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- **“Initial Submissions”**: Compliant submissions received no later than by end of day Monday of the week prior to the meeting, which are not integrated by reference or exhibit in the Staff Report, will be appended at the end of the Staff Report. The Staff Report is linked to the case number on the specific meeting agenda.
- **“Secondary Submissions”**: Submissions received after the Initial Submission deadline up to 48-hours prior to the Commission meeting are contained in this file and bookmarked by the case number.
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If you have any questions, please contact the Commission Office at (213) 978-1300.

SECONDARY SUBMISSIONS



Planning CHC <chc@lacity.org>

Los Feliz Residents are AGAINST Hollywood Plan

1 message

Desireh Sedaghat <des@missdes.com>

Mon, Mar 15, 2021 at 10:20 AM

To: contactCD4@lacity.org, Paul.Koretz@lacity.org, jeffrey.ebenstein@lacity.org, daniel.skolnick@lacity.org, councilmember.ofarrell@lacity.org, craig.bullock@lacity.org, Sarah Tanberg <sarah.tanberg@lacity.org>, nithya.raman@lacity.org, linda.lou@lacity.org, quetzalli.enrique@lacity.org, hollywoodplan@lacity.org
Cc: chc@lacity.org, support@hhprc.org, info@losfeliznc.org

To : CD4, CD5, CD13, etc al.

Our neighborhood is AGAINST the Hollywood Plan.

The proposed Hollywood Community Plan Update through up-zoning and lack of effective protections threatens historic buildings, existing affordable housing, resulting in the displacement of long-established communities.

I assure you that LFNC and CD4's approval of up-zoning these areas, do not reflect the immediate feelings and views of the existing community. The up-zoning would in fact destroy these important historic, cultural and historic neighborhoods and cause detrimental effects for decades. Stop the demolition of historic Hollywood and Los Feliz.

I want to emphasize how angry and upset the Hollywood and Los Feliz communities are about this. Not only for LFNC and CD4's plan to up-zone this historic neighborhood, which again, deserves the protection of an HPOZ, along with Hollywood, but for the extreme lack of any kind of significant community public input or sufficient outreach to the community. By doing this, they severely blindsided the community and all of those who have a stake in these areas.

I am asking YOU to correct up-zoning in designated National and State historic districts and Historic Cultural Monuments. These areas deserve the same protections granted to HPOZs.

The proposed Hollywood Community Plan up-zones and removes current protections for historic properties and limits proposed development review. We as a community are opposed to this.

Desireh Sedaghat



Fw: Hollywood Plan Proposal --Nithya Raman does not reflect the Los Feliz/Hollywood community feelings on raising height limits

1 message

Elizabeth Lovins <ealovins@yahoo.com>

Mon, Mar 15, 2021 at 9:01 AM

To: "hollywoodplan@lacity.org" <hollywoodplan@lacity.org>

Cc: "cd4.issues@lacity.org" <cd4.issues@lacity.org>, Sarah Tanberg <sarah.tanberg@lacity.org>, Losfeliznc Info <info@losfeliznc.org>, "councilmember.ofarrell@lacity.org" <councilmember.ofarrell@lacity.org>, "Paul.Koretz@lacity.org" <Paul.Koretz@lacity.org>, "jon.deutsch@losfeliznc.org" <jon.deutsch@losfeliznc.org>, "derek.galey@losfeliznc.org" <derek.galey@losfeliznc.org>, "josh.steichmann@losfeliznc.org" <josh.steichmann@losfeliznc.org>, "chc@lacity.org" <chc@lacity.org>, Councilmember Nithya Raman <contactcd4@lacity.org>

Dear Hollywood Plan,

Thank you for your work on the proposed Hollywood Community Plan, but the plan lacks significant protections for historic Hollywood, all the way east, to the historic Los Feliz residential neighborhood. These areas need to be treated with the same protections as the other Los Angeles HPOZ's. Please correct up-zoning in designated National and State historic districts and Historic Cultural Monuments, which removes current protections for historic properties and limits proposed development review.

Because of the urgent nature of these issues, I will be submitting a more extensive letter opposing the proposed Hollywood Community Plan, but I wanted to immediately ask you to please correct the proposed up-zoning in the current draft to protect our historic and cultural assets that are essential to our residential communities.

Further, as an FYI - LFNC and CD4 submitted an approval letter to up-zone the historic Los Feliz neighborhood. Please see my email correspondence below and section of CD4's letter opposing proposed height limits on Sunset and opposing height reductions on Hillhurst Avenue.

I want to emphasize how angry and upset the Hollywood and Los Feliz communities are about this. Not only for LFNC and CD4's plan to up-zone this historic neighborhood, which again, deserves the protection of an HPOZ, along with Hollywood, but for the extreme lack of any kind of significant community public input or sufficient outreach to the community. By doing this, they severely blindsided the community and all of those who have a stake in these areas.

Also, I'm sure you are already aware of this, but please make special note of the fact that Los Feliz has been an HPOZ candidate for the at least the last ten years. And the community is in the process of exploring this more now, due to the current and proposed Community Hollywood Plan, which would desecrate these highly valued historic areas.

I assure you that LFNC and CD4's approval of up-zoning these areas, do not reflect the immediate feelings and views of the existing community. The up-zoning would in fact destroy these important historic, cultural and historic neighborhoods and cause detrimental effects for decades.

The heart of Hollywood, all the way to Los Feliz, are significant to the overall cultural production of the area. Los Feliz village is the birthplace of Mickey Mouse and many other important histories that reside in these historic locations. We do not need luxury housing, that does not fit in with the scale and character of these areas. Or anymore large, gray, block structures that will only afford few affordable units and actually displace our long standing community members in the process.

And why would you want to destroy our community's historic capital, that is known world wide? This is highly irresponsible in my opinion.

Here is the section of the letter CD4 submitted that does not reflect the views of the Los Feliz community.

Nithya's letter here and the part of her letter opposing height reductions on Hillhurst:

http://www.hhwnc.org/wp-content/uploads/2021/03/2_17_21-Councilmember-Nithya-Raman-Press-Release.pdf

"On the issue of affordable housing, CD4 believes strongly that the Hollywood CPIO's incentives should go further than those within the City's Transit Oriented Communities Program, and thereby serve as a model for incentivizing affordable housing in high-opportunity neighborhoods across Los Angeles. To achieve this, we support more ambitious affordable housing percentages within incentive programs that allow for increased density, as well as the removal of parking requirements for 100% affordable projects. **We oppose the proposed height limits on Sunset Blvd. in Corridor 5 and the proposed height reductions on Hillhurst Ave. in Los Feliz and on portions of Hollywood Blvd. and Melrose Ave.** We support opportunities for increasing allowable height along these corridors only for projects that demonstrate a substantial commitment to affordable housing."

So first, I'm asking for you to correct the up-zoning in these historic areas from Hollywood to Los Feliz.

And secondly, I'm asking for CD4 and LFNC, to commit to a more transparent public process and actual community outreach regarding this important matter. The community does not appreciate being blindsided.

I'd also like to re-affirm the fact that the community does not support the up-zoning into the historic core areas from Hollywood to Los Feliz.

Again, please make adjustments in the proposed Hollywood Community Plan to protect these areas with the same level of protection that LA's other HPOZ's have.

Thank you and please let me know if you have any questions or concerns. Again, I will send in a more extensive letter opposing these issues shortly. And I'm always happy to talk further. Thank you for your review of this important matter and I hope to hear your thoughts regarding this.

Sincerely,

Elizabeth Lovins

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Director, Hollywood Art Center, *since 1912* -- HCM #1202 | www.hollywoodartcenterarchive.com
UCSB Art Design and Architecture Museum, Research Art Archivist
Hollywood Heritage Member
USC Master of Public Art Studies, Roski School of Art and Design
Los Feliz Resident, *since 2003*

----- Forwarded Message -----

From: Elizabeth Lovins <ealovins@yahoo.com>

To: Jon Deutsch <jon.deutsch@lofeliznc.org>

Cc: Derek Galey <derek.galey@lofeliznc.org>; Josh Steichmann <josh.steichmann@lofeliznc.org>

Sent: Sunday, March 14, 2021, 09:24:48 PM PDT

Subject: Re: Hollywood Plan Proposal on LFNC Agenda for 3/16? Nithya Raman does not reflect the community feelings on raising height limits

Dear Jon,

Thank you for your message regarding the Hollywood Community Plan.

With all due respect, I am sincerely devastated to learn that the Los Feliz Neighborhood Council and CD4 submitted their approval/support of up-zoning our neighborhood, WITHOUT truly any sort of real or substantial community input and engagement regarding this. This will destroy our community.

Unfortunately, most of the neighborhood does not seem to know the Los Feliz Neighborhood Council exists and has not been properly informed regarding this monumental decision and approval to up-zone our neighborhood in this way. Nor have they heard of any community outreach regarding this from CD4 office. Where was the public process here? So many neighbors are in shock right now about this!

