prior approved area plan or general plan:

> Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for ***a later project pursuant to or consistent with*** the program, plan, policy, or ordinance should limit the EIR or negative declaration on the ***later project*** to effects which:
>
> > (1) Were not examined as significant effects on the environment in the prior EIR; or
> > (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

14 Cal. Admin. Code § § 15152(d) (emphasis added). Thus, the tiering provision expressly treats a later site-specific development project as a separate project from the planning level decisions. Staff's effort to unreasonably expand the project actually considered by the HE EIR renders the tiering provisions of CEQA meaningless. The City cannot and does not try to explain how the City could make the finding required by 14 CCR § 15168(e):

> Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:
> (1) This activity is within the scope of the program approved earlier, and
> (2) The ***program EIR adequately describes the activity for the purposes of CEQA***.

14 CCR § 15168(e) (emphasis added). As described above, the proposed 550 Shatto Project is not within the scope of the program evaluated in the HE EIR and no reasonable person could claim that the HE EIR ***describes the Project*** for purposes of CEQA.

The City ignores that specific development projects which tier from a programmatic plan-level EIR are treated as separate projects by the tiering regulations. (14 Cal. Admin. Code § 15152(b); 14 Cal. Admin. Code § § 15152(d).) The City also ignores that, when tiering from a programmatic EIR, the City must employ the fair argument standard. (14 Cal. Admin. Code §§ 15152(f), 15070.)

Because the project considered by the HE EIR included 420,00 units of housing across the entire City, the City cannot treat the Housing Element as being the same as a subsequent development project consistent with that zoning. The City's efforts to do so are inconsistent with yet another provision of CEQA, Pub. Res. Code §21083.3. *See also* 14 CCR § 15183.3. This provision establishes a partial statutory exemption for certain projects that are consistent with all applicable general plan, specific plan, and zoning designations. (*See Id*.; *Gentry v. Murietta* (1995) 36 Cal.App.4th 1359, 1374.) Under this partial exemption, the project must be "consistent" with the applicable plan, zoning and land use designations. (Pub. Res. Code §21083.3(a), (b); 14 Cal. Code Regs. §15183(a), (d).) This means "that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning." (14 Cal. Code Regs. §15183(i)(2).) Otherwise, further CEQA review is required. (14 Cal. Code Regs. §15183(a).) Additional CEQA review is also required when a proposed project has (1) environmental effects "peculiar to the project or the parcel on which the project would be located," (2) environmental effects that were not analyzed in a prior EIR, (3) potentially significant off-site impacts or cumulative impacts that were not discussed in a prior EIR, or (4) previously identified significant impacts that "substantial new information" shows have a more severe adverse impact than discussed in a prior EIR. (14 Cal. Code Regs. §15183(b).) Since the Project exceeds the height and density allowed by existing zoning, the City cannot rely on Sections 21083.3 or 15083. Because the legislature has provided a specific provision addressing a later project's consistency with a zoning regulation, the City cannot attempt to create its own exemption from whole cloth.

D. Because the Project is Inconsistent with the Development Plan addressed in the HE EIR, the City Cannot Tier the 550 Shatto Project's Environmental Analysis from the HE EIR and Must Prepare a full EIR for the Project.

Under CEQA, a project's environmental review cannot rely on tiering when the later project is inconsistent with the program, plan, policy, or ordinance for which a prior EIR was prepared. Where a project is inconsistent with the project reviewed in the prior EIR it is outside the scope of the prior review. (*See Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. *See also* Kostka & Zischke, Practice Under the California Environmental Quality Act, ¶ 10.7.) In the recent case of *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, the court of appeal held that the City of San Diego

could not avoid CEQA review for a project that exceed the height analyzed in a prior specific plan EIR. The City of Los Angeles is engaged in the same type of CEQA avoidance, and it is equally improper.

