

# Channel Law Group, LLP

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8383 Wilshire Blvd.  
Suite 750  
Beverly Hills, CA 90211

Phone: (310) 347-0050  
Fax: (323) 723-3960  
[www.channellawgroup.com](http://www.channellawgroup.com)

JULIAN K. QUATTLEBAUM, III  
JAMIE T. HALL \*  
CHARLES J. McLURKIN  
GREGORY T. WITTMANN

Writer's Direct Line: (310) 982-1760  
[jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com)

\*ALSO Admitted in Texas

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**VIA EMAIL and**  
**ELECTRONIC UPLOAD**

City Council  
PLUM Committee  
200 N. Spring St., Room 395  
Los Angeles, CA 90012  
[clerk.plumcommittee@lacity.org](mailto:clerk.plumcommittee@lacity.org)

**Re: Supplemental Justifications for CEQA Appeal of Case No. ZA-2022-2788-CU-SPP-SPPA-SPR-WDI, Conditional Use; Project Permit Compliance; Project Permit Adjustment; Site Plan Review; Waiver of Improvement and Dedication, 2282 Ventura Boulevard; Council File No. 24-0794**

Dear City Council and PLUM Committee:

This firm represents West Valley Alliance for an Optimal Living (“Association” or “Appellant”). The Association is an organization dedicated to the protection of both the community and the environment in the West Valley. This letter outlines supplemental justifications for the CEQA Appeal for the purposes of the In-And-Out Project at 22822 Ventura Boulevard (“Project”), in addition to our previously presented appeal justifications, which we incorporate by reference herein. Moreover, this letter specifically responds to Applicant’s August 16, 2024 “Response to CEQA Appeal” (“8/16 Response”), the City’s July 2, 2024 Categorical Class 32 Justification (“7/2 Justification”), as well as the Zoning Administrator’s signed and August 12, 2024 Staff Recommendation to Deny the Appeal (“8/12 Recommendation”).

The Association brings this appeal because the Association and its members have a direct and substantial beneficial interest in ensuring that City complies with laws relating to environmental protection and orderly growth. Further, the Association and its members are adversely affected by the City’s failure to comply with CEQA, State Planning and Zoning Law and local laws in approving the Project. The Association and its members’ aesthetic, safety, and environmental interests are directly and adversely affected by the City’s approval of the Project.

Despite the fact that the Project seeks numerous deviations and variances from local zoning regulations to develop a 3,426 square feet (“sf”) fast-food restaurant on a 39,876 sf lot without showing of any practical hardship to warrant such deviations – is proposed, in part, in P (parking) zone which allows only parking uses; includes a drive-through lanes and queuing as close as 15 feet away from residential uses; proposes far longer operation hours to 1:30 am; proposes its drive-through lane to exit directly into the busy Ventura Boulevard and through pedestrian sidewalk and bicycle lane; and is sited next to and across from multi-family residential uses – the Zoning Administrator approved the Project and its numerous requested entitlements and exempted it from CEQA based on Class 32 and Class 11 Categorical Exemptions.

The approvals covered with Class 32 and Class 11 exemptions were:<sup>1</sup>

- A Conditional Use to permit a drive-through fast-food establishment in a C4 zoned property including the associated drive-through vehicular queuing lanes to be located in the P zone, which adjoins, is across the street from, or separated only by any alley from, any portion of a lot or lots in a residential zone or use; and,
- Pursuant to LAMC Section 12.24 W.27, a Conditional Use to permit a drive-through fast-food establishment within an Commercial Corner Development with hours of operation exceeding 7:00 a.m. to 11 :00 p.m., daily; to permit 20 percent of transparency fronting Ventura Boulevard, 9.5 percent of transparency fronting Rigoletto Street, and 2 percent of transparency fronting Del Valle Street in lieu of the required 50 percent facade transparency fronting adjacent streets pursuant to LAMC Section 12.22A23; and,
- Pursuant to LAMC Section 11.5.7 C, a Project Permit Compliance Review to permit the construction of a drive-through fast-food establishment that includes two (2) Wall signs, refacing of an existing Pole sign, and directional signs on a 39,876 square-foot lot in the Ventura/Cahuenga Boulevard Corridor Specific Plan area; and,
- Pursuant to LAMC Section 11.5.7 E, a Project Permit Adjustment to permit an 8.5-foot landscape buffer in lieu of the otherwise required 10-feet by Section 7.D.1.(c) of the Ventura/Cahuenga Boulevard Corridor Specific Plan; and,
- Pursuant to LAMC Section 16.05, a Site Plan Review for the construction of a building and a change of use that requires a building permit and results in a net increase in average daily vehicle trips as determined by the Los Angeles Department of Transportation (LADOT) ; and,

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<sup>1</sup> Notice of Exemption available at:  
<https://planning.lacity.gov/pdiscaseinfo/document/MTI3NzE0/fe3b456d-e5a5-4f0e-9fa7-879f1ff43502/pdd>

- Pursuant to LAMC Section 12.37 I, a Waiver of Dedication and Improvement of 5-foot public sidewalk for the east side of Rigoletto Street, which adjoins the project site.

The multitude of approvals and deviations for the Project, along with the Zoning Administrator’s Letter of Decision<sup>2</sup> of June 4, 2024 (“LOD”), is evidence that the invoked CEQA exemptions cannot be applied to the Project, as a matter of law. An Initial Study must be prepared to determine the appropriate CEQA clearance for the Project. Alternatively, an EIR must be prepared to disclose and mitigate the Project’s significant impacts under CEQA, since there is a fair argument that the Project may have traffic, air, greenhouse gas (GHG) emissions, safety, noise, light/glare, land use impacts, as well as adverse impacts on human beings.

## **I. LEGAL STANDARDS APPLICABLE TO CATEGORICAL EXEMPTIONS**

### **A. Whether the Project Fits the Scope of the Categorical Exemption Is a Legal Determination, to Which No Deference Is Owed.**

The City and the Applicant – along with the Applicant’s experts – have, to date, misstated the applicable legal standards for CEQA’s categorical exemptions and the level of deference owed to the agency’s findings. And it is based on such legally erroneous standards and flawed factual assumptions or omissions that the City approved the exemptions. And yet, “[a]n agency’s application of an erroneous legal standard in making a CEQA determination constitutes a failure to proceed as required by law.” (*City of San Diego v. Board of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 956.)

First, categorical exemptions are reserved for classes of projects determined to not have a significant environmental impact and are therefore narrowly construed as to afford the greatest protection for the environment. (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.) The scope of a categorical exemption from CEQA is determined as a **matter of law** by the Court and no deference is owed to an agency’s interpretation of the scope of the categorical exemption. (*Los Angeles Dept. of Water & Power v. Cnty. of Inyo* (2021) 67 Cal.App.5th 1018, 1040-41 (“*LADWP*”).) Unlike the noted legal standard, the City (and the Applicant) have treated the categorical exemption determinations as being a solely *factual* determination subject to a highly deferential standard of review in favor of the City. Not so.

Second, while agencies are allowed to use multiple exemptions for a Project, as the City has done, agencies must still make sure the exemptions cover the entire project. (*California Farm Bureau Fed. v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 191 (“*California Farm*”).) As related, CEQA’s piecemealing prohibition applies to categorical exemptions as well and requires that the project – and all of its parts – be adequately disclosed and reviewed for impacts under CEQA as a “whole of an action.” (CEQA Guidelines § 15378(a)&(c).) Unlike the noted standard, the City and the Applicant have not reviewed the entire Project and violated CEQA’s piecemealing prohibition, as detailed further below.

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<sup>2</sup> The Letter of Decision is available at:  
<https://planning.lacity.gov/pdiscaseinfo/search/encoded/MjU2OTA40>

Third and critically, whether a Project is categorically exempt from CEQA is decided *before* mitigation measures are applied:

“Only those projects having no significant effect on the environment are categorically exempt from CEQA review. (Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a).) If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200 [61 Cal. Rptr. 2d 447] (*Azusa*).) Mitigation measures may support a negative declaration but not a categorical exemption. (*Ibid.*)” (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 (“*SPAWN*”).)

“‘The determination of whether an activity is exempt from CEQA is made as a part of the preliminary review process. That process is described in Guidelines section 15060, which makes it clear that the applicability of an exemption must be made *before* the agency begins its formal environmental evaluation of the project.’ (*City of Pasadena v. State of California*, *supra*, 14 Cal.App.4th at p. 820, 17 Cal.Rptr.2d 766, italics in original, fn. omitted.)” (*Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1265 (Emphasis in original).)

Unlike the above-noted well-settled law prohibiting consideration of mitigation measures in CEQA exemption analysis, the City considered and contemplated mitigation before deciding that exemptions apply.

**B. The City Should Not Uncritically Rely on Project Proponent’s Studies and Should Scrupulously Ensure the Categorical Exemption Applies.**

While the Applicant assures the City, including in its 8/16 Response that Appellant has a “heavy burden” to overcome the deferential substantial evidence standard on factual determinations of the City or Zoning Administrator (*id.* at p. 3), that burden applies if the City has successfully shown the exemptions apply as a matter of law, which it does not.

Moreover, the City should not uncritically rely on every study or expert opinion presented by anyone and particularly the Project proponent or applicant. This is true even with CEQA’s in-depth studies like environmental impact reports (“EIR”), let alone with a CEQA exemption at issue here:

“[T]he reviewing court is not to “**uncritically** rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.” (*Id.* at p. 409, fn. 12, 253 Cal.Rptr. 426, 764 P.2d 278.) “Our role here, as a reviewing court, is not to decide whether the board acted wisely or unwisely, but simply to **determine** whether the EIR contained sufficient

information about a proposed project, the site and surrounding area and the projected environmental impacts arising as a result of the proposed project or activity **to allow** for an **informed** decision.... [Citation.]” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, *supra*, 27 Cal.App.4th at p. 718, 32 Cal.Rptr.2d 704.)”

(*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1355–1356 (epmh. added).)

