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February 6, 2025

VIA ELECTRONIC UPLOAD

City Council
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012

Re: Justification for CEQA Appeal of Case Nos. DIR-2023-4996-TOC-HCA; ENV-2023-4997-CE; 1459 S. Hi Point Street

This firm represents Appellant Elaine Johnson ("Appellant") with regard to the project located at1459 S. Hi Point Street for a five-story residential development with one level of subterranean parking, 19 dwelling units, 24 parking spaces and 22 bicycle parking spaces ("Project"). Ms. Johnson appeals the determination that the Project is exempt from the California Environmental Quality Act ("CEQA"). This letter provides the justifications for the CEQA Appeal filed pursuant to CEQA Guidelines Section 21151(c) and local law. This letter demonstrates that the proposed project is not eligible for a Categorical Exemption under CEQA. As detailed herein, an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) must be prepared for the project, in conformance with the requirements of the CEQA.

I. CEQA STANDARD FOR A CATEGORICAL EXEMPTION

As indicated in the City Planning Commission's Letter of Determination dated January 29, 2025, rather than prepare and EIR or MND for the project, the City is improperly processing the project using an Exemption from CEQA pursuant to CEQA Guidelines, Section 15332, Article 19 (Class 32 – In-fill Development Projects), and improperly claiming that 'there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.' This letter provides substantial evidence

demonstrating that the project is not eligible for a Class 32 – Infill Development Exemption. As detailed in CEQA Guidelines Section 15332, to use a Class 32 Exemption, a project must meet the following conditions:

> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
> (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
> (c) The project site has no value as habitat for endangered, rare or threatened species.
> (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
> (e) The site can be adequately served by all required utilities and public services.
> Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

II. FAILURE TO MEET GUIDELINES SECTION 15332(a) DUE TO NONCOMPLIANCE WITH ZONING

a. Project Not Located Within ½ Mile of Major Transit Stop

The Project violates LAMC Section 12.21-A.31(b) because it requires Tier 3 Incentives which are inconsistent with the TOC Guidelines. And because the Project violates LAMC Section 12.21-A.31(b), it is necessarily ineligible for a Class 32 categorical exemption (which requires a project to be "consistent with all applicable zoning regulations.")

The Project relies on the intersection of two alleged rapid bus routes to qualify as a "Major Transit Route" for purposes of the TOC Guidelines. However, Line 217 (the bus route running on Fairfax Avenue) does not qualify as a "major" bus route.

A 'major transit stop' is defined in Public Resources Code § 21064.3. (§65589.5(h)(6)(D)(V)(ii)(III).) Public Resources Code § 21064.3 in effect throughout 2024[1] provides:

"Major transit stop" means a site containing any of the following:

[1] § 21064.3 was amended by AB 2553 to change the 15-minute frequency standard, but continues to require an intersection of two or more "major" bus routes. The legislation has no effect on Appellant's arguments.

> (a) An existing rail or bus rapid transit station.
> (b) A ferry terminal served by either a bus or rail transit service.
> (c) The intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. (§ 21064.3, emphasis added.)

There is no dispute that the Project Site does not meet the criteria in subdivisions (a) or (b). Moreover, the Project Site is not located within one-half mile walking distance of the intersection of two or more "major" bus routes because NextGen Line 217 does not qualify as a "major" bus route. Under § 21064.3, each qualifying bus route must be a "major" bus route. The Legislature intended the word "major" to differentiate qualifying bus routes from other bus routes which happen to have frequent service, but do not have other characteristics qualifying it as a "major bus route." (CCP, § 1858 [statutory construction must not omit what has been inserted and must give effect to all terms].) According to Dictionary.com, the word "major" means "greater in size, extent or importance."

The Los Angeles County Metropolitan Transportation Authority ("Metro") has created a scheme of bus routes that are greater in size, extent or importance than other bus routes: Rapid Routes. The City's Transit Oriented Communities ("TOC") Guidelines provide the following definition of a Rapid Bus:

> Rapid Bus is a higher quality bus service that may include several key attributes, including dedicated bus lanes, branded vehicles and stations, high frequency, limited stops at major intersections, intelligent transportation systems, and possible off-board fare collection and/or all door boarding. It includes, but is not limited to, Metro Bus Rapid Transit lines, Metro Rapid 700 lines, Metro Orange and Silver Lines, Big Blue Rapid lines and the Rapid 6 Culver City bus.

NextGen Line 217 lacks attributes that would make it greater in size, extent or importance than other bus routes. NextGen Line 217 lacks the features essential to differentiate it from local bus service. First, NextGen Line 217 lacks a dedicated bus lane along any portion of its route. "A dedicated bus lane is a significant factor in increasing bus speed along a route. Its absence means that during peak hours, NextGen Line 217 travels more slowly than a bus with a dedicated bus lane."

