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Public Comments Not Uploaded Grant the Appeal for 504 W Avenue 44, ENV-2022-7296-CE, at PLUM Hearing on Tuesday the 25th. Council File 24-1570

1 message

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Reply-To: clerk.plumcommittee@lacity.org

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Dear Council Members,

I am a resident of Mt. Washington and live with my family directly across from the project you are hearing at your next PLUM meeting on Tuesday. I support reasonable development at this location. A house here would improve our community. But I do not support any project that puts me, my family, and the community at great risk from fire danger. And I ask you to grant the appeal so that the danger posed by this project can be corrected. Please see the attached for more detail.

In light of the recent tragedy and disaster in Pacific Palisades I would encourage the entire City family to take more seriously its obligations and laws adopted specifically to protect its citizens from these types of events. The examples provided by the Planning Department of similar projects where widening was not required do not apply here because in those cases the projects met the minimum standard of the Fire Code. Here the project violates at least three parts of the Fire Code including minimum fire lane width and secondary access within 700 feet.

Frontenac Avenue MUST be widened and strict adherence to the Hillside Ordinance MUST be enforced. The proposed project at 504 W Avenue 44 puts the public in great danger from fire. LAFD cannot adequately service this location nor any property in this area due to the narrow streets and the excessive distance to any secondary access location. This is not my opinion but rather is crystal clear from the evidence in the record before you including the loss of our neighbor Frank Hernandez who died in 2014 from a fire at his home at 533 W Avenue 44 (the intersection of W Avenue 44 and Frontenac Avenue).

The project is located on a through lot between two city streets (W Avenue 44 and Frontenac Avenue). Both are substandard hillside streets. W Avenue 44 is 17 feet to 18 feet wide. Frontenac Avenue is 10 feet wide, while improved and paved in the past, due to mud and dirt slides now appears as a dirt road. The City is requiring the widening along the property boundary on W Avenue 44 but has approved a variance to NOT widen Frontenac Avenue along the property boundary. If Frontenac is not widened then an already hazardous, dangerous situation will be made worse because it would mean that Frontenac could never be made compliant to the fire code.

The project was granted a CEQA Class 3 Exemption as would seem reasonable in most cases. However, in this case there is plenty of evidence in the record of both significant, cumulative impacts from the 18 recent and proposed projects before the City and the environmental impacts from the unusual circumstances created by the project (VHFHSZ, Red Flag, violations of Fire Code Sections 503.1.5, 503.1.6.1, 503.1.6.4, not widening Frontenac along a lot in the middle of the unimproved portion of the street) that make granting of an Exception per CEQA Section 15300.2 not only reasonable but the only way to protect the public's safety. At a minimum further CEQA analysis needs to be performed so that the public and the City can be better informed about the environmental impacts of the proposed project.

I urge you to grant the appeal, send the project back for further analysis, and protect the safety for all who live in the hillsides.

Sincerely,

Mark Kenyon



504 W Avenue 44 - CEQA Appeal Justification.pdf
164K

**FRONTENAC AVENUE SAFETY COALITION
(FASC)
Justification for CEQA Appeal
ZA-2022-7295-ZAA-ZAD-SPP-HCA**

CEQA Summary

The California Environmental Quality Act (CEQA) provides exemptions from its requirements to conduct environmental review in cases where the Legislature has determined that the listed classes will not cause any significant effect on the environment. These classes are listed in CEQA Section 15300 - Categorically Exemptions. The City Planning Department determined that the proposed project at 504 W Avenue 44 met the requirements for a Class 3 exemption. That is, it meets the requirements of CEQA Section 15303 (a):

“One single family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single family residences may be constructed or converted under this exemption.”

However, Section 15300 also provides for Exceptions to the Exemptions (a uniquely confusing term of CEQA art) which can be found in Section 15300.2. The three Exceptions that are potentially applicable here are: (a) Location, (b) Cumulative Impacts, and (c) Significant Effect. Each of these will be discussed in detail below.

As is discussed below: (1) there **is** substantial evidence in the record to support all three of the Exceptions listed above, (2) there **is not** substantial evidence in the record to support the granting of the Class 3 Exception, (3) the Zoning Administrator (ZA) and East Los Angeles Area Planning Commission (ELAAPC) **erred** in their decision to grant the Exemption, and (4) the ZA and the ELAAPC provided **no analysis** whatsoever to support their decision but rather just categorically stated that the project was Exempt.

