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February 12, 2020

Honorable Members of the City of Los Angeles
Planning and Land Use Management Committee
C/O PLUM Committee Clerk
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**Re: CF 20-0087: 738 South Normandie Avenue; Case Number: DIR-2019-929-TOC (Related Case: ENV-2019-930-CE)
Applicant's Response to CEQA Appeal**

Honorable Members of the Planning and Land Use Management ("PLUM") Committee:

This letter addresses the appeal ("Appeal") filed by Carolyn Zanelli, on behalf of Save our Normandie Mariposa Historic District ("SONMHD") (collectively "Appellant") against the 738 South Normandie Avenue project ("Project"). The Appeal challenges the Letter of Determination ("LOD") issued by the City of Los Angeles ("City") Planning Director on December 19, 2019 on California Environmental Quality Act ("CEQA") grounds.

Among other determinations, the LOD determined that the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332 (Class 32 Urban In-Fill Development) and that none of the exceptions contained in CEQA Guidelines, Section 15300.2 apply. The Appeal raises a baseless challenge to the City's approval of the CEQA Class 32 Exemption based on layperson opinion with no substantial evidence to validate such challenges. For these reasons, as set forth in further detail below, the Appeal should be rejected by the PLUM Committee.

I. The Project Qualifies for a CEQA Class 32 Exemption

a. Background Information on the Project

The Project is a seven-story, 50-unit urban infill residential development on a 0.17 acre site located at 738 S. Normandie Avenue in the Wilshire Center/Koreatown neighborhood of the Wilshire Community Plan area ("Property"). The height of the Project at 80 feet 3 inches is consistent with the applicable R5-2 zoning designation for the Property – TOC height incentives were not required for additional height.¹ The density of 50 units is consistent with the applicable code density for the R5 zone,

¹ Los Angeles Municipal Code ("LAMC") § 12.21.1.



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which has a density of one unit per 200 square feet of lot area, with a 31.5 percent density increase under the Transit Oriented Communities (“TOC”) Affordable Housing Incentive Program, available due to the fact that the Project proposes to provide 5 Extremely Low Income affordable units.² Based on the affordable housing provided, the Project qualifies for three additional TOC incentives, which include allowed setback reductions and an allowed 25 percent reduction in the code open space requirement.³ The proposed 25 parking spaces for the Project are consistent with the Tier 3 TOC parking standard, which requires 0.5 spaces per bedroom.⁴ The Project’s Floor Area Ratio (“FAR”) is 5.75:1, which is under the code-allowed FAR of 6:1.⁵ The Project also complies with code requirements for bicycle parking.⁶

b. The City Correctly Adopted a Class 32 CEQA Categorical Exemption for the Project

CEQA’s Class 32 categorical exemption for “infill development” (“Class 32 Exemption”) applies to proposed developments within city limits on sites of five or fewer acres substantially surrounded by urban uses, where the site has no habitat value for special status species, can be adequately served by all required utilities and public services, and the project would not have significant traffic, noise, air quality, or water quality impacts.⁷ On December 19, 2019, the Director of Planning (the “Director”) determined the Project is exempt from CEQA under the Class 32 Exemption based on substantial evidence in the record, including, as relevant here, the City’s own staff report analysis and expert historic resources consultant technical reports prepared by City-certified historic resource consultant Historic Resources Group (“HRG”). The Director also specifically determined that none of the exceptions to Categorical Exemptions under CEQA Guidelines Section 15300.2 applied, including that the Project would not result in cumulative impacts under Section 15300.2(b), and that the Project would not result in a “substantial adverse change to the significance of a historic resource” under Section 15300.2(f).⁸

The Appellant argues that the City could not make the Class 32 Exemption findings because, contrary to the conclusion of the Director based on City staff and expert technical analysis, the exception to the Categorical Exemption under CEQA Guidelines Section 15300.2, subsection(f) applies, as the

² LAMC §§ 12.12-C.4; 12.22-A.31(b).

³ 12/19/19 LOD at pp. 11-12; TOC Guidelines at p. 12.

⁴ Gov’t Code § 65915(p); LAMC § 12.22-A.31.

⁵ LAMC § 12.21.1-A.2.

⁶ LAMC §§ 12.21-A.16(a); 12.21-G; TOC Guidelines at p. 12.