Further, each one of the categorical exemptions invoked by the City has its elements that the City had to ensure were met. Those elements cannot be met by merely *ipse dixit*<sup>3</sup> claims by the Applicant or the Applicant’s experts. Whether elements or requirements of CEQA categorical exemptions are met does not require the City to uncritically rely on any and all expert opinions.

Notably, CEQA defines substantial evidence (to support findings) as not just an expert opinion, but rather an expert opinion based on facts. (CEQA Guidelines § 15384(a)-(b) [“... Argument, speculation, unsubstantiated opinion or narrative, **evidence** which is **clearly erroneous** or **inaccurate**, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment **does not** constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and **expert opinion** supported by **facts**.” (Emph. added)].)

Lastly, omissions in CEQA analysis are not reviewed under the substantial evidence, but under the independent *de novo* standard, as a procedural non-compliance or lack of information. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392 [“the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.”])

In light of the above-noted legal principles, the City improperly concluded that an Exemption from CEQA pursuant to CEQA Guidelines, Section 15332, Article 19 (Class 32 – In-fill Development Projects), or Section 15311 (Class 11 for “Accessory Structures”) applies to the Project.

As detailed in CEQA Guidelines Section 15332, to use a Class 32 Exemption, a project must meet all of the following conditions:

### **15332. IN-FILL DEVELOPMENT PROJECTS**

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

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<sup>3</sup> *Ipse dixit* is Latin for “it is so because I say it is so.” It refers to a dogmatic statement the speaker expects the listener to accept as valid merely because it was said. The California Supreme Court cites Lewis Carroll’s *Alice Through The Looking Glass* as expressing one of the most famous examples of *ipse dixit*. (*Cooper v. Swoap* (1974) 11 Cal.3d 856, 872-873.)

(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**. (Emphasis added)

(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.

(Emphasis added)

As acknowledged by the City's guidance for a Class 32 Exemption the administrative record must disclose substantial evidence of every element of the contended exemption.<sup>4</sup> The City has failed to do this. As detailed in our prior letters, as well as in our present letter further below, the City failed to meet all of the elements for Class 32, and particularly the emphasized ones above.

Moreover, as detailed in CEQA Guidelines Section 15311, to use a Class 11 Exemption, a project must be as follows:

**15311. ACCESSORY STRUCTURES**

Class 11 consists of construction, or placement of **minor** structures accessory to (appurtenant to) **existing** commercial, industrial, or institutional facilities, including but not limited to:

- (a) On-premise signs;
- (b) Small parking lots;
- (c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

(Emph. added.)

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<sup>4</sup> <https://planning.lacity.gov/odocument/ad70d15e-11b8-49ef-aba3-b168f670a576/Class%2032%20Categorical%20Exemption.pdf>

The City and the Applicant are apparently using Class 11 for the signs of the Project. However, Class 11 on its face does not apply here. The signs that are proposed for the Project are not *minor*. They are also not placed or constructed accessory to *existing* facilities, but rather a new facility.

Lastly, even if the above-noted exemptions apply as a matter of law – which they do not – a categorical exemption cannot be used if any of the exceptions under CEQA Guidelines Section 15300.2 applies:

**15300.2. EXCEPTIONS**

- (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
- (b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
- (c) **Significant Effect.** A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
- (d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
- (e) **Hazardous Waste Sites.** A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
- (f) **Historical Resources.** A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

As detailed in our prior letters and this letter as well, the proposed Project is also not eligible for the invoked Categorical Exemptions because the unusual circumstances and the cumulative impacts exceptions apply here.

The City cannot act on the Project until the appropriate environmental documentation has been prepared for it.

## **II. THE PROPOSED PROJECT**

As a background, the proposed Project consists of **demolition** of the existing **6,539** sf. single-story commercial **bank** building and the construction of a **3,426** sf **fast-food restaurant** In-N-Out Burgers facility with 38 indoor seats, 26 outdoor seats, 31 automobile parking spaces, **and a drive-through** with space for queueing of up to **24 cars** on a **39,876** sf lot<sup>5</sup> with **137 feet** of frontage on **Ventura** Boulevard, **274** feet of frontage on the east side of **Rigoletto** Street, approximately **160 feet** of frontage on the north side of **Del Valle** Street, and **25 feet** of frontage on the west side of **Fallbrook** Avenue.

The Project site abuts multi-family residential uses to the east and is across the street from multi-family residential to the west.

The Project was approved for an extension of the allowable hours of operation to Sunday through Thursday 10:30 AM to 1:00 AM, and Friday and Saturday 10:30 AM to 1:30 AM.

In addition, the Project will have a variety of light sources, including light emanating from the interior of the restaurant; illuminated signs, including instruction signs, wall signs, and a menu board; **nine (9) 25-foot-tall lighting poles**; and a strip of red LED lighting under the building. The Project also includes a “**non-conforming**” pole sign that is “approximately **216 square** feet in area and is **42 feet tall**,” which is proposed to be **re-faced**. (LOD, p. 41.)

The Project seeks various deviations from zoning regulations on 10 contiguous sites, including at 22822, 22814, 22818, 22808 Ventura Boulevard, and 22823 Del Valle Street, at the corner of Rigoletto Street, Woodland Hills, California 91364 (“Project Site”):

- (1) a Conditional Use Permit to allow a drive-through establishment in a P (parking) zone, which, in addition is across from, abutting or adjoining residential uses;
- (2) a Conditional Use Permit to allow a drive-through fast-food establishment within a Commercial Corner Development with hours of operation exceeding 7:00 a.m. to 11 :00 p.m. to 1:00 am or 1:30 am, daily;
- (3) a Conditional Use Permit to permit 20 percent of transparency fronting Ventura Boulevard, 9.5 percent of transparency fronting

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<sup>5</sup> The project application indicates that the lot size is 38,768 square feet. See: <https://planning.lacity.gov/pdiscaseinfo/document/MzE0MDk0/532fbe86-06a9-44b1-8001-06cd07316c90/esubmit>



Rigoletto Street, and 2 percent of transparency fronting Del Valle Street in lieu of the required 50 percent facade transparency;

- (4) a Project Permit Compliance Review to permit the construction of a drive-through fast-food establishment that includes **two wall signs, re-facing** of an existing approximately **216 square feet** in area and **42 feet** tall (non-conforming) Pole sign, and **directional signs** on a 39,876 square-foot lot in the Ventura/Cahuenga Boulevard Corridor Specific Plan area;
- (5) a Project Permit Adjustment to permit an **8.5-foot** landscape buffer in **lieu of** the otherwise required 10 feet by Section 7.D.1.(c) of the Ventura/Cahuenga Boulevard Corridor Specific Plan;
- (6) a Site Plan Review for the construction of a building and a change of use that requires a building permit and results in a net increase in average daily vehicle trips; and
- (7) a Waiver of Dedication and Improvement of a **5-foot public** sidewalk for the **east** side of **Rigoletto** Street, which adjoins the Project site, with additional terms and conditions.

While the City’s entitlements do not disclose it, the Applicant has also applied for a permit for three retaining walls not once but *twice* in 2024; namely: “1 @ 2.7FT HIGH MAX 99LF, 1 @ 5.33FT HIGH MAX 13LF & 1 @ 10.7FT HIGH MAX 232LF.” (**Exhibit A** [02/01/2024 & 04/12/2024 Retaining Wall Permit Application].) However, the Applicant has been unable to clear the conditions for those retaining wall permits, despite various corrections issued by the City and multiple attempts to address those.

### **III. THE PROJECT IS NOT ELIGIBLE FOR A CATEGORICAL EXEMPTION AS A MATTER OF LAW**

#### **A. CEQA Exemptions Do Not Apply Since Mitigation Has Been Proposed.**

As noted above, whether an exemption applies is decided before mitigation measures are applied. CEQA Guidelines section 15370 provides various type of “mitigation,” including “(a) Avoiding the impact altogether by not taking a certain action or parts of an action” and “(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.” “Mitigation measures are, by their nature, modifications incorporated into a project that will—in actuality—reduce a project’s adverse environmental effects. (See, e.g., *County of Butte, supra*, 13 Cal.5th at p. 627 [“Mitigation measures are modifications of the proposed design and implementation of a project imposed by the lead agency to reduce the project’s adverse environmental effects.”].)” (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2023) 98 Cal.App.5th 1176, 1206 (“*Natural Resources*”).)

## 1. Noise Impacts

Upon approving the Project, the LOD noted: “Signs shall be installed requesting that drive-through patrons keep noise levels down as a courtesy to neighboring residents.” (LOD, p. 9.) The LOD further provided:

“The project will comply with City's **Noise Ordinance** No. 144,331, and any operational **noise** is **conditioned** to a level **inaudible** beyond the property line. The two on-site menu board with speakers are located within the drive-through lanes away from residential property with **auto adjusting** volume. There is a **10-foot** landscape **buffer** with a row of trees, and a **6-foot** block wall separating the nearest residential use on the east side of the restaurant property.” (LOD, p. 31, *emph. added.*)

The LOD further stated: “The site plan also contains **several design** features **aimed at reducing noise** impacts from the proposed use on adjoining residential uses,” and listed those design features as being a 6-foot masonry wall, 8.5 and 10 feet landscape buffers, trees, menu boards (with speakers) being as close as 20 feet away and “conditions that require the operator to constantly monitor the premises preventing any nuisance and noisy activities, and the employees who take orders from patrons in the queuing lane via handheld devices will not do so within 20 feet of the east property line to further control potential noise impacts on the adjacent residential properties.” (LOD, pp. 36-37.)

And the LOD concluded: “This **condition**, in addition to the noise-**mitigating** features of the design, will adequately **protect** residential uses in the vicinity.” (LOD, p. 37, *emph. added.*)

The above-noted statements in the LOD confirm: the Project of a fast-food restaurant with drive-through lanes and operating past midnight hours *may* have significant operational noise impacts and relies upon certain design features to reduce such noise impacts. The City manifestly relied on those mitigation and design features to find that the Project would not have noise impacts and to thereby meet one of the requirements of the Class 32 exemption. However, those design features are no different from *mitigation* defined in CEQA Guidelines section 15370 and *Natural Resources, supra*, 98 Cal.App.5th at 1206. And, for purposes of evaluating whether the Project may have noise impacts as required for Class 32, the Project had to be evaluated without such noise mitigation.