Again, how can such a decision be made on behalf of the community, when the community never was properly informed? In my opinion and many of my neighbors, Los Feliz Neighborhood Council needs to work harder to ensure all voices are heard. And so does CD4.

Los Feliz and Hollywood for that matter, deserves the SAME protections that an HPOZ offers. There is a deep, rich history here that includes many layers of space and place. We hold unique cultural, historical and architectural places within Los Feliz. It's been hotbed of cultural production for decades and many creatives live here for many specific reasons, that are essential to this cultural production. I definitely have a great deal more to say about this and I will in the next couple of days before the final commission meeting.

But at this point, I ASSURE you, this notion of up-zoning the historic Los Feliz Village, does not properly reflect the local feelings and views of the actual community. In fact, this would be devastating to all who call Los Feliz their home and for so many reasons.

As a note, the community greatly cares about the unhoused, but there are ways to build affordable housing without sacrificing the historic, social and cultural nature of the residential Los Feliz Village. As a longtime resident, I know that Los Feliz Village actually runs on Vermont and Hillhurst, from Sunset to Los Feliz Blvd. Los Feliz village is not just about everything north of Franklin. It's important for the LFNC and CD4 to realize and understand how the entire neighborhood uses the village and where.

So I'm asking that CD4 and Los Feliz Neighborhood Council, to be more transparent and work toward engaging and properly informing their immediate community and various publics on this important issue.

I'd be happy to liaise more with Derek and Josh. I deeply care about our community and all who have lived here for so many years. Los Feliz is a jewel of a place within Los Angeles and it needs to be protected.

Again, in regards to the up-zoning, it's important to know that the local Los Feliz community, is actually extremely upset about this sort of massive decision being made without their knowledge. I know, because I have spoken to many of them in the past several days.

Please let me know how you intend to fully communicate with our local community in order to ensure all voices are heard regarding this important matter.

Thank you again for your assistance. Hope to talk to you all more in the future about how we

Kind regards,

Elizabeth

Director, Hollywood Art Center, *since 1912* | <http://www.hollywoodartcenterarchive.com>
UCSB Art Design and Architecture Museum, Research Art Archivist
Hollywood Heritage Member
Los Feliz Resident, *since 2003*

On Sunday, March 14,

2021, 03:20:12 PM PDT, Jon Deutsch <jon.deutsch@losfeliznc.org> wrote:

Dear Elizabeth,

Thank you for reaching out with your concerns regarding the Hollywood Community Plan.

At the LFNC's Governing Board meeting last month (2/16/21), the board unanimously approved a statement to be submitted to the City Planning Commission for consideration prior to their 2/18/21 meeting (attached).

This statement was developed and approved by our Planning and Land Use Management committee at their 2/3/21 meeting.

I have cc'd our PLUM Chair Derek Galey as well as District C Representative and PLUM Committee member Josh Steichman, who was the primary author of the council's statement.

Unfortunately, it is too late to add this item to Tuesday's agenda (as our complete agendas must be posted 72 hours ahead of any meeting per state law).

I would encourage you to liaise with Derek and Josh as I'm sure that our PLUM committee will continue to track the proposed plan's progress and I doubt that this is the last time our PLUM Committee (and the LFNC as a whole) will weigh in.

All the best,

Jon

Jon Deutsch | President | District B Representative | Los Feliz Neighborhood Council (LFNC)
p.o. box 27003 | los angeles | california | 310.564.6285

On Mar 14, 2021, at 2:54 PM, Elizabeth Lovins <ealovins@yahoo.com> wrote:

Dear Los Feliz Neighborhood Council,

Thanks for your help in advance!

I was shocked to see that our council woman, CD4 Nithya Raman, wrote a letter opposing height reductions on Hillhurst and Vermont, and with no community input! This letter she sent, DOES NOT reflect the feelings and perspectives of the existing Los Feliz Community, friends, neighbors, business owners and residents.

We must preserve the historic Los Feliz Village, which is bound by Los Feliz Blvd and Sunset, up and down Hillhurst and Vermont. This is one of the last, pedestrian friendly, neighborhoods of extremely significant historic and cultural importance. This can be preserved without displacing current residents and subverting affordable housing. Allowing for up-zoning in this way, will have detrimental effects on our community for years to come.

Moreover, high density development should be considered differently for the Vermont/Sunset station area than the Western/Sunset area. Los Feliz is a completely different historic residential neighborhood and it should have the protection of any HPOZ. Los Feliz should not be treated like Central Hollywood or any other parts of the Hollywood Plan they are proposing high density development. And putting Los Feliz in this Hollywood plan is a mistake in my opinion.

Again, literally, as far as I know, she has sought NO community input for raising height limits up and down Vermont and Hillhurst, which are the two main thoroughfares of Los Feliz Village.

Please see Nithya's letter here and the part of her letter opposing height reductions on Hillhurst:

http://www.hhwnc.org/wp-content/uploads/2021/03/2_17_21-Councilmember-Nithya-Raman-Press-Release.pdf

"On the issue of affordable housing, CD4 believes strongly that the Hollywood CPIO's incentives should go further than those within the City's Transit Oriented Communities Program, and thereby serve as a model for incentivizing affordable housing in high-opportunity neighborhoods across Los Angeles. To achieve this, we support more ambitious affordable housing percentages within incentive programs that allow for increased density, as well as the removal of parking requirements for 100% affordable projects. **We oppose the proposed height limits on Sunset Blvd. in Corridor 5 and the proposed height reductions on Hillhurst Ave. in Los Feliz and on portions of Hollywood Blvd. and Melrose Ave.** We support opportunities for increasing allowable height along these corridors only for projects that demonstrate a substantial commitment to affordable housing."

Could you please make this urgent issue, part of the agenda on Tuesday March 16th? I looked at the upcoming agenda, and I don't see this important issue as being listed anywhere? Again, Could you make sure this is on the agenda and open up for public comment?

And reading through the Hollywood Plan Draft, looks like Nithya wants to raise height limits for large scale development up and down Vermont and Hillhurst, especially between Sunset and Franklin. At least that is what I understand.

Hollywood Plan. Check it out here! <https://planning.lacity.org/odocument/73938107-9332-404e-b2fa-75f8a0fe19ae.pdf>

Does this all make sense? I'd like to preserve our dear Los Feliz Village. Please put this on the agenda. The neighborhood needs to have a voice on this.

Thank you!

Elizabeth Lovins

Director, Hollywood Art Center, *since 1912* | <http://www.hollywoodartcenterarchive.com>

HOME | hollywoodartcenter

HOME | hollywoodartcenter

UCSB Art Design and Architecture Museum, Research Art Archivist
Hollywood Heritage Member
Los Feliz Resident, *since 2003*

<art center logo.jpg>

3/16/2021

City of Los Angeles Mail - Fw: Hollywood Plan Proposal --Nithya Raman does not reflect the Los Feliz/Hollywood community feelings on ...



TO CULTURAL HERITAGE COMMISSION

3/4/2021

Remarks made by Fran Offenhauser in Public Comment Period- abbreviated due to time

Hollywood Heritage approaches you today as the you are the forum for preservation-related matters in planning.

The Planning Commission held a 1st public hearing on the Hollywood Community Plan Update, and we realized that this precedent-setting Community Plan involved historic preservation integrally, and want to encourage your involvement. Councilman O'Farrell had agreed to a Preservation Element—a first-ever agreement. But it became a “Chapter” of goals- not an integrated Element under General Plan law.

Because many hundreds of National and California Register landmarks and Districts passed into your City care from CRA in November 2019—landmarks formerly surveyed, reviewed, and protected for 35 years by the Redevelopment Plan—we see gaps in this Plan that are very disturbing.

4 noteworthy items:

- **Zoning Plan** upzoning incentivizes demolition of a lion's share of identified landmarks, rather than carving out and supporting historic areas
- **EIR** declares significant adverse effects from the Plan on historic resources—with no analysis, no tracing of the causes in the Plan itself, and zero Mitigations.
- **An Ordinance** buried in the boilerplate repeals ALL historic building protections mandated from from CRA and passed to Planning, thus now in force. These protections were akin the CHM and HPOZ protections- so their repeal is a giant step backwards. These items are listed as Plan goals, but the reverse is happening- they exist, and are being removed.
- **A CPIO** rolled out initially specifically to protect landmarks in the Redevelopment Area morphed at the last minute, and housing density bonuses were dropped right on top of all the National Register and California Register Districts and CHMs, creating an unnecessary and bizarre conflict, while vast areas with no landmarks are left untouched.

We hope you were consulted and involved through this process, as this is the new template for other Community Plan areas. We wish and hope we are wrong—but the upzoning is the opposite of the integration of preservation with forward planning. The historic districts can be carved out rather than bulldozed.

