

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
865 South Figueroa Street, Suite 2800 | Los Angeles, CA 90017-2543
Telephone: 213.622.5555 | Facsimile: 213.620.8816
www.allenmatkins.com

Patrick A. Perry
E-mail: pperry@allenmatkins.com
Direct Dial: 213.955.5504 File Number: 390411.00001/LA1234971.01

Via Electronic Mail

February 24, 2021

Chair Marqueece Harris-Dawson
Vice Chair Gil Cedillo
Councilmember Bob Blumenfield
Councilmember John Lee
Councilmember Mark Ridley-Thomas
City of Los Angeles
Planning and Land Use Management Committee
200 North Spring Street
Los Angeles, California, 90012

**Re: 1614-1626 West Temple Street - Case Nos. DIR-2019-7519-TOC and
ENV-2019-7520-CE**

Dear Chair Harris-Dawson and Members of the Planning and Land Use Management Committee:

This firm represents 1614 Temple, LLC ("1614 Temple"), owner of the property located at 1614-1626 West Temple Street (the "Property") and applicant for the above-referenced Case. On June 19, 2019, the Director of Planning found the proposed development to be categorically exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") and approved the application for the development of a Transit Oriented Community ("TOC") consisting of 72 residential units and 700 square feet of ground floor commercial space (the "Project"). The Director's approval was appealed to the City Planning Commission, which unanimously denied the appeals on November 19, 2019. The owner of an adjacent property has now appealed the Director's adoption of the categorical exemption under CEQA to the City Council, which is scheduled to be considered by the Planning and Land Use Management Committee on March 2, 2021. As set forth in more detail below, the approved Project is categorically exempt from environmental review as an infill development project pursuant to the requirements of CEQA, and does not present any unusual circumstances that would render the adoption of the categorical exemption inapplicable. The appeal of the Director's adoption of the categorical exemption for the Project is accordingly without merit and should be denied.

A. The Project Fully Complies with All Applicable Requirements of the LAMC.

1614 Temple is a California limited liability company that has owned the Property since 2006. The Property is currently developed with two existing vacant commercial buildings and a surface parking lot, and 1614 Temple desires to redevelop the Property at this time because the existing structures have reached the end of their useful life. 1614 Temple intends to continue to own and operate the Property upon completion of construction.

The Project consists of the development of a new, six-story, 47,000 square-foot mixed-use building which includes 72 one-bedroom dwelling units, seven of which are set aside for Extremely Low Income Households (or nine percent of the proposed density), and 700 square feet of ground floor commercial space. The building will be constructed with five residential levels above one ground level of parking and commercial use and one level of subterranean parking. The Project also includes a total of 5,794 square feet of open space for residents.

The Project will provide a total of 72 automobile parking spaces, and eight short-term and 58 long-term bicycle parking spaces. Vehicular access to the Property is provided via two driveways. Ingress and egress for the street level parking garage will be provided from Temple Street, and ingress and egress for the subterranean parking garage will be provided from the abutting alley to the east. The two levels of parking are not connected to each other and need to be accessed separately either from Temple Street or from the alley. Pedestrian access is located on Temple Street.

The Property is zoned C2-1 and is located in the Los Angeles State Enterprise Zone. The Property is also located in Tier 2 of the Transit Oriented Communities Incentive Areas because it is less than 750 feet from the intersection of two non-Rapid Bus lines, each with at least a 15 minute average peak headway located at the intersection of Temple Street and Glendale Boulevard. According to the Transit Oriented Communities Affordable Housing Incentive Program Guidelines ("TOC Guidelines"), a project located in Tier 2 that provides nine percent of the total number of residential units for Extremely Low Income Households is eligible for base incentives that consist of (i) an increase of up to 60 percent in the number of residential units, (ii) an increased floor area ratio ("FAR") of the greater of up to 45 percent or 3.25:1, and (iii) a reduction in the number of required automobile parking spaces to 0.5 space per bedroom up to a maximum of one space per unit and a reduction of up to 20 percent in the number of required spaces for nonresidential uses. By setting aside more than seven percent of the base density for households at the Extremely Low Income level, the Project is also entitled to request two additional incentives, which consist of the use of any or all yard requirements for the RAS3 zone and a 20 percent reduction in required open space.