As a result, the **Appeal should be granted.** Further, the City did not have the necessary authority to make the Findings and Determinations as required. The project's Findings and Determinations should be overturned and the project should be **returned to the Planning Department** for further and appropriate environmental review.

1. The Main Controversy

Frontenac Avenue Safety Coalition “FASC” alleges that the proposed project puts the public’s safety at risk because the impacts posed by inadequate vehicle access are significant. The project violates a number of requirements adopted by ordinance in the

City's Fire Code specifically intended enacted as law to provide for emergency vehicle access, and adequate ingress and egress by the public during emergencies.

The facts and evidence in the record do not support the granting of the Class 3 Exemption because there is substantial evidence that the location, cumulative impacts, and unusual circumstances cause significant environmental impacts.

2. Facts and Evidence in the Record

Facts and Evidence That Are Undisputed By Applicant, FASC, ZA, and ELAAPC.

- The proposed project is located within a Hillside Area per the Zoning Code.
- The project is also located in a Very High Fire Hazard Severity Zone (VHFHSZ).
- The project is also located in a Special Grading Area (BOE Basic Grip Map A-13372) .
- The project site is 2.036 kilometers from the Raymond Fault.
- The project is subject to the development standards of both the Baseline Hillside Ordinance and the Mount Washington-Glassell Park Specific Plan.
- W Avenue 44 is a substandard hillside street varying in width from less than 17 feet to 20 feet.
- Frontenac Avenue is a substandard hillside street varying in width from approximately 10 feet to 20 feet.
- Both W Avenue 44 and Frontenac are designated Red Flag streets.
- Parking is allowed on the right side going uphill on West Avenue 44.
- Parking is allowed in front of 449, 453 Frontenac in the 20-foot section of that street and prohibited everywhere else on Frontenac.
- The proposed project is located on a through lot that is fronted by both W Avenue 44 and Frontenac streets.
- The Project application states in reference to both W Avenue 44 and Frontenac: *“emergency vehicle access is impaired by the current street width”*. The ZA made a finding agreeing with applicant’s statement that emergency vehicle access is impaired.
- The City implemented a Remote Automated Weather Station (RAWS) in Mt. Washington to better determine when local conditions dictate that a Red Flag condition be called for Mount Washington. The City failed to maintain this station and it has been non-functioning for over a decade. As a result, critical Red Flag conditions are missed (the west side RAWS stations often have different weather conditions) which put the public’s safety at greater risk from wildfire in our area.

Facts and Evidence That The ZA and ELAAPC Ignored In Their Written Decisions But Are Not In Controversy.

- The project site is over 900 feet to a secondary access at Glenmuir Avenue from the proposed driveway located on W Avenue 44.
- The project site is approximately 340 feet to a secondary access at Frontenac from the proposed driveway.
- Neither W Avenue 44 nor Frontenac meet the minimum requirements of a fire lane. See LAFD Fire Code Section 503.1.6, *“Fire Lanes shall have a minimum clear roadway width of 20 feet (6096 mm) when no parking is allowed on either side.”*
- LAFD Fire Code Section 503.1.5 requires a secondary access if the nearest cross street is in excess of 700 feet.
- In February 2014, Mount Washington community member Frank Hernandez lost his life in a fire at his residence at 533 W Avenue 44 (at the intersection of W Avenue 44 and Frontenac). Numerous members of the public witnessed and have testified at City hearings, including this project, that LAFD was delayed over ten minutes reaching the fire due to a legally parked truck in the 400 block of W Avenue 44.
- During the 2014 fire LAFD blocked the entire length of W Avenue 44 from the 300 block to the 500 block. LAFD did not use Frontenac for ingress or egress. They drove up and backed down W Avenue 44.
- LAFD has driven fire trucks, including ladder trucks, on Frontenac on many occasions including the days subsequent to the 2014 fire.
- City trash trucks, construction vehicles, delivery vehicles, and local traffic use Frontenac on a daily basis. They often cause issues including traffic jams, running off the downslope part of the road etc. See the photographs submitted to the record by FASC.

Facts the ZA and ELAAPC appear to rely on but do not lead to substantial evidence of no exception to Class 3 Exemption.

- The Applicant claims there are no impacts, except to emergency vehicle access, from not widening Frontenac but provided no evidence to support these claims.
- The Applicant claims it is infeasible to widen Frontenac because it is too expensive. This is just a claim and no evidence was provided to support this

contention. Counter evidence was provided by the public by citing to the projects at 449 and 453 Frontenac.