⁷ CEQA Guidelines, § 15332(b)-(e).

⁸ 1/24/20 Justification for Categorical Exemption Case No. ENV-2019-930-CE, at p 5; 12/19/19 LOD at pp. 12-13.



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Project would allegedly have a “significant impact” on the Normandie Mariposa Historic District (“District”). Notably, the Appeal does not argue that the Property itself, which is presently a vacant lot, contains historic resources that would be impacted by the Project, but rather only argues without specificity or supporting facts that the architectural character of the District would allegedly be affected. This does not constitute substantial evidence of a significant impact and improperly fails to address the substantial evidence relied on by the City.

Appellant also incorrectly asserts that the cumulative impacts exception under CEQA Guidelines Section 15300.2, subsection(b) applies. However, as further addressed below, Appellant does not provide any evidence whatsoever of any other projects that meet the applicable CEQA standard for cumulative impacts, and does not make any effort to show how any such alleged projects would cause a significant cumulative impact. This failure to provide any evidence to support the claim in the Appeal warrants rejection of the Appeal in the face of the substantial evidence relied on by the City in concluding the Project would not result in significant cumulative impacts under the applicable standard.

Because the City appropriately adopted a Class 32 Exemption for the Project and the Appeal fails conclusively to demonstrate otherwise, the Appeal should be denied.

c. The Appeal is Based Entirely on Baseless Arguments Regarding Alleged Project Impacts to Historic Resources

The Appeal focuses primarily on a single issue: the faulty assertion that, because the Project is located on an empty lot in the District, it would result in a significant impact on a historic resource. However, the Appeal submitted to PLUM fails completely to establish any such impacts under the applicable legal tests, and fails to address the contrary substantial evidence relied on by the City.

i. The Standard of Review Under CEQA for a Categorical Exemption Determination

Under CEQA, Categorical Exemption determinations are evaluated under the substantial evidence standard of review. Under this standard, so long as a city’s exemption determination is supported by substantial evidence, the determination is sufficient – *contrary evidence is not relevant*.⁹ The application of substantial evidence review in the context of a challenge to a lead agency’s adoption of a Categorical Exemption means a reviewing body will determine “whether the administrative record

⁹ See *Great Oaks Water Co. v. Santa Clarita Valley Water Dist.* (2009) 170 Cal.App.4th 956, 967-968.



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contains relevant information that a reasonable mind might accept as sufficient to support the conclusion reached. All conflicts in the evidence are resolved in support of the agency's action and we indulge all reasonable inferences to support the agency's findings, if possible."¹⁰ Thus, if the City's conclusions with respect to the Class 32 Exemption for the Project are supported by substantial evidence, those decisions must be upheld – a reviewing body's "task is not to weigh conflicting evidence and determine who has the better argument."¹¹ Even so, the Appeal does not provide any sufficient conflicting evidence to be examined and compared. Despite the fact that Appellant cites sections of the Public Resources Code and the CEQA Guidelines in an attempt to argue that the Project's approval should be reversed, the statements made in the Appeal are not backed by any substantial evidence and are simply based on unsubstantiated layperson opinion. Accordingly, the City need not give weight to the conclusory and factually baseless assertions set forth in the Appeal.

ii. The CEQA Standard for a Substantial Adverse Change to a Historic Resource

Under CEQA, a significant impact to a historic resource only occurs where a project would cause "a substantial adverse change" in the significance of that resource.¹² The CEQA Guidelines define a "substantial adverse change in the significance of a historical resource" to mean "physical demolition, destruction, relocation or alteration of the resource or its immediate surroundings such that the significance of the resource is materially impaired."¹³ A substantial adverse change results in a "material impairment" when a project:

- A. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or
- B. Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code (unless the public agency

¹⁰ *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th at 564, 570-571; *Great Oaks Water Co.*, 170 Cal.App.4th at 973.

¹¹ *Laurel Heights Improv. Assoc. v. UC Regents* (1988) 47 Cal.3d 376, 393.

¹² Pub. Res. Code § 21084.1; CEQA Guidelines § 15064.5(b).

¹³ CEQA Guidelines § 15064.5(b)(1).



