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July 29, 2022

VIA E-MAIL (clerk.plumcommittee@lacity.org)

Hon. Chair Marqueece Harris-Dawson and

Members of the Planning and Land Use Management Committee

Attention: Candy Rosales, Legislative Assistant

200 North Spring Street, Room 272

Los Angeles, CA 90012

Re: Property Address: 3209-3227 West Sunset Boulevard
Council File 22-0468

Case No. CPC-2021-2035-DB-CU-CUB-SPR-HCA; ENV-2021-2036-CE

Hearing Date: August 2, 2022, Agenda Item 1

Hon. Chair Harris-Dawson and Hon. Members of the PLUM Committee:

This office represents Sunset Twins-HH, LLC, the applicant seeking to replace an existing two-story auto body repair shop located at 3209-3227 Sunset Boulevard, with a new 84,662 square-foot, seven-story mixed use residential development consisting of 86 units, 10 of which are reserved for Very Low Income housing (the "Project"). The City Planning Commission ("Commission") unanimously approved the project on January 13, 2022, describing it as a "terrific" project, and one that is "forward looking", and "[checks] all the boxes." Commissioner Perlman summed it up well before voting to approve the Project: "to demolish an auto body shop and to be able to construct housing and affordable housing, that's fantastic." (Los Angeles City Planning Commission Hearing, January 13, 2022.) The Commission's enthusiasm for the Project is of course shared by our client and the entire Project team.

The Commission's action approving the density bonus application is final. But two appeals were filed in connection with Project's environmental determination and CUB. The appeals mainly voice general objections to increasing density in Silver Lake (e.g., parking, traffic, etc.) and general objections to the City's use of a categorical exemption. The appeals also raise vague and speculative concerns over alleged cumulative impacts.

As detailed below, neither of the appeals is supported by the facts, nor do they justify their claims that the Commission erred or abused its discretion in approving the Project with a categorical exemption. Accordingly, we respectfully request the City Council deny the appeals, and permit this Project to proceed as approved by the Commission.

A. The Project was properly approved by the City Planning Commission, and the claims put forward in the appeals are not supported by the law or facts.

Both appeals object to the Project primarily because the appellants disfavor higher density uses in the Silver Lake area. In doing so, they ignore the facts that (1) the density bonus approval is final and not further appealable; and (2) this Project is being proposed on an existing high-density commercially zoned parcel, located within an urbanized Commercial corridor (i.e., Sunset Boulevard). Ignoring these key facts, the appeals raise a variety of concerns about potential impacts of "out of scale" development, and insist that the Project will lead to traffic and parking impacts, ignoring the fact that the Project's environmental analysis specifically found no such impacts would occur. Generally, the appeals rely on classic "not in my back yard" arguments used to oppose affordable housing developments across the City, and fail to support their claims with facts or substantial evidence in the record.

In the Responsible Urban Development Initiative appeal ("RUDI Appeal"), the appellant asserts the following primary arguments: (1) density bonus projects may not be approved in high fire severity zones; (2) the Project does not qualify for a categorical exemption because it is has been "piecemealed;" and, (3) the Project's site plan review should not have been approved because the Project is "incompatible with the surrounding built environment." The second appeal, brought by David Richardson ("Richardson Appeal"), focuses mainly on concerns about parking, traffic, cumulative impacts, and somewhat vague concerns about hillside parking/access. Both appeals lack merit.

It is important to note upfront that both appeals are full of errors of fact, speculation couched as conclusions, and plain-old misinformation. (*See* CEQA Guidelines Section 15384, "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate... does not constitute substantial evidence.") For example, the RUDI Appeal begins its attack by claiming the Project obtained twelve 12 "waivers from the underlying zoning restrictions of the [LAMC]." This is factually wrong. The Project received 3 off-menu incentives, and 5 waivers. The RUDI Appeal goes on to also claim that there is a 100-unit residential development proposed at 3210-3218 that is "not yet submitted." This is also wrong.