- The Applicant claims that building Frontenac is infeasible because it would lead to additional grading. And while this claim may be true the Applicant did not provide any evidence to support this claim. And as members of FASC pointed out at the hearing the proposed grading and retaining wall on the Frontenac side of the project could be redesigned to incorporate the roadway into the existing design.
- The ZA and ELAAPC adopted the Applicants' contention that there were no adverse environmental impacts by not widening Frontenac because the project was not providing access to the property from that street. The ZA and ELAAPC completely ignored how widening that street is required to eventually make Frontenac compliant with 503.1.5 of the Fire Code.
- At the ELAAPC hearing presentation the ZA provided only two projects from throughout the City that he relied on for evidence in the granting of the request not to widen Frontenac. Curiously, these two projects appear to be a last minute addition as they were not referenced in his decision letter. These projects were approved at 4547 E Cleland Avenue and 4548 E San Andreas Avenue. But as members of the public pointed out at the hearing, neither of these is particularly on point or a good reference to the proposed project because they both meet the requirements for secondary access as required by LAFD Fire Code Section 503.1.5. The project at 4547 E Cleland is only 450 feet and 4548 E San Andreas is 75 feet respectively from a secondary access.

3. Analysis Of The Roadway Facts, Evidence, And The Impacts On Public Safety.

The City And Applicant admit emergency access is inadequate

The City and the Applicant admit that the existing street width on both W Avenue 44 and Frontenac impair emergency vehicle access. W Avenue 44 is a hazard as it is less than 20 feet in many places and allows parking on one side of the street. The ZA stated that Frontenac is unimproved but this is an error as it was required to be improved at 449 and 453 Frontenac in 2003. Additionally, the City paved its entire length in approximately 2012. The dirt condition of the current street is due to the City's lack of maintenance and dirt falling onto the Frontenac roadway from the upslope lots.

Frontenac is a hazard due to its very narrow width, lack of maintenance, and dirt eroding onto its surface by the use by City vehicles, construction vehicles, and members of the public. A proper analysis on the current environmental situation and

possible mitigations should have been ordered as part of an MND process, not an exemption.

City must require the Applicant to widen Frontenac or that street will never be made Code compliant - this is the minimum that the City could do to remedy an obviously unsafe situation

If the Applicant is not required to widen Frontenac along his boundary there will always be a section of that street that is 10 ft. wide unless the City were to choose to widen it of its own accord. This possibility runs counter to existing City policy that requires new developments to pay to improve sub-standard streets.

The ZA stated, “the improvement of Frontenac Avenue is expected to be required when the properties develop along Frontenac Avenue that take access directly from Frontenac Avenue.” This statement is contrary to the facts in the record.

As Zimas shows there are 17 lots on the west side of Frontenac. Of the 17 on this side, 9 are already built with access from Canyon Vista Avenue and 1 is already built on Frontenac itself; it was constructed in 1924. All 10 of these properties already provide their 10-foot access to the centerline of Frontenac. Of the remaining 7 lots on the west that are unbuilt only 1 appears to not contain the full 10 feet along its boundary. In that case it appears by physical inspection that the road is fully built to 10 feet on the west side, but the City’s failure to clean the debris from the upslope lots has narrowed the road. This debris is over 12 inches deep in some places and gives the road the appearance of being a dirt road.

The entire issue of making Frontenac compliant to City standards is on the downslope lots, east side of the road. That is, it is these lots on the east that need to be widened, not those across the road to the west. This is clearly visible on ZIMAS. On this side of the street there are 12 lots. Of these, 3 lots front only on Frontenac and of these, 2 (449 and 453) were already required to widen it to 20 feet (that is, they added the additional 10 feet on their side of the street). Of the remaining 9, 7 are unbuilt (including the proposed project) and 2 are already built. All 9 are through lots between W Avenue 44 and Frontenac. Of these, 3 lots including 1 already built are within 700 feet of a secondary access. The remaining 6 lots (5 unbuilt including the proposed project and 1 built in 1924 at 486 W Avenue 44) are all greater than 700 feet to a secondary access point. Under the policy as stated by the ZA, these lots will not be required to widen Frontenac because they also front on W Avenue 44.

Using the ZA’s logic that only those lots “that take access directly from Frontenac Avenue” will need to widen it as the policy, there is only 1 lot that still needs to widen Frontenac to meet the this policy - it is at the end with Canyon Vista at 443 Frontenac.

