

## Communication from Public

**Name:** Dean Wallraff, Advocates for the Environment  
**Date Submitted:** 02/28/2021 09:54 AM  
**Council File No:** 20-1596  
**Comments for Public Posting:** Please include the attached letter in the record for this case.

March 1, 2021

## Advocates for the Environment

A non-profit public-interest law firm  
and environmental advocacy organization



Los Angeles City Council  
201 N. Figueroa Street, 4th Floor  
Los Angeles, CA 90012

Submitted via LACouncilComment.com

Re: Comments on 1427-1433 S. Greenfield Ave.; Case No. DIR-2019-277-TOC-DRB-SPP and CEQA No. ENV-2019-278-CE, Council File 20-1596, (Item #15 on March 2, 2021 PLUM Agenda)

Dear Honorable City Council Members:

I write to add supplemental comments to our appeal of the above-referenced case, which is scheduled to be heard in the PLUM Committee on March 2, 2021.

We incorporate by reference the comments in the appeal in another case by Fix the City, dated February 16, 2021, attached as Exhibit 1. Many of the issues raised in the Fix the City letter apply in this case, since in this case, as in that case, the City is employing a Class 32 CEQA exemption to avoid analyzing the project's specific environmental impacts.

The following arguments, among others, in the Fix the City letter apply here:

- The Class 32 exemption is inappropriate because there is no evidence in the record that the adequate infrastructure required by CEQA Guidelines § 15332(e) is present for the project site;
- The Project amounts to a discretionary increase in density and intensity, and is therefore inconsistent with General Plan Framework Mandatory Mitigation Policy 3.3.2; because of this inconsistency, the project is not consistent with the General Plan, as Guidelines § 15332(a) requires.

The City Council should grant the appeal and find that the Project is not eligible for a CEQA Class 32 exemption because the Project is inconsistent with the requirements of Guidelines § 15332.

Sincerely,

A handwritten signature in black ink that reads "Dean Wallraff". The signature is fluid and cursive, with the first name "Dean" and last name "Wallraff" clearly distinguishable.

Dean Wallraff, Attorney at Law

Counsel for Bruce Shapiro and Oren Lavee, Appellants

# Exhibit 1

# FIX THE CITY

February 16, 2021

## JUSTIFICATION FOR CEQA APPEAL TO LA CITY COUNCIL ENV 2790-CE) 1300 WESTWOOD BLVD.

Fix the City is a nonprofit organization that advocates for adequate infrastructure and public safety. This appeal focuses on the CEQA Class 32 Exemption granted to this TOC project (and applies to all other Class 32 exemptions granted to TOC projects seeking discretionary additional TOC incentives). We support the twin goals of Measure JJJ to increase affordable housing and good jobs.

### CLASS 32 CRITERION (E) REQUIRES ADEQUATE INFRASTRUCTURE AND CITY SERVICES

For too long the City has claimed that if a site is served already, the site qualifies for a Class 32 CEQA Exemption. But that is not what the Class 32 Criterion (e) requires: it requires **adequate** infrastructure, utilities and public services. In this case, the site is served, but *inadequately*, as the evidence in the record cited below, makes abundantly clear. *The city failed to make a finding of adequacy and support it with substantial evidence.*

This Class 32 CEQA exemption is **arbitrary and capricious and a prejudicial abuse of discretion**. It puts public safety at risk. It is an abdication of the city's responsibility to protect public safety under the **California Constitution** (Article XIII, Section 35). *Saying emergency services exist is not the same as concluding that they are adequate and supporting that conclusion with substantial evidence.*

The deception starts with fire safety CEQA analysis by the Planning Department (which is skipped with Class 32 Exemptions for TOC projects seeking discretionary incentives) by addressing water pressure, distance from a station, or the number of hydrants. *It does not reveal whether the station is actually available or whether traffic congestion severely delays response time. **There may be a station on a map, but is it available?*** Frequently, the answer is no.