According to the Project plans prepared by The Albert Group Architects dated December 13, 2019, the lot area of the Property is 17,059 net square feet, which may be increased to 18,269

square feet to include the 1,210 square feet of the area of one-half the width of the adjoining alley for purposes of computing residential density pursuant to Section 12.22C.16 of the LAMC. According to Sections 12.14C and 12.11C of the LAMC, the minimum lot area per dwelling unit in the C2 zone is 400 square feet. A total of 45 residential units would accordingly be permitted on the Property, which may be increased by 60 percent in accordance with the TOC Guidelines for projects located in Tier 2 that provide at least nine percent of the total dwelling units for Extremely Low Income Households. The allowable number of residential units is therefore 73 dwelling units, which exceeds the 72 dwelling units proposed for the Project.

According to Section 12.21.1A.1 of the LAMC, the allowable FAR for buildings on a lot in a commercial or industrial zone in Height District No. 1 may not exceed 1.5 times the buildable area of the lot, which may be increased in accordance with the TOC Guidelines up to 3.25:1 for projects located in Tier 2 that provide at least nine percent of the total dwelling units for Extremely Low Income Households. The allowable floor area for the Project is therefore 55,442 square feet, which exceeds the 47,000 square feet of floor area proposed for the Project.

Pursuant to the TOC Guidelines, 36 automobile parking spaces are required for the proposed dwelling units at 0.5 parking space for each of the one-bedroom units. According to Section 12.21A.4(x)(3)6 of the LAMC, one automobile parking space is required for every 500 square feet of commercial floor area located in an Enterprise Zone, which may be decreased pursuant to the TOC Guidelines by 20 percent for ground floor nonresidential uses in Tier 2. Two automobile parking spaces are therefore required for the proposed 700 square feet of commercial use. A total of 72 automobile parking spaces are proposed for the Project, which includes 70 spaces for the residential units and two spaces for the proposed ground floor commercial use, which meets or exceeds applicable requirements.

According to Section 12.21A.16 of the LAMC, one short term bicycle parking space is required for every 10 units of the first 25 dwelling units, and one short term bicycle parking space is required for every 15 units of the next 26 to 100 dwelling units. One long term bicycle parking space is required for each of the first 25 residential units, and one long term bicycle parking space is required for every 1.5 residential units for the next 26 to 100 dwelling units. A minimum of two short term and two long term bicycle spaces are required for commercial uses with less than 2,000 square feet. A total of eight short term and 58 long term bicycle parking spaces are therefore required for the Project. A total of 62 long term and eight short term bicycle parking spaces are provided, which meets or exceeds applicable requirements.

According to the TOC Guidelines, a project in Tier 2 that includes at least seven percent of the base units for Extremely Low Income Households is eligible to receive two additional incentives subject to approval by the Director of Planning. According to Sections 12.22A.31(e) and 12.22A.25(g) of the LAMC, such incentives must be approved unless the Director finds that (i) the incentives are not required in order to provide for affordable housing costs as defined in California

Health and Safety Code Sections 50052.5 or 50053 for rents for the affordable units, or (ii) the incentive will have a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Here, no evidence has been provided to indicate that the incentives are not required in order to provide for affordable housing costs or that the incentive will result in a specific adverse impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources. The Director accordingly approved two additional incentives for the Project from the menu of permissible incentives set forth in the TOC Guidelines.