Second, "NextGen Line 217 includes average stop spacing that is virtually identical to the spacing of the pre-NextGen Line 217 (0.19 miles vs 0.22 miles in the northbound direction and 0.20 vs 0.22 miles in the southbound direction). In contrast, Meto Rapid 700 line was characterized by limited stops and only at major intersections. Limiting stops is another factor in

increasing bus speed along a route. The high number of stops along NextGen Line 217 also contributes to slower average speeds than the previous Rapid 780 line."

Third, "as of June 2024, NextGen Line 217 does not allow off-board fare payment or rear-door boarding to expedite passenger loading. Again, this deficiency, when combined with more frequent stops, also results in slower average speeds."

Finally, "NextGen Line 217 does not feature branding or stations that distinguish it from any of Metro's local lines. There are no stations for NextGen Line 217 and its stops consist of stand-alone pole signage or a standard bus shelter used on Metro's other local lines. This branding is significant because branding is an important component of increasing public awareness, and thus usage, of high-quality bus service."

Considering the absence of these essential features, there is nothing to distinguish NextGen Line 217 from any of Metro's other local lines.

The rules of statutory construction require assigning meaning to the word "major" in the phrase "major transit stop." (CCP, § 1858.) Any other interpretation would impermissibly read the word "major" out of the statute and reduce it to surplusage. This analysis demonstrates that NextGen Line 217 is indistinguishable from a Metro Local Line and there is nothing "greater in size, extent or importance" compared to Metro Local Lines such that it is a "major bus route." The only criterion satisfied by NextGen Line 217 is that it features frequency of service less than 15 or 20 minutes. However, the Legislature presumably inserted the word "major" into the statute to indicate that frequency of service is not sufficient to qualify a bus route as a "major route." In order to qualify as a "major" bus route under the Public Resources Code, a bus route must have other features that distinguish it from standard local bus service. These features are lacking for NextGen Line 217. Thus, NextGen Line 217 is not a "major bus route" within the meaning of § 21064.3 and does not fall within the fee exception in § 65589.5, subdivision (p).

The Project violates LAMC Section 12.21-A.31(b) because it requires Tier 3 Incentives which are inconsistent with the TOC Guidelines. And because the Project violates LAMC Section 12.21-A.31(b), it is necessarily ineligible for the Class 32 categorical exemption (which requires a project to be "consistent with all applicable zoning regulations.")

b. The Project is Not Consistent with the Q Conditions

The applicable "Q" Condition established by Ordinance No. 168,193 requires a minimum of 100 square feet of "usable open space" for each dwelling unit and lays out clear criteria for what constitutes "usable open space." The Project's proposed open space does not meet these criteria. The Project requires 1,900 square feet of open space in compliance with the "Q" Conditions. This analysis assumes a 25 percent reduction in required open space, yielding 1,425

square feet of open space in compliance with the "Q" Conditions, although the Project is not eligible for this reduction.

- None of the private open space located above the first habitable level qualifies as private open space under the "Q" Conditions, which provides that only patios and yards located "at ground level or the first habitable level" may qualify as private open space.

- None of the private patios at ground level qualify as private open space under the "Q" Conditions, which require that patios shall be "enclosed by a solid screen material at least four feet in height" and measure at least 15 feet in width. (One patio exceeds 15 feet in width, but it is located within the front yard and therefore cannot qualify as open space under the "Q" Conditions.)

- The "Q" Conditions require that open space be "usable" and that common open space "shall incorporate recreational amenities[.]" The Project Plans depict planters reaching approximately four feet in height in the rear yard for much of its areas, rendering this area unusable—especially considering that the depth of the planters far exceeds an ordinary arms' length, putting it out of reach and making it literally inaccessible and unusable to its purported beneficiaries. Because these planters cannot constitute usable open space, the entire rear yard fails to meet the 20-foot

- The 592 square-foot "roof garden" does not qualify as open space under the "Q" Conditions for several reasons. First, it is located on a rooftop and therefore cannot qualify as open space under the "Q" Conditions which provide that "rooftops shall not be included as open space." Second, the width of the "roof garden" is less than 15 feet measured east to west because the 15-foot measurement on the plans includes the roof perimeter wall, which will necessarily not be usable as open space. Third, the average width of the "roof garden" is less than 20 feet after accounting for planters and walls which render large portions of the area unusable for open space purposes.

- The "Q" Conditions require that common open space shall provide one 24-inch box tree per three dwelling units, and that those trees shall be planted within the open space. Here, the Project requires six (6) 24-inch box trees within the common open space because it proposes 19 dwelling units. The Project Plans do not depict any box trees in any of the common open space.

