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August 26, 2021

BY EMAIL

Chair Marqueece Harris-Dawson
Members of the Planning and
Land Use Management Committee
200 N. Spring Street, Rm. 340
Los Angeles, CA 90012

Re: Council File 21-0481
ENV-2020-2068-CE
1447 S. Hi Point St.
Response to CEQA Appeal
PLUM Hearing Date: August 31, 2021
Agenda Item: TBD

Honorable Chair Harris-Dawson and Members of the PLUM Committee:

We represent Hi Point M, LLC, the owner of the Property and applicant for the Project approved by the Director of Planning and affirmed by the City Planning Commission ("CPC"), and which enjoys community support. We respond to the appeals filed by Elaine Johnson, and Brandon Araujo and Annette Wong. As described further below, the Project is fully compliant with the zoning for the Property, as modified by the Transit-Oriented Communities ("TOC") Affordable Housing Incentive Guidelines adopted by City voters and implemented by the Department of City Planning ("DCP"), and falls firmly within the four corners of the adopted Class 32 (urban infill) Categorical Exemption (the "CE"). The appeal's mischaracterizations of the impacts of the Project and the required scope of analysis—many of which appear to be virtual carbon copies of objections by others to other projects—are unavailing, and the PLUM Committee should affirm the decisions of the Director and the CPC, and reject this appeal.

1. The Categorical Exemption More than Satisfies the Requirements of the California Environmental Quality Act.

The appeal relies upon several erroneous claims regarding the legal standards that govern CEs—most notably, though by no means exclusively, the standard of review—and offers purportedly factual claims regarding potential impacts of the Project that do not withstand scrutiny. Even assuming for the purposes of argument the law operates in the manner stated by the appeal (it does not), the appeal offers no evidentiary support for its assertions, though such evidentiary support is fundamentally required by law, as is an explanation of any claimed evidentiary failure in applying the CE. The lack of evidence provided by the

appeal is all the more striking when compared to the robust technical analysis supporting the CE.

(a) Substantial Evidence Supports the Director's and CPC's Adoption of a Categorical Exemption for the Project.

Findings and an extensive, multifaceted technical study supported the Director's decision to adopt the CE.¹ The determination included negative findings regarding the factors that might disqualify the Property or the Project from a CE. Further, and although not required, the CE included detailed quantitative analysis of potential project impacts, including cumulative impacts, and concluded none would result.

The Director's and CPC's Determinations each contained a detailed series of findings addressing the qualification of the Project and Property for a CE. This qualification comprises the factors provided in the State CEQA Guidelines:

- Consistency with applicable general plan and zoning policies and regulations;
- Location within city limits, on a site of five acres or less, surrounded by urban development;
- No habitat value for certain sensitive species;
- No significant effects related to traffic, noise, air quality, or water quality; and
- Adequate service by required utilities and public services.

(Guidelines §15332(a); Determinations, p. 13-21.) These findings and the supporting analysis and documentation provide more than substantial evidence—the evidentiary standard that governs a CE—that the Project qualifies. Thus, the appeals bear the burden to show error and/or a lack of evidentiary support for the CE. The appeals cannot and do not do so.

(i) The Project is Consistent with the General Plan and Zoning.

As described in both Determinations, the Wilshire Community Plan² designates the Property for Medium Residential, and the zoning map designates the Property R3-1 (Multiple Residential, Height District 1). The regulations applied by these designations are modified by the “Q” Qualified Condition established pursuant to Ordinance 168193 and by the TOC Guidelines.

As stated in the Determinations (p. 14,) the proposed multi-family use is consistent with the designation of the Community Plan. The zoning designations that correspond to the Medium Residential designation include the R3 designation for the Property. Thus, to the

¹ If a project is subject to a categorical exemption, no formal environmental evaluation is required. *City of Pasadena v. State*, 14 Cal. App. 4th 810 (1993).