The Richardson Appeal, which is focused almost exclusively on Mr. Richardson's personal concerns over parking and traffic impacts, also turns on an erroneous general conclusion that "public transit opportunities in this neighborhood are [] minimal." Again, this is wrong. As to this point, the staff report explains:

[Metro] operates multiple bus lines with multiple bus stops within walking distance from the Project Site with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. Bus lines that operate in the Project Site area include, but are not limited to, Metro 2, Metro 4, Metro 201, Metro 175 and regional/commuter lines (Metro RapidBus 704). The Project Site is also situated within easy walking distance to retail,

restaurants, entertainment, and other commercial businesses located along W. Sunset Boulevard and in the Silver Lake - Echo Park - Elysian Valley area.

The Commission also understood this claim was wrong, and noted on its own that the site is also located within Metro's new Metro Micro service area, which allows for easy and inexpensive ride-share service to for easy access around the Community and to other transit options including the nearby Vermont/Santa Monica Metro B-Line station. This is not an exhaustive list of the inaccuracies contained in the appeals, but it helps highlight the point that the arguments raised are based mainly on the appellants' inaccurate speculation about the Project and the surrounding community, and not the actual facts on the ground.

B. The Project does not create a fire risk and there are no restrictions against siting off-menu density bonus projects at this location.

The appellants' claim that the Project—which is proposed along one of the City's most well-established 5+ lane commercial thoroughfares—is somehow a fire risk, lacks credibility. The Project does not block any streets, and abuts existing high-density multi-family residential and commercial uses on all sides. It is also located mid-block along a 100 ft. wide right-of-way. There is simply no credibility to the claim that housing at this location would pose a fire risk. The appellants' suggestion that visitors to the Project will block neighboring streets and make emergency access more difficult also lacks any factual grounding. In reality, the Project is expected reduce parking demand, as the appellant's forget that *the existing and historic use of the Property is an auto body shop* (i.e, a use that *only* attracts automobiles). To suggest that a new, non-auto oriented use will somehow result in vehicles overflowing into the hillsides, is just not a credible argument. As to Mr Richardson's complaints about vehicles illegally parking in front of his home, as disruptive and frustrating as this situation may be, this is a parking enforcement issue and is irrelevant to the Project's anticipated future impacts.

Although the Project's density bonus approval is final and therefore not at issue in this appeal, the appeals are still also wrong that density bonus projects are not permitted in Very High Fire Hazard Severity zones ("VHFHS zones"). Los Angeles Municipal Code ("LAMC") § 12.22 A.25 (e)(2)(iv), states that for a project [t]o be eligible for any **on-menu incentives**, a Housing Development Project [...] ... shall not be located on a substandard street in a Hillside Area or in a Very High Fire Hazard Severity Zone..." (emphasis added) Ignoring the distinction between on-menu and off-menu incentives, the appellants erroneously argue that this provision bars all density bonus projects from VHFS zones. This is wrong. The LAMC states that on-menu, *and not off-menu*, density bonus projects are prohibited, a restriction created specifically because on-menu projects are not always required to go through a discretionary review process. There is, however,

no such restriction for off-menu density bonus projects like this one, and given the Project's location mid-block on Sunset Boulevard, there is no need for any risk to be addressed or mitigated.¹

Moreover, even if this LAMC provision did purport to restrict density bonus projects in VHFHS zones—which it does not—this provision would conflict with state density bonus law (Government Code Section 65915.), which includes no such carve-out for VHFHS zones or substandard streets. It would also conflict with the Housing Accountability Act, as the Project has already been deemed consistent with all objective LAMC regulations and criteria. Accordingly, the appellants' twisted interpretation of the LAMC's density bonus provisions could not be used to justify a denial of the Project, even if it were correct.

To be certain, the Project applicant retained a fire protection expert to look into these fire safety concerns and to confirm that the Project will not create or exacerbate any potential fire risk. Attached as **Exhibit A** is a copy of the report prepared by Dudek's Principal Fire Protection Planner Michael Huff, which concludes that: (i) that the Property is not truly in a VHFHS zone because it was likely "mis-mapped into a higher fire hazard severity zone..."; and (ii) the Project "would not create or pose a wildfire risk... and does not include characteristics that would lead to a higher level or risk." (Exhibit A., Pg. 4.) Accordingly, the appellants' claims about the Project's fire risks are simply not credible.