Stated differently, the City must first determine how much noise will be produced by the Project to then be able to assess whether the proposed mitigation or design features will be able to indeed reduce such impacts to insignificant levels. That is not what the City did. As stated in *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 210 (“*California Clean*”), in an analogous context, CEQA “requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.” Here too, the City considered some design features of the Project to conclude that noise impacts will be mitigated to the level of insignificance to qualify for the Class 32 exemption and to thereby avoid CEQA review or evaluation of impacts altogether. This was improper, as a matter of law.

## 2. Stormwater Runoff & Water Impacts

The City provides:

“The project will be subject to Regulatory Compliance Measures (RCMs), which require compliance with the City of Los Angeles Noise Ordinance pollutant discharge, dewatering, stormwater mitigations; and Best Management Practices for stormwater runoff. These RCMs will ensure the project will not have significant impacts on **noise** and **water**.” (LOD, p. 44, *emph. added.*)

However, the City does not specify the RCMs or show that such RCMs were intended to – and critically would indeed – reduce water or noise impacts to insignificant levels to qualify for a Class 32 exemption.

Neither does CEQA allow reliance on regulatory compliance alone to conclude the Project will have no impacts. As the Court in *California Clean* provides, compliance with the building or any other code is not an adequate assessment of mitigation since the code does not address CEQA considerations, including “whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate certain resources, or anything else external to the building’s envelope.” (*California Clean, supra*, 225 Cal.App.4th at 211.) For the same reason, CEQA does not allow reliance on thresholds of significance to conclude there will be no impacts, and requires agencies to explain how such compliance will indeed reduce impacts. (CEQA Guidelines § 15064(b)(2) [“When using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project’s impacts are less than significant. Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project’s environmental effects may still be significant.”])

As such, to the extent the City relied on RCMs to reduce water or noise impacts of the Project, those constitute mitigation and are yet insufficient, without more, to conclude that the Project will have no noise or water impacts, apart from the fact that the City also failed to explain *what* those RCMs are and *how* such RCM compliance will indeed reduce impacts.

## 3. Traffic & Air Impacts

The Zoning Administrator’s decision notes that the Project will not have significant impacts to **vehicle-miles-traveled** (“VMT”). (LOD, p. 52 [“the proposed project would not result in a significant transportation impact on VMT”].) As such, the City is silent on traffic delays or congestion and level of service problems and does not disclaim those.

Moreover, the City concedes traffic impacts may occur and provides: “The applicant should consult with the LADOT East Valley District Office for the evaluation of **additional traffic control** measures adjacent to the Project location.” (LOD, p. 52, *emph. added.*)

The above-noted omission of denial of traffic impacts related to traffic delays and congestion, including due to the location of the Project's exit lanes (including on a busy Ventura Street, through a pedestrian sidewalk and bicycle lanes) and the incorporation of drive-through lanes in the Project, and the apparent reliance on future mitigation measures to control traffic near the Project site is evidence that the Project *may* have traffic impacts. Moreover, the City's reliance on some yet unknown "traffic control measures" is improper to conclude that the Project will have no traffic impacts in order to qualify for Class 32 exemption, as the City does here.

Since traffic congestions and delays, including from drive-through lane queuing, are directly linked to air pollution and GHG impacts, and since the Project Applicant is yet to consult with LADOT about additional traffic control measures needed for the Project, then the City also improperly relied on such additional control or mitigation measures for purposes of air quality (and GHG), in order to qualify for CEQA Class 32 exemption.

The above-noted traffic and air/GHG problems are even more pronounced since the Project seeks – and was approved for – a waiver the City's requirements for dedications and street improvements, as well as a reduction of setbacks on streets. The City sophistically claims such dedications and setbacks are not necessary because the width of the road is already 30 feet wide and that such dedication and setbacks were required only to widen the sidewalk and not the road. (LOD, p. 51-52.) But the City also concedes that the existing widths of Rigoletto and Del Valle streets are less than what is envisaged under the General Plan's Mobility Plan 2035 and hence implicitly concedes that a 5-foot dedication would be required to meet the Mobility Element's contemplated widths:

**"Rigoletto Street**, adjoining the property to the west, is a Local Street-Standard, designated for a right-of-way width of 60 feet and roadway width of **36 feet** by the Mobility Plan 2035 and **is** improved with an approximately **30-foot** paved roadway, 20-foot landscaped sidewalks, concrete curb, and gutter. **Del Valle Street**, adjoining the property to the south, is a Local Street-Standard, designated for a right-of-way width of 60 feet and roadway width of **36 feet** by the Mobility Plan 2035 and is improved with sidewalks, concrete curb, and gutter." (LOD, pp. 51-52, *emph. added.*)

Notably, the City fails to mention the current width of the Del Valle Street.

As such, the Project not only improperly relies on some unknown "traffic control measures" or mitigation to conclude that the Project will have no traffic or air/GHG impacts and to thereby support its CEQA exemption, but also *adds* to the traffic problems in the area by siting a busy and popular fast-food restaurant with a drive-through feature and yet fails to mitigate those impacts themselves and, worse yet, further exacerbates its caused traffic and related impacts by refusing to provide the required setbacks and street dedications to allow the widening of the roads and to lessen traffic delays and related congestions.

In sum, the City improperly relied on *mitigation* to conclude that the Project will have no traffic, air/GHG, and water impacts for purposes of CEQA exemption, in violation of CEQA.

## **B. The City Failed to Consider the Whole of the Action and Piecemealed the Project**

As also noted in Section I.A, *supra*, prior to determining the type of CEQA clearance required for the Project, the City has to determine what constitutes the “project” or the “whole of an action.” Here, the City failed to do that.

### **1. Retaining Walls**

The Project’s building permits indicate that the Applicant applied for retaining wall permits to allow 3 retaining walls, extending from 2.7 to 10.7 feet in height. (See, **Exhibit A.**) The respective permit applications show that there are numerous requirements to be cleared for those permits, which have not been cleared to date. (*Ibid.*) The permit records also show that the Applicant was issued several corrections but, despite multiple attempts, was unable to address those. (*Ibid.*)

The LOD contains no single statement or disclosure about the retaining walls, including about the 10.7 feet wall. Neither is there anything noted at the height of 10.7 feet in the LOD that may remotely resemble retaining wall or their consideration by the City.

The placement of retaining walls may cause more impacts and indicate an unusual circumstance, which evaded the City’s review for purposes of CEQA clearance. For example, depending on the location of the retaining walls, they may have aesthetic, traffic visibility and hence circulation, soil stability, and water impacts. Placement of retaining walls may encroach into the public right-of-ways and affect pedestrian, bike, or traffic circulation and cause related impacts. Moreover, to the extent such retaining walls will be illuminated, those may also add to the light and glare impacts of the Project for nearby commercial and residential uses, which were not disclosed or considered by the City.

The City’s failure to consider the whole of an action and the retaining walls or their impacts as part of its approvals makes the City’s exemption determination invalid and improper as a matter of law.

### **2. Encroachment into the Public Right-of-Way**

The LOD – dated *June 4, 2024* – states:

“The proposed drive-through restaurant will be located wholly within the property boundaries of the project site and **no request for encroachment into the public right-of-way is anticipated or requested. Thus**, the City can find that the project will not create or add to a detrimental concentration of mini-shopping centers or commercial corner developments in the vicinity of the project.” (LOD, p. 39, *emph. added.*)

However, the Project’s building permits show that the Project’s sought – and yet undisclosed – *retaining wall permit* application involved *encroachment* into the public right-of-way, which the Applicant has not cleared to date. (See **Exhibit A.**) The said retaining wall permit applications were submitted in February and again in April of 2024 – far before the June 4, 2024 LOD, which claimed no encroachment into the right-of-way is anticipated. As such, the LOD manifestly relies on inaccurate facts and is therefore flawed.

The City’s failure to consider the impacts of the Project’s encroachment into the public right-of-way was improperly left out from the “whole” of an action of the Project, making the City’s determination of the CEQA exemptions improper and invalid, as a matter of law.

### 3. **Revised Landscape Plan**

The LOD, at pp. 7-8, provides: “A revised landscape plan consistent with the site plan shall be submitted to ensure that...” And, among issues to be so ensured are the width of the setbacks on various streets and tree-removals. But a close read of those requirements shows that more discretionary judgment is left on the part of the City – a determination that should not have been piecemealed from the Project’s approvals or determination of a CEQA clearance.

For example, the LOD provides:

- (c) Pursuant to Section 7.D.1.(c) of the Specific Plan, a ten-foot landscaped buffer shall be provided around any surface parking lots adjacent to any street, alley, residentially zoned lot, existing residential use, or other parking lots. An 8.5 feet landscaped **setback** along the eastern property line adjacent to the **residentially used lot** shall be provided [in] compliance with the Project Permit **Adjustment authorization**.
- (d) Pursuant to Section 7.D.3.(a) of the Specific Plan, at least 60 percent of all Front Yards or front setbacks in excess of 18 inches, shall be landscaped and the **remainder** shall be finished to City standards for sidewalks, **or** finished with **other paving** materials, including **concrete** pavers, **brick** masonry pavers.  
...
- (f) Project shall preserve all healthy mature street trees **whenever possible**. All feasible alternatives in project design should be considered and implemented to retain healthy mature street trees. A permit is required for the removal of any street tree and shall be replaced 2:1 **as approved** by the Board of **Public Works** and **Urban Forestry Division**.  
...

- (g) **Street trees** shall be provided to the **satisfaction** of the **Urban Forestry** Division. Per Exhibit A, six (6) Street trees shall be provided.

...