The 550 Shatto Project is inconsistent with the development plan addressed in the HE EIR which states:

> ***Future residential developments*** on existing opportunity sites (the majority of the housing development accommodated by the Housing Element) would ***need to comply with existing applicable zoning (i.e., floor area ratio [FAR], building heights and setbacks, transitional height requirements***, and overlay zones), including all of the RCMs identified above, that govern scenic quality, such as hillside development. (HE DEIR 4.1-37)
>
> In addition, developers would be required to comply with applicable regulations, including the RCMs [regulatory compliance measures] stated above, to avoid or minimize potential impacts associated with the visual quality and character of the area/neighborhood. (DEIR 4.1-45)

Thus, the HE EIR clearly assumed that future projects would comply with the General Plan and zoning, and did not analyze the impacts of projects that do not comply with zoning. The proposed Project fails to comply with height, density, setback and many other zoning requirements. As such, the Project is outside the scope of the HE EIR. Thus, not even tiering is allowed to review the 550 Shatto Project as proposed. As a result, the Project must be reviewed as a separate project pursuant to CEQA.

E. Whether Tiering to the HE EIR is Available to the City or a Stand Alone CEQA Document Must be Prepared for the Project, the Record Contains Substantial Evidence of Several Fair Arguments That the Project May Have Significant Environmental Impacts, Requiring the Preparation of an EIR

Even if the City were able to tier off of the HE EIR, subsequent CEQA review is required if there is a fair argument that the Project may have any adverse environmental impacts not analyzed in the HE EIR. (*Sierra Club v. Sonoma, supra*). "Subsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the HE EIR. *Id.* If a later project is outside the scope of the program, as here, then it is treated as a separate project and the Program EIR may not be relied upon in further review. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.) The second consideration is whether the "later activity would have effects that were not examined in the program EIR." (14 CCR §§ 15168(c)(1).) A Program EIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." (*Sierra Nevada Conservation v. County of El Dorado* (hereinafter "*El Dorado*") (2012) 202 Cal.App.4th 1156). If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. (*Id.*)

For these inquiries, the "fair argument test" applies. (*Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (**"**when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., the sufficiency of the evidence to support a fair argument.'")) Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Id.* at 1316 (quotations omitted).)

The Project site is heavily contaminated with methane gas and other toxic chemicals that pose a risk of vapor intrusion. The CPC Staff Report states, "The project is located within a Methane Zone, Special Grading Area, and an Urban Agriculture Incentive Zone." (CPC Staff Rpt. A3). For this reason, the Project requires a soil management plan (SMP) that has not yet been developed. (AEI 6). The Project approvals include Hazardous Mitigation Measure-1:

> MMP HAZ-1: A Site-specific Soil Management Plan (SMP) will be prepared to provide guidance to contractors in the appropriate handling, screening, and management of potentially impacted and/or known impacted soils that may be encountered at the Site during excavation and/or grading activities. Procedures described in the SMP will include training for construction personnel on the identification of suspected impacted soil; procedures for the proper field screening and sample collection of potentially impacted soil; appropriate handling of segregation of potentially impacted and known impacted soil in preparation for proper disposal.

CEQA prohibits deferral of mitigation measures. Mitigation measures must be set forth in a CEQA document so the public can comment on their adequacy of lack thereof. "[M]itigation measure[s] [that do] no more than require a report be prepared and followed" do not provide adequate information for informed decisionmaking under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).) "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.) This is a significant impact that was not analyzed in the HE EIR, and which has not been adequately mitigated.

There is also a fair argument that the Project may have adverse impacts on historic resources. The Project site includes the historic church building "constructed in 1936 for the First English Evangelical Lutheran Church. The 1936 church building on the project site was identified by SurveyLA, the Citywide historic resources survey overseen by the City of Los Angeles' Office of Historic Resources, as appearing to be eligible through survey evaluation for listing in the National Register of Historic Places, and as a local Historic-Cultural Monument (HCM)." (CPC Staff Rpt. A2). This makes the Project subject

to historic resource protections under CEQA, such as the provision that the Project may not be exempted from CEQA review. CEQA Section 21084(e) expressly prohibits reliance on a categorical exemption for "a project that may cause a substantial adverse change in the significance of an historical resource." (Pub. Res. Code § 21084(e).)