- The "Q" Conditions require that 50 percent of common open space shall be planted with ground cover, requiring at least 712.5 square feet of planted ground cover within the common open space. The Project Plans depict 394 (364 + 30) square feet in the

> rear yard. To provide the remaining required planted ground cover in the "roof garden," 318 square feet would be required. The Project Plans do not calculate the planted ground cover on the "roof garden," although it appears to be approximately three to five feet deep based on the scale of the drawings, providing a maximum of 150 square feet.

Appellant commissioned an expert report from a licensed architect, Francis Offenhauser, who confirmed that the plans demonstrate that the Project is not compliant with the Q Conditions. See **Exhibit A.** As such, the Project is not consistent with all applicable zoning regulations and is therefore ineligible for the Class 32 categorical exemption.

Staff argued at the hearing that adding a "catch-all" condition requiring compliance with the Q Conditions would resolve these errors. The following Condition was added: "18. **Q Condition**. The project shall be consistent with the provisions of Ordinance 168,193." However, merely adding a condition does not make the Project compliant with local zoning law. The question is whether or not substantial evidence supports the City's determination that the Project is consistent with all applicable zoning regulations. And that analysis is undertaken looking at the evidence that exists currently – not at some later time. The City cannot reasonably dispute the current plans demonstrate that the Project is not consistent with the Q Conditions.

III. CONCLUSION

I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

Jamie T. Hall

Exhibit A

Q Condition Conformance Review

To: Channel Law Group, LLP
From: Frances Offenhauser, Architectural Consultant
Date: January 6, 2025

Subject: 1459 Hi Point St.; DIR #2023-4996-TOC-HCA including -1A

The Architectural Consultant was tasked by Channel Law Group, LLP ("CLG") with reviewing the project plans for 1459 Hi Point St, Los Angeles, to evaluate whether the plans approved by the City Planning Department and attached to their Appeal Recommendation Report dated for Jan 9, 2025 comply with the requirements contained in the "Q Conditions" that regulate this property.

Regulations including TOC: The proposed development is a multifamily 5 story apartment building over a single level below-grade garage. It received a Director's Determination approving a 70% increase in residential unit density, a 50% increase in Floor Area Ratio, a 25% reduction in required open space, and other incentives in exchange for 2 units of affordable housing under the City of Los Angeles "Transit Oriented Communities" bonus incentive program. The only "incentive" changing open space requirements is the 25% reduction in total quantity.

The "Q Conditions" are found in Ord 168,193, effective 10-02-1992. Per the Los Angeles City Planning Department website, the Q Prefix on a Los Angeles Zone

> "may impose either temporary or permanent development restrictions on a property. These restrictions are uniquely applied to an individual or group of properties, and can further limit the types of allowed uses that would otherwise be permitted within the Zone Class."

These Q Conditions govern this site's development in addition to other regulations, and all regulations must be met: Zoning for the property (R3-1-O) which specifies Residential Use and Unit Count, Height District including FAR; LAMC Zoning Code definitions and general regulations, including LAMC Sec: 12.21.G (requirements for multifamily open space); and in this case the specific allowances and incentives requested by the Applicant for TOC density bonus program incentives.

"Approved Plans" Inconsistent: Three sets of project plans are attached as "Exhibit D-Approved Plans" the Appeal Recommendation Report. The 3 sets of drawings are: Architectural (undated, displaying no Architect license, titled "New 20 Unit Apartment" "Drexel Construction.com"); Landscape (SLD) (dated 11-08-24 from Savage Landscape Design, Michael Savage Lic # 4,397); and illustrative renderings. A 4th set of drawings was utilized for a Building and Safety PZA review, which is not a part of the Appeal Recommendation report or this Review.

The 3 sets of plans are inconsistent between the plan sets, and fail to match the quantities in the staff written Recommendation Report. Those inconsistencies are central and critical-- because they occur in the areas which must be measured and calculated to substantiate City Planning's Approval, and in this case specifically affect open space and landscape zoning compliance (at the

"rear yard" and the 4th floor roof/"5th floor garden"). See **Attachment A** for the inconsistency in project plans.

The inconsistency with the quantities in the Staff Report reflects a fundamental error. DIR reports and accompanying plans are used by the Department of Building and Safety (the enforcement arm of the Planning Department) as the basis for reviewing and approving building permit plans. If the quantities are erroneous, and in this case the stated amounts in the text fail to match the amounts on plans in Exhibit D and in zoning, the enforcing Agency (Building and Safety) cannot perform.

