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February 24, 2021

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 OF CASE NO. ENV-2019-278-CE, FOR PROPERTY LOCATED AT 1427-1433 SOUTH GREENFIELD AVENUE; CF 20-1596**

The Project involves the demolition of the existing two apartment buildings (5-unit and 2-unit) and the construction of a new six-story, maximum 37,567 square feet, maximum 66.5’ in height, apartment building consisting of 29 units. Two levels of subterranean parking are proposed consisting of 47 parking spaces. The Project requires a haul route for 14,000 cubic yards of dirt. One existing Street Tree and 13 non-protected on-site trees will be removed. The Project reserves three (3) units for Extremely Low Income, one (1) unit for Very Low Income, and one (1) unit for Low Income occupancy for a period of 55 years.

On September 24, 2020, the Director approved DIR-2019-277-TOC-DRB-SPP for the construction of the Project. The Director determined, under Environmental Case No. ENV-2019-278-CE that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines, Section 15332 (Class 32), and that there is no substantial evidence demonstrating that an exception to a categorical exemption, pursuant to Section 15300.2, applies.

On October 2nd and 9th, 2020, the Director’s Determination was appealed to the City Planning Commission by three separate aggrieved parties (Rouslan Boundine; Bruce Shapiro and Oren Lavee, represented by Kathleen R. Unger, Advocates for the Environment; and Peter Leininger). On November 5, 2020, the City Planning Commission conducted a public hearing to consider the appeal under Case No. DIR-2019-277-TOC-DRB-SPP-1A. The City Planning Commission denied the appeal with a 5-0 vote. The Letter of Determination of the City Planning Commission was issued on November 23, 2020.

On December 1, 2020, a CEQA appeal was filed by an aggrieved party (Bruce Shapiro and Oren Lavee, represented by Kathleen R. Unger, Advocates for the Environment; “Appellant”) to the City Council (Case No. ENV-2019-278-CE-1A). The appeal in its entirety is located within Council File 20-1596. Below is a summary of the appeal points with a staff response to each point.

## **APPEAL ANALYSIS**

**Appeal Point 1:** *“The Project will negatively impact the community and the environment. It is out of scale and proportion with the existing buildings on the street and in the neighborhood. The Project’s two stories of subterranean parking and six stories aboveground make it an eight-story building project, on a block where there is only one building with subterranean parking and where most buildings do not reach the 45-foot height limit.*

*The Project will dwarf the other buildings on the block in height. It will have a serious negative effect on adjacent neighbors’ privacy. It will block sunlight and cast shadows onto neighboring properties.*

*The Project also represents a massive increase in density compared to the existing use of the site. The density of the Project’s building will be far greater than any neighboring multifamily buildings. During a pandemic in particular, increasing density this greatly poses a public health risk. . . . The Project will cause significant health, safety, and public welfare issues, as well as environmental impacts. . . .”*

**Staff Response:** A Class 32 categorical exemption, at issue here, is the categorical exemption for infill development projects meeting certain conditions. As detailed in the Director’s Determination, the City Planning Commission Determination, and the rest of the administrative record, the City has provided substantial evidence to support its determination that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies. As discussed therein, the Project substantially complies with the applicable regulations, findings, standards, and provisions of the Specific Plan and is consistent with the TOC Program. The Project was also reviewed in accordance with the Design Review Board and Specific Plan procedures of Los Angeles Municipal Code Sections 11.5.7 and 16.50. Here, the Appellant has not provided any evidence to support its implied claim that the City has erred or abused its discretion by making this determination.

The Appellant’s arguments appear to focus on the City’s analysis of Class 32 findings (a) and (d), that “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” and “approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality,” respectively. None of the Appellant’s appeal points challenge the adequacy of the City’s analysis of Class 32 findings (b), (c), or (e).

The City’s determination that the Project falls within the Class 32 categorical exemption also includes findings that demonstrate that none of the exceptions identified in the CEQA Guidelines apply. Here, the burden shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the Project out of the exempt category. Again, the Appellant has not met its burden as there is no evidence in the record to conclude that any of the exceptions otherwise apply. Argument, speculation, unsubstantiated opinion, or narrative does not constitute substantial evidence.

As described in the Director’s Determination, the City Planning Commission Determination, and the rest of the administrative record, the site is within a transit priority area as defined by Public Resources Code (“PRC”) Section 21099, as it is within one-half mile (2,640 feet) of the Metro “D” (Purple) Line Extension, Westwood/UCLA Station, which meets the definition of a major transit stop as defined by PRC Section 21064.3. PRC Section 21064.3 defines “major transit stop” as a site containing a rail transit station, a ferry terminal served by either a bus or rail transit service,

or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. State Senate Bill 743 precludes a lead agency from finding that a project will result in aesthetic impacts, including shade/shadow impacts, when a project is located within a transit priority area. A transit priority area is defined as an area within one-half mile of a major transit stop that exists or is planned. As such, as a Project located in a transit priority area, aesthetic impacts, including those relating to shade and shadow, and parking impacts shall not be considered significant impacts by the lead agency. Therefore, the City has provided substantial evidence to support its determination that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32).