This anomaly of 2 separate Commissions is causing a problem. Graumans shouldn't be incentivized for demolition. When Planning absorbed Cultural Heritage it was expected to be in the interest of avoiding situations like this. Can you hold a joint session with the Planning Commission? Or hold your own hearings? Or present your position to the Planning Commission?

Respectfully submitted
HOLLYWOOD HERITAGE

Fran Offenhauser for Brian Curran, President





HOLLYWOOD HERITAGE, INC.
P.O. Box 2586
Hollywood, CA 90078
(323) 874-4005 • FAX (323) 465-5993

To the Cultural Heritage Commission:

Attached is Hollywood Heritage's letter to the Planning Commission addressing issues in the Hollywood Community Plan Update (HPCU) —a 20 year long range plan for Hollywood, in the works for 12 years. The HPCU includes a Plan Map and proposed Zoning; a Plan Text with a Preservation Chapter; a CPIO (Community Plan Implementation Overlay); its EIR (Environmental Impact Report); and its Exhibit I (Redevelopment historic protections repeal Ordinance).

We hope to address 5 issues that appear most directly in your purview.

We are addressing you frankly because after years of promises, City Planning at the last minute unveiled highly damaging documents regarding preservation for City Planning Commission approval. Fran Offenhauser also addressed you briefly, and a draft of her verbal remarks is attached, including the specifics which time didn't allow her to report to you.

The website says OHR:

- Integrates historic preservation into Los Angeles's long-range planning and development project reviews
- Manages the City's historic resource inventory, [HistoricPlacesLA](#), which includes the findings from [SurveyLA](#), Los Angeles's first-ever citywide survey of its historic resources
- Serves as an expert resource on preservation within City Planning and for other City departments

The website says about the CHC:

- the Cultural Heritage Commission, oversees the designation and protection of local landmarks.
- Individual staff members are assigned now in areas which relate to our questions-- cover National Register of Historic Places and California Register of Historical Resources and Redevelopment Plan Unit, Historic Resources

The CHC Ordinance says:: The Cultural Heritage Commission (Commission) shall perform those functions relating to historic and cultural preservation of sites, buildings or structures that embody the heritage, history and culture of the City.

Thus it seems that you are the Commission most involved with the long range planning affecting historic resources in Hollywood. We are hoping that the administrative divisions within the Planning Department are not an impediment to your review of and influence on the Hollywood Community Plan.

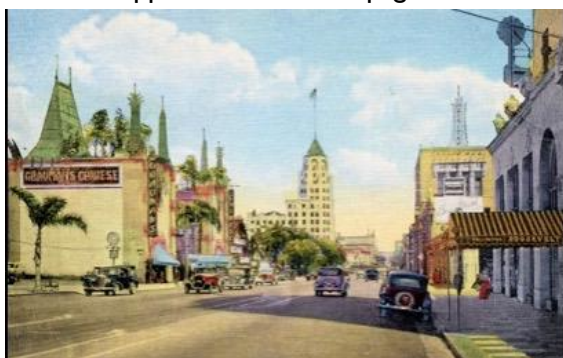
The proposed Hollywood Community Plan Update arrives with 3 unprecedented recent changes:

- #1 CRA Transfer: : In November 2019, after 34 years spearheading historic surveys and protections, our Redevelopment Agency transferred its stewardship of about 914 designated and eligible protected resources in central Hollywood to City Planning
- #2 CPIO: Recently City Planning rolled out a new “CPIO”. It was promised as the definitive answer for preservation. Instead it places 40%-100% density bonuses directly on top of the National and California Register landmarks the CPIO is supposed to protect! (Some already had the densest zoning in the City.) But CPIO leaves alone large swaths of the Community Plan area that don’t have historic buildings. It illogical.
- #3 Redevelopment Obligations Repeal Ordinance (Exhibit I)—: At the last minute City Planning announced publicly that “clarifications” or “Amendments to the Hollywood Redevelopment Plan are proposed.” In fact this is a wholesale repeal of all historic obligations in force for 34 years and that City Planning insisted publicly they would honor, including a parallel to the CHM Ordinance for 180 day delay of demolition and robust demolition and assessment provisions.

This is why the new role and the expected activity for your Commission and OHR comes into sharp focus when long term planning is happening. We also question whether this is a template to be rolled out in other areas, and have testified about this multiple times to no avail.

Question I: CLG follow up: As a Certified Local Government, what obligations does the Planning Department and/or the Cultural Heritage Commission have to identify and protect National Register, California Register, and Redevelopment survey-identified resources that have never been through the City’s HCM or HPOZ process?

- a. Is the Cultural Heritage Commission the responsible Commission?
- b. How has CHC and OHR re-defined their roles regarding obligations to the 914 designated/surveyed historic properties transferred from the Hollywood Redevelopment Area? (Building Permit Clearance Handbook says City Planning Redevelopment Unit “clears” historic resources- see attached.) We know OHR has a Redevelopment staffer.).
- c. HPCU removes all current robust protections. What is the precise process going forward? What protections there are in the CPIO don’t cover the whole Redevelopment Area as expected, so many resources are in limbo if not also CHMs.
- d. Is it acceptable for properties in the National Register Districts to be treated in an inferior way to HPOZ Districts? (see Question 5)
- e. As a CLG, what is the responsibility for environmental review? The HPCU EIR states that the Plan itself has a significant adverse effect on historic resources. Hollywood Heritage’s written comments over the years have not been disclosed or shared; the EIR offers no analysis or mitigation measures; the newly released CPIO is devastating for resources and it is submitted for Planning Commission approval having been written after the environmental review.
- f. Is it OK to ask the Planning Commission to approve “environmental standards” in an Appendix where the page is blank?



In reviewing this Community Plan what NEW specific protections for historic resources are they proposing? What specific action is included to promote Adaptive Reuse? What is the progress and timeline for Los Feliz? Why do flyers and promotions say “no additional height incentives are proposed including within the Hollywood Boulevard National Register Historic District” when it is true only in Subarea 1000- about 1/3 of the District? Other areas have unlimited height and FAR up to 6.5:1

Legend

Land Use	Color
Residential	Yellow
Commercial	Green
Industrial	Blue
Public Use	Red

Scale

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Question 3: Identification and Public Information about Resources: What are the specific actions that have been taken to record and map Redevelopment Area surveyed properties accurately, and to protect them?

- ## What does the Hollywood Community Plan do for Historic Preservation?

- Recognize the significance of Hollywood's history, architecture, and resources. See the new *Preservation* chapter (Chapter 5) of the *Hollywood Community Plan*.

-



- Safeguard historic resources through the proposed CPIO, which has a review process for projects involving certain eligible and designated resources.

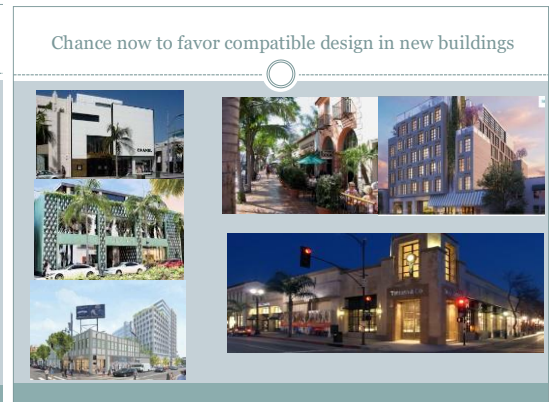
-



- c. Hollywood Heritage responded to the Redevelopment Agency about some omissions from its most recent survey, and forwarded comments also to City Planning. Hollywood Heritage was required to peer review, but after peer reviewing and mapping all roughly 1,000 properties, no one responded. The errors are not major and are correctable, but the process to do this prior to an EIR release and correction of the maps in the HPCU is invisible.
- d. CPIO Page 9: (Definitions – “Designated” and “Eligible” Historic Resources) This gives the local “Director” authority which by law he/she does not have to remove designated resources from State or National designation, and is given here authority over the surveys prepared, adopted, and transferred to the City by CRA. .
- e. The proposed Land Use and Zoning has not been mapped to coordinate it with historic resources in the Community Plan. Who will do it and when? Even in the “preserved” center section of the Boulevard, the current 2:1 FAR is raised to 3:1, while at the ends the highest densities (4.65:1 FAR and 6.5:1 FAR) are placed on existing lowrise District contributors.