It, however, has an existing use that is connected to the home at 437 Canyon Vista Avenue. And even if 443 Frontenac was eventually split from 437 Canyon Vista and required to build out Frontenac to 20 feet it would do nothing to correct the situation for the 24 lots along Frontenac and W Avenue 44 that are not in compliance with LAFD Code Section 503.1.5 and do not have a secondary access within 700 feet.

As the public testified to before both the ZA and the ELAAPC, the situation is made worse because this lack of an adequate secondary access caused many to be trapped in their homes with no way out except on foot during the 2014 fire.

The ZA seems to contend that installing sprinklers will resolve this issue. However, while sprinklers can provide more time for LAFD to get to a property, they cannot resolve those issues where LAFD is unable or unwilling (due to a fire where the access issues put their equipment and personnel at risk) to access properties that are greater than 700 from a secondary access.

The Applicant could widen Frontenac from the intersection with W Avenue 44 to Canyon Vista Avenue and thereby create a Code compliant access that extends to the boundary of the Hillside.

As described above, the upslope lots along Frontenac already provide the required 10 feet to centerline street improvement. Though this is hard to see on Zimas and in the field due to the significant eroded soil that has been allowed to collect on the street. Frontenac has been graded and paved in past years but not maintained properly by the City.

As described above, none of the lots on the downslope have any construction on them except the last lot at Canyon Vista where a fence has been erected and the 2 that have already widened the road. It is feasible to widen Frontenac along its entire length and thus create a Code compliant roadway. Because Frontenac connects to Canyon Vista there would then be a continuous road of 20 feet or greater to the boundary of the Hillside.

As the ZA correctly states, this same feasibility is not possible on W Avenue 44 because the homes developed along much of that road were constructed in the 1920's and 1940's before the 20-foot minimum requirements were enacted, and they now encroach into the 20-foot right-of-way.

4. CEQA Exceptions

Location Exception

CEQA Section 15300.2 states that the location of “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.”

The location of the proposed project is in a mapped hillside area, a mapped Very High Fire Hazard Severity Zone, serviced by two streets that do not meet the minimum requirements of a Fire Lane, is adjacent to and across the street from Rainbow Canyon Park - a wildland natural landscape prone to wildfires and with steep topography, and where the evidence shows that LAFD cannot adequately protect the public's safety even on a night with good conditions (i.e. no wind, cool weather, good visibility etc.) as was witnessed in the 2014 fire.

To mitigate these impacts from locations like Mt. Washington the City has adopted a number of policies and ordinances. These include the Hillside regulation for widening streets, both adjacent to a property and to the boundary of the hillside, requiring sprinklers, Red Flag regulations, Fire Code regulation 503.1.5 - 700 foot secondary access, Fire Code regulation 503.1.6.1 - minimum Fire Lane is 20 feet with no parking. Other than sprinklers the proposed project does not implement any of these mitigations fully and as a result the project's location causes significant impacts to the occupants of the proposed building as well as the surrounding landowners.

W Avenue 44 is 17 to 18 feet in many locations with parking one side. This has already led to the death of Frank Hernandez. Fire trucks cannot maneuver past legally parked cars. Widening W Avenue 44 adjacent to the property would help mitigate this impact but further analysis and mitigation should be performed. For example, the parking is currently on the opposite side from the fire hydrants - this violates LAFD Fire Code Section 503.1.5.4; perhaps the City should study and fix this. Maybe parking should be made by permit only and conditions set to increase the public's safety.

The situation along Frontenac is discussed above, there the City should at a minimum require the widening of the road adjacent to the property otherwise the road will never be made compliant. The City should analyze the safety issues caused by Frontenac and propose mitigation measures, adopt overriding considerations or the no project option as allowed under CEQA. None of the Conditions imposed on the project, none of the

Regulatory Compliance Measures (RCMs), and none of the Hillside Construction Regulations (HCRs) mitigate the non compliance of the project with the Fire Code.

Requiring the widening along the entire length of Frontenac is technically feasible and would bring the project and the upper end of W Avenue 44 into compliance with LAFD Code Section 503.1.5. Financial feasibility is **NOT** part of the required Findings that the City must make and the owner developer knew or should have known that such a Finding could not be made. If the City does not like either of these alternatives then it should conduct a full environmental review, analyze the impacts, and see if a mitigated negative declaration is possible. What the City cannot do is break its own laws. Section 503.1.5 is clear, if a situation results in a dead-end that is over 700 feet the City **SHALL** provide at least one additional ingress-egress roadway. That is done through properly conditioning the project to assure the both roadways are improved to assure the safety of the residents of the project and the surrounding community.