- (i) Removal of street trees requires approval from the Board of Public Works. All projects must have **environmental** (CEQA) **documents** that **appropriately address** any **removal** and **replacement** of **street trees**. Contact Urban Forestry Division at (213) 847-3077 for tree removal permit information.

(LOD, p. 8, emph. added.)

The above-noted and emphasized statements leave no doubt that the revised landscape plan, with its setbacks and tree-removal and replacement, *may* have significant impact on the environment and particularly residential uses nearby. The above-noted statements further concede that significant *discretion* is left to the City and the Applicant to determine the locations and types of trees. And the above-noted statements concede that a CEQA review is required for the removal and replacement of street-trees. These issues, therefore, had to be considered as part of the approvals for the Project and not moved out of public review, as the City did here.

#### 4. **Lighting**

Another issue of concern and impacts that has been understated and/or omitted is the lighting and glare impacts of the Project especially on the residential uses next to and across from the Project site. The LOD provides:

“Prior to the **issuance** of the Certificate of **Occupancy**, **street lighting improvement plans** shall be submitted for review and the owner shall provide a good faith effort via a ballot process for the formation or annexation of the property within the boundary of the development into a Street Lighting Maintenance Assessment District. **IMPROVEMENT CONDITION: Construct new street lights: two (2) on Ventura Boulevard, two (2) on Rigoletto Street, and one (1) on Del Valle Street.**”  
(LOD, p. 4, emph. added.)

As such, the street lighting improvement plans will be proposed *after* the Project is fully built and prior to its operation. Such lighting will affect pedestrian circulation, will invariably be in the public right-of-way, and may also add to the light/glare the Project will generate. And yet, this lighting plan will not be reviewed by the public at all and has been left out from CEQA review.

In addition, the LOD suggests that the Project will have to mitigate light and glare but provides no assurance of such mitigation beyond the good faith and discretion of the Applicant. It provides:

“Lighting. Lighting should be directed onto the site, and be **adequately aimed and shielded** so as to **not spill** over onto **adjacent** properties, especially into areas planned and zoned for **residential uses**.” (LOD, p. 10, emph. added.)

And again,

“19. All public areas of the lot or lots not covered by a building shall have **night lighting** for safety and security. All other open exterior areas, such as walkways and trash areas, shall have low-level, security-type lighting. All exterior lighting shall be directed onto the lot or lots, and **all flood lighting** shall be **designed to eliminate glare** to adjoining properties. All parking areas shall have a minimum of 3/4 foot candle of flood lighting measured at the pavement.

20. All **exterior** portions of the site shall be **adequately illuminated** in the evening so as to make **discernible** the **faces** and **clothing** of persons utilizing the space. Lighting shall be directed onto the site **without being disruptive** to **persons on adjacent properties**.”

(LOD, p. 5, emph. added.)

The above-noted emphasized statements show that the Project may indeed have light/glare impacts, but the City neither reviewed the lighting plan nor retained the discretion to review it in the future. And yet, as the above statements confirm, such lighting *may* be “disruptive” to other uses, especially to the residential uses next and across from the Project site.

Moreover, the above-noted statements show that the Project relied on unknown mitigation plan or measures to conclude that the Project is exempt from CEQA and will have no light/glare impacts. This is also improper, as a matter of law.

Compounding this omission of the City to require and review the Project’s lighting plan is the fact that, on April 11, 2024, the Applicant applied for lighting permits, noting: “Total lighting area: **67,831 sq ft**. New Electrical for new ground up restaurant with drive thru.” (See **Exhibit B**, emph. added [Lighting Permit Application].) The 67,831 sq. ft. area to be illuminated as a result of the Project that is indicated in the permit application is at odds with the LOD’s Project description stating that the “project site consists of 10 contiguous double-bit axe-shaped lots and parcels with a total lot size of **39,876 square feet**.” (LOD, p. 16, emph. added.) It indicates that the City may not have duly disclosed all the areas that are proposed for lighting installation and suggests that the additional square footage that will be illuminated may have further light/glare impacts on adjacent uses, the impacts of which have not been duly disclosed, studied, or mitigated.



In sum, because the City failed to consider the “whole” of the action, because the City approved the Project based on flawed assumptions that the Project will require no encroachment into the public right-of-way and without reviewing and approving the revised landscape plan as part of the “whole” being approved, the Project’s CEQA exemption determination is invalid, as a matter of law. (See, *LADWP, supra*, 67 Cal.App.5th at 1025 [the Court found two CEQA violations: (1) the agency improperly described the project narrowly as constituting only condemnation and a mere change in ownership; and (2) as a result of this unduly narrow project description, the agency erroneously concluded the commonsense exemption applies].)

#### **IV. THE PROJECT IS NOT ELIGIBLE FOR THE INVOKED CATEGORICAL EXEMPTIONS BASED ON THE RECORD**

##### **A. Class 11 Exemption Does Not Apply, as a Matter of Law**

The City and the Applicant rely on Class 11 for the allegedly “on-premise signs.” (LOD, p. 1.) To be sure, the Project proposes – and was approved for:

- a. Project Permit Compliance Review to permit the **construction** of a drive-through fast-food establishment that **includes two (2) Wall signs, refacing of an existing Pole sign, and directional signs** on a 39,876 square-foot lot in the Ventura/Cahuenga Boulevard Corridor Specific Plan area...

(LOD, p. 2, *emph. added.*)

Moreover, as to those signs, the LOD further explains:

**Wall Signs:** Per section 8.B.1.a of the Ventura/Cahuenga Boulevard Corridor Specific Plan, a maximum of one (1) wall sign per tenant on a building’s street frontage and a second sign facing a parking lot, secondary street, or alley is permitted. The total sign area permitted is two square feet per one lineal foot of lot frontage. The site has a frontage of approximately 137 feet on Ventura Boulevard and 280 feet on Rigoletto Street; therefore, a maximum signage area of 274 square feet or 560 feet would be permitted for the site. The proposed **two (2) 56 square-foot** wall signs will not exceed the maximum signage area, and thus complies with the Specific Plan regulations.

**Existing Non-Conforming Pole Signs:** The Ventura/Cahuenga Boulevard Corridor Specific Plan permits **pole signs** on the subject lot, but they **cannot** be **taller than 20 feet** or more than **35 square feet in area**. While the pole sign on the subject property is approximately **216 square feet in area** and is **42 feet tall**, the sign has **legal, non-conforming rights** as the sign was installed on the existing poles with permit 1972 VN 90367 in 1972. The existing legal, non-conforming sign is not changing in height or area;

therefore, the proposed **re-facing** of the **pole sign** complies with the regulations of the plan.

(LOD, p. 41, *emph. added.*)

As noted in the definition above, Class 11 CEQA exemption is used only for placement or construction of accessory structures for *existing* facilities. Here, the Project – a fast-food restaurant with drive-through lanes – is not an *existing* facility. More so, the *existing* facility – the 6,739 square-foot, single-story commercial structure of the Bank of America – will be *demolished* and instead of it a 3,426 square foot, one-story drive-through fast-food restaurant will be constructed. (LOD, 16.) As such, none of the signs – wall or pole – are not being proposed for any *existing facility* as required for Class 11, but are rather proposed for a completely *new* facility with *new* and *different* features as compared with the prior facility.

Moreover, based on CEQA Guidelines § 15311, the structures that are exempt must be “minor.” Here, the wall signs or the pole sign are not minor. The pole sign alone is **216 square feet in area** and is **42 feet tall**. (LOD, p. 41.) The **two** wall signs are **56 square-foot** in area.

In sum, the Project and more precisely its signs or any accessory structures are not eligible for Class 11 exemption on its face since Class 11 requires that such structures or signs be *minor* and be added to an *existing* structure, which is not the case here.

## **B. Class 32 Exemption Does Not Apply, as a Matter of Law.**

The Applicant concedes that, to qualify for a Class 32 exemption, the Applicant has to show that “1. The project is consistent with the **applicable general** plan designation and ***all applicable*** general plan policies **as well as** with the applicable zoning **designation** and **regulations**.” (8/16 Response, p. 5, *emph. added.*) And the Applicant claims: “The Project **clearly** satisfies each criteria: It is a **Code-conforming** fast-food restaurant, characterized by infill development, on a site that is approximately 0.89 acres, located wholly within the City of Los Angeles and adequately served by **existing utilities** and public services.” (*Ibid*, *emph. added.*) Not so. The Applicant’s aforementioned conclusion and claim lack factual support.

### **1. Consistency with the General Plan**

In its analysis of the above-noted *first* requirement for Class 32, the Applicant and the City rely upon only a showing of consistency of the Project with the General Plan and its cherry-picked few policies. And, for a reason. The City and the Applicant conveniently but improperly narrow the inquiry to a single subjective and “very deferential” determination of general plan consistency, and, worse yet, to only a few policies which they claim are the only “applicable” policies to the Project. (8/16 Response, pp. 5-6.)

Nonetheless, the LOD is a vivid example of the Project’s inconsistency with the General Plan and its Elements, as well as other plans. It provides:

**Ventura Boulevard**, adjoining the property to the north, is a Boulevard 11, designated for a right-of-way width of 110 feet and roadway width of **80 feet** by the Mobility Plan 2035 and improved with an **approximately 90-foot paved** roadway, **30-foot** landscaped sidewalks, concrete curb, and gutter.

**Fallbrook Avenue**, adjoining the property to the north, is a Boulevard 11, designated for a right-of-way width of 110 feet and roadway width of 80 feet by the Mobility Plan 2035 and improved with an approximately 53-foot paved roadway, 17-foot sidewalks, concrete curb, and gutter.

**Rigoletto Street**, adjoining the property to the west, is a Local Street-Standard, designated for a right-of-way width of 60 feet and roadway width of **36 feet** by the **Mobility Plan 2035** and is improved with an approximately **30-foot** paved roadway, 20 foot landscaped sidewalks, concrete curb, and gutter.

