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January 11, 2024

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") APPEAL SUMMARY AND STAFF RESPONSE. 3836 NORTH FIGUEROA, 3800-3830 NORTH PASADENA AVENUE, 3832-3836 NORTH FIGUEROA STREET & 110 EAST AVENUE 39; CF 23-0668**

**Project Background**

The proposed project is the construction, use, and maintenance of a new, seven-story (with one [1] basement level), mixed-use building with 100 dwelling units, including 10 dwelling units set aside for Extremely Low Income Households (or 10% of the total number of units) and 14,734 square feet of ground floor commercial space. The project includes commercial, residential and parking on the ground floor. The 2<sup>nd</sup> floor primarily includes parking with some residential uses. The 3<sup>rd</sup> through 7<sup>th</sup> floors includes dwelling units and amenities for residents. The project will provide a total of 114 automobile parking spaces, 16 short-term and 210 long-term bicycle parking spaces.

On September 15, 2022, the designee of the Director of Planning issued a Determination for Case No. DIR-2018-4190-TOC-SPR, which approved a Transit Oriented Communities (TOC) housing development by granting by-right Base Incentives and one (1) Additional Incentive for a qualifying Tier 3 project as follows:

**Base Incentives.**

- a. *Residential Density.* An increase in maximum residential density by up to 70 percent to allow for 100 dwelling units, including On-site Restricted Affordable Units.
- b. *Floor Area Ratio (FAR).* An increase in maximum permitted FAR of up to 4 to 1.
- c. *Parking.* Provision of parking at a maximum 0.5 automobile parking spaces per unit and a 30% percent reduction in the nonresidential parking requirement consistent with LAMC Section 12.22-A.31.

### Additional Incentives.

- d. *Height.* An increase in height of two (2) additional stories and up to an additional 22 feet. Exceptions for roof structures and equipment in LAMC Section 12.21.1-B,3, shall be permitted.

In addition to the Letter of Determination, the Director of Planning also determined based on the whole administrative record that the Project is exemption from CEQA pursuant to Article 19, Section 15332, Class 32 of the CEQA Guidelines, and there is no substantial evidence demonstrating that an exception to a categorical exemption applies. A Categorical Exemption justification report (CE Justification Report) was prepared for the accompanying environmental case (Case No. ENV-2018-4189-CE) by the Department of City Planning.

On September 30, 2022, within the required 15-day appeal period, two (2) appeals were filed by Saul Ramirez Jr. and Derek Ryder, Arroyo Seco Alliance, for the entire decision of the Director of Planning. The City Planning Commission unanimously decided to deny the appeal and sustain the Planning Director's Determination at its meeting on March 23, 2023.

On June 6, 2023, a CEQA appeal was filed by one party: Amalia Bowley Fuentes on behalf of Lozeau Drury LLP. While the underlying entitlement (Transit Oriented Communities) cannot be further appealed, the appellant is challenging the Project's CEQA clearance to the City Council, as filed under Council File No. 23-0668.

### Staff Recommendation

Staff recommends that the PLUM Committee recommend for Council Action to deny the submitted CEQA appeal and sustain the City Planning Commission's determination, based on the whole of the administrative record, that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15332, Article 19 (Class 32), and that there is no substantial evidence demonstrating that an exception to the categorical exemption (ENV-2018-4189-CE) pursuant to CEQA Guidelines Section 15300.2 applies. The Appellant has not met the burden of proof to demonstrate with substantial evidence that the Director of Planning's adoption of the Class 32 Categorical Exemption is incorrect and inappropriate and that any of the exceptions to a categorical exemption applies.

### Appeal Summary

The following appeal statements have been compiled and summarized from the submitted appeal and responded to below.

#### **1. Appeal Point:**

The proposed project does not qualify for a Class 32 Categorical Exemption under CEQA and instead requires an Environmental Impact Report (EIR) due to significant Traffic Impacts.

**Staff Response:**

The appellant claims that the project is not eligible to use a Class 32 Categorical Exemption due to the implementation of a Transportation Demand Management (TDM) strategy included in the conditions of approval of the project. The appellant argues that the TDM is a mitigation measure that will mitigate potential traffic impacts.

On May 11, 2018, the City's TDM program was integrated into the Mobility Plan 2035. Through the TDM Ordinance (Ord. No. 168,700, Eff. 3/31/93), the project can utilize various strategies that change travel behavior in order to improve efficiency, ease traffic and reduce carbon footprints. The TDM program includes a menu of options for employers and institutions, including ridesharing, carpooling, vanpooling, shuttles, telecommuting, flexible work hours, bicycle parking, subsidized transit passes and more.

In this case the project was conditioned to provide residential parking at a cost of \$150 a month for residential parking spaces, with the exception of all Restricted Affordable Units which shall include any required parking in the base rent or sales price as verified by the Los Angeles Housing Department (LAHD).