Findings: The Consultant finds that the project's plans fail to show conformance with the project Q Conditions for "usable open space". None of the approved plans actually address or quantify "usable open space"

a. The Architectural and Landscape plans each present "open space" calculations which do not match the other; the "Approved" plans don't match each other, and do not match the "Approval" text. This is noteworthy, and affects the rear yard and 4th floor rooftop.
b. The case is processed for an approved 19 units. The amount of open space required by the Q Conditions is 100 sf X the number of residential units. The Approved plans show 20 units, and the Recommendation Report cites 19 units and calculates 20 units.
c. The requirements for open space and landscaping in the Approved Drawings, DIR Approval, and Recommendation Report fail to evaluate or substantiate conformance with Q Conditions which apply to this property. (They may refer to a different code requirement for which the Staff Report cites 2,492 SF of open space required). Q Conditions require 1,495 SF of usable open space IF the number of units is 19.
d. A close reading of the project drawings shows that none of the landscaped or hardscape area qualifies as "usable" – e.g. meeting the definition of "usable open space" as stated in the Q Conditions. Thus 1,495 SF of qualifying usable open space is required and 0 SF is provided; 747.5 SF of usable landscaped open space is required, and 0 SF is provided.
e. The Appeal Recommendation Report fails to address the specific appeal points by Channel Law regarding open space calculations which are details mandated in the Q Conditions—that the totals and dimensional requirements were not met. TOC does not relieve the project from the Q Conditions- it solely reduces the total by 25%.

SECTION 1: Conformance of project plans with Q Conditions:

The Q Conditions which are pertinent to this discussion are cited verbatim below in quotation marks.

A. OPEN SPACE Q CONDITIONS CALCULATIONS IN EXHIBIT D

The Q Conditions regulate "usable open space". In the ordinance the dimensions and qualitative requirements for usable open space are clearly specified. The amount which must be "common" in this case in this case is the same as the total, because none of the private open space provided qualifies as "private" under the Q conditions.

1. Q Conditions base "total" amount of "usable open space" requirement on number of units

"10. Open Space: A minimum of 100 square feet of usable open space shall be provided for each dwelling unit. Parking areas, driveways, front yard setback areas and rooftops

shall not be included as open space. To be considered as "usable open space" the project shall meet the following criteria: (the further criteria are shown in # 2-4 below)

Finding: Neither set of Approved Plans provides a "usable open space" calculation. Each plan set does have its own "open space" calculation, without showing its source Code derivation. This failure to provide the correct calculations leads to totals that are not approvable. The inclusion of 592 sf of "rooftop" is not permitted in the Q Conditions. See **Attachment B** and **C**

	Calculated For CLG	*Calculated by Drexel in Approved Plans*	*Calculated by SLD in Approved Plans*
Required: **"**Total Usable Open Space"	**1,495 sf** *19 DU x 100 sf//unit= 1900 sf x .75 (reflects 25% reduction in total per TOC)*	**INCORRECT CALCULATION: 2,156.25 SF (**8x175+11x125+ 1x100=2,875 sf x.75)	**Fails to provide**
Provided: "Total Usable Open Space"	**See #2 below**	**INCORRECT CALCULATION 2,492 SF** labeled as "open space provided" As noted below, this includes non-compliant private balconies, no-compliant rooftop (562 SF), and substandard dimension spaces. (see #2 below)	**INCORRECT CALCULATION: 749 SF** labeled as "total common open space area", with NO reference to usable

2. <u>Q Conditions state qualitative and dimensional requirements for open space to qualify as "usable":</u>

"b. Common Usable Open Space: Each common usable open space area shall have a total area of at least 400 square feet and shall have an average width of 20 feet with no width less than 15 feet at any point. Recreation rooms at least 600 square feet in area may qualify as common open space, but shall not exceed more than 25 percent of total open space required.

Common open space areas shall incorporate recreational amenities such as swimming pools, spas, picnic tables, benches, tot lots, ballcourts, barbecue areas, sitting areas, etc. to the satisfaction of the Department of City Planning. (Note: amenities that meet the Department of Recreation and Parks specifications pursuant to Section 17.12F LAMC may be credited against fees required under Section 12.33 of the LAMC) •"

Findings: The approved project plans do not demonstrate that quantities and dimensions required are met. See **Attachments B** and **C**

While a 400 sf common open space minimum may appear to be met in the rear yard, its dimensions are non-compliant-

- while the "average width" of 20' is dimensioned in the rear yard area on the plans, the "floor area" or "area" is less. The thickness of the outer walls reduced the dimension below 20'. Further, building sections show that this area is broken up by 4' high planter walls, making it non-continuous and not "usable". To make the areas atop the 4' planter walls usable, they would need to be accessible to people via stairs, and safe for those people with guardrails-- as the height exceeds 30" drop.
- The minimum width of the usable are at 15' is not achieved in either the rear yard or the rooftop—if any argument is made to include the rooftop.