**Del Valle Street**, adjoining the property to the south, is a Local Street-Standard, designated for a right-of-way width of 60 feet and **roadway width of 36 feet** by the **Mobility Plan 2035** and is improved **with** sidewalks, concrete curb, and gutter.”

(LOD, pp. 17-18, *emph. added*; see also pp. 51-52.)

Manifestly, the City’s description shows: (1) Rigoletto Street’s *existing* roadway width of 30 feet needs to be further widened into 36 feet under the Mobility Plan 2035; (2) Del Valle Street’s *existing* roadway width is *not* specified, although it must be 36 feet under the Mobility Plan 2035.

The identified Mobility Plan 2035<sup>6</sup> is part of the General Plan of the City; it is a mandatory Element of the General Plan. As such, the Project has to be consistent with the Mobility Plan 2035 and its policies and goals, to meet the requirements of the Class 32 exemption.

The Project, however, seeks – and was approved for – a “Waiver of Dedication and Improvement of 5-foot public sidewalk for the east side of Rigoletto Street, which adjoins the project site,” pursuant to LAMC Section 12.37. (LOD, p. 2.)

And the LOD’s reasoning for approving the sought waiver implicitly admits the Project is not compliant with the General Plan’s Mobility Plan 2035 and yet concludes the opposite by claiming that the dedication was required for the *sidewalk* and not for the *roadway* width:

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<sup>6</sup> See the Mobility Plan 2035 at [https://planning.lacity.gov/odocument/523f2a95-9d72-41d7-aba5-1972f84c1d36/Mobility\\_Plan\\_2035.pdf](https://planning.lacity.gov/odocument/523f2a95-9d72-41d7-aba5-1972f84c1d36/Mobility_Plan_2035.pdf)

Along **Rigoletto** and **Del Valle** Streets, a **five (5)-foot dedication and improvement to widen** the Roadways are **necessary to** complete a **60-foot half-width** Right-of Way.” (LOD, p. 52, *emph. added.*)

However, the existing street lane and roadway capacity would **not materially** be changed with the **five (5)-foot** dedication. The 5-foot dedicated area would be reserved to **increase** the **width** of the **sidewalk**. Per **LAMC 12.37 A.3**, no additional improvement will be required on such a lot where complete roadway, curb, gutter, and sidewalk improvements **exist** within the present dedication. Additionally, a **dedication** along **Rigoletto Street** will **necessitate** the removal and reconstruction of a power pole, which based upon initial **cost estimates**, will call into question the **nexus** of **proportionality** in terms of the cost of development of the proposed project and the cost of off-site improvements. Therefore, the **dedication** or improvement requirement does not bear a **reasonable relationship** to **any project** impact.

(LOD, p. 52, *emph. added.*)

There is no support for the City’s claim that the dedication is required for a *sidewalk* and not for the *roadway width*. The City’s above-noted description shows that the roadway width on both Rigoletto and Del Valle must be 36 feet, while it is only 30 on Rigoletto Street, where the waiver of dedication is sought. And the City does not even specify the width of the Del Valle street which is connected to Rigoletto Street, per the City’s analysis of the need to provide 60 feet total width (roadway + sidewalk). A dedication of land has been historically linked to street widening. “The power to impose reasonable requirements of dedication for street widening as a condition to permission for new land use or development is well settled. (See *Ayres v. City Council of Los Angeles* (1949) 34 Cal.2d 31 [207 P.2d 1, 11 A.L.R.3d 503] (subdivision); *Bringle v. Board of Supervisors* (1960) 54 Cal.2d 86 [4 Cal. Rptr. 493, 351 P.2d 765] (zoning variance); *Southern Pac. Co. v. City of Los Angeles* (1966) 242 Cal. App. 2d 38 [51 Cal. Rptr. 197] (building permit). Cf. *Associated Home Builders etc., Inc. v. City of Walnut Creek* (1971) 4 Cal.3d 633, 640, fn. 6 [94 Cal. Rptr. 630, 484 P.2d 606, 43 A.L.R.3d 847] (open-space dedication by subdivider); *Mid-Way Cabinet etc. Mfg. v. County of San Joaquin* (1967) 257 Cal. App. 2d 181 [65 Cal. Rptr. 37] (dedication held unreasonable condition to permission for use that would not benefit from or contribute to need for road improvement).) (*White v. County of San Diego* (1980) 26 Cal.3d 897, 906, fn. 2.) As such, the City’s claim that the dedication is required for the sidewalk only and not for the street widening is unavailing.

Moreover, LAMC 12.37 A.3 does not excuse street dedication and improvement in this case, as the City claims it. LAMC 12.37 A.3 provides: “3. **No additional improvement** shall be required on such a lot where complete roadway, curb, gutter and sidewalk improvements exist **within the present dedication contiguous thereto.**”<sup>7</sup> (*Emph. added.*) As such, the exception applies only to *improvements* rather than *dedication* and only if there has already been a

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<sup>7</sup> See [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lapz/0-0-0-18023](https://codelibrary.amlegal.com/codes/los_angeles/latest/lapz/0-0-0-18023)

*dedication continuous* to such lots. The City's conflating of improvement and dedication and the omission of the requirement that a prior dedication be present is improper and legally erroneous.

Lastly, the LAMC 12.37 A.3, on which the City relies to not require improvement on an existing street improved with gutters and curbs cannot override the General Plan Mobility Element's specific goal of widening both Rigoletto and Del Valle streets to achieve a 36-foot roadway width. "The general plan 'is, in short, a constitution for all further development within the city.' (*O'Loane v. O'Rourke* (1965) 231 Cal.App.2d 774, 782 [42 Cal.Rptr. 283]; 58 Ops.Cal.Atty.Gen. 21 (1975); see also *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532 [160 Cal.Rptr. 907].)" (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 997.)

The City's attempt to ignore the General Plan's applicable and critical specific mandates and then to justify the Project's said discrepancies with the General Plan with a claimed lack of "nexus of proportionality" is also unavailing. The issue is not the *proportionality* but rather an unambiguous requirement under the LAMC to dedicate and improve 5 feet to roadway, which, in turn, will be necessary to implement the goals and objectives of the General Plan's mandatory Mobility Element 2035.

Moreover, the City's above-noted failure to comply with the Mobility Element of the General Plan creates other inconsistencies within the General Plan. Thus, the Mobility Element of the General Plan is necessarily linked to the Land Use Element and the inconsistencies of the Project with the Mobility Element of the General Plan affect will reasonably foreseeably also trigger inconsistencies with the Land Use, Safety, and other Elements within the General Plan:

"[Gov. Code] Section 65302 requires, inter alia, that the circulation element—including existing and proposed major thoroughfares and transportation routes—be "correlated" with the land use element. In common parlance, "correlate" means "to bear reciprocal or mutual relations...." (Webster's Third New International Dictionary (1981) p. 511.) "Correlated" means "closely, systematically, or reciprocally related...." (*Ibid.* ) Section 65302 therefore requires that the circulation element of a general plan, including its major thoroughfares, be closely, systematically, and reciprocally related to the land use element of the plan.

In its more concrete and practical application, the correlation requirement in subdivision (b) of section 65302 is designed to insure that the circulation element will describe, discuss and set forth "standards" and "proposals" respecting any change in demands on the various roadways or transportation facilities of a county as a result of changes in uses of land contemplated by the plan. (See *Twain Harte Homeowners Assn. v. County of Tuolumne*, supra, 138 Cal.App.3d at p. 701, 188 Cal.Rptr. 233; see also *Camp v. Board of Supervisors*, supra, 123 Cal.App.3d at p. 363, 176 Cal.Rptr. 620.) The statutory correlation requirement is evidently designed in part to prohibit a general plan from calling for unlimited population growth in its land use

element without providing, in its circulation element, “proposals” for how the transportation needs of the increased population will be met.

(*Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90, 99–100.)

As such, the Project is inconsistent with the General Plan’s Mobility Element, which, in turn, causes inconsistencies with the General Plan’s other Elements and in the General Plan itself.

## 2. Consistency with Other Zoning Regulations

The City’s and Applicant’s analysis of consistency of the Project for purposes of the *first prong* of Class 32 CEQA exemption manifestly omits the discussion of the Project’s consistency with *other zoning* regulations under CEQA Guidelines § 15332: “(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**.” (Emph. added.) And, for a reason. The Project does not meet this requirement at all, as a matter of law and fact.

First, the Project seeks numerous waivers and deviations from zoning regulations, including but not limited to:

- (1) use of drive-through lanes and queuing in a P (parking) zone of the Project’s site, whereas P zone is designed solely for parking<sup>8</sup> uses and not for queuing – an issue completely overlooked by the City;
- (2) a conditional use permit to allow a drive-through feature in a P zone near *residential* uses;
- (3) a conditional use permit to allow a drive-through fast-food establishment within a Commercial Corner Development with hours of operation **exceeding 7:00 a.m. to 11:00 p.m.**, daily to “**10:00 AM to 1:00 AM** Sunday through Thursday, and **10:00 AM to 1:30 AM** Friday and Saturday for the restaurant” (LOD, p. 17);
- (4) a conditional use permit to permit **20 percent** of transparency fronting Ventura Boulevard, **9.5 percent** of transparency fronting Rigoletto Street, and **2 percent** of transparency fronting Del Valle Street *in lieu of* the required **50 percent** facade transparency;
- (5) a Project Permit Compliance Review to permit the construction of a drive-through fast-food establishment that includes two wall

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<sup>8</sup> See [https://codelibrary.amlegal.com/codes/los\\_angeles/latest/lamc/0-0-0-110412](https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-110412)

signs, **re-facing**<sup>9</sup> of an existing approximately **216 square feet** in area and **42 feet tall (*non-conforming*) Pole sign**, and directional signs on a 39,876 square-foot lot in the Ventura/Cahuenga Boulevard Corridor Specific Plan area;

- (6) a Project Permit Adjustment to permit an **8.5-foot** landscape buffer *in lieu of* the otherwise required **10 feet** by Section 7.D.1.(c) of the Ventura/Cahuenga Boulevard Corridor **Specific Plan**;
- (7) a **Waiver** of Dedication and Improvement of a **5-foot public sidewalk** for the east side of Rigoletto Street, which adjoins the Project site;
- (8) reduction of three (3) of the required automobile parking spaces and replacement of those with 12 short-term bicycle parking spaces, under LAMC Ordinance No. 182,386 (Bicycle Parking Ordinance).