The HE EIR admits that it did not analyze historic resource impacts, such as the impacts at issue in this case, and that project-specific analysis would be required. The HE EIR states:

> In addition, changes to a building located near an eligible resource or within a historic district could cause indirect impacts that undermine a resource's historical significance by altering its setting or introducing incompatible architectural elements into a historic district. Large-scale projects of this type may have a greater potential for indirect effect, such as detracting from a neighboring resource's historical setting. (HE DEIR 4.4-43)
>
> However, the relevant ordinance would not prohibit the demolition of a historical resource and does not apply to properties listed in or determined to be eligible for the California Register or local register, or those found eligible in a survey, such as SurveyLA or the CRA/LA Survey, which would also qualify as historical resources pursuant to PRC Section 21804.1 and Section 15064.5(a) CEQA Guidelines. Impacts to historical resources associated with housing development that could occur under the project would be potentially significant. (HE DEIR 4.4-47)
>
> If a development proposes alteration or addition to a historical resource to allow for its continued use, the integrity of the resource could be undermined such that it would no longer convey the historical associations that make it eligible for listing. To reduce such impacts, a resource may be rehabilitated in conformance with the Secretary's Standards to allow for continued or new uses while maintaining features that convey the resource's historical significance. Construction of a project as it relates to rehabilitation of a historical resource shall be monitored for compliance with the Secretary's Standards. (HE DEIR 4.4-48)

Since the Project site contains a building the is "eligible" for historic listing, and the Project would alter the historic building, the Project may have an adverse impact on the historic resource. As such this impacts must be analyzed and mitigated in a CEQA document.

The Project will also have aesthetic impacts not analyzed in the HE EIR. The HE EIR assumed all future residential projects would comply with height, density and setback requirements set forth in zoning and General Plan. As a result, the HE EIR concluded that aesthetic impacts would be less than significant. The HE EIR states:

> In addition, developers would be required to comply with applicable regulations, including the RCMs [regulatory compliance measures] stated above, to avoid or minimize potential impacts associated with the visual quality and character of the area/neighborhood. (HE DEIR 4.1-45)

Since the 550 Shatto Place project will exceed height, density and setbacks required by zoning, it was not analyzed in the HE EIR and it will have significant aesthetic impacts. Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist*. (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177). The General Plan's height, density, and setback requirements are intended to avoid aesthetic impacts. Therefore, the violation of those policies creates a fair argument that the Project will have significant impacts that must be analyzed in CEQA document.

Finally, these impacts are also "peculiar" impacts that preclude reliance on CEQA section 21083.3 and CEQA Guidelines section 15183. Section 15183 of the CEQA Guidelines allows a project to avoid environmental review if it is:

> "**consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified** . . . **except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.**" 14 CCR 15183 (emphasis added).

The intention of this section is to "streamline" CEQA review for projects and avoid the preparation of repetitive documents. While this section is considered an exemption from CEQA, environmental review is still required for various types of impacts, including those "peculiar to the project or parcel on which the project would be located," those which "were not analyzed as significant effects in a prior EIR," "are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR," or "[a]re previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR." Section (f) of the exemption states that a Project's environmental effects are not peculiar to a project if "uniformly applied development policies or standards have been previously adopted" which serve to mitigate environmental impacts, "**unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.**" (Emphasis added). The impacts discussed above related to the Project's height, density, setback violations, hazardous materials, and historic resources are all project-specific impacts requiring review under Section 15183.

F. Alternatively, Assuming That the 550 Shatto Project is the Same Project Addressed by the HE EIR, There are Significant Impacts that were not Analyzed in the HE EIR that Require a Supplemental EIR.