C. The Project description is accurate, stable, and complete, and clearly describes the whole of the project as required by CEQA.

The RUDI Appeal also argues that the Project description in the environmental analysis is flawed because it should describe all "RYDA" developments in the Silver Lake community and that the City's environmental analysis fails "to properly review the 'whole of an action.'" This argument is nonsense. First, on a preliminary level, the argument ignores the critical fact that all of the projects referenced in the appeals as "RYDA" projects were filed by different applicants (i.e., not RYDA.). Accordingly, the appellant has no factual basis to argue that the projects are all proposed by the same applicant, nor is there any basis to argue that different projects should be treated as one project just because there is overlap in some of the individuals involved.

Moreover, even if the projects were filed by the same applicant—which they were not—this still would not be evidence that the Project description was inaccurate or piecemealed. The rule against piecemealing concerns situations where agencies "chop[] a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." Banning Ranch Conservancy v. City of Newport Beach (2012) 211 Cal.App.4th 1209, 1222. The concern is thus whether a single project has been broken up into multiple projects to evade environmental review, not whether the same or similar group of people happen to be involved with the development team. Here, there is no evidence that (i) this Project

¹ Appellant also claims that the Project is in a special grading area and is also ineligible as a Transit Oriented Communities ("TOC") development. The Project is not a TOC project, nor is there any prohibition against density bonus projects in special grading areas.

is part of a larger project, (ii) that there is any reasonably foreseeable expansion of the Project that was not considered, or (iii) that the Project is a component of any other larger development. (*See Leonoff v. Monterey Cnty. Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358, [no piecemealing because “[t]here were two separate projects”].) This is a stand-alone development in every respect, and the appeals provide no evidence that this is not case.

Finally, to the extent other neighboring projects are relevant to the environmental analysis, the appeals ignore the extensive cumulative impacts analysis included in the Project's environmental review. The records shows that the City exhaustively analyzed the potential for cumulative impacts from this Project and five other projects identified within the vicinity of the Project site, including many of projects the appeal wrongly lists as "RYDA" projects. The analysis concludes that the "Project would not result in any significant traffic, noise, air quality, or water quality impacts..." and that "the potential for the [] Project to result in cumulative impacts is less than significant." (Pg. 88, of CEQA Exemption.) The appeals fail to provide substantial evidence that the City's cumulative impacts study is flawed in any way.

D. The City's Site Plan Review findings are supported by substantial evidence in the record.

The Appellant's letter suggests that the Applicant did not meet the requirements of Site Plan Review and that the Project would not be compatible with existing and future developments in the area. The Appellant claims the building is out of scale with the neighborhood and states that it will “tower over all other commercial and residential development along Sunset.” This is wrong, and a review of the neighborhood and the Project's renderings illustrate exactly why. First, the Project will not tower over neighboring residences or commercial uses. To the east, high density multi-family developments are perched on a hill high above the Property, about the same height as the Project. To the north, another Transit Oriented Communities ("TOC") project was approved by the City in 2019, permitting a new mixed-use multi-family structure that will rise to approximately 60 feet. To the west are other multi-story mixed-use buildings, and again dense multi-family development perched on hillsides at higher elevations than the Project's roofline. It has been made clear in the project findings and at public hearings, that this location is suitable for this level of density specifically because of the context of the neighborhood.

E. There is substantial evidence in the record that the Project will not have any traffic impacts, on its own or cumulatively.

The appeals also erroneously claim that the Project will cause significant traffic and parking impacts along Sunset Boulevard and in the surrounding hillside neighborhoods. These arguments, however, are not supported by substantial evidence. They also ignore the extensive traffic analysis included in the Project's traffic studies that show the opposite to be true—that the Project will not cause a significant impact on traffic. As for the appeals' various concerns about finding parking in the area, our courts have made it clear that "[t]he social inconvenience of having to hunt for scarce parking spaces is not an environmental impact." *San Franciscans Upholding the Downtown Plan v. City & Cnty. of San Francisco* (2002) 102 Cal.App.4th 656, 697.