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reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant); or

- C. Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.¹⁴

Accordingly, a significant impact under CEQA on a historic resource only occurs where a project would physically destroy features that contribute to the historic nature of the resource in a manner that threatens the eligibility of the resource for listing. If an impact on a historical resource does not involve a “substantial adverse change” in the significance of the resource, there is no significant impact, and the exception to Categorical Exemptions under CEQA Guidelines Section 15300.2(f) does not apply.¹⁵

- iii. A Project That Conforms To the Secretary of Interior’s Standards Does Not Cause A Significant Impact on a Historic Resource Under CEQA

Critically for this Project, CEQA Guidelines Section 15064.5(b)(3) states that “[g]enerally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.” Thus, any Project that is determined based on substantial evidence to comply with the Secretary of Interior’s Standards is deemed to have a less than significant impact on an affected historic resource under CEQA.

- iv. Under CEQA, Layperson Opinions on Technical Issues and Unsupported Expert Opinions Are Not Substantial Evidence

Under CEQA, “members of the public may provide opinion evidence where special expertise is not required, however, interpretation of technical ... information requires an expert evaluation.”¹⁶ With respect to the highly technical analysis of the assessment of what constitutes a historic resource and

¹⁴ CEQA Guidelines § 15064.5(b)(2).

¹⁵ *Citizens for Responsible Development in West Hollywood*, 39 Cal.App.4th at 501-502.

¹⁶ *Joshua Tree Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 690.



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what level of impacts would imperil a historic resource's status as a historic resource, "in the absence of a specific factual foundation in the record, dire predictions by non-experts regarding the consequences of a project do not constitute substantial evidence."¹⁷ Further, "[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence."¹⁸ Under CEQA, even "expert" opinions with no factual basis are not substantial evidence.¹⁹ However, the Appeal does not attempt to establish any expert credentials for its unsupported allegation – merely being an apparent member of a community association that appears to advocate for a historic neighborhood without any identified credentials is not sufficient to indicate a basis to establish expertise in the highly technical realm of historic architecture. As such, the dire predictions set forth in the Appeal are insufficient to establish substantial evidence.

v. The Appeal Fails to Establish Any Substantial Evidence of a Substantial Adverse Change to Historic Resources – But Even If It Did (It Does Not), the City Can Still Rely On the Substantial Evidence in the Record Showing No Such Impacts

Two technical reports prepared by expert consultant HRG, dated March 28, 2019 and November 18, 2019, respectively, fully support the City's determination that the Project would not cause any significant impacts on historic resources. **First**, the reports cite the 1994 Department of Parks and Recreation Primary Record, which identified twenty-six contributing buildings in the District and three non-contributing buildings, one of which was once on the Property but was subsequently demolished in 2004; meaning the Property was non-contributing to the District even before it was altered to its current state as a vacant lot.²⁰ Thus the Property contains no historic resources – but is rather a surface parking lot that was the former site of a non-contributing twelve-unit apartment building originally built in 1948 and demolished in 2004.²¹ Thus, the Project would not result in any direct physical impacts to any District contributors, would not alter the historic setting of the District, and thus would not affect the eligibility of the District as a historic resource and not result in a significant impact for that reason alone.

¹⁷ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.

¹⁸ *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.

¹⁹ *Joshua Tree Downtown Business Alliance, supra*, 1 Cal.App.5th 677, 690.

²⁰ November 18, 2019 HRG Report at p. 13 and 29.

²¹ *Id.*, at p. 13.



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Second, the historic reports fully analyze the consistency of the Project with the relevant standards of the Secretary of Interior's Standards, Standards 9 and 10, finding the Project to be consistent with these standards. Under Standard 9, the expert reports determined that the Project would not destroy historic materials, features, or spatial relationships that characterize the District, as the proposed project maintains height, scale, setbacks and design elements consistent with contributors in the District.²² Under Standard 10, the report concludes that the future demolition of the Project would not negatively impact the historic features and eligibility of the District, as the Project is a new addition and its removal would not physically affect any District contributors in a manner that would negatively affect the eligibility of the District as a historic resource.²³ This substantial evidence provided by an expert consultant provides sufficient additional support to validate the conclusion that the Project is consistent with the Secretary of Interior's Standards, which under CEQA deems the Project to result in a less than significant impact on the District.