Even assuming that the zoning changes reviewed by the HE EIR somehow equate to reviewing a 550 Shatto Project, numerous significant impacts were not analyzed in the HE EIR and require subsequent CEQA review.

When changes to a project's circumstances or new substantial information comes to light subsequent to the certification of an EIR for a project, the agency must prepare a subsequent or supplemental EIR if the changes are "[s]ubstantial" and require "major revisions" of the previous EIR. *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 943. "[W]hen there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations "turn[ ] on the value of the new information to the still pending decisionmaking process." *Id*., 1 Cal.5th at 951–52. The agency must "decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." *Id*., 1 Cal.5th at 952. Section 21166 and CEQA Guidelines § 15162 "do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects." *Id*., 1 Cal.5th at 958.

Section 15162 provides, in relevant part,

> (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
>
> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
>
> (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
>
> (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

> (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
> (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
>
> (b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a).

14 Cal. Admin. Code § 15162(a)-(b).

As discussed above, the Project will have significant impacts due to contaminated soil and impacts to a historic resource. The impacts were not analyzed in the HE EIR and could not have been analyzed in that document. Since the HE EIR analyzed the impacts of over 400,000 residential units, it could not possibly have analyzed the unique historic and hazardous materials impacts of each and ever one of those 400,000 projects. As such, supplement CEQA review is required to analyze these and other Project impacts at the project-specific level.

The Project will have greater aesthetic impacts than analyzed in the HE EIR because the HE EIR assumed that all future residential projects would comply with height, density and setbacks required by zoning. Since the 550 Shatto Project vastly exceeds those zoning requirements, its aesthetic impacts will be much greater than analyzed in the HE EIR.

The Supreme Court stated that Section 21166 and CEQA Guidelines § 15162 "do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, ***potentially significant environmental effects***." (*Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Cmty. Coll. Dist*., 1 Cal. 5th 937, 958)(emphasis added).) Thus, a potential of significant effects must be addressed in any subsequent EIR or negative declaration. Plaintiffs in that case had argued that CEQA Guidelines § 15162 should be voided in part because its language would create a loophole around CEQA's fair argument standard. The Court put aside this concern by explaining that Section 15162 did not change the application of the fair argument standard to issues that had not previously been addressed in a negative declaration or EIR:

> Plaintiff's argument would have force if the Guidelines did, in fact, create such a loophole. But the substantial evidence test referred to in the Guidelines does not, as plaintiff supposes, refer to substantial evidence that the project, as modified, will necessarily have significant environmental effects. It instead refers to substantial evidence that the proposed modifications will involve "[s]ubstantial changes" that "require major

> revisions of the previous EIR or negative declaration due to the involvement" of new or significantly more severe environmental effects. (CEQA Guidelines, § 15162, subd. (a); see *id.*, § 15384 [defining "substantial evidence"].) The distinction is important here, because whether "major revisions" will be required as a result of project changes necessarily depends on the nature of the original environmental document. A negative declaration is permitted when "there is no substantial evidence that the project or any of its aspects *may* cause a significant effect on the environment" (CEQA Guidelines, § 15063, subd. (b)(2), italics added; see also Pub. Resources Code, §§ 21151, 21064.5), whereas an EIR is required when a project and project alternatives may have significant effects (*id.*, § 21002.1, subd. (a)). When there is a proposal to modify a project originally approved through EIR, no "major revision" to the initial EIR is required if the initial EIR already adequately addresses any additional environmental effects that may be caused by the proposed modification. In contrast, when a project is initially approved by negative declaration, a "major revision" to the initial negative declaration will necessarily be required if the proposed modification *may* produce a significant environmental effect that had not previously been studied. (CEQA Guidelines, § 15162.) Indeed, if the project modification introduces previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR.