	For CLG	*Stated by Drexel in Approved Plan*	*Stated by SLD in Approved Plans*
Required: Min 400 SF usable and having 20' av width, 15' min dim, having usable recreational amenities	**1,495 sf**	**See #1 above** Dimension on plan showing 20' is to outside of exterior wall, not a clear floor area, this the average falls below 20"	**Fails to provide**
Provided:	**ACTUAL: Zero**	**INCORRECT CALCULATION: 950 sf** Rear Yard **950** sf: 400 sf min usable space in rear yard provided but not meeting 20' average width, and 15' min dimension	**749 SF**

3. <u>Q Conditions state 50% minimum of "Common Usable Open Space" must be planted</u>

"A minimum of 50 percent of the common usable open space areas shall be planted in ground cover *1* shrubs or trees and shall include at least one 24-inch box tree for every three dwelling units (Trees shall be planted within open space areas). An automatic irrigation system shall be provided for all required landscaped areas. Landscaped areas located on top of a parking garage or deck shall be contained within permanent planters at least 30 inches in depth (12 inches for lawn/ground cover) and properly drained."

<u>Finding</u>: A minimum of 747.5 sf the total "common usable open space" is required to be landscaped/planted, all having ground cover, plus 6 trees on site. These quantities are not met.

- The planted areas are in <u>raised</u> planters, meaning they are not accessible and usable. If there is an argument that they might be usable for gardening, they fall short of the 747.5 SF required quantity, and 50% of the 570 SF is not reachable.
- Raised planters vs usable planting areas is a critical architectural distinction. As noted in #2 above, stairs and guardrails would be required to safely access these areas. In 1992 "usable" planting areas on parking structure rooftops were called "planted" or "vegetated" roofs, and had a full soils covering across the entire roof to make the areas "usable" for strolling or picnicking. Today these are known as "green roofs". Their drainage is carefully controlled—hence even in 1992 in these Q Conditions the drainage

was regulated to contain mud flow and still prevent root rot. Planters raised 4' above a recreational deck do not qualify as "usable" space.

- Further, the landscape plans show 0 (zero) 24" box trees (see LP-1) **Attachment D**

	For CLG	*Stated Drexel in Approved Plan*	*Stated SLD in Approved Plans*
Required: Total Common Usable Open Space Landscaped	**747.5 sf all with ground cover** *Min 50% x 1,495 sf* **6 trees:** 1 tree/dwelling unit	**Fails to provide**	**INCORRECT CALCULATION 187.25 SF** (25% x 749 SF) (stated as "Total Common Open Space Landscape Area")
Provided: Total Common Usable Open Space Landscaped	**0 Trees- Ground cover- 0 SF** 570 SF ground cover--394 sf rear yard + 176_roof planters- but these do not qualify as "usable"	**ICORRECT CALCULATION 2,606 "**Total Landscaped Area" **394 SF** in rear yard Mickey on roof	**INCORRECT CALCULATION 385 SF stated by SLD** Trees shown are street trees- not allowed as a part of open space calculation

4. <u>This project does not have any qualifying "private open space" as defined in the Q Conditions</u>

"a. Private Open Space: Patios and yards (located at ground level or the first habitable room level) which are part of a single dwelling unit and are enclosed by solid screen material at least four feet in height may be included as usable open space provided said areas have a horizontal dimension of at least 15 feet in width."

<u>Finding:</u> None of the private patios depicted on the drawings at the ground level or first habitable floor have a minimum dimension of 15'. Thus, all usable open space which is required must be "common." (See **Attachment B**)

