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CITY PLANNING**

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September 1, 2022

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-2022-757-CE-1A; COUNCIL FILE No. 22-0875

On June 23, 2022, the Director of Planning issued an exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332 (Class 32, Infill Development) for a Transit Oriented Communities Affordable Housing Incentive Program (TOC) project (Case No. DIR-2022-756-TOC-HCA) consisting of the construction, use, and maintenance of a new, six-story, 56,112 square-foot residential building with 60 dwelling units, including six (6) dwelling units set aside for affordable housing (or 10% of the proposed density) the six (6) units reserved is for Extremely Low Income (ELI) Households.

On July 19, 2022, a CEQA appeal was filed by an aggrieved party (Enrique Velasquez, Coalition for an Equitable Westlake/Macarthur Park, "Appellant") to the City Council (Case Number ENV-2022-757-CE-1A; Council File Number 22-0875) challenging the Director of Planning's determination that the project is exempt from CEQA.

APPEAL SUMMARY

The Appellant states that the proposed project does not qualify for a Categorical Exemption due to an exception to the exemption (Attachment 1). The Appellant states that the Categorical Exemption does not apply to the proposed project due to cumulative impacts and alleges that a mitigated negative declaration or environmental impact report must be conducted. The Appellant lists 15 alleged development projects that are within a .6-mile radius of the project site on file with the City from January 2017 to the date of the appeal filing.

APPEAL ANALYSIS

A local agency's determination that the project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. 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. (*Berkley Hillside Preservation v. City of Berkley* (2015) 60 Cal.4th 1086; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226

Cal.App.4th 1012, 1022-23.) Here, the Appellant has not met its burden because no facts were submitted in the administrative record to conclude that there will be a cumulative impact of successive projects of the same type in the same place, over time that is significant. The cumulative impact exception applies when the environmental impact at issue affects the environment in general and does not apply to activity that has an impact on only some particular persons. (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 799.) Speculation that significant cumulative impacts will occur simply because other development projects may be or were previously approved in the same area is insufficient to trigger this exception. Simply listing other projects occurring in the area that might cause significant cumulative impacts is not evidence that the proposed project will have adverse impacts or that the impacts are cumulatively considerable. (*Hines v. California Coastal Comm'n* (2010) 186 Cal.App.4th 830, 857.)

As demonstrated in the Class 32 Justification for Project Exemption Case No. ENV-2022-757-CE (Attachment 2), the proposed project meets all criteria to qualify as an infill site under the Class 32 CEQA Exemption, California Environmental Quality Act & CEQA Guidelines Section 15332. Relevant to this matter, CEQA Guidelines Section 15300.2(b) states that a categorical exemption is inapplicable “when the cumulative impact of successive projects of the same type in the same place, over time is significant.” CEQA Guidelines Sections 15065(a)(3) and 15064(h) state that a “cumulatively considerable” impact means that the incremental effects of an individual project are significant when viewed in connection with the effects of other related projects. The Appellant has submitted no evidence that there will be a cumulative adverse impact caused by the proposed project and other projects of the same type in the same place over time that is significant. Moreover, the Appellant does not state which cumulative effects are at issue or provide any supporting facts regarding those impacts.

As set forth in the administrative record, the proposed project and other projects in the vicinity area are subject to Regulatory Compliance Measures (RCMs) related to air quality, noise, hazardous materials, geology, and transportation. Numerous RCMs in the City’s Municipal Code and State law provide requirements for construction activities and ensure impacts from construction related air quality, noise, traffic, and parking are less than significant. For example, the South Coast Air Quality Management District (SCAQMD) has District Rules related to dust control during construction, type and emission of construction vehicles, architectural coating, and air pollution. All projects are subject to the City’s Noise Ordinance No. 144,331, which regulates construction equipment and maximum noise levels during construction and operation.