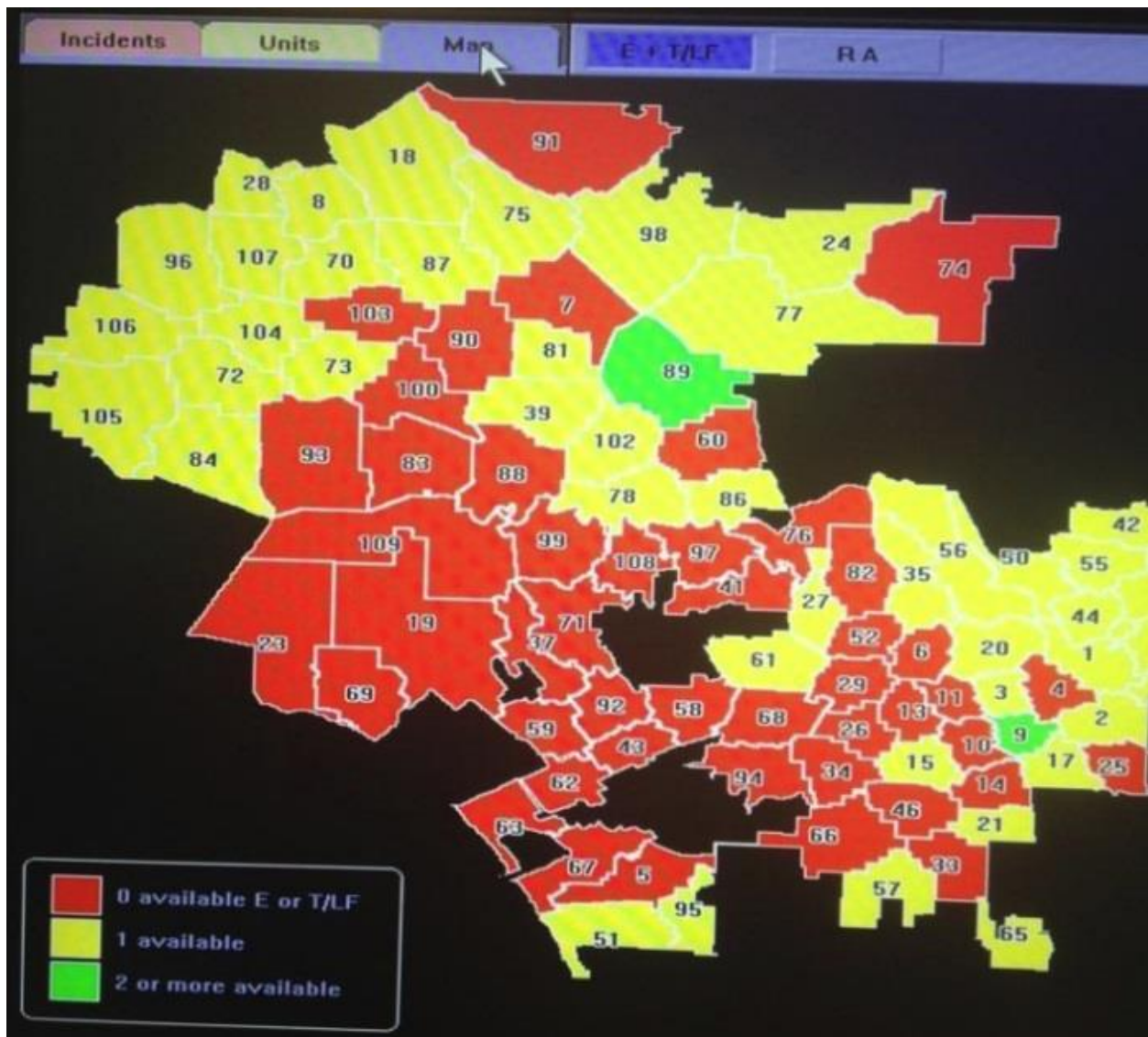
While Fix the City's focus is on emergency services, this city has also experienced chronic water rationing, power outages, sinkholes, air pollution that exceeds federal limits, inadequate park space per capita, etc. *This city is not adequately served.* Under these circumstances, a Class 32 Exemption cannot be lawfully granted. We ask that the Class 32 CEQA determination be rescinded.

Look at the map from the LAFD Dispatch Center taken in 2012 (next page). Almost no station was available to answer a call. *It's worse now.* Many stations are dark and serving other communities.

CEQA is a disclosure law. It requires that the City answer the question of whether public safety services are adequate. The City cannot lawfully dodge the question of adequacy by saying a site is already hooked up to utilities and there are services.

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Adequacy is the key factor. By granting CEQA Class 32 Exemptions without regard for the adequacy of public safety services, the City is exacerbating public safety hazards.



Substantial evidence has been presented by the city itself proving inadequate emergency service:

- A 2005 LAFD letter for the Casden Expo EIR stating that LAFD Station 37, the first-in station for 1300 Westwood, is too old, small and inadequate,
- LA City Controller's Response Time Audit,
- LA County Grand Jury on LAFD Response Lag Time,
- Third-Party Study on LAFD (2015), and
- LAFD 2020 Strategic Plan.