Significant Cumulative Impacts

CEQA Section 15300.2 states that a Class 3 Exemption is *“inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.”*

The City has approved over 11 projects, including new construction and major remodels, on W Avenue 44 and Frontenac in the years since it adopted the Hillside regulations (e.g. street widening). The new construction projects have widened the road in front of their property and major remodels did not. In all cases, these projects added people and cars to the area. But the hazardous situation continues to exist, and many parts of both W Avenue 44 and Frontenac remain less than 20 feet. This was the situation in 2014 when the fire at 533 W Avenue 44 occurred thus demonstrating that the impacts to safety continue to be significant and cumulative in nature.

Additionally, there are 6 recently approved projects that will be constructed in the next year or two (421, 475, 487, 504, 533, and 537 W Avenue 44) and one at 481 W Avenue 44 that is in the Application process. And it can be expected that 4 or 5 other projects could/will be pursued in the next 5 years.

All these projects are single family homes that have occurred over the past decades and 6 are occurring in the next few years. The benchmark for a Class 3 Exemption is a three house project. Six is double that standard and almost 18 is 6 times the exemption limit. The cumulative impacts are all related to the inadequate roadway system and its impact on public safety. The policies pursued by the City (Hillside Ordinance, Red Flag, Fire Code, etc.) have helped but the evidence shows that it is not enough. LAFD should be able to reach a house on W Avenue 44 or Frontenac in 5 minutes. It should not take

15 minutes. The record shows that the last wildfire, in 2023, on Frontenac had to be put out by members of the public as LAFD was unable to access the fire in a timely manner. If a wildfire were to again rage up Rainbow Canyon (this has happened 3 or 4 times in the past two decades) it is a possibility or even a probability that the local fire captain will not put his or her equipment and people at risk up a long narrow, substandard street with no exit.

The cumulative impacts from all these projects is obvious and significant. The City is turning a blind eye to its obligations under CEQA. It is essentially piece-mealing the impacts from all these projects by only considering each single project before it in isolation; even in cases, such as the proposed project, where the record shows multiple ongoing projects happening closely in time.

The cumulative impacts caused by the projects described above include: fire and emergency vehicle access, parking, impacts of parking on access, traffic, noise, and air pollution. No single projects Conditions, RCMs, or HCRs take into account the cumulative impacts from 6 or 18 projects. Only a proper cumulative impact analysis can determine and mitigate these impacts.

Significant impacts caused by unusual circumstances

CEQA Section 15300.2 states that a Class 3 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.*” As the CEQA Guidelines state and the California Supreme Court determined this Exception only applies if there is substantial evidence that the unusual circumstances exist that will have a significant effect on the environment.

In Section 1 above, we have summarized the Facts and Evidence in the record. Does any of this Evidence point to unusual circumstances? To help answer this question the reader should take note of the Planning Department's own reports with respect to the adoption of the ordinances related to the Baseline Hillside ordinance, the Mt. Washington Specific Plan, the adoption of Regulatory Compliance Measures, and the adoption of Hillside Construction Regulations. However, the most recent analysis of the unusual circumstances posed in the hillsides of the City is in the City Planning Commission and City Planning Department reports, analysis, and Findings during the adoption of the Accessory Dwelling Unit (ADU) ordinance, see CPC-2016-4345-CA and CF 16-1468 for details.

In the CPC report, in support of the ADU ordinance, it was reported that hillside lots in the City comprise 28% of the total lots. Does the fact that these lots are less than a third of the total (i.e. a minority) make the circumstances of hillside lots unusual? The

Planning Department and the City Council PLUM Committee appear to have concluded that merely being a hillside lot was not unusual. They then analyzed hillside lots in VHFHSZ and the impacts from fire, roughly 20% of all lots, and concluded that these two conditions together were likely unusual enough to exempt them from the ADU ordinance. Further in that same report, they considered the less than 5% of lots in a designated Hillside, VHFHSZ, and on a Red Flag street and again concluded these lots exhibited even greater unusual circumstances and should be exempt from the ADU ordinance. The report also highlighted as an unusual circumstance any streets that were less than 20 feet and that they should be exempt from the ADU ordinance. This mix of options was presented to the Planning Department and PLUM for their consideration.