Additionally, the Appellant lists 15 projects that are within a .6-mile radius, which is equivalent to 3168 feet. However, the Appellant’s .6-mile radius appears arbitrary and speculative in nature. The radius to be studied depends on the impact at issue. Here, the Appellant has not identified which cumulative impacts, e.g., noise, aesthetics, dust, are at issue. Additionally, “in the same place” means the area where a particular project impact will occur, not the environment in general. See *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, 958.

It should be noted that only one (1) of the Appellant’s listed projects are within a 500-foot radius of the subject property.

In conclusion, the Appellant has failed to provide substantial evidence demonstrating that the Class 32 Categorical Exemption for the Project is deficient. The CEQA Determination includes substantial evidence that the Class 32 Categorical Exemption applies to the proposed project and that no exceptions to the categorical exemption apply. Therefore, the Categorical Exemption adequately addresses all impacts relative to the proposed project at 1031 – 1043 South Dewey Avenue.

RECOMMENDATION

Staff recommends that the PLUM Committee recommend for City Council to **deny** the appeal and **determine** that based on the whole of the administrative record, as supported by the justification prepared and found in the environmental case file, ENV-2022-757-CE-1A, the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332, Class 32, and there is no substantial evidence demonstrating that any exceptions contained in CEQA Guidelines, Section 15300.2 applies

Sincerely,

VINCENT P. BERTONI, AICP

Director of Planning



Michelle Carter

City Planner

VPB:MC

ATTACHMENT

Attachment 1: Appeal Justification

Attachment 2: Notice of Exemption and Class 32 Justification

July 15, 2022

Los Angeles City Council
200 N. Spring Street
Los Angeles, CA, 90012

Re: Case Nos. CEQA - ENV-2022-757-CE; DIR-2022-756-TOC-HCA
Project Location: 1037 S. Dewey Avenue (“the Project”)

Dear Los Angeles City Council:

On behalf of Coalition for an Equitable Westlake/MacArthur Park (“Coalition”), an unincorporated association of long-time community residents, we are writing to object to the City’s CEQA determination. A project qualifies for a Class 32 Categorical Exemption if it is developed on an infill site and meets certain criteria. However, before a project can be determined to qualify for a categorical CEQA exemption, exceptions to the exemption, such as cumulative impacts, must be considered. If an exception to a categorical exemption applies, CEQA review in the form of an MND or EIR must be conducted. CEQA Guidelines section 15355 states: “Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.”

The City has a burden to provide substantial evidence, which must be based upon facts, reasonable assumptions based on facts and expert opinion, rather than the City’s mere speculation, to support its findings. CEQA Guidelines § 15384(a); *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal. App. 4th 694, 711 (citing *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 386). The City must demonstrate with substantial evidence that the Project would not result in significant environmental impacts pursuant to CEQA Guidelines § 15332

Additionally, any environmental impacts based on pre-Covid levels of public transit ridership that do not take into account declining public ridership, which is expected to further decline after Covid. <https://caltransit.org/news-publications/publications/transit-california/transit-california-archives/2019-editions/may/ridership-study-revisited>;
<https://www.latimes.com/opinion/story/2021-04-07/los-angeles-public-transit-crisis>

Below the Coalition submits a list of past projects, current projects and future projects spanning back to January 1, 2017 that contribute towards the cumulative impacts of the Project that must be considered. The projects listed below are all within a .06 mile radius of the Project. Many have already been approved. The area within a .06 mile radius is heavily populated and is a high pedestrian and car traffic area.

The projects are listed by the address of the development, the distance from the project, the number of existing units, the number of units being constructed, the number of increased units per project and City Planning Departments assigned case number. Please see below.