In addition to the documents above, Fix the City incorporates by reference the 26,000 pages of city infrastructure and emergency service substantial evidence submitted to

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the city and in the administrative record for the Expo TNP. This substantial evidence supports our appeal of the CEQA determination of Criterion (e) regarding the inadequacy of existing infrastructure and public services.

In the name of transparency and public safety, the Council needs to admit that emergency services are inadequate and stop issuing Class 32 CEQA Exemptions by dodging the question of adequacy.

### **INADEQUATE INFRASTRUCTURE AND PUBLIC SERVICES PREVENT DISCRETIONARY INCREASES IN DENSITY OR INTENSITY**

Under General Plan Framework Mandatory Mitigation Policy 3.3.2 (a CEQA mitigation declared by the LA City Council to be mandatory),<sup>1</sup> discretionary increases in density or intensity cannot be lawfully approved unless adequate infrastructure and public services can accommodate current development as well as the added demand. Adequacy is determined regarding staffing, equipment, facilities and response times.

Unfortunately, the Planning Department considers this policy as optional despite the clear intent of the City Council in 2001 as well as the pleadings the City filed with the Court of Appeal for the *Hillside Federation* case challenging the General Plan Framework. We seek to enforce that binding commitment to balance development with adequate infrastructure and public services so that this city is livable, safe and sustainable.

Approval of discretionary increases in height, reductions of open space and required yards (i.e., increased intensity of development) for 1300 Westwood Blvd., given the inadequate emergency service for this project site, violates mandatory mitigation Policy 3.3.2. The mitigation through policy section of the FEIR for the GPF follows in Exhibit A. Exhibit B is the Notice of Determination for the FEIR for the GPF. Note that the City Council certified that the mitigation measures included in the FEIR (e.g., 2.10.5) are a condition of approval – mandatory, and not optional.

### **DISCRETIONARY APPROVALS WITH CONDITIONS OF APPROVAL MAKE THIS PROJECT INELIGIBLE FOR CLASS 32 EXEMPTION**

To grant a Class 32 CEQA Exemption a project must be consistent with ALL FIVE criteria for Class 32 Exemptions. This project not only violates **Criterion (e)** as discussed above, it is also in violation of **Criterion (a)** and is therefore not exempt from CEQA review.

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<sup>1</sup> The Notice of Determination issued by the City Council in 2001 is attached to this appeal. It clearly shows that the mitigations included in the FEIR for the General Plan Framework were a condition of approval. They are mandatory.

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This project does not comply with the zone or General Plan, as required by Criterion (a). The Planning Director has been issuing Class 32 infill exemptions for TOC projects that are approved with conditions, in violation of CEQA Class 32 Exemptions.<sup>2</sup>

Class 32 Exemptions are limited to ministerial, by-right projects. When a TOC project is ministerial and relies on just the three TOC incentives authorized by Measure JJJ (increased FAR and density, reduced parking under California Public Resources Code 65915(p)), it can be granted approval over-the-counter and not require Director's Approval. Such a project is eligible for a Class 32 Exemption.

1300 Westwood Blvd. seeks three additional discretionary incentives (75-foot height in a 45-foot 1VL height district, reduced open space, and reduced yards). It was approved with conditions. The discretionary review coupled with conditions of approval make this project ineligible for a Class 32 CEQA Exemption. The *TOC Guidelines Staff Report of May 25, 2017* (page A10)<sup>3</sup> make it clear that requesting discretionary incentives triggers CEQA review.

Fix The City respectfully requests that the City Council rescind the Class 32 CEQA determination for this project and that the City Council instruct the Planning Department to cease issuing Class 32 Exemptions to TOC projects that seek discretionary/additional incentives (the bulk of TOC projects). In this case, the city conditioned approval, the litmus test for CEQA review.<sup>4</sup>

The Planning Department recently issued a Memo on CEQA review for on-menu Density Bonus applications being exempt from CEQA review.<sup>5</sup> However, if conditions are placed on the Density Bonus approval, it cannot be considered exempt from CEQA.

### CLASS 32 CRITERION (A)

Class 32 CEQA exemptions for infill projects are limited to by-right, ministerial projects that are "consistent with the applicable general plan designation and ***all*** applicable general plan policies as well as with the applicable zoning designation and regulations" (Emphasis added, Criterion (a)). This project is not consistent. Therefore, granting a Class 32 CEQA exemption for a project limited to 45-feet and approved for 75-feet

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<sup>2</sup> "Because approval of any Additional Incentives would require a discretionary approval, this would also trigger CEQA review" (Staff Report, TOC Guidelines, May 25, 2017, p. A10).