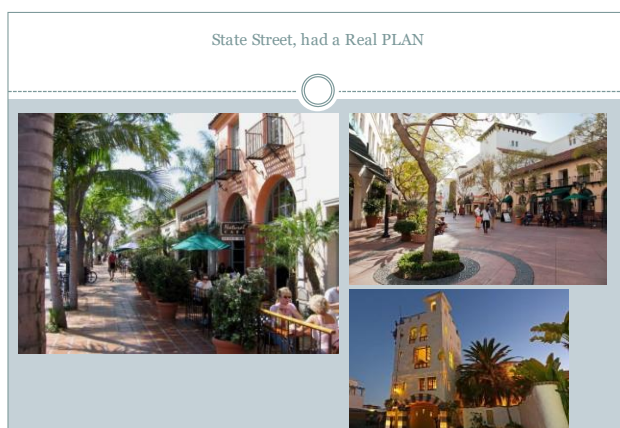
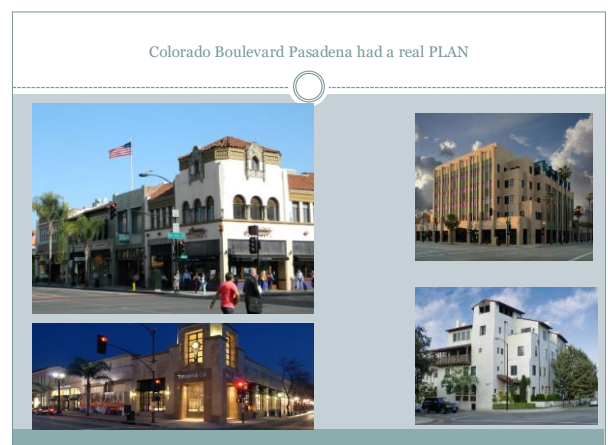
Question 4: Design Review: Who will review projects for Standards-compliance and for District compatibility in the Hollywood Community Plan Area when CHMs and HPOZs are not involved?

- f. The HPOZ's in the Hollywood Community Plan Area are outside of the area where historic resources are dealt with, and the Plan text says those will be preserved.
- g. The CHMs in the Community Plan Area will remain under OHR and the Commission. Many important CHMs are targeted by upzoning in the Plan, with further housing density bonuses on top in the CPIO—Graumans, the Egyptian, Max Factor, Artisan's Patio, the Equitable, the Taft, etc. (Many will prevail because they are already large, but low FAR sites like the theaters may not.) The greatest loss is the potential for HCMs numbering in the hundreds which are targeted for the highest densities in the City.
- h. Design review today is assigned at the Building Department to the “Redevelopment Unit”, not OHR OHR does have a Redevelopment staffer. Are these being eliminated?
- i. Ordinance Exhibit I repeals all current design review obligations and presumably all fees will be removed also. For 10 years Hollywood Heritage has reviewed all demolition permits at no cost to the City- this will also be eliminated.
- j. CPIO states the “Director” has sole design review authority—without public involvement and with no opportunity for appeal, on CPIO pages 14,15,16, and 23—to review projects for _____. The CPIO declares in advance the Director's decision needs no environmental review, or he/she will adopt a statement of overriding consideration (for demolitions). By law the City doesn't have this authority.
- k. Site Plan Review Threshold (p 20): _____
- b. California Register-designated Districts will lose major protections. These were listed a few years after the 1988 Community Plan, so were zoned then mistakenly for high density. Recognizing this, as the resources had been identified by CRA address by address for protection, CRA required required design review of every permit to avoid demolition and eliminate impacts and the areas were overtly identified for potential downzoning and further regulation.) All this protection is proposed to be repealed in the HPCU. New design guidelines from the City's “Character Residential” template are added, a valiant effort but again falling short of the protections already in place.



Question 5. “Contextual Contributors”:

- The CPIO explicitly denies review or protections to National and California Register District “non-contributors” (P. 9) —a violation of CEQA, Preservation Brief #14, and the Niles decision. This affects Hollywood Boulevard’s National Register District significantly. The CPIO does not map or ever disclose where they are.
- By contrast, in HPOZs, “altered contributors” and “vacant lot” new construction projects require vigorous design review, public involvement, and right for appeal.
- District boundaries are mandated by the Register as essential for defining the context, period-compliance, and continuity of the District.
- “Non-contributors” is misleading—“contextual contributors” is better.
- The CPIO fails—it removes the usual mechanism available by which “contextual contributors” can be investigated and restored. It allows by right demolition of already - restored potentially contributing buildings! These “non-contributors” have never been updated or investigated formally since 1985.



Attachments to ADD—see email

EXCERPT FROM BUILDING AND SAFETY PERMIT CLEARANCE HANDBOOK

III. AREA-SPECIFIC DEPARTMENTAL CLEARANCES IIIB. CLEARANCE BY THE REDEVELOPMENT PLAN UNIT OF DEPARTMENT OF CITY PLANNING Note: Effective November 11, 2019, per Resolution and Ordinance No.186325, the CRA/LA, Designated Local Authority no longer has authority or responsibility to review projects that are within the Redevelopment Project Areas.

1. HISTORIC RESOURCE VERIFICATION IN REDEVELOPMENT PROJECT AREA Historical Resource Verification Clearance is required for: π Any permit located within a Redevelopment Project Area flagged by a ZI in ZIMAS. The City Planning Department Redevelopment Plan Unit will review the building for historic significance per eligibility criteria in SurveyLA and the Former Community Redevelopment Agency, CRA/LA-DLA surveys or any subsequent City sanctioned or accepted surveys.

2. PROJECT LOCATED IN REDEVELOPMENT PROJECT AREA Redevelopment Project Area clearance is required for the following projects located in a Redevelopment Project Area flagged by a ZI in ZIMAS: π Change of Use π Use of Land π New construction π Addition π Relocation π Exterior alteration π Interior alteration π Demolition π Signs (new & alteration) π Site grading π Fence & block walls *Fran*



HOLLYWOOD HERITAGE, INC.
P.O. Box 2586
Hollywood, CA 90078
(323) 874-4005 • FAX (323) 465-5993

February 14, 2021

City Planning Commissioners
Mr Craig Weber and Ms. Linda Lou,
Email: linda.lou@lacity.org
Email: cpc@lacity.org

RE: Item CPC 2016-1450-CPU
Hollywood Community Plan Update February 2021- Planning Commission

Dear Commissioners:

The Board of Directors of Hollywood Heritage, its Preservation Issues Committee and its members thank you for the opportunity to review and comment the Hollywood Community Plan Update (HPCU), released February 5 for your February 18, 2021 hearing.

The promise, but oh so necessary improvements, in the Hollywood Community Plan Update. The promise of this Hollywood Community Plan has been that the years of investment in professional historic 'survey' work have delivered! We, and you, know where and what the significant landmarks of Hollywood are. The planning work that supports restoring those landmarks, and using them to launch an attractive, sustainable, economically thriving Hollywood, is one that integrates historic buildings into Community Planning. That work hasn't been done.

What is hiding in the proposed Community Plan that is surprisingly problematic?

- Why is Grauman's Chinese Theatre in the Plan's zoning with incentives for high density housing? Why is our commercial "main street" so dismally behind other locales such as Pasadena, Santa Monica, Larchmont—and even Culver City? Why is Yamashiro shown as commercial land, and its rezoning for massive development hidden in a footnote? Why does the Plan have an Implementation section suggesting important great tools for Hollywood, while the Ordinance in Exhibit I asks the Commission to vote to repeal those very same good ideas which are already in our law? Why is highest density in the City piled on already dense congested central Hollywood, with massive projects entitled, while 3 other Metro stops with far more opportunity are left sleeping?
- Why are the few remaining intact central Hollywood neighborhoods touted as "preserved" ("Character Residential"), while the Plan proposes that the zoning already on them—already 6 houses on a lot—be further increased by 40% (Exhibit D CPIO) rather than showing how to

realistically keep these historic homes intact, maybe with some units at the back? Why are major landmark churches showing as opportunity sites for high density new buildings?

- Why are there no maps where people can clearly see what is proposed on designated historic sites and historic districts, and whether the sites of landmarks are upzoned?
- Why does City Planning claim they can't have "new" protections for historic buildings, due to SB 330, when the most robust historic protections are already in effect, and this HPCU proposes to remove them?

The challenge is that this is the first time a Community Plan in Los Angeles has attempted a Community Plan Preservation Element. Downtown Los Angeles has had its Downtown Design Guidelines. The Planning Department adoption of those Guidelines downtown was a milestone for LA. The Hollywood Community Plan is missing that kind of effort.

What is the backstory—how are Cultural Resources treated by the HPCU? The proposed Plan and its CPIO has changed radically with 4 revisions, the latest rolled out immediately before comments were due on the Plan.