Although largely ignored by the appellants, the traffic analysis included in the staff report was prepared to respond to these concerns. A Transportation Assessment ("TA") was prepared for the Project in accordance with the City of Los Angeles Department of Transportation ("DOT") Transportation Assessment Guidelines. The TA evaluated Project access and circulation in the site vicinity, as well as potential vehicle delay and queuing conditions at local intersections (including Sunset Boulevard & Micheltorena Street and Sunset Boulevard & Descanso Drive) trips under existing and future post-Project traffic conditions.² The TA was reviewed and approved by DOT staff on July 15, 2021, and concluded that the Project (i) would not be expected to substantially increase delays or worsen queuing conditions at local intersections, (ii) is not anticipated to result in adverse conditions along residential local street segments, and (iii) will not create significant impact on traffic.

F. The City properly determined that the Project qualifies for a Class 32 "in-fill" categorical exemption.

Finally, as for the appellants' demand that the City must prepare a costly Environmental Impact Report ("EIR") due to the alleged traffic and parking impacts, this demand again ignores the important voluminous records illustrating that the Project's traffic and parking impacts were thoroughly evaluated as part of the Class 32 exemption and found to not be significant under CEQA. Accordingly, even if an EIR were required, nothing would change about the Project or the traffic/parking mitigation, because the EIR would reach the same conclusion as the Class 32 exemption: the Project will not have a significant impact. As the Project meets all the criteria for a Class 32 exemption, the Commission did not err in approving the Project and adopting the associated CEQA findings.

CONCLUSION

In conclusion, given the overwhelming evidence supporting the Commission's action of approving the Project, and considering the lack of substantial evidence supporting the claims alleged in the appeals, we respectfully request the City Council deny the appeals and uphold the Commission's approval.

² The Project access and circulation evaluation performed as part of the Project TA was based on traffic volume data obtained from manual traffic counts conducted at the study area intersections on a typical weekday, prior to the COVID-19 pandemic and when schools were in session. The manual counts were growth-factored to represent existing (2021) traffic conditions.

Thank you in advance for your consideration, and we look forward to answering any questions you may have at the upcoming hearing.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'D. Freedman', with a large, stylized 'D' and a long horizontal flourish extending to the right.

DANIEL FREEDMAN of
Jeffer Mangels Butler & Mitchell LLP

CC: Craig Bullock, Legislative Director, Councilmember O'Farrell
Elizabeth Ene, Director of Planning and Land Use, Councilmember Blumenfield
Paola Bassignana, Dir. of Planning and Econ. Development, Councilmember Rodriguez
Albizael Del Valle, Deputy District Director, Councilmember Harris-Dawson
Gerald Gubatan, Planning Director, Councilmember Cedillo
Hannah Lee, Chief of Staff, Councilmember Lee
Oliver Netburn, Principal City Planner, Department of City Planning
Parissh Knox, Deputy City Attorney, Office of the City Attorney

EXHIBIT A

MEMORANDUM

To: Daniel F. Freedman, Jeffer Mangels Butler & Mitchell LLP | JMBM
From: Michael Huff, Principal Fire Protection Planner, Dudek
Subject: 3209 - 3227 W. Sunset Boulevard Fire Hazard Severity Zone Evaluation
Date: July 27, 2022
cc:

This memorandum documents preliminary fire hazard severity zone analysis for the 3209 - 3227 W. Sunset Boulevard project site in Los Angeles, California. Dudek's analysis focuses on the site's location within a designated very high fire hazard severity zone and included evaluating the existing conditions of the project site, its distance from the nearest wildland areas that would support wildfire, and potential for ember related ignitions. This evaluation's purpose is to determine if the fire hazard severity zone inclusion is appropriate and justified or whether, in our professional opinion, the project would or would not create or pose a fire risk and whether the Project may be included within a fire hazard severity zone but does not include characteristics that would lead to a higher level of risk.