**Appeal Point 2:** *“Despite the Applicant's requests to exceed the planning and zoning limitations on height and density for the area based on inclusion of affordable units in the Project, the Project in fact will result in a net loss of affordable housing. The Project site already has seven affordable units. The Project is required to include five affordable housing units, but the other 24 units will be predominantly large two- and three-bedroom, high-rent apartments.”*

Staff Response: In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15131, CEQA analysis is limited to those socioeconomic issues that could result in a direct change on the physical environment. The presence or loss of affordable housing and economic effects are not, in and of themselves, environmental issues pursuant to CEQA. Here, there is no evidence of any direct physical impacts on the physical environment. As such, the Appellant has not met its burden as there is no evidence in the record to conclude that the City has erred or abused its discretion.

As described in the Director's Determination, the City Planning Commission Determination, and the rest of the administrative record, the Project will actually result in the increase of covenanted affordable housing units. The TOC Guidelines require a Housing Development to meet any applicable housing replacement requirements of California Government Code Section 65915(c)(3), as verified by the Department of Housing and Community Investment (HCIDLA) prior to the issuance of any building permit. There are no covenanted affordable units currently on the site; the seven units currently on the site are subject to the Rent Stabilization Ordinance. Pursuant to the AB 2556 Determination made by HCIDLA dated January 25, 2019, seven (7) units are subject to replacement with equivalent type, with two (2) units restricted to Extremely Low Income Households, two (2) units restricted to Very Low Income Households, one (1) unit to Low Income Households. For the two (2) remaining units presumed to have been occupied by an above-lower income person or household, as permitted by California Government Code §65915(c)(3)(C)(ii), the City has opted to require that those unit(s) be replaced in compliance with the City's Rent Stabilization Ordinance (RSO). Additionally, all the new units in the Project may be subject to RSO requirements unless an RSO Exemption is filed and approved by HCID's RSO Section.

**Appeal Point 3:** *“The Project will have significant traffic and parking impacts. The Project will provide 47 parking spaces, which represents a substantial increase in the number of vehicles on this small residential street. Street parking on this block of Greenfield Avenue is already very congested. The street is a cul-de-sac that dead-ends at Westwood Park, and parkgoers, UCLA students, and Westwood visitors park on the street, taking up available street parking. Although not identified as a secondary highway because of its width, Ohio Avenue is used as an east-west secondary throughfare, carrying significant traffic. The intersection of Greenfield Avenue and Ohio Avenue is an uncontrolled intersection, which already presents difficult and dangerous conditions when drivers attempt a left turn onto the busy Ohio Avenue from Greenfield. The*

*proposed Project will increase the number of vehicles on the street, causing traffic backups, and exacerbating this dangerous condition. Because of the difficulty in entering Ohio Avenue from Greenfield Avenue, adding approximately 50 new vehicles to the street will lead to extreme back-up on this residential street.*

*The increased traffic and congestion generated by the Project will compromise access for emergency vehicles, delivery trucks, street cleaning, and residents. The Project also involves a significant amount of construction traffic, including 30 trucks per day to haul away earth for the subterranean parking structure."*

Staff Response: The Appellant has failed to provide substantive evidence to support its allegations that the Project has significant parking or traffic impacts. The Appellant has failed to meet its burden and has not submitted evidence that demonstrates how the City has erred or abused its discretion. As described in the Director's Determination, the City Planning Commission Determination, and the rest of the administrative record, the Project will not result in any significant effects relating to traffic and parking.

As described in the Staff Response to Appeal Point 1 above, pursuant to PRC Section 21099 aesthetic and parking impacts of a residential project on an infill site within a transit priority area shall not be considered significant impacts on the environment. Furthermore, the Transit Oriented Communities Program requires that the City not require more than one-half parking space per unit. As proposed, the 29-unit Project is providing 47 parking spaces, in lieu of the 15 spaces otherwise required by the TOC Program. The Project is situated near the future Metro "D" (Purple) Line-Westwood/UCLA Station and multiple local and rapid buses, which encourages alternative modes of transportation and potentially reduces the demand for automobile parking.

The Project was put into LADOT's Vehicle Miles Traveled (VMT) Calculator and was not required to perform additional VMT analysis based on the screening criteria of a net increase in 250 trips; the Project is estimated to result in an increase of 65 daily trips based on the calculator. Regarding the Haul Route, final review and approval is conducted by the Department Building and Safety. As Building and Safety reviews the haul route, they will regulate the route trucks will travel and the times at which they may enter and leave the site, thereby reducing inconveniences for the neighbors. The Appellant has failed to provide substantive evidence demonstrating that the Project will have a significant effect on traffic.