After much discussion by PLUM and the City Planning Department it was decided that lots that were both in a designated hillside area and in a VHFHSZ would be exempt from the ADU ordinance unless certain conditions could be met, these are: ADU has sprinklers, an additional off street parking spot is provided, and the lot is on a 20 foot or greater street. The only other exemption was the entire Northeast Los Angeles Community Plan (NELA Plan) area and the Silver Lake - Echo Park - Elysian Valley Community Plan (Silver Lake Plan) area would be exempt - these will be discussed below. But note in general, any lot that is in a hillside, in a VHFHSZ, and fronts on a street that is less than 20 feet is considered by the Planning department to be unusual enough to be prohibited from the ADU ordinance. While the report does not characterize how many lots this is, one can estimate that it is less than 1% of all lots in the City.

In exempting the NELA Plan and Silver Lake Plan areas from the ADU ordinance the Planning Department noted in its report that these areas: *“are distinct from other hillside neighborhoods in that they allow for greater access, may have less fire risk and are generally more urbanized.”* The evidence in this case establishes that there exist unusual circumstances that are distinct from the general character of hillside lots in this Plan area.

Therefore, the evidence from the Planning Commission, PLUM Committee, and the Planning Department's own reports show that the City considers any lot that is in a hillside designated area and is in a VHFHSZ has unusual circumstances stemming from the risk of allowing more density into such high fire danger areas. And if it also fronts on a substandard hillside street, it is even more unusual. And/or any lot that meets these definitions and happens to be in the NELA Plan area must have, by definition, unusual circumstances - that is it is very distinct for the usual hillside conditions in the NELA Plan area.

The record clearly shows that:

The project violates Section 503.1.5 of the LAFD Fire Code. The evidence from the City's own records including ZIMAS show categorically that the project is sited on a substandard hillside street (W Avenue 44) that results in a dead-end in excess of 700 feet. The Code requires that an additional, secondary access be provided. There is no way around this requirement - the operative language is "**shall provide.**"

The project violates Section 503.1.6.1 of the LAFD Fire Code. The evidence in the record shows that both W Avenue 44 and Frontenac are less than 20 feet in width and allow for parking except on Red Flag days. Evidence in the record shows that fires occur on non-Red Flag days and can cause loss of life. The City admits that "*emergency vehicle access is impaired by the current street width.*" Section 503.1.6.1 prohibits parking on streets that are less than 20 feet - whether or not it is a Red Flag Day. Section 503.1.6.1 states that "*Fire Lanes **shall** have a minimum clear roadway width of 20 feet (6096mm) when no parking is allowed on either side.*"

The project violates Section 503.1.6.4 of the LAFD Code. The evidence in the record shows that the project and Fire Hydrants are on the west side of W Avenue 44 and the parking (which violates Section 503.1.6.1) is on the east side. Section 503.1.6.4 states that "*where parking is allowed on one side of a required fire lane, parking **shall** be on the same side of the roadway as the hydrants.*"

The City must comply with the law or conduct the proper environmental review needed to overcome this flaw if possible. The City Planning Department cannot approve a project that violates its own law. The law is clear, in each case the operative language is **shall** which is a mandatory duty on the City decision makers. These are requirements that the Planning Department cannot ignore as it has done so here.

In any case, surely the most obvious and definitional example of an unusual circumstance is one in which a project is proposed that does not comply with the law. In this case three laws. At a minimum the Class 3 Exemption is inappropriate because there is substantial evidence that the project does not comply with Sections 503.1.5, 503.1.6.1, and 503.1.6.4 of the Fire Code and the ordinances that adopted that Code., and that this is an very unusual circumstance that directly causes significant environmental impacts to the health and safety of the public.

5. Conclusion

As it is discussed above: (1) there **is** substantial evidence in the record to support all three of the Exceptions location, cumulative impacts, and significant impacts due to unusual circumstances, (2) there **is not** substantial evidence in the record to support the granting of the Class 3 Exception, (3) the Zoning Administrator (ZA) and East Los Angeles Area Planning Commission (ELAAPC) **erred** in their decision to grant the Exemption, and (4) the ZA and the ELAAPC provided **no analysis** whatsoever to support their decision but rather just categorically stated that the project was Exempt.

As a result, the **Appeal should be granted.** Further, the City did not have the necessary authority to make the Findings and Determinations as required. The project's Finds and Determinations should be overturned and the project should be **returned to the Planning Department** for further and appropriate environmental review.