1037 S. Dewey Ave. (60 units)

	<i>Address of proposed projects</i>	<i>Dist.</i>	<i>Existing</i>	<i>Proposed</i>	<i>Increase</i>	<i>Case No.</i>
1	966 S DEWEY AVE	.1 miles	None	99 units	99 units	ZA-2017-3446-VCU-CUB-ZAA-SPR
2	909 S. FEDODORA ST	.6 miles	1 unit	23 units	22 units	DIR-2017-278-DB
3	924 S. CATALINA	.3 miles	4 units	30 units	24 units	DIR-2018-3005-TOC
4	950 S BERENDO ST	.3 miles	7 units	75 units	70 units	ENV-2018-3646-EAF
5	904 S NORMANDIE AVE	.5 miles	21 units	29 units	8 units	ENV-2018-4984-EAF
6	3031 W OLYMPIC BLVD	.4 miles	None	14 units	14 units	DIR-2019-1053-TOC
7	968 S FEDORA ST	.3 miles	None	50 units	50 units	DIR-2019-1113-TOC
8	2870 W OLYMPIC BLVD	.1 miles	None	126 units	126 units	DIR-2019-2498-SPR
9	982 S DEWEY AVE	.1 miles	2 units	14 units	12 units	ENV-2019-3453-EIR
10	936 S MARIPOSA AVE	.6 miles	1 unit	21 units	20 units	DIR-2019-4091-TOC
11	986 S MARIPOSA AVE	.3 miles	3 units	100 units	97 units	DIR-2020-1140-TOC-SPR-HCA
12	944 S DEWEY AVE	.2 miles	4 units	51 units	47 units	DIR-2020-5590-TOC-HCA
13	900 S KENMORE AVE	.5 miles	None	29 units	29 units	TT-74228-EXT
14	950 S BERENDO ST	.3 miles	7 units	77 units	70 units	DIR-2021-9706-TOC-HCA
15	832 S KENMORE AVE	.6 miles	6 units	45 units	39 units	DIR-2022-1302-HCA-TOC
	totals	.6 miles	<u>Existing</u> 56 units	<u>Proposed</u> 783 units	<u>Increase</u> 727 units	Note: If we add the 60 units under the proposed project in question, then we get a net increase of 787 new units concentrated within .6 miles in this constantly changing neighborhood



CITY OF LOS ANGELES
DEPARTMENT OF CITY PLANNING
CITY HALL 200 NORTH SPRING STREET LOS ANGELES CA 90012

Class 32 CEQA Exemption

1037 South Dewey Avenue

Case Number: ENV-2022-757-CE

Project Addresses: 1037 South Dewey Avenue (1031 – 1043 South Dewey Avenue)

Community Plan Area: Wilshire

Council District: 10

Project Description: The subject property is comprised of three (3) lots measuring approximately 17,738 square feet and is currently undeveloped vacant lots. The proposed project involves the construction of a new, six-story, 56,112 square-foot residential building with 60 dwelling units, including six (6) dwelling units set aside for affordable housing (or 10% of the proposed density) the six (6) units reserved is for Extremely Low Income Households. The building will be constructed with five (5) residential levels above one (1) ground floor level of parking and one (1) level of subterranean parking. The project includes 32 one-bedroom units, eight (8) two-bedroom units, 19 three-bedroom units, one (1) four-bedroom unit and a total of 7,746 square feet of open space for residents. The proposed project would include 56,112 square feet with a maximum floor area ratio (FAR) of 4.5:1.

PREPARED FOR:

The City of Los Angeles
Department of City Planning

PREPARED BY:

The City of Los Angeles
Department of City Planning

APPLICANT:

Henry Fan
URSA 1037 Dewey Ave., LLC

JUSTIFICATION FOR PROJECT EXEMPTION

CASE NO. ENV-2022-757-CE

The City of Los Angeles determined based on the whole of the administrative record that the project is exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies.