On June 18, 2020, the Los Angeles Department of Transportation (LADOT) issued a letter regarding the intersection of Greenfield Avenue and Ohio Avenue. LADOT found that, based on traffic collision records, various field investigations, and a spot speed study, the intersection did not qualify for the installation of additional stop signs. LADOT found that the "existing traffic control and physical conditions indicate that the existing stop signs are providing proper right-of-way assignment at [the intersection of Greenfield Avenue and Ohio Avenue]." LADOT also reviewed LAPD records and found that traffic collisions did not reveal an operational problem associated with the existing conditions at this intersection. Therefore, the City has found that the intersection satisfies safety criteria, and the Applicant has failed to provide substantive evidence demonstrating that the Project will have a significant effect on the intersection. The City has provided substantial evidence to supports its determination that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32).

**Appeal Point 4:** *"The Project is inconsistent with the General Plan and Specific Plan, as discussed below. Therefore, the Project is not eligible for a CEQA Infill Exemption under Guidelines § 15332."*

*“The Project is inconsistent with the Westwood Community Plan (Community Plan), which is part of the City of Los Angeles General Plan. The Community Plan’s Policy 1-1.1 is to “protect existing single family residential neighborhoods from new out-of-scale development and other incompatible uses.” Similarly, Policy 1.3.1 is to “require architectural and height compatibility for new infill development to protect the character and scale of existing residential neighborhoods.” The Project is an out-of-scale development incompatible with the existing residential neighborhood, and its approval therefore conflicts with the Community Plan.”*

Staff Response: The Appellant has failed to provide substantive evidence to support its allegations that the Project is not consistent with the applicable General Plan and Westwood Community Plan policies and other applicable zoning regulations. The Director and City Planning Commission have made findings of consistency with the general plan and applicable policies and regulations when approving the Project and no new substantial evidence has been raised by the Appellant regarding this analysis. As detailed in the Appeal Recommendation Report, reasons set forth in other appeal points in this report, and elsewhere in the record, the Project is consistent with the City’s General Plan, Community Plan, land use designation, zoning code, Westwood Specific Plan and TOC Guidelines as set forth below.

In *Wollmer v. City of Berkeley* (2011) 193 Cal. App.4th 1329, a California Court of Appeal held that the city should apply, “the plain meaning of Guidelines section 15332, subdivision (a) to its own codes in a manner that [is] in harmony with the state’s density bonus law.” Further, the Court held that, “in the context of a density bonus project, it is clear that the waived zoning standards are not ‘applicable.’” The City has, similarly in this instance, harmonized the requirements of the General Plan and Specific Plan with its own TOC incentive program to determine the applicable set of regulations for the Project. As detailed in the Director’s Determination, the City Planning Commission Determination, and the rest of the administrative record, the City has provided substantial evidence to support its harmonization and clearly define the applicable regulations.

In addition to the reasons set forth elsewhere in the record, the Project is consistent with the Housing Element of the General Plan. The Project meets the Housing Element goal, policy, and objective cited below by creating additional housing units in a transit oriented district and including three (3) units for Extremely Low Income, one (1) unit for Very Low Income, and one (1) unit for Low Income household occupancy for a period of 55 years. As such, the following goal, objective and policy are specifically achieved.

- Goal 1: A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy, and affordable to people of all income levels, races, ages, and suitable for their various needs.
- Objective 1.1 Produce an adequate supply of rental and ownership housing in order to meet current and projected needs.
- Policy 1.1.4 Expand opportunities for residential development, particularly in designated Centers, Transit Oriented Districts and along Mixed-Use Boulevards.

The Project is also consistent with the Westwood Community Plan (part of the Land use Element of the General Plan). The Project meets the Westwood Community Plan goal, policies, and objective cited below by providing multi-family dwelling units in a new, safe, and secure building. The Project is located within a neighborhood designated for Medium Residential Land Uses, which includes multiple-family residential uses, and is well served by facilities and necessary infrastructure. The site is near the future Metro “D” (Purple) Line-Westwood/UCLA Station and multiple local and rapid buses, which encourages alternative modes of transportation. The five

covenanted affordable units will ensure that the Project is accessible to lower-income segments of the population. As such, the following goal, policies and objective are specifically achieved.

Goal 1: A safe, secure and high quality residential environment for all economic, age and ethnic segments of the community.

Policy 1-1.3: Provide for adequate multi-family residential development.

Policy 1-2.1: Locate higher density residential within designated multiple family areas and near commercial centers and major bus routes where public service facilities and infrastructure will support this development.

Objective 1-4: To promote the adequacy and affordability of multiple-family housing and increase its accessibility to more segments of the population.