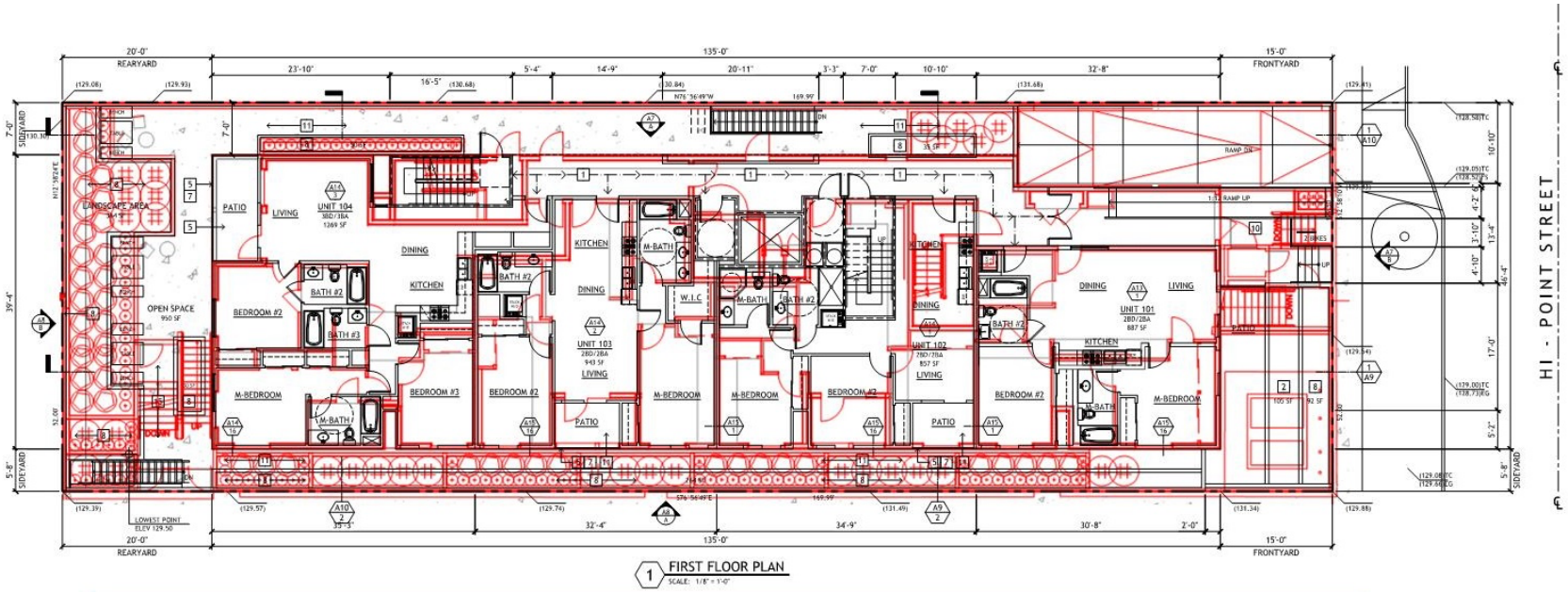
Respectfully Submitted:

Frances Offenhauser, AIA, Licensed Architect #C1186

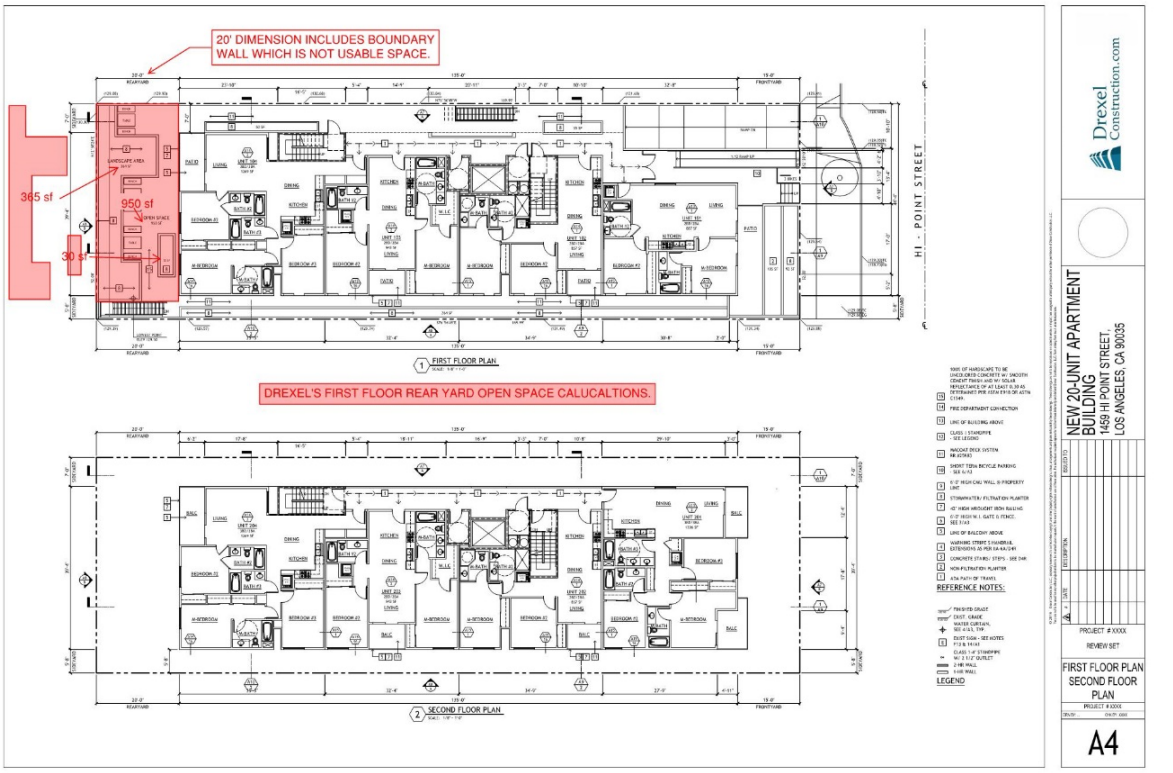
Encls.