The proposed project is the construction of a new, six-story, 56,112 square-foot residential building with 60 dwelling units, including six (6) dwelling units set aside for affordable housing (or 10% of the proposed density) the six (6) units reserved is for Extremely Low Income Households. The building will be constructed with five (5) residential levels above one (1) ground floor level of parking and one (1) level of subterranean parking. The project includes 32 one-bedroom units, eight (8) two-bedroom units, 19 three-bedroom units, one (1) four-bedroom unit and a total of 7,746 square feet of open space for residents. The proposed project would include 56,112 square feet with a maximum floor area ratio (FAR) of 4.5:1.

The project requires the following:

1. Pursuant to Los Angeles Municipal Code (L.A.M.C.) Section 12.22-A,31, a 70% increase in density consistent with the provisions of the Transit Oriented Communities Affordable Housing Incentive Program along with two (2) Additional Incentives for a Tier 3 project with a total of 60 dwelling units, including six (6) units reserved for Extremely Low Income (ELI) Households.

Implementation of the California Environmental Quality Act

Pursuant to Section 21084 of the Public Resources Code, the Secretary for the Natural Resources Agency found certain classes of projects not to have a significant effect on the environment and declared them to be categorically exempt from the requirement for the preparation of environmental documents.

The project meets the conditions for a Class 32 Exemption found in CEQA Guidelines, Section 15332 (In-Fill Development Projects), and none of the exceptions to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 apply.

Conditions for a Class 32 Exemption

A project qualifies for a Class 32 Categorical Exemption if it is developed on an infill site and meets the following criteria:

- 1) 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;
- 2) The proposed developed occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- 3) The project site has no value as habitat for endangered, rare, or threatened species;
- 4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- 5) The site can be adequately served by all required utilities and public services.

The project is located within the Wilshire Community Plan which designates the subject property for High Medium Residential land uses with a corresponding zone of R4. The subject property is zone R4-1. The project is consistent with the applicable general plan land use designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

The subject site is wholly within the City of Los Angeles, on a site that is approximately 0.407 acres in size. Lots adjacent to the subject properties are developed with the following urban uses: multi-story multi-family residential structures. The site is currently undeveloped with vacant lots and is surrounded by development and therefore is not, and has no value as a habitat for endangered, rare or threatened species.

The project will be subject to Regulatory Compliance Measures (RCMs), which require compliance with the City of Los Angeles Noise Ordinance, pollutant discharge, dewatering, stormwater mitigations, and Best Management Practices for stormwater runoff. These RCMs will ensure the project will not have significant impacts on noise and water. The project would not result in any significant effects related to traffic, noise, air quality, or water quality.

- An Air Quality Technical Report dated February 2022, was prepared by DKA Planning, for the proposed project indicating that the project will result in less than significant impacts to air quality.
- A Noise Technical Report dated February 2022, was prepared by DKA Planning, for the proposed project indicating that noise impacts would be less than significant.
- Construction and operational noise levels would not have a significant impact. Based on a review of similar projects, the project would not create significant levels of construction or operational emissions, nor toxic air contaminants. In addition, the project would not result in significant impacts to water quality.

The project site will be adequately served by all public utilities and services given that the construction of a 56,112 square foot, six-story, 60-unit residential development will be on a site which has been previously developed and is consistent with the General Plan. Therefore, the project meets all the Criteria for the Class 32.

Exceptions to Categorical Exemptions

There are six (6) exceptions to categorical exemptions must be considered in order to find a project exempt from CEQA: (a) Location; (b) Cumulative Impacts; (c) Significant Effect; (d) Scenic Highways; (e) Hazardous Waste Sites; and (f) Historical Resources.

The project is not located on or near any environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. There is not a succession of known projects of the same type and in same place as the subject project. The project would not reasonably result in a significant effect on the environment due to unusual circumstances. The project is not located near a State Scenic Highway. The only State Scenic Highway within the City of Los Angeles is the Topanga Canyon State Scenic Highway, State Route 27. Furthermore, according to Envirostor, the State of California's database of Hazardous Waste Sites, neither the subject site, nor any site in the vicinity is identified as an active hazardous waste site. The project site has not been identified as a historic resource by local or state agencies, and the project site has not been determined to be eligible for listing in the National Register or Historic Places, California Register of Historical Resources, the Los Angeles Historic-Cultural Monuments Register, and/or any local register, and

was not found to be a potential historic resource based on the City's HistoricPlacesLA website. Based on this, the project will not result in a substantial adverse change to the significance of a historic resource and this exception does not apply.