Contrary to the Appellants' claim, the Westwood Community Plan Policy 1-1.1 is not applicable to the Project site as it is not within a single-family zoned neighborhood; the subject property, and all adjacent properties, are zoned R3-1 and designated for multi-family use, with a general plan land use designation of Medium Residential. The nearest single-family zone is two blocks away from the Project site. The Project is consistent with the requirements of the [Q]R3-1-O Zone, the Transit Oriented Communities Program, the Westwood Community Multi-Family Specific Plan, the Westwood Community Design Review Board, and the Westwood Community Plan.

Furthermore, the Project demonstrates consistency with Westwood Community Plan Policy 1.3.1 through compliance with the design standards of the Westwood Community Multiple Family Specific Plan and TOC requirements which require landscaped setbacks, ground floor open space, underground parking, roof screening, and street trees. There is no consistent architectural theme or character on Greenfield Avenue. Existing properties have varying aesthetics, styles, and heights ranging from one to four stories. In recognition of input received at multiple Design Review Board meetings, and other community meetings, the project design has been revised and refined and conditions have been imposed that address some of the design issues raised through the review process to ensure this infill project is compatible with the character and scale of the neighborhood. The project design features include a large central courtyard to break up the mass of the building; large front setbacks on the fifth and sixth levels to reduce the visibility of the building from the street; side setbacks on the fifth and sixth levels to reduce visibility of the upper stories and increase light to the neighboring properties; a fully landscaped front yard; and the use of high quality materials at the façade of the building. As discussed in the Staff Response to Appeal Point 1, PRC Section 21099 aesthetic impacts, including those relating to shade and shadow, and parking impacts shall not be considered significant impacts by the lead agency. Therefore, the City has provided substantial evidence to supports its determination that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32).

**Appeal Point 5:** *"Gov. Code § 65455 states that 'no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan..."*

*The Westwood Community Multi-Family Specific Plan (MF Plan) requires that the Project provide 200 square feet of open space per dwelling: 5,800 feet for 29 units (MF Plan § 6.A.1.) The TOC incentives purport to override the Specific Plan requirements for density, height, and open space, including the height, parking, and open-space requirements in MF Plan §§ 5 and 6.A. The TOC incentives proposed to be granted make the Project inconsistent with the Specific Plan's requirements, so they and the Project violate Gov. Code § 65455. The inconsistencies also preclude the use of a Class 32 CEQA exemption for the Project."*

Staff Response: The Appellant has failed to provide substantive evidence to support its allegations that the Project is not consistent with the applicable regulations. As described in the background and findings sections of the Director's Determination, the City Planning Commission Determination, and the rest of the administrative record, the Project conforms to the requirements of the Transit Oriented Communities (TOC) Affordable Housing Incentive Program (TOC Program).

Also see the staff response to Appeal Point 4 regarding the Project's consistency with applicable regulations from the General Plan, Westwood Community Multi-family Specific Plan, other zoning regulations, and the TOC Program. The Project was reviewed in accordance with the Design Review Board and Specific Plan procedures of the Los Angeles Municipal Code Sections 11.5.7 and 16.50. The City's review included an analysis of the open space requirements; as detailed in the Director's Determination, the City Planning Commission Determination, and the rest of the administrative record, the Project is providing 4,447 square feet of open space, which is above the required 4,350 square feet of open space when accounting for the TOC Incentive Program.

Pursuant to the voter-approved Measure JJJ, Section 12.22- A,31 was added to the Los Angeles Municipal Code to create the TOC Program. In cases where Base or Additional Incentives are permitted for a project under the TOC Program, the incentives shall be based off the otherwise allowable development standards for the property found in the Specific Plan. The Project is eligible for the following Tier 3 Base Incentives a 70 percent increase in density, up to a 50 percent increase in Floor Area, and a reduction in residential parking requirements, which are granted by-right for eligible TOC projects. Pursuant to the TOC Guidelines, the Project is eligible for, and has been granted three Tier 3 Additional Incentives to construct the Project.

### **RECOMMENDATION**

Upon careful consideration of the Appellant's points, the Appellant has failed to meet its burden as there is no evidence in the record to conclude that the City erred or abused its discretion. No new substantial evidence was presented showing that the Director and City Planning Commission has erred in its actions relative to the Categorical Exemption. The Appellant's claims were raised in their appeal to the City Planning Commission and were addressed by the City in response. Argument, speculation, unsubstantiated opinion, or narrative does not constitute substantial evidence. Therefore, based on the above, in consideration of the CEQA appeal for the project located at 1427 – 1433 South Greenfield Avenue, the Department of City Planning recommends that the PLUM Committee recommend for City Council to deny the appeal and determine, based on the whole of the administrative record, the project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning



Michelle Singh  
Senior City Planner

VPB:MS:EG:DS