² The land use provisions of the City's General Plan are implemented through a General Plan Framework Element, which delegates specific land use designations to the various Community Plans. The Wilshire Community Plan governs the area that includes the Property.

extent the Project complies with the applicable zoning regulations, as modified by the applicable "Q" Qualified Condition, it complies with the General Plan, as well. Further, the Community Plan recognizes the need for low- and moderate-income housing "in **all** parts of this Community." (p. HO-3.) The Project, in providing a range of housing opportunities that include units affordable to Extremely Low Income households, is consistent with the terms and intent of the Community Plan. Notably, a general finding of consistency with the Community Plan or General Plan does not require strict consistency with every policy or with all aspects of a plan. Land use plans attempt to balance a wide range of competing interests, and a project need only be consistent with a plan overall; even though a project may deviate from some particular provisions of a plan, the City may still find the project consistent with that plan on an overall basis. *See, e.g., Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 815 (2007). Therefore, because the Project would advance a range of planning policies articulated in the Community Plan, the Project is consistent overall, even if inconsistencies existed with other particular policies. Despite this, the appeal failed to identify any such policies.

The Project complies with the zoning regulations that allow for development bonuses in exchange for providing affordable units. Section 12.22-A.31(b) of the LAMC and Section V of the TOC Guidelines authorize density bonuses and incentives for TOC developments, including the Project, that exceed otherwise allowable zoning regulations, any applicable "Q" Qualified Condition. Section 12.22-A.25(g)(2)(i)(c)(ii) of the LAMC specifically precludes a finding of conflict with a General Plan or zoning designation on the basis of the TOC bonuses and incentives. Section 12.22-A.25(g)(2)(i)(c)(ii) precludes denial of the bonuses and incentives absent a significant, unavoidable impact to public health or safety, a finding the State Legislature has recently declared "will arise **infrequently**."³

The appeal erroneously states that the site does not qualify for a Tier 3 development site. To qualify as a Tier 3, the site must be located within 2,640 feet of a Major Intersection in which there are two intersecting Rapid Bus Lines. The Department of City Planning confirmed that the project lands in a Tier 3 area on February 20, 2020. The Pico Blvd. and Fairfax Ave. intersection has two rapid buses, the Big Blue Bus Rapid 7 and the Metro Rapid 780, both with stops at the intersection and the project lies within 2,640 feet from the intersection. The routes have stops with a service interval of 15 minutes or less during the morning and afternoon peak commute periods. Therefore, the site is eligible for Tier 3 TOC incentives. Therefore, the Director's grant and the CPC's affirmation of that grant is consistent with the zoning, the General Plan, and the intent of State and Local law.

The appeal's argument appears based on the incorrect premise that the Project somehow represents something other than what could be built under the applicable regulations at any time. The City did not amend any planning requirement or remove some obstacle to development. (*See* CEQA Guidelines §15162.2(d), addressing growth-inducing impacts.) Rather, the City applied an established regulatory framework: the zoning, as modified by the "Q" Qualified Condition and the TOC Guidelines—that has been and remains available to any developer within a designated TOC area. In doing so, the City merely incorporated the

³ Govt. Code §65915.5(a)(3), as modified by AB 3194 (Ch. 243, Stat. 2018).

otherwise ministerial provisions of the TOC Guidelines (the Project requested no relief from any of its provisions) into the discretionary process for the Project, in accordance with sections 12.22-A.31 and 12.22-A.25 of the LAMC.

(ii) The Project Occurs within City Limits on a Project Site of No More than Five Acres Substantially Surrounded by Urban Uses.

The Property is located in a highly urbanized area within the Wilshire community. The Property encompasses 8,838.5 square feet, or about 0.20 acres and lies wholly within the municipal boundary of the City of Los Angeles. (Determination, p. 15.) The project is surrounded by urban uses and is not located near any areas designated for farmland or agricultural uses. Commercial, institutional and multi-family developments of varying uses and densities are located just off of Pico Blvd, which is located half a block from the Project. The project site has no value as habitat for endangered, rare or threatened species.