COUNTY CLERK'S USE

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 395
LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION
(PRC Section 21152; CEQA Guidelines Section 15062)

Pursuant to Public Resources Code § 21152(b) and CEQA Guidelines § 15062, the notice should be posted with the County Clerk by mailing the form and posting fee payment to the following address: Los Angeles County Clerk/Recorder, Environmental Notices, P.O. Box 1208, Norwalk, CA 90650. Pursuant to Public Resources Code § 21167 (d), the posting of this notice starts a 35-day statute of limitations on court challenges to reliance on an exemption for the project. Failure to file this notice as provided above, results in the statute of limitations being extended to 180 days.

PARENT CASE NUMBER(S) / REQUESTED ENTITLEMENTS
DIR-2022-0363-TOC-HCA / Transit Oriented Communities Affordable Housing Incentive Program

LEAD CITY AGENCY
City of Los Angeles (Department of City Planning)

CASE NUMBER
ENV-2022-757-CE

PROJECT TITLE
1037 South Dewey Avenue

COUNCIL DISTRICT
10

PROJECT LOCATION (Street Address and Cross Streets and/or Attached Map)
1037 South Dewey Avenue (1031 – 1043 South Dewey Avenue)

Map attached.

PROJECT DESCRIPTION:
Construction of a new, six-story, 56,112 square-foot residential building with 60 dwelling units, including six (6) dwelling units set aside for affordable housing (or 10% of the proposed density) the six (6) units reserved is for Extremely Low Income Households. The building will be constructed with five (5) residential levels above one (1) ground floor level of parking and one (1) level of subterranean parking. The project includes 32 one-bedroom units, eight (8) two-bedroom units, 19 three-bedroom units, one (1) four-bedroom unit and a total of 7,746 square feet of open space for residents. The proposed project would include 56,112 square feet with a maximum floor area ratio (FAR) of 4.5:1.

Additional page(s) attached.

NAME OF APPLICANT / OWNER:
Henry Fan, URSA 1037 Dewey Ave., LLC

CONTACT PERSON (If different from Applicant/Owner above)
Patrick Jen

(AREA CODE) TELEPHONE NUMBER | EXT
626.999.7741

EXEMPT STATUS: (Check all boxes, and include all exemptions, that apply and provide relevant citations.)
STATE CEQA STATUTE & GUIDELINES

STATUTORY EXEMPTION(S)
Public Resources Code Section(s) _____

CATEGORICAL EXEMPTION(S) (State CEQA Guidelines Sec. 15301-15333 / Class 1-Class 33)
CEQA Guideline Section(s) / Class(es) **Section 15332 / Class 32**

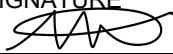
OTHER BASIS FOR EXEMPTION (E.g., CEQA Guidelines Section 15061(b)(3) or (b)(4) or Section 15378(b))

JUSTIFICATION FOR PROJECT EXEMPTION: Additional page(s) attached

None of the exceptions in CEQA Guidelines Section 15300.2 to the categorical exemption(s) apply to the Project.
 The project is identified in one or more of the list of activities in the City of Los Angeles CEQA Guidelines as cited in the justification.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.
If different from the applicant, the identity of the person undertaking the project.

CITY STAFF USE ONLY:

CITY STAFF NAME AND SIGNATURE
Michelle Carter 

STAFF TITLE
City Planning Associate

ENTITLEMENTS APPROVED
Transit Oriented Communities Affordable Housing Incentive Program

DISTRIBUTION: County Clerk, Agency Record
Rev. 6-22-2021