<sup>3</sup> "CONDITIONS OF APPROVAL (As modified by the City Planning Commission at its meeting on January 14, 2021)" (P.C-1, LD).

<sup>4</sup> The *Friends of Westwood* (1987) decision stated that projects which involve a mix of discretion and ministerial approvals even if they conform with zoning and are therefore subject to CEQA review under Site Plan Review. The author of this appeal co-founded Friends of Westwood and was a plaintiff in that lawsuit. Discretion and conditioning approval therefore make this project ineligible for a Class 32 exemption.

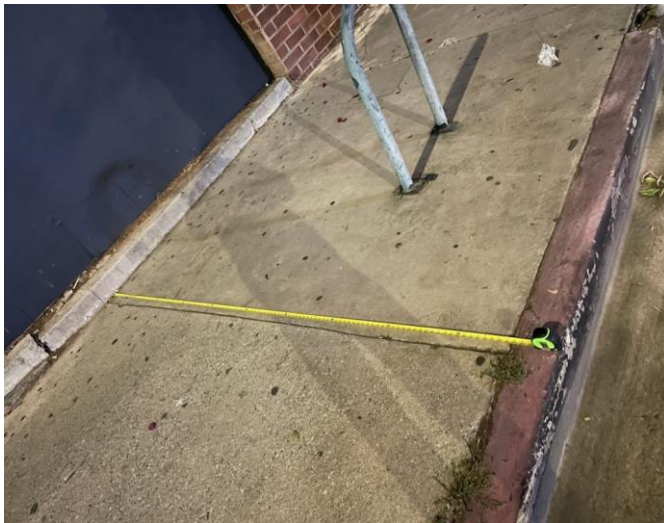


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adjacent to a single-family home, as well as reduced yards and open space, is a substantial prejudicial abuse of discretion.

Criterion A requires that “The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designations and regulations.” **The 75-feet in height approved for this project violates the height district designation of 1VL (45-feet) as well as the established Transitional Height Ordinance**, a zoning regulation. Transitional Height was not amended by Measure JJJ. Therefore, the project violates the zoning and general plan and make the project ineligible for a Class 32 Exemption under Criterion (a). Measure JJJ Section 6 only permits up to three (3) ministerial incentives (extra density and FAR and reduced parking). Height, yards, etc. are not authorized by the voters and violate City Charter Section 464(a). It therefore does not meet criterion (a).

**10-FOOT SIDEWALK INADEQUATE.** Furthermore, Fix the City provided substantial evidence that the **sidewalk** for the project **does not comply with the 15-foot sidewalk standard mandated by MP 2035**. See the photo below that shows the inadequate sidewalk for Westwood Boulevard. From the property line to the curb is only 10’ 1”, and not 15-feet. The sidewalk therefore does not comply with MP 2035 and does not qualify for a Class 32 Exemption. None of the plans provide dimension of sidewalk.



**CPC “Condition 15.** Westwood Boulevard Pedestrian Oriented District (POD). The Department of Building and Safety shall not issue a building permit for the Project unless the Project conforms to all of the applicable provisions of the Westwood Boulevard Pedestrian Oriented District.” Ordinance No. 174,260. Fix the City requests that City Council instruct B&S not to issue any permits for this project because it violates several provisions of the Westwood POD.



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**VIOLATES POD ENTRANCE REQUIREMENT.** This project violates LAMC Section 13.07(d): “Pedestrian Access: All new developments fronting on Pedestrian Oriented Streets shall provide at least one entrance for pedestrians to each Ground Floor.” This project has no door on its Westwood Boulevard frontage within the Westwood POD. The building entrance is on Wellworth Avenue, not Westwood Blvd. Therefore, the project violates the POD and does not qualify for a Class 32 Exemption.

**VIOLATES POD HEIGHT:** The height of this project violates LAMC 13.07.5(a): “The height of a building shall not exceed 40 feet. If the underlying zone otherwise permits a height in excess of 40 feet, then any portion of the building above 40 feet in height, including the roof and roof structure, shall be set back from the front line at a 45-degree angle, for a horizontal distance of not less than 20 feet.” This project does not provide required setback above 40-feet and therefore does not qualify for a Class 32 Exemption. See p. 32 (Exhibit A, A3.12) shows Westwood frontage does not conform to the above-40-feet setback.