Project Site Description

The Project site is located at 3209 – 3227 W. Sunset Boulevard. The Project site is approximately 25,000 square feet and is proposed for a mixed use development. The existing land use is an automobile repair/body shop. Approximately the southern one-half of the site is a parking lot while the northern one-half is the location of the shop structures.

The land uses in the vicinity of the Project site includes commercial and retail along Sunset Boulevard and residential development to the north, south, east and west for considerable distances. The nearest area that includes natural vegetation is Griffith Park, approximately 2.5 miles north of the site. Approximately 2 miles to the east are natural slopes adjacent to Dodger's Stadium. There are no wildlands to the south or west for at least several miles.

Fire Hazard Severity Zone

The Project site is currently mapped at the western edge of a Very High Fire Hazard Severity Zone (Figure 1). PRC 4201 - 4204 and Govt. Code 51175-89 direct the California Department of Forestry and Fire Protection (CAL FIRE) to map areas of significant fire hazards based on fuels, terrain, weather, ember cast, and other relevant factors. These zones, referred to as Fire Hazard Severity Zones (FHSZ), define the application of various mitigation strategies to reduce risk associated with wildland fires. Figure 1 illustrates the Project site and its location within the VHFHSZ in relation to surrounding moderate and low FHSZs. The Project area, being dominated by developed landscapes, appears to be mis-mapped based on the lack of steep terrain and unmaintained, native fuels for a large area

Memorandum

Subject: 3209 – 3227 W. Sunset Boulevard Fire Constraints Analysis

surrounding the site. CAL FIRE is currently re-mapping fire hazard severity zones with anticipated release date being sometime in 2022, but with no firm deadline. Although it is not known what the Project site will be mapped

With the re-mapping effort, it is likely that fire hazard severity zones will be expanded based on ember cast, but that is unconfirmed at the time of this memorandum.

Topography

The site is flat with a retaining wall on the eastern edge and a slope up to residential land uses. The greater project area includes mostly flat terrain with some developed, gently rolling terrain. The topography on and adjacent to the site are not consistent with extreme wildfire behavior due to the lack of steep terrain. The nearest steep terrain with natural fuel beds occurs approximately 2.5 miles to the north.