- **HPOZs and CHMs will remain:** The HPCU states a major preservation feature is "Preserve the six HPOZs (Historic Preservation Overlay Zones)". HCM's will retain their current review by OHR and the delay of demolition for a year.
- **Upzoning invisible:** There no maps where people can clearly see what is proposed on designated historic sites and historic districts, and whether the sites of landmarks are upzoned. The actual part of this Community Plan that gets adopted is Zoning Ordinances for every land parcel. No proactive or inventive zoning to resolve conflicts was attempted.
- **Plan flyers promote HPCU as "about" preservation:** Flyers and summaries tell the public about historic preservation goals etc. In fact there is nothing but reductions in support for historic buildings. The flyers say there are height limits protecting the National Register Historic District on Hollywood Boulevard; in fact (on Page __, CPIO) we see only a small section of the Boulevard has any proposed height limits, against a backdrop of massive limitless height and cancellation of urban design height controls. (See attached flyer)
- **First Ever Preservation Element promised:** Councilman O'Farrell requested a Preservation Element for this Plan. "Elements" of Community Plans are required by State law to be integrated and consistent each with the other, so traffic, water and sewer, historic resources, open space etc. are consistent with the proposed Land Use/zoning and vice versa.
- **Preservation Element falls legally and practically short:** But in our HPCU Plan text we see a promising start on a Preservation Element-- the history that made Hollywood famous. But it devolves into a "Chapter" of the Plan text, recounts current City Planning activities; stops before fully identifying where the landmarks are; blurs what unique features, challenges or opportunities they might pose; does not integrate resources into the proposed zoning; and puts out Implementation Policies as aspirations-- while removing the very same policies in the proposed Exhibit I Ordinance. (See attached HPCU flyer and see #2 below.)

More background-- Late in the HPCU process, after issuance of the Plan and EIR, around 1,000 historic resources transferred to City jurisdiction:

- **Redevelopment had responsibility for National Register and California Register Districts and Section 511 list:** Unfortunately, this Plan was started so long ago that the lions share of preservation activity and protections in central Hollywood – the Redevelopment area—were

administered then by the CRA (Community Redevelopment Agency). The Hollywood Redevelopment Plan for 35 years had robust protections for resources in the City, and had demolition delays, recurring historic surveys, and District protections paralleling CHMs, SurveyLA, and HPOZs.

- **CRA Transfer to City Planning November of 2019**, all those landmarks and their protections were transferred to the City, after the City had already issued the Hollywood Community Plan and its EIR. The landmarks were improperly identified; the City's responsibilities undertaken for them un-discussed.
- **Definition and protection of historic resources reduces listings, has wiggle language in the proposed CPIO**; CPIO definitions eliminate many designated National and California Register sites from the current definition; remove the current delay of demolition that parallels the CHM protections; freeze districts in time—some designated 30 years ago—so that buildings won't be investigated in case their authentic facades have been covered over, and some completely restored buildings won't be recognized.
- **New construction in historic districts, including Hollywood Boulevard National Register District allows replacement**: It allows replacement of buildings within historic districts with NO design review
- **Exhibit I repeals specific protections promised by the City**: A proposed Ordinance presented for Commission approval repeals the Redevelopment protections that paralleled CHMs and HPOZs – repeal in direct conflict with Mitigations promised by City Planning in the Mitigated negative Declaration for the "transfer".

There are initiatives in the Plan that are carefully developed –like the TDR draft and the Character Residential design guidelines draft in the August 2020 version. That degree of detail, specificity, and expertise applied throughout the Plan could lead to a significantly better result.

What is needed from the Planning Commission? How can we reboot this effort and make a win-win with preservation, and prompt a new Hollywood renaissance? The Planning Commission must send this back to the Planning Department, or require that prior to forwarding to PLUM, these items are corrected.

#1: Remove the CPIO upzoning incentives from Hollywood Boulevard and the Character Residential (aka Historic) Districts, and correct mapping errors and lists of historic resources

#2: Reject the counterproductive, unexplained, and damaging Ordinance in Exhibit I, which repeals from existing law the same provisions that this Plan quixotically says need to be implemented

#3: Save Hollywood Boulevard

#4 : Enact necessary Mitigation Measures for Cultural Resources, or revise the zoning, so that the EIR does not allow avoidable adverse significant impacts on historic buildings.

#5: The greenest building is one that already exists. Hollywood has the highest concentration of historic resources in LA after Downtown in Los Angeles. Work with OHR and preservation organizations to accurately identify and map the important historic buildings, remove the unnecessary bullseye off of historic resources, and make the Plan Implementation section real.

These items are expanded upon and described more fully in the following discussions:

See following pages

#1: Remove the CPIO upzoning incentives from Hollywood Boulevard and the Character Residential (aka Historic) Districts, and correct mapping errors and lists of historic resources

The Plan and CPIO speak soothingly about preservation. The proposed CPIO puts a direct bullseye on our commercial main street and California Register historic neighborhoods-- our theatres, galleries, Jimmy Kimmel, the Academy Awards.

Case Studies: Hollywood Heritage has prepared case studies with local developers showing the genuine results of the well-intentioned CPIO—it is quite opposite of what is intended, piling upzoning on top of CHMs, National and California Register Districts.

Hold public hearings for this newly issued CPIO: The proposed CPIO creates an unneeded artificially-created conflict between historic neighborhoods and housing production incentives—all crowded into in the artificially limited land area which was supposed to be preserved.. It is unnecessary and should be removed.

This 97 page CPIO rolled out first in August 2020, held one Zoom meeting in which we participated, and issued revisions 10 days ago with no tracking changes. Cambridge Mass worked with the public for 3 years on detailed design standards to ameliorate the effects on existing neighborhoods before enacting their affordable housing incentive ordinance. Either the CPIO calculates actual quantities created by this incentive system and does conflict mapping with historic buildings and avoids them—or it should not go forward at all.

Make preservation protections in CPIO at least equal to current:

- Extend City- approved HPOZ and HCM-type mechanisms to State and Nationally -listed historic buildings and Districts to achieve an equal level of City treatment. *Or don't remove all the current mechanisms which have provided that equivalent protection for 34 years.* 3rd class treatment of Federal and State -identified resources is unacceptable, and terrible precedent for future Community Plans.
- Extend HPOZ treatment for altered or “non-contributors” within designated Districts: Make sure improperly altered buildings are investigated for reversibility and assessed rather than state in advance they can be demolished. Buildings on vacant lots must be compatible with districts. Follow Preservation Brief #14 and the Niles decision on the effects of new construction on historic districts
- Remove the upzoning incentives from the Hollywood Boulevard Commercial and Entertainment Historic District, including incentives to tear down Grauman's. (It already was zoned in 1988 at twice the density of Century City, and the CPIO raises it more..)
- Instead have true re-investment tools: Validate parking in City lots built to cover the historic buildings parking deficit. Allow housing in upper floors of existing historic buildings.
- For CPIO, locate the upzoning incentives NOT on historic districts – move to near OTHER Metro stations. Use the map of historic buildings as a guide to where NOT to incentivize upzoning.
- Be clear that historic buildings will remain- so they are invested in, not abandoned. Pasadena made the first line in their Colorado Boulevard Plan when they transferred Redevelopment 30 years ago “there will be no historic building demolished” . The area surged into a fabulous tourist, regional, and local attraction.
- Let Hollywood Boulevard and the California Register neighborhoods finally escape the stranglehold of land speculation. Major large buildings and large numbers of homes and

apartments have sat vacant for years. Other cities figure out how to pour investment into the fabulous buildings they have—same age--, restoring them, amazing the public.

- Reverse the current trend of disinvestment, emptying buildings, partial demolition, short leases, etc, Require

Calculate actual current Plan capacity under the 1988 Community plan first. Remove the artificial and unnecessary conflict created by this Plan by pitting historic building against affordable housing.

#2: Reject the counterproductive, unexplained, and damaging Ordinance in Exhibit I, which repeals from existing law the same provisions that this Plan quixotically says need to be implemented—and even repeals all tenant protections!

As noted above, a new Ordinance, in Exhibit I, asks you to repeal ALL of the historic protections and incentives from the last 34 years that were law in central Hollywood. These were mandatory parts of the Hollywood Redevelopment Plan (HRP). This ordinance is touted as a “clarification”, and virtually no one reading it would know what it means.

Hold public hearings about repealing all of the historic protections carried over from Redevelopment, specifically promised by City Planning to NOT be repealed:

- Clarify what will happen with the Redevelopment Unit’s permit processing in Hollywood if the Community plan successfully replaces every requirement of the redevelopment plan in the HPCU when adopted
- Clarify City’s proposal regarding large filing fees which were assessed as a part of the CRA transfer to City planning
- Clarify the role of OHR

Reject the proposed Ordinance Exhibit I to REPEAL the same provisions proposed as policies and implementations in the HPCU Plan text. These are the centerpiece proposals for the future implementation of historic preservation for the HPCU Section 5 and 7. (“P” noted below are Plan Policies.) **These same provisions the Planning Commission is asked to repeal by forwarding Exhibit I to PLUM.**

Some examples:

P		Redev Plan Sec
P28:	<u>Planning, design review:</u> “Ensure that the character of historic neighborhoods are maintained .. by providing review of new development within historic neighborhoods” HRP states Any residential area with architecturally or historically significant structures may be further planned to reduce allowable density, require compatible design, ensure adequate parking, and conserve structures.”	(HRP Sec 505)
P35	<u>Design review:</u> “..use the Secretary of the Interior Standards”—HRP 409 All rehabilitation undertaken in the Project Area... determined by the Agency to be of architectural or historic significance shall be rehabilitated in accordance with the Secretary of the Interior Standards	HRP Sec 409)
P38:	<u>Survey listing and protection:</u> “protect designated and eligible historical buildings in the Regional Center”— this section removes the listing and inventory requirement for nearly 900 buildings; a 180 day delay of demolition provision equivalent to that for City Historic Cultural Monuments; etc	(HRP Sec 511)
P38:	<u>Planning, design review:</u> Hollywood Boulevard and Sunset Boulevard Plans (<i>sic-</i> was ‘Hollywood Core Transition District Plan’)- HRP required Hollywood Boulevard Urban Design Plan in 5 years – overdue and stalled from adoption- - removing this section removes the best chance for Hollywood to recover as a Main Street district- plan required by CRA and prepared numerous times	(HRP Sec 506,2,1 and 518.2 HRP)
P39:	<u>Design review:</u> showing under “complementary design” for new infill in historic districts and “matches the scale”	HRP Sec 506

<u>P40:</u>	<u>Design review- standards:</u> For height limits to limit commercial heights adjacent to historic neighborhoods “Any development project which involves designated historical resources, including City of Los Angeles Historic-Cultural Monuments, shall conform with the Secretary of Interior’s Standards for Rehabilitation	(HRP Sec 506.2.2)
<u>P41</u>	<u>Survey listing and public information:</u> : “Support and complete HistoricPlacesLA on-line” . All of the properties identified by the CRA are <u>not</u> integrated “Agency... shall maintain publicly available list of all buildings within the Project Area which it determines to be architecturally or historically significant” . Agencies listing of 1.078 known landmarks not integrated or shown in ZIMAS	HRP Sec 511
<u>P70-76:</u>	<u>Parking and traffic programs</u> to support businesses in existing buildings mandated for CRA—having been done well	(HRP Sec 506 and 518)
	<u>Design review</u> for any project exceeding 80/du/acre	HRP Sec 505.1)
	<u>Design review</u> All development plans (public or private) within the Redevelopment Area shall be subject to review and approval (existing regulation PRIOR to SB 330):	(HRP_Sec 407.1.4,
	Establish zoning regulations to ensure appropriate review of design for resources. Removing this section demotes the most significant landmarks: “Any development project which involves designated historical resources, including City of Los Angeles Historic-Cultural Monuments, shall conform with the Secretary of Interior’s Standards for Rehabilitation	
	<u>Design review:</u> Agency must review commercial uses in residential areas and residential uses in commercial areas	HRP 505.4 and 506.3
**	<u>Displacement:</u> To the maximum extent feasible. Seek to build replacement housing within the Project Area and prior to the destruction or removal of dwelling units which house low and moderate income people	410.2

**** Ordinance recommends repeal although this was never transferred!**

CPIO page 13 strike

CPIO syas about review

#3: Save Hollywood Boulevard

Hollywood Boulevard is one of only a few districts in the nation listed at the national level of significance in the National Register of Historic Places. This HPCU, CPIO, and Ordinance Exhibit I ask you to roll back the clock drastically, to remove protections, to give the Director of Planning wide-ranging discretion with no public input, to treat significant portions as vacant land, to lose the untapped potential, to forgo the excellence hidden under bad remuddlings-- to lose it unnecessarily.

Santa Barbara, Santa Monica, Pasadena took their historic districts as a “a goose that laid a golden egg” 30 years ago. They used what can be called a “Main Street” approach, well known for making thriving districts, attractive to tourists and residents alike. Their springboard was historic buildings- restored. Hollywood has promoted Times Square-ish touristy new buildings and bilboards. Successful specialty retail and entertainment locales must be attractive first to locals.

- Accurately show the District: The HPCU and CPIO mistakenly show the district from Las Palmas to Cahuenga, rather than its full extent from Sycamore to Argyle.
- Discretionary Review: Every building within the National Register District boundary line must be protected by discretionary review. Altered contributors must be investigated—as many buildings have their facades covered up but are still extant. Altered contributors can be restored, or if replaced designed to be compatible with the historic district—following the Secretary of the Interior Standards, with Preservation Brief #14 elucidating Standard #9, and with design complying with the Niles decision.
 - *Use all known and possible existing building devices to keep them standing: -- in-lieu parking; validated parking district; adaptive re-use automatic variances; seismic bond funding; community assistance bureau for building repairs*
- Main Street Ingredients that make a successful District are well known ingredients. First and foremost is a quality Urban Design Plan, integrated with traffic management (curbs, loading, delivery, drop off) and coordinated validated parking; economic restructuring; organization for safety and security; coordinated image and marketing.
 - *Identify and remove zoning code impediments to reuse of existing commercial building upper floors*
- No upzoning: Hollywood Boulevard has underlying zoning from the 1988 Plan that was close to the highest in the City at the two ends—from La Brea to Las Palmas, and from Cahuenga to Argyle. Larger and taller buildings were historically there, where cross-mountain roads passed through Hollywood. High density is already allowed there—CPIO incentives not needed, as residential construction is allowed in commercial districts by right.
 - *Hollywood Heritage can provide City Planning with case studies. We have studied how to achieve needed improvements to the buildings using the rubric of zoning and CPIO.*
 - a. *CPIO upzoning affordable housing incentives are inappropriate along Hollywood Boulevard. Adaptive re-use is more appropriate.*
 - b. *Stop discretionary zoning actions allowing projects 2-5 times what zoning allows--that incentivize vacant and mothballed buildings*
 - c. *Stop mythologizing that new construction is a rising tide to lift all boats. It hasn't worked.*

#4 : Enact necessary Mitigation Measures for Cultural Resources, or revise the zoning, so that the EIR does not allow avoidable adverse significant impacts on historic buildings.

The EIR issued to you by City Planning says outright that this Plan has “unavoidable” significant adverse impacts on our historic buildings. This is simply untrue. Adverse impacts are avoidable – they are created by the Plan, and the plan has changed constantly and can change more to avoid them.

- “Unavoidable impacts” are avoidable: How do we know unequivocally that these impacts can be avoided? First, they are created mostly by this new Plan—some from the 1988 Plan. The Plan’s proposed zoning must be overlain on the mapping of historic resources, and the conflicts identified, and avoided.
- Mitigations are known and possible: Secondly, CRA had procedures and formal Mitigation Measures for 34 years. In their EIR CRA’s massive Regional Center density—second densest in the City—they planned sufficiently (not perfectly at all) to mitigate the impacts.
- A Statement of Overriding Consideration to bulldoze Hollywood simply will not be true. The Plan and the EIR have done none of the underlying Plan capacity calculations and other calculations which can justify a Statement of Overriding Consideration. The entire Community Plan Area south of Franklin is stated to be a potential locus for the Plan’s re-zoning, yet the highly concentrated upzoning is proposed all in the highest density areas already, and on top of the greatest concentration of historic buildings. There is no justification...
- “Automatic” CEQA clearances The CPIO makes untenable statements about that must be removed.

Don’t kill the goose that laid the golden egg. Positive preservation must be added to the HPCU, such as:

- Resolve the conflicts --in the zoning. Once the location of identified resources is mapped, a “conflict map” can be prepared using information regarding existing and proposed zoning and land use projects. Part of that effort should include the mapping of existing unchanged zoning/community plan against historic building and district locations.
- Conflict maps were prepared for two earlier versions of the HPCU, one on which the EIR was based. Hollywood Heritage prepared GIS format maps to make this efficient, and others have mapped it also.
- Check necessity of any upzoning: Provide the calculation of excess capacity in the current plan, adding in excess capacity for housing built and being built in commercial zones; excess housing allowed under State ADU ordinance and City TOC ordinance etc. Accurately count housing already entitled against the 2040 household projections using State Finance Dept data, and evaluate against RHNA numbers for a realistic view. (We heard SCAG had adjusted to RHNA numbers.)
- Adopt clear mitigation measures
- Adopt environmentally superior EIR Alternative based on evidence and data.
- Redefine “eligible resources” Community-plan wide.
- Change definition of prohibition of demolition of Receiver sites to include the entire ARG survey as corrected
- *Transfer of Development Rights should not be limited to Regional Center- the California Register and other districts and individual resources throughout Hollywood should be able to use this tool (P 15 CPIO)*

- *Do not treat nationally and state-recognized landmarks with any reduction of oversight from OHR compared to local HCMs and HPOZs.*
 - *Do not change definitions in national and state districts – it is simply not within local authority to redefine some buildings as NOT an “eligible resource” that are within district boundaries established by superior jurisdictions.*
- d. All projects are required to meet Environmental Review Standards Appendix A, being recommended for Approval of the Planning Commission, but the page is blank.

#5: The greenest building is one that already exists. Hollywood has the highest concentration of historic resources in LA after Downtown in Los Angeles. Work with OHR and preservation organizations to accurately identify and map the important historic buildings, and make the Plan Implementation section robust, building from “best practices”

It takes the planet 30 years to recover from a building’s demolition.