### CONCLUSION

In conclusion, this project does not qualify for a Class 32 CEQA Exemption. Please rescind the Class 32 Exemption for this project and instruct Building and Safety not to issue any permits for this project.

Laura Lake, Ph.D.

Fix The City

### EXHIBIT A:

#### **“LA GENERAL PLAN FRAMEWORK FEIR FIRE/EMERGENCY MITIGATION MEASURES, pages 16-17.**

LOS ANGELES CITYWIDE GENERAL PLAN FRAMEWORK EIR

#### *2.10 FIRE/EMERGENCY MEDICAL SERVICES*

##### *2.10.5 Mitigation Measures*

##### **2.10.5.1 Mitigation through Framework Policy**

Policies 3.3.2, 7.10.1, 9.17.1, 9.18.1 through 9.18.4, 9.19.1, 9.20.1 through 9.20.3 contained in the General Plan Framework represent measures that would serve to lessen impacts relative to fire/EMS.

Policy 3.3.2 directs monitoring of infrastructure and public service capacities to determine need within each CPA for improvements based upon planning

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standards. This policy also directs determinations of the level of growth that should correlate with the level of capital, facility, or service improvement that are necessary to accommodate that level of growth. In addition, the policy directs the establishment of programs for infrastructure and public service improvements to accommodate development in areas the General Plan Framework targets for growth. Lastly, the policy requires that type, amount, and location of development be correlated with the provision of adequate supporting infrastructure and services.

Policy 7.10.1 focuses available implementation resources in targeted areas or "communities in need." Policy 9.17.1 addresses the monitoring and forecasting' of demand for existing and future fire facilities and service for the purpose of assuring that every neighborhood would have the necessary level of fire protection service and infrastructure.

Policies 9.18.1 through 9.18.4 and 9.19.1 address the issue of achieving a goal for the highest level of service at the lowest possible cost to meet existing and future demand. Specific issues covered in this set of policies include: completion of current fire service capital improvements; identifying and prioritizing areas of insufficient fire facilities; land acquisition for fire station sites in areas deficient in these facilities; ordinance related actions pertaining to fire protection services; and advance planning for fire station site funding and construction.

Policies 9.20.1 through 9.20.3 address issues related to the LAFD's ability to assure public safety in emergency situations. Specific issues covered by these policies include: mutual aid and assistance agreements; special fire-fighting units for unique situations; and preparation of contingency plans for emergencies and disasters. Public services are either funded entirely or partially by the General Fund and/or by Special Funds. The General Fund is composed of property tax, sales tax and other general taxes that can vary according to economic conditions. Special funds are those fees and charges that are associated with specific services or products such as sewers, public parking, gasoline and parks. Moneys generated by these specific fees go entirely to the service which generated them. Even though revenues from these fees can vary according to economic conditions; they can be considered a more reliable source of revenue than those in the General Fund. Fire services are funded entirely by General Fund moneys. Consequently, the budget available to this department can vary according to the priorities of the City.

2.10-15

### *2.10 FIRE/EMERGENCY MEDICAL SERVICES*

As discussed in Appendix B, the fiscal impacts of the Framework Plan result in a slight net surplus of funds. Preliminary work from the Development Reform Committee indicates that additional funds may be necessary. However, the Framework fiscal analysis assumes:

1) Current expenditure levels are maintained through year 2010 (i.e., no

expansion of services);

2) Economic conditions result in full utilization of commercial and industrial areas.

Given the limited surplus of funds, it is unlikely that fire services could be expanded to the levels identified in this analysis. Furthermore, if economic conditions do not result in full utilization of commercial and industrial designated areas, there may be insufficient revenue to maintain, let alone expand, fire services to serve the buildout population.

However, because the Framework Plan contains Policy 3.3.2 which considers monitoring the type and location of development and population the negative fiscal effects of the Framework Plan could be minimized.

#### 2.10.5.2 Additional Recommended Mitigation

Full implementation of these policies would reduce significant impacts to a less than significant level so that no additional mitigation measures would be required.

#### 2.10.6 Level of Impact Significance

Although the Plan would generate increased land use density in CP As that already have shortages of service availability or high fire risk areas, with full implementation of the policies contained in the Plan, overall impacts would be reduced to a less than significant level (Class III)."

### EXHIBIT B:

**NOTICE OF DETERMINATION, GPF FEIR MANDATORY MITIGATIONS (INCLUDING POLICY 3.3.2 IN 2.10.5 ABOVE), AUGUST 2001.**



GPF\_FEIR\_CCCertific  
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