All of the above-listed deviations confirm the Project is *not* consistent with all the applicable zoning regulations and, unlike the Applicant's claim, is not "Code-conforming." (8/16 Response, p. 5.)

Moreover, the LOD shows that the Project does not comply with setback requirements despite a contrary conclusion by the City. Thus, the LOD provides:

"The proposed building is subject to **18-inch minimum** and **20-foot maximum front** yard setback for a minimum of 33 percent of the length of the front lot line., **zero foot side** yard setbacks, and a minimum of **15-foot rear** yard setback. For **corner** lots, the **side** of the lot facing the side street intersecting with Ventura or Cahuenga Boulevard shall require a minimum **18-inch** and maximum **15-foot** landscaped setback. The required **rear** yard setback is **15 feet** for lots adjacent to a street. The existing patterns of setbacks of surrounding buildings vary. The proposed project **complies** with the **Specific Plan** and **LAMC setback** requirements, therefore **compatible** with the existing surrounding developments."

(LOD, p. 49, *emph. added.*)

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<sup>9</sup> It is also unclear what "re-facing" means and whether the new sign will be more illuminated than the existing one; or whether "re-facing" will allow use of a digital sign, instead of the existing static one. Notably, digital signs are known to cause distraction for drivers and may have traffic and safety impacts; they are also known to affect birds and thus have biological impacts.

And yet, the City’s approvals included and required much *reduced* setbacks than those noted above:

- a. Pursuant to Section 7.A.3.(a).2.(i) of the Specific Plan, a **three feet** landscaped setback along **Ventura Boulevard** [front].
- b. Pursuant to Section 7.A.3.(b) of the Specific Plan, **ten feet** landscaped setback along **Rigoletto Street** [side].
- c. Pursuant to Section 7.A.3.(c).1 of the Specific Plan, **fifteen feet** landscaped setback along **Del Valle Street** [rear].

(LOD, pp. 7-8.)

The LOD further provides:

Section 7 A: Yards. No projects may be built within 18 inches of the front lot line and each lot shall have a maximum front yard of 20 feet for a minimum of 33 percent of the length of the front lot line. The balance of the lot frontage may have a maximum Front Yard of 60 feet, or a Front Yard equal to the average of all existing structures on the block in which the lot is located, whichever is less. For corner lots, the side of the lot facing the side street intersecting with Ventura or Cahuenga Boulevard shall require a minimum 18 inch and maximum 15-foot landscaped setback. The required rear yard setback is 15 feet for lots adjacent to a street.

The project proposes a **variable front** yard setback of **approximately 9.6 feet to 23.1 feet** and maintains a front yard depth of **39.4 percent**. (54 feet of the 137 feet lot line length) with a three (3) foot-landscaped area. The project proposes a **side yard** setback of approximately **67 feet** from the property line along Rigoletto Street to the main structure with **10.5 feet** landscaped area. The project proposes more than **100 feet rear yard** setback from Del Valle Street to the **trash enclosure**. As such, the project complies with the setback requirements.

(LOD, p. 40, *emph. added.*)

Simply put, the City mixes apples with oranges. As for the Del Valle Street setback, a setback is improperly counted from the street to a trash enclosure, instead of counting from the street to the property line. As such, the claim that the Project provides a 100 feet rear yard setback to the trash enclosure is legally erroneous and cannot show the setback is sufficient.

Moreover, as to the Ventura Blvd. [front] setback, there is nothing in the Los Angeles Municipal Code (“LAMC”) or the applicable Specific Plan that allows for a “variable” setback or *averaging* of the setback across the frontage of the Project. This is particularly critical where, as here, such “variable” setback is proposed along Ventura Boulevard, which is expressly “a high-volume street and is one of the main corridors in Los Angeles utilized for the transportation of people and encourages pedestrian activity and flow.” (LOD, p. 45.)



In sum, the Project is not consistent with all of the applicable zoning regulations and instead seeks major deviations therefrom, which, in turn, conflicts not only with the LAMC but also the Specific Plan, Community Plan, and further the Reimagine Ventura Plan (promoting pedestrian circulation and bike-use), as discussed in our prior comments incorporated herein.

### **3. Traffic Impacts**

The Applicant's Response of 8/16 (pp. 7-9) seems to suggest that, as long as it provided a traffic study of an expert, such study is immune to any challenges and necessarily constitutes substantial evidence. Not so. Our Supreme Court cautioned that a court should not "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 409, fn. 12.)

Moreover, the Applicant's Response of 8/16 (pp. 7-9) seems to suggest that a technical study can never be questioned by a non-expert. Not so either. The challenge here is not to the factual conclusions of the expert, but rather the flaws and omissions in the expert reports, which do not always require an expert to identify. For example, Appellant raised the manifest issue that the seven traffic studies on which the traffic report relied here were either from out of state (including Texas), or obsolete, and, in addition, taken during COVID-19 pandemic's stay-at-home orders where restaurants were closed or working at a partial capacity. These facts reasonably call into question the accuracy of the traffic study, the adequacy of the representative sample on which such study relied, and its conclusions. The noted lack of an up-to-date traffic study and traffic data from post- or pre-COVID time and in the busy and densely-populated Los Angeles area amounts to an *omission* of a representative sample for the Project's traffic report, which precluded accurate information and hence is a procedural issue reviewed de novo. (See, *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392 ["the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA."])

In addition, as noted earlier, the City conceded that the Project may have significant traffic impacts and therefore required that the Applicant consult with LADOT to discuss "additional traffic control measures" for the Project. (LOD, p. 52.)

As such, the Applicant's or its expert's claims that the Project will have no traffic impacts is unsupported by any relevant or credible evidence and does not withstand scrutiny.

Lastly, the Applicant's reliance on *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877 ("*Jensen*") to argue against Appellant's specified flaws in the Applicant's traffic study is misplaced since the case is legally and factually inapposite. First, *Jensen* involved a *noise* study for the Dream Center prepared by an expert, which was challenged by Appellant who relied upon *another* noise study prepared by the same expert but for the Tower Market "despite the differences in setting," including that the "Tower Market Study, also prepared by Svinth, assessed impacts occasioned by development of a 24-hour convenience market and gas station in a different, more densely populated part of Santa Rosa, where existing noise levels were higher

than in the area of the Dream Center and higher than the base ambient noise levels in the Noise Ordinance.” (*Jensen, supra*, 23 Cal.App.5th at 892.) Moreover, the appellant in *Jensen* challenged the *different methodology* used by the same expert for the Dream Center and argued that, had the expert used the methodology he used in the Tower Market, the expert would have found noise impacts were significant. Unlike *Jensen*, the issue here is *traffic* and the Appellant does not argue that the expert should have used a different methodology but rather an accurate representative sample.

Second, in *Jensen* the appellant used the so-called *averaging* technique and its own non-expert calculations of the data provided by the expert, which the Court ignored only because there was no evidence of the accuracy or credibility of such non-expert calculations:

Employing an averaging technique ostensibly derived from the Tower Market Study, and working with a chart (not easily decipherable) from the Noise Study, appellants purport to have calculated the existing ambient noise levels for the Project. These calculations were not a part of the Noise Study, were not presented to the City in the appeal process, and no expert has confirmed their accuracy. The numbers do not appear in the administrative record and first appeared in appellants' reply brief in superior court. For that reason alone, we would be justified in ignoring appellants' calculations.

(*Jensen*, at p. 891.)

Here, Appellant has not imposed any specific methodology. Also, unlike the appellants in the *Jensen* case, Appellant here presented its criticism of the expert's study during the administrative review, where the City and the Applicant had ample time to review and yet have not provided any meaningful criticism to Appellant's detailed analysis short of claims that Appellant is a non-expert.

Lastly, *Jensen* supports Appellant's claims that the setting of any technical study is critical and must take into account the density of the population where the Project is proposed and, based on the Court's pointing of different settings between the Tower Market Noise Study (with dense population and involving heavy trucks) and the Dream Center Noise Study, the Appellant's criticism that the expert's reliance on In-n-Out restaurants in *Texas* or on such restaurant operations during COVID-19 pandemic could not be representative of the traffic conditions for purposes of evaluating a similar In-n-Out restaurant in Los Angeles.

In sum, the LOD itself admits the Project may have traffic impacts that are left unstudied and unmitigated. And a clearly erroneous expert study that is not based on accurate facts or representative sample, as here, cannot constitute substantial evidence.

#### 4. Air/GHG Impacts

The City's and Applicant's conclusions that the Project will have no air/GHG impacts are also unavailing, as a matter of law and fact. First, since the traffic impacts were understated as detailed above, the air/GHG impacts are derivatively understated, as a matter of law. There is a direct correlation between traffic and air/GHG impacts increases. As stated in the Office of Planning Research's ("OPR") technical advisory in 2018:

"VMT and Greenhouse Gas Emissions Reduction. Senate Bill 32 (Pavley, 2016) requires California to reduce greenhouse gas (GHG) emissions 40 percent below 1990 levels by 2030, and Executive Order B-16-12 provides a target of 80 percent below 1990 emissions levels for the transportation sector by 2050. The transportation sector has three major means of reducing GHG emissions: increasing vehicle efficiency, reducing fuel carbon content, and reducing the amount of vehicle travel."<sup>10</sup>

Similarly, there is an acknowledged nexus between the increase of traffic and an increase in related air quality, GHG impacts, noise, water/flooding impacts and impacts on human health and natural environment, including wildlife and waterways. As described in the 2018 OPR Technical advisory:

"Beyond GHG emissions, increases in VMT also impact human health and the natural environment. Human health is impacted as increases in vehicle travel lead to more vehicle crashes, poorer air quality, increases in chronic diseases associated with reduced physical activity, and worse mental health. Increases in vehicle travel also negatively affect other road users, including pedestrians, cyclists, other motorists, and many transit users. The natural environment is impacted as higher VMT leads to more collisions with wildlife and fragments habitat. Additionally, development that leads to more vehicle travel also tends to consume more energy, water, and open space (including farmland and sensitive habitat). This increase in impermeable surfaces raises the flood risk and pollutant transport into waterways."<sup>11</sup>

Second, to the extent the air/GHG study relied upon the VMT counts of the Project in the traffic study, the air study is critically flawed as it fails to consider the emissions from the vehicle idling and queuing especially in light of the drive-through feature of the Project, as well as other causes of air/GHG impacts from the fast-food restaurant Project involving far longer hours of

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<sup>10</sup> Office of Planning and Research, *2018 Technical Advisory on Evaluating Transportation Impacts in CEQA* (Dec. 2018) at 2, available at [https://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)

<sup>11</sup> *Id.* at p. 3.

operation and far more heat, waste, electricity, and appliances, unlike the existing office/bank building or any other use.