As described above and in the Determinations (p. 15), the Property contains a single family residence and ornamental vegetation, and lies within an established, fully developed, medium- to high-density residential area proximate to a major commercial and mixed-use corridor. The Property does not contain any protected trees, any natural or sensitive plant community, or provide habitat area for a special-status species, and no such species have been identified on-site. The Project will redevelop an already developed site with urban, multi-family residential uses, open space with ornamental vegetation, and hardscape. Any nesting birds that may be present are already protected by the Federal Migratory Bird Treaty Act and section 3503 of the California Fish and Game Code. The Property also is not located adjacent to any sensitive natural area, such as a wetland or other habitat area. Therefore, the Project will not alter available habitat for endangered, rare, or threatened species.

(iii) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Traffic: As discussed in the Determinations (pp. 15, 16), the Project will result in a net increase of 19 residential units on the project site. The Los Angeles Department of Transportation ("LADOT") published a threshold guide that lists various uses within the City and identifies thresholds that would require LADOT to complete or approve a study such as a technical memorandum or traffic impact assessment. As described in the Determination (pp. 15, 16) this Project is beneath the LADOT threshold of significance to even require a study of the Project's impact on traffic. Therefore, the project will not result in any significant impact relating to traffic.

Noise: As described in the Determinations (pp. 16) and the CE supporting documentation (p. 5), the Project must comply with the City of Los Angeles Noise Ordinances, Nos. 144,331 and 161,574 and any subsequent ordinances, which limits the emission or creation of noise. During construction of the proposed project, the Applicant is required to comply with the City's Noise Ordinance No. 161,574, which regulates noise from demolition and construction

activities. Section 41.40 of the LAMC prohibits construction activity (including demolition) and repair work, where the use of any power tool, device, or equipment would disturb persons occupying sleeping quarters in any dwelling hotel, apartment, or other place of residence, between the hours of 9:00 p.m. and 7:00 a.m. Monday through Friday, and between 6:00 p.m. and 8:00 a.m. on Saturday. All such activities are also prohibited on Sundays and all federal holidays.

Section 112.05 of the LAMC further specifies the maximum noise level of construction machinery that can be generated in any residential zone of the city or within 500 feet thereof. The project's compliance with the above ordinances and regulations results in no significant construction noise impacts.

Additionally, as an enclosed, multi-family residential structure, the project is not considered a significant operational noise source. Activities associated with occupancy of such structures does not cause significant noise impacts on the environment.

Air Quality: As described in the Determinations (pp. 16,17,18) and discussed in detail in the CE supporting documentation (pp. 6,7), the building construction phase includes the construction of the proposed building on the Property, connection of utilities, laying irrigation for landscaping, architectural coatings, paving, and landscaping the subject property. Appropriate dust control measures are required to be implemented as part of the proposed project during each phase of development, as required by SCAQMD Rule 403 - Fugitive Dust. Specifically, Rule 403 control requirements include, but are not limited to, applying water in sufficient quantities to prevent the generation of visible dust plumes, applying soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project Site, and maintaining effective cover over exposed areas.

Best Management Practices ("BMPs") required by the Department of Building and Safety ("DBS") and the SCAQMD include, but are not limited to, the following:

- Unpaved demolition and construction areas shall be wetted at least three times daily during excavation and construction, and temporary dust covers shall be used to reduce emissions and meets SCAQMD Rule 403;
- All dirt/soil loads shall be secured by trimming, watering or other appropriate means to prevent spillage and dust;
- General contractors shall maintain and operate construction equipment to minimize exhaust emissions; and
- Trucks shall not idle, but be turned off.

The CE supporting documentation included modeling the emissions anticipated from Project activities, according to accepted professional practice and guidance published by the

SCAQMD and upon which DCP relies. Modelling conducted for emissions on a regional level and according to adopted Localized Significance Thresholds demonstrated Project emissions will not result in significant impacts related to air quality because they fall below established numeric threshold levels.

The appeal erroneously states that the DCP must have projects comply with methane mitigation measures. The Los Angeles Department of Building and Safety will require a project applicant to submit methane mitigation plans that comply with and meet the city guidelines and standards for projects located within a methane zone or buffer area. Methane mitigation system design follows strict LADBS design guidelines. The process includes soil gas testing, city approval of mitigation design drawings and site inspections during construction.