Permissible incentives for projects located in commercial zones in Tier 2 include use of setback requirements for the RAS3 zone and a 20 percent reduction in the amount of required open space. According to Section 12.10.5 of the LAMC, the following setbacks are required in the RAS3 zone:

Front Yard :	five feet
Side yard:	five feet for all portions of buildings erected and used for residential purposes
Rear yard:	five feet when property is not located adjacent to property zoned RD or more restrictive

In addition, Section 12.22A.18(c)(3) provides that setbacks are not required for residential portions of buildings located on lots in the C2 zone used for combined commercial and residential uses, if such portions are used exclusively for residential uses, abut a street, private street or alley, and the first floor of such buildings at ground level is used for commercial uses or for access to the residential portions of such buildings. Surrounding properties are zoned C2 and R4, which are not more restrictive than the RD zone. The Project accordingly maintains the applicable front and rear yard setbacks of five feet, a side yard setback of five feet for the residential portion of the building along the westerly property line, and no setback along the easterly property line adjacent to the alley, all in conformance with RAS3 requirements permitted as an additional incentive pursuant to the TOC Guidelines.

According to Section 12.21G of the LAMC, 100 square feet of open space is required for every dwelling unit with less than three habitable rooms. Each of the proposed dwelling units in the Project will have less than three habitable rooms. The Project is accordingly required to include a total of 7,200 square feet of open space, which may be reduced by 20 percent to 5,760 square feet in accordance with the TOC Guidelines. The Project proposes to include 5,794 square feet of open space, which exceeds applicable requirements pursuant to the TOC Guidelines.

B. The Project Is Categorically Exempt from CEQA Review.

According to the Director's Determination, which was unanimously upheld by the City Planning Commission on appeal, the Project is categorically exempt from CEQA review pursuant to Section 15332 (In-Fill Development Projects) of the CEQA Guidelines (California Code of Regulations, Title 14, §§ 15000 *et seq.*). The Director's Determination further found that there is no substantial evidence to demonstrate that an exception to the categorical exemption pursuant to Section 15300.2 of the CEQA Guidelines applies.

CEQA applies to "discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division." (Public Resources Code ("PRC") § 21080(a).) CEQA does not apply to "[m]inisterial projects proposed to be carried out or approved by public agencies." (PRC § 21080(b)(1).) Section 15369 of the CEQA Guidelines defines a ministerial decision as one that "involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out." According to the TOC Guidelines and Section 12.22A.31 of the LAMC, the base incentives for residential density and reduced parking "shall be granted" to eligible housing developments. Granting such incentives is accordingly ministerial, and the only decision requiring discretion, and thereby subject to CEQA at all, is whether to grant the additional incentives regarding reductions to setbacks and open space.

Section 21084(a) of the PRC requires the CEQA Guidelines to include "a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division. In adopting the guidelines, the Secretary of the Natural Resources Agency shall make a finding that the listed classes of projects referred to in this section do not have a significant effect on the environment." The CEQA Guidelines accordingly include a list of exemptions at Sections 15300 *et seq.*

Section 15332 of the CEQA Guidelines provides a categorical exemption for in-fill development projects meeting the following conditions:

- 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.
- 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.

Section 15300.2 of the CEQA Guidelines identifies relevant exceptions to the application of a categorical exemption, which include the following:

1. when the cumulative impact of successive projects of the same type in the same place, over time is significant.
2. there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
3. the project 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.
4. the project is located on a site which is included on any list of hazardous waste sites compiled pursuant to Section 65962.5 of the Government Code.
5. the project may cause a substantial adverse change in the significance of a historical resource.

As described below, substantial evidence clearly supports the decision that the Project falls within the categorical exemption set forth in Section 15332 of the CEQA Guidelines, and there is no evidence to establish that any of the exceptions to the categorical exemption applies.