Third, as noted on page 34 of the Air Quality analysis for the Project:

The **emissions** generated by the vehicle miles travelled (VMT) associated with the proposed project have been analyzed by **inputting** the project-generated **vehicular trips** (VMT and trip generation **rate** [for weekend rates]) from the In-N-Out Burger (22822 Ventura Boulevard) **Transportation Assessment** (“TA”) (Ganddini, 2021) into the CalEEMod Model. The TA found that the proposed project will generate approximately 1,403 daily vehicle trips with 13,218 daily VMT.

(Emph. added.)

The above-quoted passage confirms that the air quality emissions analysis – that was improperly not disclosed by the City for review – must have relied on VMT data only and thereby also omitted the idling and queuing of such vehicles from the drive-through feature of the proposed Project. Notably, while CEQA has now adopted VMT as a measure of *traffic* impacts and does not consider traffic congestion as part of traffic impacts, it nonetheless cautions that traffic congestion and traffic delay must still be part of the CEQA consideration for traffic-related issues, such as air quality, and hence VMT should not be the measure for air/GHG impacts. (See Pub. Res. Code § 21099(b)(1)&(3); *Covina Residents for Responsible Development v. City of Covina* (2018) 21 Cal.App.5th 712, 728-730.)

In sum, the air quality analysis is flawed and must be redone using the corrected Project trip generation and also adding emissions from vehicle queuing and idling due to the drive-through feature and potential traffic congestion of the Project.

## **5. Noise and Light Impacts**

For reasons stated in Section III, *supra*, the Project may have noise and light impacts that are not disclosed or rely on mitigation, which is improper as a matter of law.

In sum, the proposed Project has not established all of the requirements to be eligible for the categorical exemptions, and the burden of proof has not yet shifted to Appellant to prove exceptions to exemptions apply. The appeal must be granted and the Project approval reversed pending preparation of an appropriate environmental document.

## **V. THE PROJECT IS NOT ELIGIBLE FOR THE INVOKED CATEGORICAL EXEMPTIONS ALSO BECAUSE EXCEPTIONS TO EXEMPTIONS APPLY**

Even assuming the Project was shown to be within the scope of the invoked Class 32 and Class 11 categorical exemptions, which is not the case here, the Project would still not qualify for such exemptions since exceptions to exemptions apply. Categorical exemptions are subject to

important exceptions, including unusual circumstances and cumulative impacts. (Guidelines § 15300.2; *SPAWN*, *supra*, 125 Cal.App.4th at 1105.)

The Applicant's 8/16 Response and the City's 8/12 Recommendation conveniently mischaracterize Appellant's claims and reasons for finding exceptions to exemption apply and evade critical issues raised by the Appellant. This silence and evasion speak volumes about the weight and credibility of the Applicant's claims and the City's recommendations. (*See generally*, *In Re Neilson's Estate* (1962) 57 Cal.2d 733, 746 ["silence, evasion, or equivocation may be considered as a tacit admission of the statements made"].)

As articulated in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114-1117 ("*Berkeley Hillside*"), whether **unusual circumstances** exist is a factual inquiry, reviewed under the **substantial evidence** standard. **However**, "if 'unusual circumstances' are **established**, an agency should apply the **fair argument** standard in determining whether there is 'a reasonable possibility' that those circumstances will produce 'a significant effect' within the meaning of CEQA. (Guidelines, § 15300.2, subd. (c).)" (*Berkeley Hillside*, *supra*, 60 Cal.4th at 1117.) "A party invoking the exception may **establish** an **unusual** circumstance without evidence of an environmental effect, by showing that the project has **some feature** that distinguishes it from others in the exempt class, **such as** its size or location. In such a case, to render the exception applicable, the party need only show a **reasonable possibility** of a significant effect due to that **unusual circumstance**. **Alternatively**, ... a party may establish an unusual circumstance with **evidence** that the project **will** have a significant environmental effect." (*Id.* at 1105, *emph. added.*)

As also stated in *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 819-820, there are two *alternatives* to establish the unusual circumstances exception: (1) prove *both* the unusual circumstances (some feature of the project making it unusual and distinct from others in the same exempt class) exist, reviewed under the substantial evidence standard, *and reasonable possibility* of significant impacts due to those unusual circumstances, reviewed under the fair argument standard; or (2) show the project *will* have significant impacts, reviewed under the substantial evidence standard.

The "cumulative impacts" exception is reviewed under the fair argument standard. (*Aptos Resident Assn. v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1052 [petitioner failed "to produce evidence that there was a *fair argument* that the cumulative impact exception applied." Emph. added.])

"The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is *de novo*, with a preference for resolving doubts in favor of environmental review.'" (*Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 289 ("*Aptos Council*") (Ital. orig.))

## A. Unusual Circumstances

The City and the Applicant evade the unusual circumstances and the distinctive features of the Project presented by the Appellant. To wit, the Project is: (1) a fast-food restaurant *with* a drive-through feature; (2) is proposed adjacent to and across from multi-family residential uses; (3) proposes encroachments and drive-through lanes that exit onto the public right-of-way on the pedestrian sidewalk, as well as the bike lane on the busy Ventura Boulevard; (4) seeks numerous deviations and waivers from zoning regulations, including for non-parking uses in the P zone and extended hours of operation past midnight each and every day.

Moreover, the City fails to note any other such drive-through fast-food restaurant nearby. To the contrary, the City concedes: “the proposed restaurant will be the *first* drive-through on this segment of Ventura Boulevard.” (LOD, p. 30, *emph. added.*) The drive-through lanes are a distinct feature of the Project which qualifies as an unusual circumstance. And, there is a fair argument that this drive-through feature will cause various impacts, including traffic congestion, traffic hazards, idling/queuing, privacy, and attendant noise, air/GHG impacts, especially to the residential uses within as close as 15 feet away.

Further, the City (or Applicant) fails to show that other fast-food restaurants existing in the City are located next to and across multi-family residential uses.

Similarly, the City (or Applicant) fails to show that other fast-food restaurants are located on a busy and major commercial boulevard of regional significance, such as the Ventura Boulevard, and exit through the public sidewalk and bike lane along Ventura. (LOD, p. 28).

Compounding the noted omissions, the City (or Applicant) are silent on the Applicant’s *three* retaining wall permit applications, which may encroach into the public right-of way.

The City further ignores the fact that the Project is proposed next to the freeway and yet offers outdoor seating area, thereby exposing its patrons to the freeway’s air/noise pollution risks. It also ignores that the Project’s drive-through lane exits into the bike lane along Ventura Boulevard and will therefore frustrate the City’s applicable “Reimagine Ventura” vision plan.

All of the above-noted features make the Project distinct from all others that could otherwise be exempt under Class 32. And there is a fair argument that such distinct features may cause significant traffic, air/GHG, light/glare, noise, safety impacts, and adverse health impacts on human beings.

## B. Cumulative Impacts

CEQA Guidelines § 15300.2(b) provides: “All exemptions for these classes are **inapplicable** when the cumulative impact of **successive projects** of the **same type** in the **same place, over time** is significant.” (*Emph. added.*) The City and the Applicant presume that the *successive* projects under the exception are only *future* projects. Yet, the exception itself is not expressly limited to *future* projects. Moreover, the cumulative impacts under CEQA expressly

include impacts from *past, present, and probable* projects. (CEQA Guidelines §§ 15355(b); Pub. Res. Code § 21083(b)(2).)

The Applicant contends:

There is no evidence in the **record** at all that “successive projects of the same type in the same place” **might** occur, let alone that they **would introduce** a significant impact, and Appellant never fleshes out an argument as to why this exception might apply to the Project. The appeal justification letter does make the bald statement, without evidence or data of any kind, that “the Project has the potential to result in a cumulatively considerable increase in localized air toxics and air pollution in proximity to existing residential development.” Again, the **air quality impacts** of the Project were analyzed by air quality experts in the Air Quality Report, which determined that the **Project** would result in **no significant air** quality or **GHG** impacts under CEQA. Emissions from the adjacent freeway exist in the existing or “baseline” condition for the Project site. Appellant’s assertion that the cumulative impacts exception applies to the Project is meritless.

(8/16 Response, p. 14, *emph. added.*)

The City’s 7/2 Justifications echo the Applicant’s claim:

There is **not** a **succession** of known projects of the same type and in the same place as the subject project. As mentioned, the project proposes the construction of a drive-through, **fast-food** restaurant in an area zoned and designated for such development. All **adjacent** lots are developed with **residential** and **commercial** uses. The Property’s immediate neighbors to the east are a single-story retail structure and a two-story multi-family condominium building.