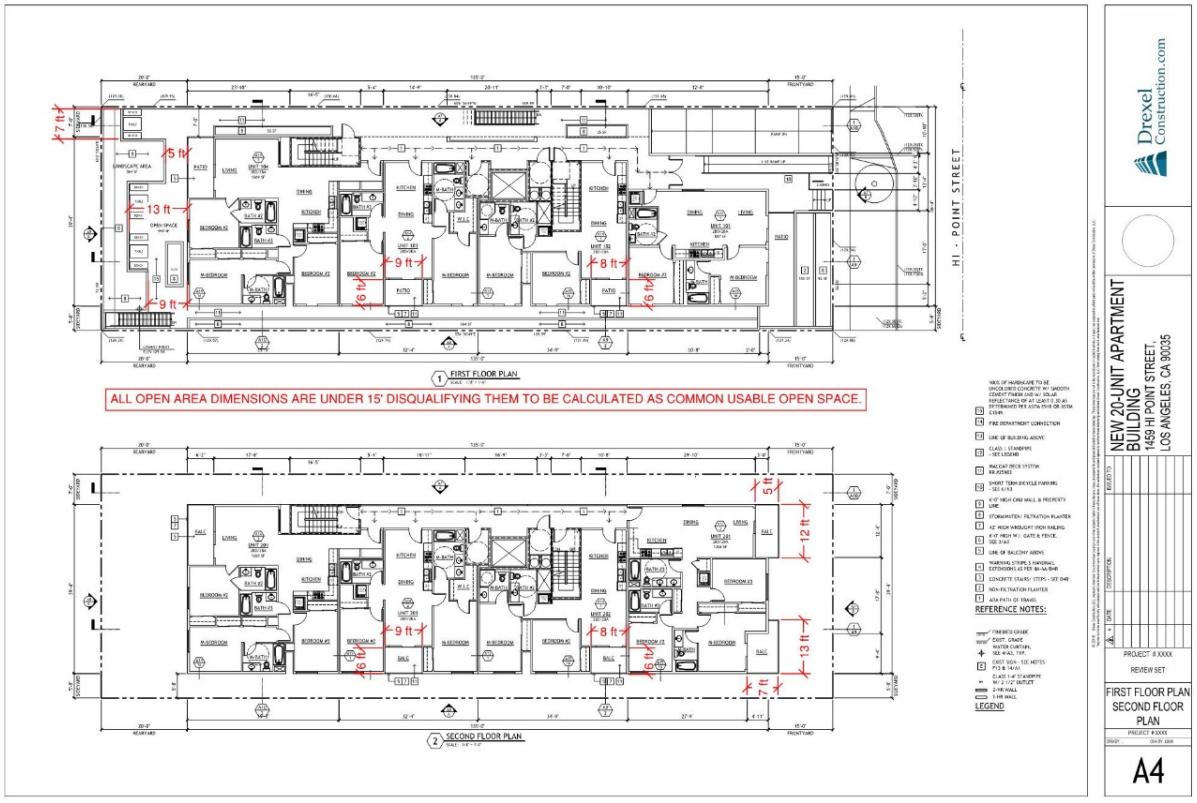
ATTACHMENT A

Inconsistency in plans Approved in Director Determination. Sheet A4 of Drexel Construction