Friends of Coll. of San Mateo Gardens, 1 Cal.5th at 957–58. The Court further emphasizes that:

> In short, the substantial evidence standard prescribed by CEQA Guidelines section 15162 requires an agency to prepare an EIR whenever there is substantial evidence that the changes to a project for which a negative declaration was previously approved might have a significant environmental impact not previously considered in connection with the project as originally approved, and courts must enforce that standard. (See *Friends of "B" Street v. City of Hayward*, *supra*, 106 Cal.App.3d at p. 1002, 165 Cal.Rptr. 514.) ***It therefore does not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects***. So understood, CEQA Guidelines section 15162 constitutes a valid gap-filling measure as applied to projects initially approved via negative declaration, including the project at issue in this case.

Friends of Coll. of San Mateo Gardens, 1 Cal.5th 937, 959 (emphasis added). Although the previous environmental document addressed in *Friends of Coll. of San Mateo Gardens* was a negative declaration, the Court's reasoning that, once it is determined that substantial changes must be made to a prior environmental document, the fair argument standard continues to apply to any issues not previously addressed, whether or not the

previous document was an EIR or negative declaration. Indeed, the operative language of section 15162 interpreted by the Supreme Court applies to situations with either a prior EIR or prior negative declaration. *See* CEQA Guidelines § 15162.

G. Subsequent CEQA Review is Required for Impacts not Mitigated to Less Than Significant in the HE EIR

The HE EIR concluded that several of the impacts identified as a result of the Housing Element project were significant and unavoidable. These impacts included air quality, biology, cultural resources, historic resources, hazardous materials, noise, transportation, public services, wildfire, and others. (DEIR 2-8). For most of these impacts, the HE EIR concluded that it was not possible to mitigate the impacts to less than significant levels without more specific information on the unknown future projects that will be proposed. For example, it is impossible to develop a plan to protect historic resources without knowing where projects will be located, whether they will be located at the same location as a historic resource, and the nature of the project and the resources affected. The same is true for hazardous materials. Until a specific project t is proposed, it is impossible to develop a clean-up plan, since it is unknown a priori whether a project site is contaminated, the nature and extent of the contamination, the identify the toxic chemicals involves, the extent of the migration of contaminated plumes of toxic chemicals, etc. Such impacts simply cannot be addressed in the abstract in a document addressing over 420,000 housing units across the massive City of Los Angeles. As such, the impacts were deemed significant and unmitigated.

For example, for Air Quality impacts, the HE EIR stated, that meaningful analysis must occur when specific projects are proposed.

> "in the absence of detailed information regarding the specific development proposed it is not possible to preclude the possibility of multiple adjacent development projects that result in a local deterioration of air quality. Cumulative air quality impacts would be significant and unavoidable." (HE DEIR 4.2-65)

Similarly, for biological impacts, the HE EIR stated, "Additionally, without knowing all site-specific conditions and depending on circumstances, even applying mitigation measures, impacts may still occur. Therefore, impacts related to the Housing Element Update are significant and unavoidable." (DEIR 4.3-50)

In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are "mitigated or avoided." (*Id*. citing CEQA Guidelines §15152(f)). The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since they were not "mitigated or avoided." *Id*. Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or avoided." *Id*. Such a second tier EIR is

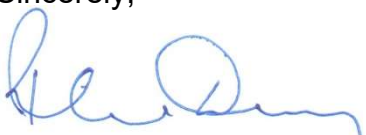
required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, "The requirement of a statement of overriding considerations is central to CEQA's role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support." *Id*. at 124-125.

Since the HE EIR admitted numerous significant, unmitigated impacts, a second tier EIR is now required to determine if mitigation measures can now be imposed to reduce or eliminate those impacts at the project-level. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

CONCLUSION

In light of the above comments, the City should deny all requested concessions and waivers under the Density Bonus Law because the Project has no additional density at all and does not even provide the level of density allowed under existing zoning. In short, there can be no density bonus if there is no additional density. The City should also reject the Planning Staff's decision to rely on the HE EIR since it does not analyze the 550 Shatto Place Projct at all. A relevant and updated EIR for the 550 Shatto Project should be prepared, and that EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



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