(7/2 Justification, p. 2, *emph. added.*)

The above-quoted rebuttals suffer from several flaws. First, they are inconsistent with the record, which provides: “Although the proposed restaurant will be the first drive-through on **this segment of Ventura Boulevard**, there are **several existing** fast-food **restaurants** in the **vicinity**.” (LOD, p. 30, *emph. added.*) As such, contrary to the Applicant’s claims, the record confirms that there *are* fast-food restaurants in the same segment of Ventura Blvd. that may have cumulatively impacts with the Project. Those existing fast-food restaurants are the type of successive projects over time that are contemplated by CEQA Guidelines for the cumulative impact exception.

Second, the City displays a myopic view of the CEQA’s exception. It suggests or presumes that the cumulative impact exception applies only if the *adjacent* lots of the Project are fast-food restaurants. Such narrow interpretation of CEQA’s cumulative impact exception is

absurd and will unnecessarily narrow the scope and purpose of CEQA's protections, and should therefore be avoided. (*Chaffee v. San Francisco Library Com.* (2004) 115 Cal.App.4th 461, 467–468 [statutory construction must have “a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences”].)

Third, to disclaim cumulative impacts, the Applicant improperly relies on its experts' conclusions about the Project's *own* air quality impacts by themselves, rather than the Project's cumulative air quality impacts with *other* similar projects and fast-food restaurants in the vicinity. This myopic view of the cumulative impacts and particularly those of air quality is legally erroneous. As stated in *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720:

“One of the most important environmental lessons evident from past experience is that environmental damage often occurs **incrementally** from a **variety of small sources**. These **sources** appear **insignificant**, assuming threatening dimensions only when considered in **light** of the **other** sources with which they interact. Perhaps the **best example** is **air pollution**, where thousands of relatively small sources of pollution cause a serious environmental health problem.

“CEQA has responded to this problem of incremental environmental degradation by requiring analysis of **cumulative impacts**. Because of the critical nature of this concern, courts have been receptive to claims that environmental documents paid insufficient attention to cumulative impacts.”

(Emph. added.)

As such, the City's own statements in the record confirm that there *are* successive similar projects in the Project's vicinity, and that there is a fair argument that such projects *could* have cumulative impacts with the Project, including but not limited to air, GHG, traffic, noise, light, and adverse impacts on human beings. The City's and Applicant's claims to the contrary are based on legal errors and therefore owe no deference.

For these reasons, categorical exemptions Class 32 and Class 11 do not apply to the Project since the unusual circumstances and cumulative impacts exceptions apply and since there is a fair argument that the Project may have impacts due to those unusual circumstances and successive and similar restaurants in the vicinity.



## VI. CONCLUSION

We have presented the appropriate legal standards, facts, reasonable assumptions predicated on facts, and reasonable assumptions predicated on expert studies/opinion. We have shown that CEQA, case law, and constellation of factors make the CEQA exemptions under Class 32 and 11 facially inapplicable to the Project, as a matter of law. Moreover, we have also shown that the unusual circumstances and cumulative impacts exceptions under CEQA Guidelines § 15300.2 further disqualify the Project from the use of categorical exemptions. Lastly and critically, we have shown that the Project's CEQA clearance and exemptions are flawed *ab initio*, since the Project's description fails to include the "whole" of the action, is based on false assumptions and omissions, as well as on mitigation, which is improper as a matter of law.

For these reasons, the appeal should be granted.

Thank you for your consideration of this matter. I may be contacted at [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com) if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

Cc: Jack Chiang, Associate Zoning Administrator ([jack.chiang@lacity.org](mailto:jack.chiang@lacity.org))  
Adrineh Melkonian, City Planner ([adrineh.melkonian@lacity.org](mailto:adrineh.melkonian@lacity.org))

Encls.

Channel Law Group, LLP

September 24, 2024

Supplemental Justifications for CEQA Appeal of Case No. ZA-2022-2788-  
CU-SPP-SPPA-SPR-WDI, Conditional Use; Project Permit Compliance;  
Project Permit Adjustment; Site Plan Review; Waiver of Improvement and  
Dedication, 2282 Ventura Boulevard; Council File No. 24-0794

# **EXHIBIT A**

# Los Angeles Department of Building and Safety

## Certificate Information: 22822 W VENTURA BLVD 91364

Application / Permit	24020-20000-00522
Plan Check / Job No.	B24VN04394
Group	Building
Type	Nonbldg-New
Sub-Type	Commercial
Primary Use	(23) Retaining Wall
Work Description	THREE (N) RETAINING WALLS (1 @ 2.7FT HIGH MAX 99LF, 1 @ 5.33FT HIGH MAX 13LF & 1 @ 10.7FT HIGH MAX 232LF) PER ENGR DESIGN
Permit Issued	No
Current Status	Quality Review Completed on 5/14/2024

### Permit Application Status History

Submitted	4/12/2024	APPLICANT
Assigned to Plan Check Engineer	4/25/2024	NILOOFAR MEHRAIN
Corrections Issued	5/13/2024	NILOOFAR MEHRAIN
Quality Review Completed	5/14/2024	JASON HEALEY

### Permit Application Clearance Information

Zoning Plan Check	Not Cleared	4/3/2024	Department of Building and Safety
Miscellaneous	Not Cleared	4/26/2024	City Planning Department
Miscellaneous	Not Cleared	4/26/2024	City Planning Department
ZA Case	Not Cleared	4/26/2024	City Planning Department
ZI	Not Cleared	4/26/2024	City Planning Department
ZI	Not Cleared	4/26/2024	City Planning Department
Encroachment in public way	Not Cleared	5/13/2024	Bureau of Engineering
Eng Process Fee Ord 176,300	Not Cleared	5/13/2024	Bureau of Engineering
Grading Pre-Inspection	Not Cleared	5/13/2024	Department of Building and Safety
Roof/Waste drainage to street	Not Cleared	5/13/2024	Bureau of Engineering
Specific Plan	Not Cleared	5/13/2024	City Planning Department
Work Adjacent to Public Way	Not Cleared	5/13/2024	Bureau of Engineering

### Contact Information

No Data Available.
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### Inspector Information

No Data Available.
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### Pending Inspections

No Data Available.
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### Inspection Request History

No Data Available.
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# Los Angeles Department of Building and Safety

## Certificate Information: 22822 W VENTURA BLVD 91364

Application / Permit	24020-20000-00195
Plan Check / Job No.	B24VN01357
Group	Building
Type	Nonbldg-New
Sub-Type	Commercial
Primary Use	()
Work Description	?? # RETAINING WALLS (1@ __LF, 1@ __LF & 1@ __LF) PER ENG'R DESIGN
Permit Issued	No
Current Status	Verifications in Progress on 7/22/2024

### Permit Application Status History

Submitted	2/1/2024	APPLICANT
Assigned to Plan Check Engineer	2/1/2024	NILOOFAR MEHRAIN
Corrections Issued	2/4/2024	NILOOFAR MEHRAIN
Quality Review Completed	2/14/2024	JASON HEALEY
Application Withdrawn	3/13/2024	JASON HEALEY
Applicant returned to address corrections	5/8/2024	NILOOFAR MEHRAIN
Applicant returned to address corrections	7/22/2024	NILOOFAR MEHRAIN

### Permit Application Clearance Information

Landscape for retaining wall	Not Cleared	2/5/2024	City Planning Department
Roof/Waste drainage to street	Not Cleared	2/5/2024	Bureau of Engineering
Excavation more than 5-ft deep	Not Cleared	2/5/2024	Cal Occ. Safety and Health Administration
GPI Written Notices	Not Cleared	2/5/2024	Department of Building and Safety
Grading Pre-Inspection	Not Cleared	2/5/2024	Department of Building and Safety
"D" conditions	Not Cleared	2/5/2024	City Planning Department
Comm Cor/Mini-Mall	Not Cleared	2/5/2024	City Planning Department
Comm Cor/Mini-Mall	Not Cleared	2/5/2024	City Planning Department
Miscellaneous	Not Cleared	2/5/2024	City Planning Department
Miscellaneous	Not Cleared	2/5/2024	City Planning Department
Specific Plan	Not Cleared	2/5/2024	City Planning Department
ZA Case	Not Cleared	2/5/2024	City Planning Department
ZI	Not Cleared	2/5/2024	City Planning Department
Eng Process Fee Ord 176,300	Cleared	2/15/2024	COLIN LOREDO

### Contact Information

Engineer	Lamoureux,, Mark; Lic. No.: C38382	426 SAGE PLACE    GLENDORA, CA 91740
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### Inspector Information

No Data Available.
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Pending Inspections

No Data Available.
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Inspection Request History

No Data Available.
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Channel Law Group, LLP

September 24, 2024

Supplemental Justifications for CEQA Appeal of Case No. ZA-2022-2788-  
CU-SPP-SPPA-SPR-WDI, Conditional Use; Project Permit Compliance;  
Project Permit Adjustment; Site Plan Review; Waiver of Improvement and  
Dedication, 2282 Ventura Boulevard; Council File No. 24-0794

# **EXHIBIT B**

# Los Angeles Department of Building and Safety

## Certificate Information: 22822 W VENTURA BLVD 91364

Application / Permit	24041-10000-16620
Plan Check / Job No.	E24LA02481
Group	Electrical
Type	Electrical
Sub-Type	Commercial
Primary Use	()
Work Description	[ePlanLA] Power and energy for service 1,000A, 120/208 V, 3 ph, 4W, new panels, Electrical equipments, receptacles, HVAC equipment, new power and lighting, Total lighting area: 67,831 sq ft. New Electrical for new ground up restaurant with drive thru
Permit Issued	No
Current Status	Quality Review Completed on 4/25/2024

### Permit Application Status History

Submitted	4/11/2024	APPLICANT
Assigned to Plan Check Engineer	4/18/2024	MIKO GHАЗAIAΝ
Corrections Issued	4/21/2024	MIKO GHАЗAIAΝ
Quality Review Completed	4/25/2024	MEHDI ZANDI

### Permit Application Clearance Information

No Data Available.
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### Contact Information

Engineer	Moss,, Randall Victor; Lic. No.: NA13453	,
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### Inspector Information

No Data Available.
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### Pending Inspections

No Data Available.
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### Inspection Request History

No Data Available.
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