Water Quality: As described in the Determination (p. 18) and the CE supporting documentation (p. 7), construction activities would not involve any significant excavation near an identified water source. In addition, the project will be required to comply with various regulatory requirements, which would reduce stormwater flows off-site. The project would comply with Chapter VI Article 4.4 of the LAMC, Stormwater and Urban Runoff Pollution Control, which require implementation of BMPs to reduce or prevent pollutant discharges. As a part of the building permit process for the Project, the Applicant will be required to eliminate or reduce non-stormwater discharges to waters of the nation, develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") for project construction activities, and perform inspections of the stormwater pollution prevention measures and control practices to ensure conformance with the site SWPPP. Therefore, development of the proposed project would not degrade the quality of stormwater runoff from the site.

(iv) The Project Will Not Result in Significant Cumulative Impacts, and the Impacts Claimed by the Appeal are Speculative.

In addition to the project-specific impacts discussed above, the CE supporting documentation specifically included a detailed analysis of potential cumulative impacts of the Project. This analysis included a comprehensive, phase-by-phase comparison of Project impacts and those of the nearest developments at 1437 and 1447 S. Hi Point St. At this time, both project have completed construction. However, the appeal extends its reach to identify other developments further away from the project site and makes a baseless speculation that there will be some impacts as a result without any further justification. Most of the other projects mentioned by the appeal will be completed prior to the commencement of this Project.

The appeal's argument appears based on the incorrect premise that the Project somehow represents something other than what any developer could build under the applicable regulations at any time. The City did not amend any planning requirement or remove some obstacle to development. (See CEQA Guidelines §15162.2(d), addressing growth-inducing impacts.) Rather, the City applied an established regulatory framework: the zoning, as modified by the "Q" Qualified Condition and the TOC Guidelines—that has been and remains available to any developer within a designated TOC area. In doing so, the City

merely incorporated the otherwise ministerial provisions of the TOC Guidelines (the Project requested no relief from any of its provisions) into the discretionary process for the Project, in accordance with sections 12.22-A.31 and 12.22-A.25 of the LAMC.

To extrapolate from that to whether, where, and in what form other development might occur for the purposes of generating a cumulative scenario requires pure speculation, in contravention of CEQA. Although CEQA requires consideration of “reasonably foreseeable indirect physical changes in the environment,” a change that is “speculative or unlikely to occur” is not reasonably foreseeable. (CEQA Guidelines §15064; *see also* §15145.) Therefore, CEQA does not require the City to simply guess at future development that may or may not occur. Further, the definition of a cumulative impact for the purposes of qualification for a CE is narrower than in the general sense for CEQA. *Robinson v City & County of San Francisco*, 208 Cal. App. 4th 950, 958 (2012) (the phrase “in the same place” should be interpreted to refer to the area where the environmental impact will occur). As described above, the City identified nearby projects of a similar type to the Project here, and evaluated the cumulative impacts with respect to that development. The appeal provided no evidence, let alone substantial evidence, of any particular significant impact by any foreseeable development the City failed to consider. Consequently, the appeal’s argument necessarily fails.

(v) The site can be adequately served by all required utilities and public services.

The site is currently and adequately served by the City’s Department of Water and Power, the City’s Bureau of Sanitation, the Southern California Gas Company, the Los Angeles Police Department, the Los Angeles Fire Department, Los Angeles Unified School District, Los Angeles Public Library, and other public services. These utilities and public services have continuously served the neighborhood. In addition, the California Green Code requires new construction to meet stringent efficiency standards for both water and power, such as high-efficiency toilets, dual-flush water closets, minimum irrigation standards, LED lighting, etc. As a result of these code requirements, the proposed project will not create any impact on existing utilities and/or public services and the new 20-dwelling unit development will be adequately served by the existing infrastructure.

To that extent, LADBS along with the Bureau of Engineering requires a sewer availability clearance. LAMC 64.16.1 requires this clearance for any new construction project which may increase the sewer discharge. The clearance exists to ensure that the proposed project will be compatible with the sewer line. The Bureau of Engineering grants a sewer availability clearance after determining the costs of connecting the new building to the existing sewer line and ensuring its compatibility. LAMC 64.11.3 requires the project developer to pay the cost up front in order to receive the clearance. No building permit for this project will be granted without the Bureau of Engineering granting the sewer availability clearance.