The determination that a categorical exemption applies will be upheld if it is supported by substantial evidence. (*See, Aptos Residents Association v. County of Santa Cruz* (2018) 20 Cal.App.5th 1039, 1046 ["Although categorical exemptions are construed narrowly, our decision that a project falls within a categorical exemption is deferential, and we determine only whether that decision is supported by substantial evidence."].) "The Secretary, in complying with the Legislature's command to determine the 'classes of projects' that 'do not have a significant effect on the environment' (§ 21084, subd. (a)), necessarily resolved any number of 'fair arguments' as to the possible environmental effects of projects in those classes. Allowing project opponents to negate those determinations based on nothing more than 'a fair argument that the project will have significant environmental effects' . . . would be fundamentally inconsistent with the Legislature's intent in establishing the categorical exemptions." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 40 Cal.4th 1086, 1106 ("*Berkeley Hillside*").) "As to projects that meet the requirements of a categorical exemption, a party challenging the exemption has the burden of producing evidence supporting an exception." (*Id.* at 1105.) Here, the determination that the Project falls within the Class 32 categorical exemption is clearly supported by substantial evidence, and there is no evidence, substantial or otherwise, that an exception applies.

The Property is designated Highway Oriented Commercial in the Westlake Community Plan, which is a component of the City of Los Angeles General Plan. Zoning designations that are consistent with the Highway Oriented Commercial designation include C2, C1, CR, RAS3, RAS4, and P. The Property is zoned C2, which is consistent with the Community Plan land use designation. Permitted uses in the C2 zone include a range of commercial uses as well as multi-

family residential uses consistent with the requirements of the R4 zone. Section 12.22A.31 of the LAMC provides for various incentives for the inclusion of affordable dwelling units in proposed housing development projects in accordance with the TOC Guidelines. As described above, the Project consists of 72 residential units, seven (i.e., nine percent) of which will be set aside for Extremely Low Income Households. The Project therefore qualifies under the TOC Guidelines for the proposed base incentives consisting of increased residential density, increased floor area, and reduced parking as a matter of right. The Project is also eligible for the proposed additional incentives of reduced setbacks and open space subject to approval by the Director of Planning. The Project is accordingly consistent with the General Plan and zoning designations.

The Property is located within the city limits of the City of Los Angeles and is 17,067 square feet, or approximately 0.4 acres, in area. The Property is currently developed with two one-story commercial buildings and associated surface parking lots and therefore has no value as habitat for endangered, rare, or threatened species. Moreover, as set forth in the Findings Supporting Categorical Exemption prepared for the Department of City Planning by EcoTierra Consulting, Inc. dated June 2020 (the "CEQA Findings"), the Project will be adequately served by all required utilities and public services, including water, wastewater, solid waste disposal, natural gas, electricity, fire protection, police protection, schools, parks, and libraries. The CEQA Findings also establish on the basis of substantial evidence that the Project will not result in any significant effects relating to traffic, noise, air quality, or water quality.

With regard to the cumulative impacts exception, there is no evidence that the Project, in conjunction with successive projects of the same type in the same place over time will result in any significant effects. The Transportation Assessment for the Project prepared by Crain & Associates dated November 2019 concluded that Project traffic along with the traffic associated with 11 related projects in proximity to the Property and an annual ambient growth factor of 1.0 would not result in a cumulative traffic impact. The CEQA Findings similarly considered the cumulative impacts of the Project in the areas of land use and planning, endangered, rare or threatened species, noise, air quality, greenhouse gases, water quality, utilities, public services, and historical resources and similarly concluded that the impacts of the Project would not be cumulatively considerable in conjunction with the impacts of other projects.