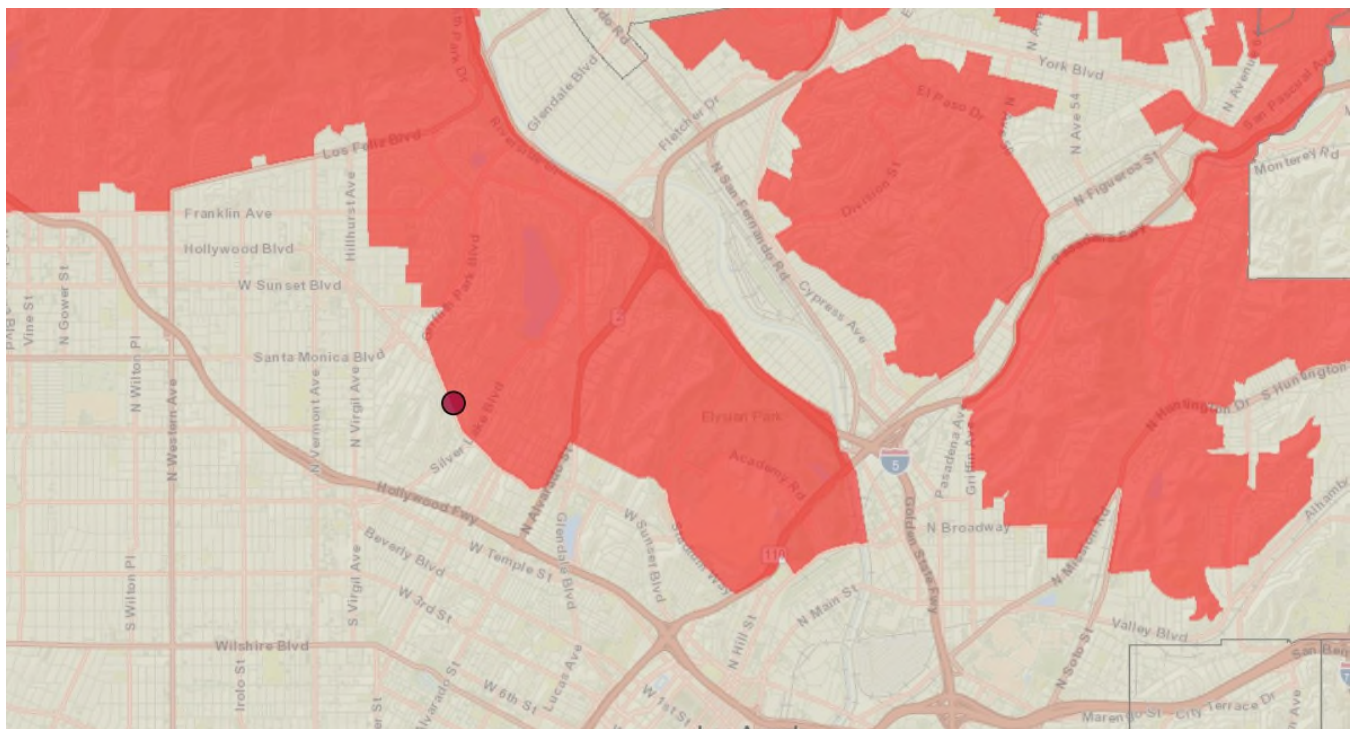
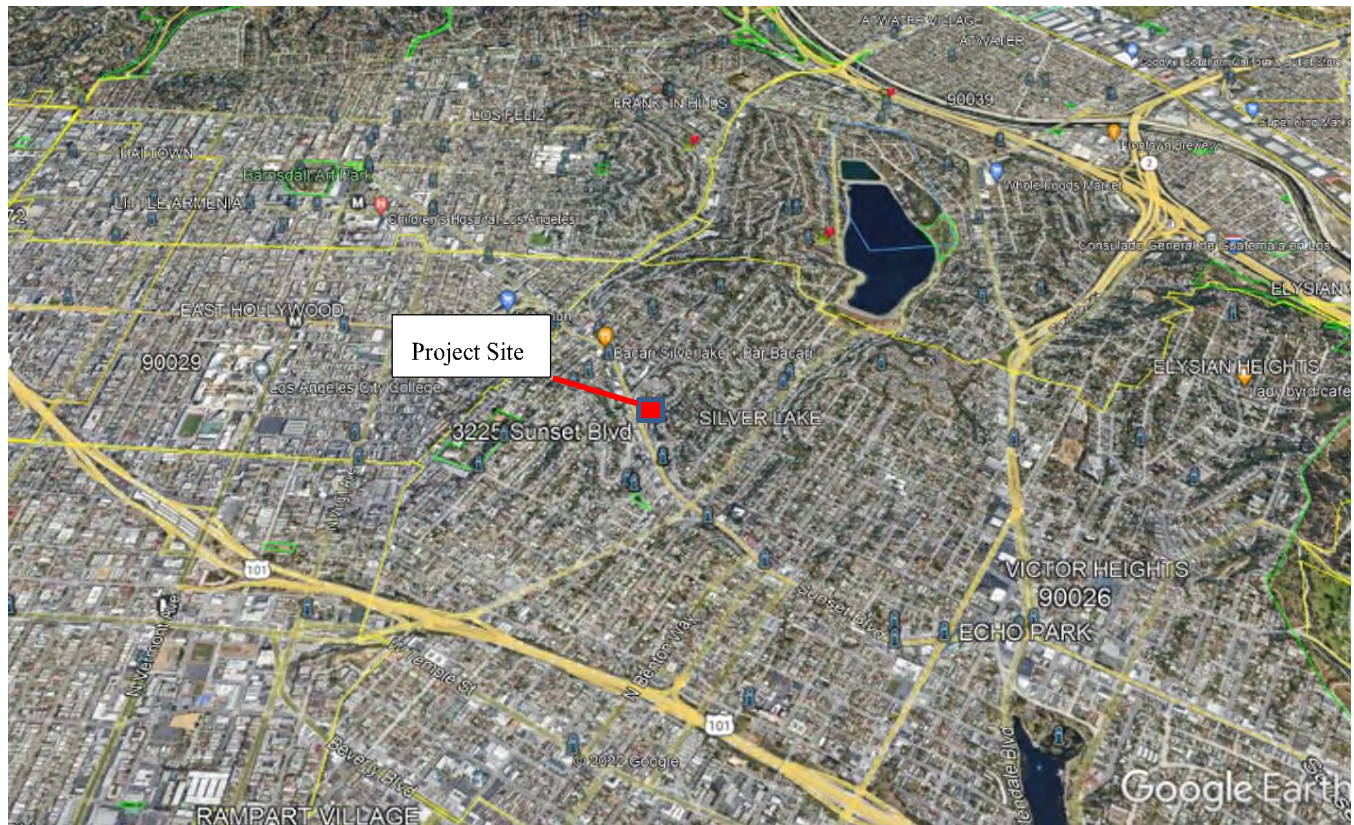