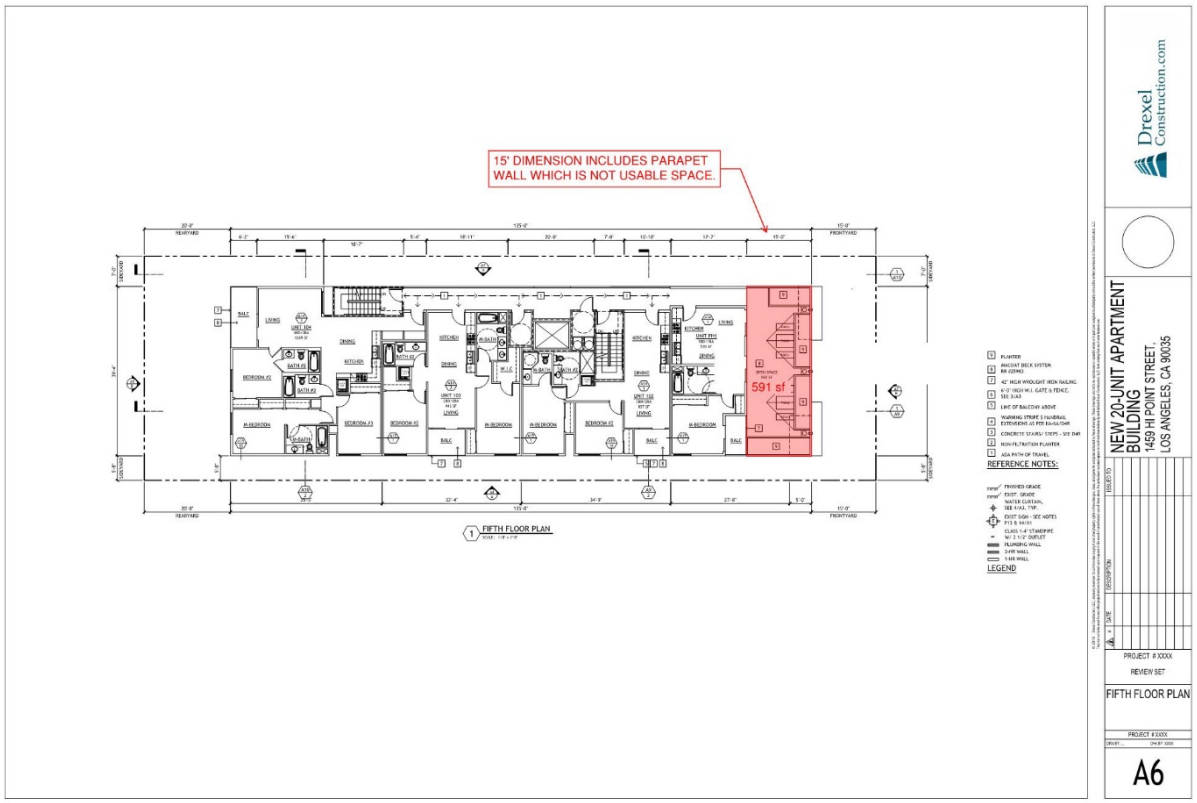


ATTACHMENT B

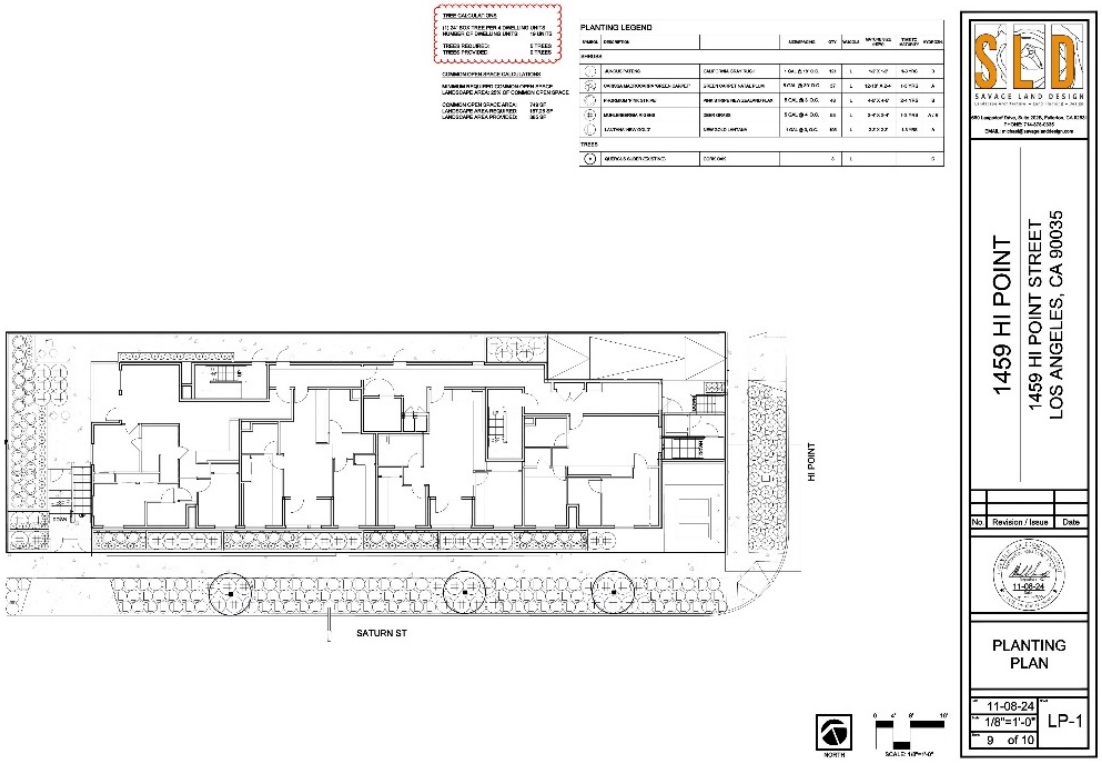




ATTACHMENT C



ATTACHMENT D



ATTACHMENT F

5th floor open space not shown;
architectural drawings omit aspects required for landscape approval