The condition referenced above does not constitute a mitigation measure, as mitigation measures are actions taken to reduce a project's impacts on the environment that are above and beyond the existing laws, regulations, and requirements already in place to reduce environmental impacts.

Additionally, as detailed in the project's traffic report prepared by Transpo Group, dated January 31, 2023, the project does not generate any significant impacts as defined by CEQA. Furthermore, Transpo Group completed the NELA Plaza Development Project (currently known as the Belvedere Development) TIS in July 2018. LADOT adopted the Transportation Assessment Guidelines (TAG) in July 2020, which requires additional analysis to comply with CEQA. The Project has not been entitled prior to July 2020; therefore, the study prepared provides the required CEQA analysis in accordance with the July 2020 TAG.

Furthermore, a Vehicle Miles Traveled (VMT) Analysis was also included in the transportation study dated January 31, 2023. The City's VMT calculator version 1.3 was used to determine the Project VMT. The mixed-use Project is considered to have a significant impact if the VMT per capita exceeds 15 percent below the average household VMT per capita for the Area Planning Commission (APC) area in which the project is located. The Project is located in the East Los Angeles APC, which has a 7.2 threshold for 15 percent below the average household VMT per capita. The Project characteristics are part of the VMT calculator including the land use size, proposed parking reduction and monthly parking costs, and provision of bicycle parking. The retail portion of the project is less than 50,000 square-feet; thus, it is considered local serving and would not have a VMT impact. Attachment A shows the VMT calculator for the Project. The VMT per capita is 5.3 for the Project. As indicated on the VMT calculator, the Project would not have a significant impact and no mitigation is required.

Therefore, there is substantial evidence in the record that demonstrates that the project will not result in significant transportation-related impacts regardless of the Transportation Demand Management condition.

**2. Appeal Point:**

The proposed project does not qualify for a Class 32 Categorical Exemption under CEQA and instead requires an Environmental Impact Report (EIR) due to significant Air Quality Impacts.

**Staff Response:**

The project provided substantial evidence to demonstrate eligibility for a Class 32 Categorical Exemption, pursuant to CEQA Guidelines Section 15332, and that no exceptions pursuant to CEQA Guidelines, Section 15300.2 applies. A Class 32 Categorical Exemption justification was prepared by the Department of City Planning and included in the case file. The justification included a traffic report and VMT analysis, noise study, air quality report, and narrative related to exceptions to a categorical exemption. In accordance with the Class 32 Infill Development Categorical Exemption, the project demonstrated consistency with zoning and general plan policies and that the project would not result in any significant impacts related to traffic, noise, air quality or water quality. As there were no identifiable significant CEQA impacts, the project would not require an EIR or MND.

The appellant alleges that potential air quality impacts make the project ineligible for the Class 32 Categorical Exemption. The appellant contests that an environmental chemist and certified hydrogeologist of the environmental consulting firm Soil Water Air Protection Enterprise (SWAPE) reviewed the Class 32 document and found that the exemption incorrectly estimated the projects potential air quality impacts therefore cannot be relied upon to determine the significance of the projects impacts on indoor and outdoor air quality. However, the appellant did not provide a technical air quality report to demonstrate different results.

An Air Quality Impact Analysis dated March 2017 was prepared by ENVICOM Corporation for the proposed project indicating that the project will result in less than significant impacts to air quality. The City Planning Commission approved the project on March 23, 2023. Subsequently, the Supporters Alliance for Environmental Responsibility (SAFER) appealed the City Planning Commission's determination to the City Council.

However, the project's environmental impacts were fully analyzed in the Categorical Exemption document prepared by the Department of City Planning. As noted in this analysis and the supporting technical data in the Appendices, the project will not exceed any air quality thresholds of significance for construction or operation. As a 100 unit residential development with ancillary open space uses, the project will not result in the generation of any significant amounts of air pollutants.

In summary, the appeal does not provide any substantial evidence of any significant environmental impacts. Planning has evaluated the proposed project and determined that it qualifies for a Class 32 Categorical Exemption under CEQA. Planning maintains that the required findings and imposed conditions of the City Planning Commission are valid and that the appeal arguments are not grounds for reversal of any portion of the approval. Therefore, Planning recommends that the Planning and Land Use Management Committee deny the appeal and sustain the City Planning Commission's decision

The appellant has not submitted substantial evidence to support their claims that a Class 32 Categorical Exemption was improperly utilized, and thus, there is sufficient evidence in the record demonstrating that the project's CEQA clearance was properly assessed.

**Conclusion**

Based on the information in the record and after consideration of the appellant's arguments for appeal, Staff concurs with the determination by the City Planning Commission which found that the Project complied with all requirements under CEQA and that there is no substantial evidence that the project would result in a significant effect on the environment. Therefore, it is recommended that the PLUM Committee deny the appeal and affirm that the Project is compliant with CEQA and that no further analysis is warranted.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning

A handwritten signature in black ink, appearing to read 'Esther Ahn', written in a cursive style.

Esther Ahn  
City Planner

EA:nm:ss