Figure 1. Mapped fire hazard severity zones in the Project's vicinity, including a very high fire hazard severity zone classification for the Project site, which is located at the extreme periphery of the mapped zone.

Fuel

The site is devoid of vegetation except for ornamental shrubs, trees and ground cover associated with the residential land uses to the east, upslope from the site. Off-site areas include disturbed, developed, maintained landscapes, hardscape, and agriculture. The fuels in the area are not consistent with extreme wildfire behavior due to the lack of unmaintained fuel beds.

The aerial image in Figure 2 illustrates the Project's immediate surroundings, which are a mix of high-density urbanization and disturbed or converted landscapes with virtually no unmaintained open space within 2+ miles in all directions.



Fire Environment Assessment

- It is suspected that CAL FIRE's very high fire hazard severity zone is related to potential ember threat.
- The nearest wildland area to the north/northeast (Santa Ana wind direction) from the Project is nearly 2.5 miles away.
- Any Project on the site would not be anticipated to be directly threatened by wildfire.

- The existing site does not appear to be especially vulnerable to airborne embers that would be minimal in size and viability this far from a wildland area. Any future project on the site would be built to Chapter 7A of the California Building Code and would be defensible from the anticipated wildfire risk.
- Any Project on the site would be advised to utilize specific ember resistant vents to mitigate the low probability, but possible ember cast threat.
- Any future landscaping on site would include common landscape plantings that do not represent a significant wildfire threat.
- Fuel load off-site is minimal with disturbed and converted landscapes not representing a significant hazard.

Summary

Based on Dudek's review of the site, a field visit to the Project area, and understanding of fire hazard severity zone mapping, it is our opinion that the study area as described herein, is mis-mapped into a higher fire hazard severity zone than warranted. We believe that it would be more appropriately classified as a low, or even a Moderate Fire Hazard Severity Zone. ***It is Dudek's professional opinion that the project would not create or pose a wildfire risk. Further, although the Project may be included within a fire hazard severity zone, it does not include characteristics that would lead to a higher level of risk.***

This opinion stems from:

- The areas' fire environment does not include the features necessary to facilitate extreme wildfire behavior.
- The Project site and area is subject to seasonal weather extremes that have been found to facilitate fire spread, however, this site does not include steep terrain or heavy fuels which result in aggressive wildfire and is long distances from the nearest wildland fuels.
- The Project area and greater region exhibits generally flat to gently rolling terrain with disturbed and developed landscapes with low available fuel biomass.
- The nearest large, natural open space areas that would be significant sources of embers occur nearly 2.5 miles to the north/east, which is the primary direction from which a Santa Ana wind driven wildfire would burn and produce embers that could land on the site.

Please feel free to contact me if you have any questions regarding this assessment or if you need additional information.