Notably, the key difference between the May and November 2019 reports is that the November report analyzes a revised version of the Project that was *more compatible* with the District. Contrary to inaccurate statements in the Appeal regarding the original modern design of the Project, the revised, approved version of the Project does not include such modern features. While both reports indicate the Project would not result in a significant impact under CEQA, the revised report indicates that the characteristics of the revised proposed Project are even more in conformity with the characteristics of the District than the version of the Project analyzed in the first report.²⁴ The first report was thus more conservative as it analyzed what the City determined to be a less compatible Project that still did not result in a significant impact; so the revised Project design and report provides even stronger support for the conclusion that the Project would not cause a significant impact to the District.

Further, Appellant's assertion that the Project will be inconsistent with the surrounding properties based on its height is false and is in fact contradicted in the Appeal itself. HRG's expert analysis notes that the "contributing buildings vary in size but are generally consistent in scale, massing, and setbacks. They range in height from two to seven stories, with the majority (22) at four stories or more."²⁵ Not only is

²² Id., at pp. 22-23.

²³ Id at p. 23.

²⁴ See March 28, 2019 HRG Report at p. 23 and November 18, 2019 HRG Report at p. 23.

²⁵ Id., at p. 13



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a seven-story residential structure consistent with the zoning and uses permitted and widely utilized in the District, but Appellant also contradicts its own argument by providing in her Appeal a photo of the neighboring seven-story apartment building located at 715 S. Normandie Avenue.²⁶ Appellant's arguments do nothing to undermine the City's well-supported decision to approve a Class 32 exemption for the Project. The Appeal should be denied.

The Appeal rests entirely on the false notion that the Project merely being located in the Normandie Mariposa Historic Apartment District would, by itself, result in a substantial adverse change to the District. This is not sufficient to demonstrate a significant impact under CEQA. The Appeal does not even attempt to argue that the Project does not comply with the Secretary of Interior's Standards or that the Project would result in *any* physical impacts to nearby District contributors, much less the kind of physical destruction or demolition of key historic features that would constitute a significant impact under CEQA – it simply asserts in a conclusory manner that such impacts would occur, without any evidence, and based on opinions regarding the neighborhood's "cultural and architectural history."²⁷ However, as stated above, "[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence."²⁸ Because this Appeal offers nothing more than unsubstantiated opinions, it should be denied.

vi. The Appeal Fails to Establish that the Cumulative Impacts Exception Applies

The Appeal also incorrectly attempts to assert that the "cumulative impacts" exception applies to the Project's approved Class 32 Exemption.²⁹ Under CEQA, the test for what constitutes a significant cumulative impact under the exception is narrowly circumscribed. Categorical exemptions are only "inapplicable when the cumulative impact of *successive projects of the same type in the same place ...* over time is significant."³⁰ In its findings for the Project, the City determined this exception does not apply.³¹

²⁶ 1/20/20 CEQA Appeal by Carolyn Zanelli at p. 2.

²⁷ 1/20/20 CEQA Appeal by Carolyn Zanelli at p. 5.

²⁸ *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352.

²⁹ CEQA Guidelines, § 15300.2(b).

³⁰ *Id.*

³¹ 1/24/20 Justification for Categorical Exemption Case No. ENV-2019-930-CE, at p 5.



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In response, the Appeal misconstrues the meaning of the cumulative impacts exception, *speculating* that the approval of the Project would establish precedent that other developers could follow *in the future* in resulting in the “wholesale disregard of a species of architecture emblematic to the City of Los Angeles.”³² However, such speculation about hypothetical future projects does not constitute substantial evidence under CEQA.³³ As the Appellant makes no effort to identify any actual projects that might cause a cumulative impact in conjunction with the Project that meet the applicable CEQA definition, much less any analysis that would show a significant impact, it fails to meet its burden to show any error on the part of the City in approving a Class 32 Exemption for the Project.

II. Conclusion

The Appeal does not put forth any arguments that would warrant reversing the City’s adoption of a Class 32 Exemption for the Project. The Appeal should be denied.

Best regards,

A handwritten signature in blue ink, appearing to read 'Andrew Brady', written over a blue circular stamp or mark.

Andrew Brady

AB:

cc. Leyla Campos (leyla.campos@lacity.org)
Iris Wan (Iris.Wan@lacity.org)
Christina Toy Lee (christina.toy-lee@lacity.org)

³² 1/20/20 CEQA Appeal by Carolyn Zanelli at p. 4.

³³ CEQA Guidelines, § 15384(a) (“Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.”)