The HPCU can have accuracy on the location of historic buildings, and must be mapped and publicly available.. 30 years of work by arms length experts has established where Hollywood’s historic buildings are. *Action items are:*

- *Share the new and corrected EIR mapping with preservation organizations and the public NOW--prior to any further hearings . Small district boundary adjustments, etc are needed in the interest of precision*
- *Plan Footnotes state 5. “The Cultural/Historic sites mapped are representative of publicly accessible sites but there is a comprehensive list of historic resources maintained by the Office of Historic Resources.” This is wholly unacceptable. Map all historic buildings and districts accurately HHI has prepared all the mapping in GIS format for the City*
- *Adopt the 511 list*
- *Clearly identify where an historic area has been subsumed under a CPIO category, which process alterations, additions, and new construction will follow—OHR or CPIO development standards or both.*
- *Revise the map prepared by City Planning showing opportunity sites for housing- remove churches, landmarks, etc. be more precise.*
- *Require all new building projects to prepare carbon budgets and ameliorate greenhouse gas emissions on site*

Hollywood Heritage can assist in the following Implementation items mentioned in the HPCU Plan Text. However, a number of these items must precede Plan adoption:

- Suggested in the Plan text :
 - P68: Work with preservation organizations
 - P39: for Land Use and Zoning : “Maintain appropriate General Plan Land Use designations and zoning in historic districts which are either listed in or eligible for “ the National Register (sic)” .Must be done now.
 - P129: Encourage neighborhood uses such as high quality shops—can not happen against the background of speculation
- Suggested in the Plan but already exist
 - P33: “Study” Transfer of Development Rights—this is in the CPIO but not developed properly
 - P66: Hollywood Walk of Fame Treatment Plan (not being utilized)
 - P130: Study design standards for sidewalk dining element along the Hollywood Walk of Fame (see CD 13 heart of Hollywood Initiative)
- Suggested in the Plan but not a good idea:
 - P36: For ensuring “complementary design” utilize Citywide Design Guidelines for new and infill development. (These guidelines are imprecise for the detailed conditions, not tailored to Hollywood’s specific characteristics; fail to utilize

Preservation Brief #14 to interpret Standard #9, and fail to comply with the Niles decision regarding historic district infill.)

Preservation matters. In Los Angeles historic buildings occupy 6.2% of our total land parcels, leaving 93.8% available for new development and much-needed housing. There is plenty of room to grow. Less than 1% of growth per year anticipated means 995 of the community is already here. All deserve consideration. All citizens can equally share in culture and local heritage through our historic buildings. Historic preservation is not the province of elitists-- 21 of 35 LA HPOZs have a greater share of racial diversity than the rest of the city. Between 1999 and 2019 LA created over 12,000 new housing units through adaptive re-use of historic buildings.

About Hollywood Heritage, Inc. For three decades Hollywood Heritage has been the central advocate for preservation and protection of Hollywood's irreplaceable historic resources. We preserve what is most significant in Hollywood, honing in now on Hollywood Boulevard; but we support responsible new and infill development. Our organization nominated many of the current Historic Cultural Monuments and assisted neighborhoods with their HPOZs; listed the Hollywood Boulevard Commercial and Entertainment District in the National Register of Historic Places at the national level of significance; provided technical assistance to countless developers and owners of significant properties; invested in buildings and restorations to trigger Hollywood's recovery; and participated in a fruitful cooperation with City Planning and Council Offices over the years on public policy, and on actions with the Hollywood CRA for 34 years. Our efforts have resulted in the rehabilitation of countless significant landmarks and districts in Hollywood. Our future challenge is acute.

We have attached to our comments an excerpt from the extensive comments we provided previously on the proposed CPIO.

Hollywood Heritage looks forward to working with CD13, CD4, and CD 5 and the staff of the Planning Department, including OHR, to bring the marvelous goals of the Community plan to fruition.

Sincerely,



Richard Adkins
President

Community Plan Exhibits being issued Feb 5, 2021, dated February 2021

- CPC Staff Recommendation Report
- EXHIBIT A: Draft Resolution to certify the EIR, Adopt EIR Findings, a Statement of Overriding Considerations, and Adopt a Mitigation Monitoring program.
- EXHIBIT B: Draft Community Plan
- EXHIBIT C: Proposed and Existing General Plan Land Use and Framework Maps, and Proposed Change to Chapter 1 of the Framework Element
- EXHIBIT D: Proposed Community Plan Implementation Overlay (CPIO) District Map and Ordinance
- EXHIBIT E: Proposed General Plan Land Use and Zone Change Maps and Matrices; Street and Network Reclassifications; Circulation Map; Symbols; Footnotes; and Corresponding Zone-Land Use Nomenclature Changes

- EXHIBIT F: SNAP change – Proposed Vermont/Western Transit Oriented District Station Neighborhood Area Plan (SNAP) Amendment
- EXHIBIT G: Proposed Hillside Construction Regulation (HCR) District EXHIBIT H: Draft Environmental Impact Report (DEIR) and Appendices; Partially Recirculated Draft Environmental Impact Report (RDEIR) and Appendices
- EXHIBIT I: “clarify the relationship “to the Redevelopment Plan

ATTACHMENT #4

HOLLYWOOD HERITAGE **Definition/Review of Historic Resources** **within Hollywood Redevelopment Area** **Summary of Peer Review required from Hollywood Heritage** (Detailed excel spread sheets and GIS format maps available)

Moving forward from the HPCU DEIR: The Hollywood Community Plan Update and the CPIO must have consistent, clear resolved identification of historic resources in the former Community Redevelopment Area. The last listing provided was Appendix L in the 2018 version of the HPCU; this was incomplete.

All of the concepts, categories, and other information presented to City Planning is backed by a detailed series of Excel spreadsheets created by Hollywood heritage, with the pertinent information on each property listed in a table. The Excel list meets the requirements of showing earlier status codes. This data has been mapped in a series of overlays which illustrate geographic proximity, level of significance, current planning information, conflicts for resolution due to zoning, etc.

One final step needed is to compare our list to Appendix L from the Community Plan EIR. This is the answer for satisfying a “publicly available list of all buildings” noted in the Plan. However, survey information is dynamic—time passes.

“The 511 List” is what we call the survey results from the most recent work prepared by the Redevelopment Agency and turned over to Los Angeles City Planning and uploaded in whole or part “HistoricPlacesLA.” Prepared by Architectural Resources Group, portions of it are called “ARG list” which identify known historic resources as of the beginning of 2020.

Hollywood Redevelopment definition from Section 511 has been the definition of resources, and the “list” is notably based on expert and professional surveys. The area has been surveyed and re-surveyed multiple times over its 35 years. “Buildings listed as Cultural-Historic Monuments by the City and listed in, determined or appear to be eligible for listing in the National Register of Historic Places are determined to be of architectural and/or historic significance.

The Agency shall use established criteria for determining additional architectural and/or historical resources and shall maintain a publicly available list of all buildings within the Project Area which it determines to be architecturally and/or historically significant.”

In practice, these resurveys have negotiated the changes in status code definitions handed down from Sacramento, and have included buildings of status codes 1-7.

Properties in a district – “non-contributors” must be listed in 511 list: The CPIO goes to great pains to direct that “non-contributors” to Hollywood’s historic districts may be demolished by right and replaced. Hollywood Heritage believes this is wrong at this time—for 3 reasons:

1. Properties in historic districts are classified as individually eligible, or eligible part of a district and within its boundary(collection of resources have a unified boundary and ascribed “period of significance.”) Today district components in the Redevelopment Area are separated into “contributing” and “non-contributing” features. However, these designations are old and based on windshield surveys, and were not re-visited by experts in the ARG survey.
2. The category of “altered contributors” – used by Los Angeles HPOZ’s to recognize buildings which contribute in their massing, style, urban patterning etc to a district, and are within its boundaries but perhaps are poorly altered, is missing from the ARG Survey.
3. As well, the actual allocation of current contributors and non-contributors may have changed.

Automatic demolition of “non-contributors” skips 2 crucial steps—assessing whether there is an underlying building which can contribute (for example when facades are covered over in commercial areas), and assessing in detail the urban design characteristics in the specific part of an overall district that are pertinent so an infill buildings will be compatible. Skipping these steps is not allowed under CEQA—as reflected in the Niles decision in California and in Preservation Brief #14, which is the accepted measure of compliance with the Secretary of the Interior Standards.

Total number of properties: 913

Total number of current non-contributors within districts: 261

Action items/recommendations re “non-contributors”:

1. 511 list must contain all properties within the boundaries of an identified or designated historic district built during the period of significance, including “non-contributors” Until further assessment is done and protocols aligned with the Los Angeles Historic Preservation Overlay Zone program (which allows for “altered contributors” from the period of significance and requires design review), the proposed
2. “Altered contributors” be introduced as a “511 List” category
3. These properties be given protection under the Redevelopment Plan, Community Plan, and accompanying CPIO. Rehabilitation of contributors and non-contributors from the period of significance will result in more robust and cohesive districts and stop the erosion of the resource (“district”). Infill on parcels which contain non-contributors outside the period of significance must be reviewed for “compatibility” with existing historic construction. The Secretary of the Interior’s Standards and Guidelines for Rehabilitation shall be the authority on rehabilitation techniques and compatible new construction.