The Project is currently served by all public utilities and services and will be required to adhere to all applicable regulatory compliance measures during construction, operation and maintenance of the proposed building.

(b) The Appeal Failed to Provide Any Substantial Evidence to Support His Erroneous Claims.

Any claim of a significant impact requires the support of substantial evidence. The California Environmental Quality Act ("CEQA") defines substantial evidence as "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Public Resources Code Section 21080(e)(1). The law is clear that "argument, speculation, unsubstantiated opinion or narrative" **do not** constitute substantial evidence. *Id.* at subdiv. (e)(2); CEQA Guidelines Section 15384; *see also, Newberry Springs Water Assn. v. County of San Bernardino*, 150 Cal. App. 3d 740 (1984). Further, courts have well established that testimony, even by an expert, is not substantial when the party proffering that evidence is not qualified to render an opinion on the subject. *Cathay Mortuary, Inc. v. San Francisco Planning Comm'n*, 207 Cal. App. 3d 275 (1989). This is particularly true where, as here, the argument that a significant impact could occur is not supported by any expert testimony and consists of nothing more than suppositions and assertions, not supported by facts, that certain things would occur. *See, e.g., Apt. Assn. of Greater Los Angeles v. City of Los Angeles*, 90 Cal. App. 4th 1162, 1175-76 (2001). The appeal simply fails to provide any substantial evidence of any significant project-specific or cumulative impact (as defined in §15300.2(b)), and his claims are actually contradicted by evidence in the record.

Thus, all of the evidence in the record demonstrates that any potential impacts to biological resources are less than significant, and contradicts the unsupported assertions in the appeal.

(c) No Historical Resource Abuts the Property, and Substantial Evidence Does Not Support Any Claim of Impacts to Historical Resources.

As the Property is not itself designated as historic, is not located within a historic district or overlay zone, and would not compromise any historic structure, no claim of any significant impact related to historic resources would occur or is supportable by substantial evidence.

(d) Speculative Impacts to Land Value are Not Impacts on the Environment and are Not Cognizable under CEQA.

CEQA does not require any analysis of potential effects on property values, no matter how potentially severe those effects might be. *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, 157 Cal. App. 4th 885, 903 (2007). Further, purely socioeconomic impacts are outside the purview of CEQA. *See, e.g., Gabric v City of Rancho Palos Verdes*, 73 Cal.App.3d 183, 200 (1977) (effects on neighborhood character are socioeconomic and not within the purview of CEQA). The key question under CEQA is whether a project will affect the environment of persons **in general**, not whether a project will affect particular persons. *Association for Protection etc. Values v. City of Ukiah*, 2 Cal.App.4th 720, 734 (1991). Therefore, even though environmental analysis to support the CE is not required, the analysis provided in the supplemental documentation was properly

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limited to the potential effects of the Project on the environment in general, with some refinement for more localized effects, such as air quality.

2. The PLUM Committee Should Affirm the Decisions of the Director and the Area Planning Commission and Uphold the Categorical Exemption.

The standard of review for a CE is whether substantial evidence supports its adoption, and the **appellant bears the burden of proof** to demonstrate a CE's inapplicability. (*Berkeley Hillside, supra*, 60 Cal. 4th at 1105.) This is consistent with the State Legislature's determination that categorically exempt projects may have effects that are typical of such projects, but are not considered significant for the purposes of CEQA. *Id.* Here, **the appeal has failed to provide any evidence** of a significant impact.

Further, as described above, not only has the appeal failed to provide evidence, but the evidence in the record contradicts the appeal's claims. Simply put, the appeal has failed to meet its burden, and the record for the Project cannot support a rejection of the CE at issue here. Therefore, we urge the PLUM Committee to reject the unfounded claims of the appeal, deny the appeal, and uphold the adoption and affirmation of the CE for the Project.

Very truly yours,



JONATHAN RABBANIAN of
Rabbanian Law Group, APC

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Enclosures

cc: Hon. Councilmember Mark Ridley-Thomas, Council District 10 (via email)