With respect to the unusual circumstances exception, "it is not enough for a challenger merely to provide substantial evidence that the project may have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption." (*Berkeley Hillside*, at 1105.) The Court in *Berkeley Hillside* accordingly established a "bifurcated approach to the questions of unusual circumstances and potentially significant effects." (Id. at 1115.) "We conclude that both prongs of [PRC] section 21168.5's abuse of discretion standard apply on review of an agency's decision with respect to the unusual circumstances exception. The determination as to whether there are 'unusual circumstances' . . . is reviewed under section 21168.5's substantial evidence prong. However, an agency's finding as to whether unusual circumstances give rise to 'a

reasonable possibility that the activity will have a significant effect on the environment' . . . is reviewed to determine whether the agency, in applying the fair argument standard, 'proceeded in [the] manner required by law.'" (*Id.* at 1114.) Thus, in determining whether "a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry, . . . and a reviewing court should apply the traditional substantial evidence standard that section 21168.5 incorporates." (*Id.*) However, "when there are 'unusual circumstances,' it is appropriate for agencies to apply the fair argument standard in determining whether 'there is a reasonable possibility [of] a significant effect on the environment due to unusual circumstances.'" . . . As to this question, the reviewing court's function 'is to determine whether substantial evidence support[s] the agency's conclusion as to whether the prescribed "fair argument" could be made.'" (*Id.* at 1115, quoting *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

In this case, there is substantial evidence that there are no unusual circumstances. However, even if there were unusual circumstances, there is no substantial evidence to support a fair argument that the Project would have an impact on the environment due to such unusual circumstances. The Property is currently developed with commercial uses in an urban environment and is zoned C2. Surrounding properties are zoned C2 and R4 and are developed with commercial and single and multi-family residential uses. As set forth above, the Project complies with applicable requirements of the LAMC and the TOC Guidelines and will not result in any significant effects relating to traffic, noise, air quality, or water quality.

Nor is there any evidence to support a fair argument that even if there were any unusual circumstances, such circumstances would result in a significant effect on the environment. Substantial evidence "includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." It does not include "argument, speculation, unsubstantiated opinion or narrative," or "evidence that is clearly inaccurate or erroneous." (PRC § 21080(e).) No evidence, substantial or otherwise, has been provided to demonstrate that even if there were any unusual circumstances associated with the Project, of which there are none, that there is a reasonable possibility that the Project will result in a significant effect on the environment due to such unusual circumstances.

Nor is there any evidence that the Project may result in damage to scenic resources within an officially designated scenic highway or cause a substantial adverse change in the significance of a historical resource because there are no state or locally designated scenic highways in proximity to the Property, and there are no identified historical resources on the Property that would be affected by the development of the Project.

The Property similarly is not included on any list of hazardous waste sites compiled pursuant to Section 65962.5 of the Government Code. According to the Phase I Environmental Site Assessment prepared for the Property by SESPE Consulting dated November 2019, the Property is not included in any of the databases of contaminated properties, properties under assessment for

Chair Marqueece Harris-Dawson

February 24, 2021

Page 9

contamination, permitted facilities, and related listings maintained by regulatory agencies with jurisdiction over hazardous waste sites.

Based on the foregoing, the Project is categorically exempt from CEQA review as an in-fill development project pursuant to Section 15332 of the CEQA Guidelines.

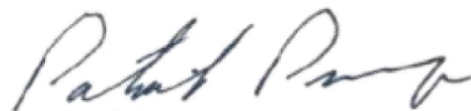
D. Response to Appeal.

A summary of the evidence that the Project will not result in any significant effects relating to traffic, noise, air quality, or water quality, including detailed responses to specific issues raised by the appellant are provided in the attached Appendix A. Please note that as shown in the timeline attached as Appendix B, representatives of 1614 Temple have reached out to the appellant and other neighboring property owners and residents multiple times over the past several months in a good faith effort to address their concerns. 1614 Temple has also offered to implement the additional measures identified in Appendix C. To date, the appellant has failed to accept these additional measures or propose alternate measures that would address its perceived concerns.

E. Conclusion.

For the foregoing reasons, you are respectfully requested to deny the appeal and approve the Project as proposed. Your careful attention to this request is greatly appreciated. Please do not hesitate to contact me with any questions or if I can provide any additional information with regard to the issues set forth above.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Patrick Perry", written in a cursive style.

Patrick A. Perry

PAP
Enclosures