Recommendation for “Historic Resources” : “ HHI Proposed 511 List” which includes:

- a) Evaluation code 1, 1D and 3S, 3D: Properties listed in or identified as eligible for inclusion in the National Register of Historic Places, either as individuals or as part of a district. This includes both contributing and non-contributing properties from the identified or updated period of significance within the boundary of a district. (Non-contributors from the period of significance should have a status code 1D*.)
 - Associated districts: Hollywood Blvd. Commercial and Entertainment District -proposed period of significance 1964; Hollywood High School Historic District; Grace-Yucca-Wilcox Multi-Family Historic District; Ivar Hill Multi-Family Residential; De Longpre Park Residential; McCadden-De Longpre-Leland Residential; Fountain Avenue Multi-Family Residential.)
- b) Evaluation code 2 and 2D: Properties identified as designated or eligible for designation for inclusion in the California Register. In a district, both contributors and noncontributors from the period of significance are a part of the 511 list. (Non-contributors from the period of significance should have a status code 2D*.)
 - Associated districts: Selma/LaBaig; Afton/DeLongpre; Vista del Mar/Carlos; Serrano Historic District.

- c) HCMs and locally eligible ARG 5's: Properties identified as locally eligible for listing either individually or as part of a district in the CRA update of 2019 (ARG) and those designated as Historic Cultural Monuments in the City of Los Angeles. "Eligible Historic Resources" definition in CPIO: properties identified as eligible for listing as individual historic resources on the National Register of Historic Places, or on the California Register of Historic Resources, or as contributors within a historic district that is eligible for listing at the Federal, State, or Local level (p. 5). This differs slightly from our proposed 511 list in that it does not identify "5s" in the 2019 update.
- d) Properties identified within Planning Districts identified by the 2019 update (ARG) which are from the period of significance of that district.
 - Associated districts: Cahuenga Boulevard Commercial Planning District; Hollywood Multi-family North; Santa Monica-Western Commercial Planning District
- e) HHI Multifamily district—Orange/Orchid: Properties within the 1700 blocks of Orange and Orchid identified by Hollywood Heritage as districts but not included in the 2019 CRA update.

Public Information and the proposed 511 List

Per our conversation, Hollywood Heritage is requesting a separate ZI to identify historic resources within the Redevelopment Area. The current ZI 2488 for the Redevelopment Area does indicate that there may be certain parcels which contain historic resources which are subject to further assessment/review, but the code is not specific to historic resources.

Morton, W. Brown, Anne E. Grimmer, and Kay D. Weeks. *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*. Washington, D.C.: U.S. Department of the Interior, National Park Service, Cultural Resources, Preservation Assistance Division, 1992.



Planning CHC <chc@lacity.org>

March 16, 2021 Agenda Item 1. Historic Fairfax Theater

1 message

Toby Horn <thorn626@gmail.com>
To: Planning CHC <chc@lacity.org>

Sun, Mar 14, 2021 at 3:16 PM

To Honorable Cultural Heritage Commissioners:

Please consider my strong support for designating the historic Fairfax Theater as a Los Angeles HCM.

The theater served various important purposes during the significant growth period of the Fairfax and Miracle Mile districts. It was an employer of many local school students throughout the years, contributing to the financial stability of their newly arrived parents from the horrors of war in Europe, and later for youths relocating from Boyle Heights in the 1940s and 50s.

The theater served as a "shul"- a synagogue, for all important High Holiday services and as a live entertainment site for burlesque, musical and other cultural events. The Fairfax Theater, was in a word, a cultural center for the local community. It was built as an important touchstone of the overall Deco design which heavily influenced the adjacent buildings both north and south on Fairfax during the period of significance when Fairfax was a humming commercial corridor of family owned bakeries, delis, shoe stores and support services.

I strongly urge your consideration in designating the Fairfax Theater as a City of Los Angeles Historic Cultural Monument.

Thank you,

Toby Horn
146 South Fuller Avenue
Los Angeles 90036
(323)934-5611
thorn626@gmail.com

TMH

ARMBRUSTER GOLDSMITH & DELVAC LLP

LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

WILLIAM F. DELVAC
DIRECT DIAL: (310) 254-9050

12100 WILSHIRE BOULEVARD, SUITE 1600
LOS ANGELES, CA 90025

Tel: (310) 209-8800
Fax: (310) 209-8801

E-MAIL: Bill@AGD-LandUse.com

WEB: www.AGD-LandUse.com

March 11, 2021

VIA EMAIL

City of Los Angeles Cultural Heritage Commission
200 N. Spring Street, Room 272
Los Angeles, CA 90012

Attn: James K. Williams, Commission Executive Assistant II
chc@lacity.org
James.k.williams@lacity.org

Re: New Historic-Cultural Monument (HCM) Application for Previously-Declined
Nomination of the Fairfax Theater (7901-7909 W. Beverly Boulevard)

Honorable Commissioners:

Our firm represents B&F Associates (“B&F”), the owner and developer of the Beverly Fairfax mixed-use project (the “Project”) at 7901-7909 W. Beverly Boulevard (“Site”). At your meeting on March 18, 2021, as part of the Director’s report, you will hear a Commission committee report on the review of the new HCM application (“New Nomination”) for the previously-declined nomination of the Fairfax Theater (the “Theater”).

B&F respectfully requests that you decline any further consideration of the New Nomination, which (i) is barred by B&F’s vested land use entitlements granted by the City, and (ii) does not meet the Commission’s own rules for renomination.

Vested Approvals Preclude Renomination

As you know, in 2010, the Commission previously found that the Theater did not meet the criteria for designation as an HCM (Case No. CHC-2010-520-HCM) (“Declined Nomination”). Following that determination, an EIR was certified in 2013, which concluded that the Theater is not a historic resource. As part of the approvals, B&F obtained a special entitlement known as a Vesting Zone Change (VZC), which is a legislative act of the City Council, along with the other entitlements from the City to develop the Project. The entitlements include Q conditions that vest the Project plans and require retention of only the façade, terrazzo flooring, and coffered ceiling at the main Theater entrance, as a project design feature. Under the Municipal Code, the City has no right or ability to impose different conditions until after the end of the vesting period. The vesting period for the entitlements was extended in 2016, and the approvals are conclusively valid until February 1, 2024.

On February 19, 2021, upon the request of City staff, we sent an analysis to staff outlining why the vested entitlements permitting demolition of the Theater, and State law, prevent the City

City of Los Angeles Cultural Heritage Commission

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from designating the Theater as an HCM. (See Vesting Analysis attached as Attachment 1.) As outlined in the Vesting Analysis, we do not believe that the City has the legal right to act upon the New Nomination. But, even if the City did designate the Theater, staff agreed with us that designation could not impede with B&F's vested rights to develop the Project. As Ken Bernstein noted in his February 26, 2021 email response to the Vesting Analysis:

[B]ased on the vested rights noted in the February 19, 2021 vesting analysis, the regulatory provisions of the Cultural Heritage Ordinance cannot be applied to the approved project; therefore, none of the Cultural Heritage Ordinance requirements will impede the effectuation of the project or the vested right to develop the approved housing on this property.

Again, while we agree that B&F has a vested right to proceed with the demolition and all the other approved aspects of the Project, Mr. Bernstein's reply prompts the question: if the Cultural Heritage Ordinance cannot be applied to the Project, how can the designation part of the Ordinance apply?

Even if the City could legally designate the Theater as an HCM, the designation would be practically meaningless, as staff admits. Given that the Cultural Heritage Ordinance cannot be applied to impair the vested approvals, what good purpose is served by consideration or designation?

It would be bad policy to waste the Commission's time and would be entirely unfair to B&F to subject it to the time, cost, and uncertainty of the extended process of consideration of an HCM application 10 years after it rejected the Declined Nomination. Even assuming, for the sake of argument, that staff is correct, and the New Nomination could be considered, the Commission's further consideration would be counter to an orderly planning process.

The New Nomination Does Not Meet the Criteria for Renomination

Even if the Project were not vested, the New Nomination does meet the Commission's own standards for hearing a renomination of the Declined Nomination.

Section 8.3 of the Commission's Rules and Operating Procedures strictly limits the circumstances under which a new application for a previously-declined nomination may be placed on the Commission's agenda. In this case, only substantial new historic information that makes the New Nomination materially different from the Declined Nomination would be sufficient. Teresa Grimes, the Project's historic resource consultant, has prepared an analysis (attached as Attachment 2) demonstrating that there is no substantial new historic information in the New Nomination that makes it materially different from the Declined Nomination the Commission previously denied in 2010.

Simply adding facts that only go to the same points and issues of the Declined Nomination is not by its nature substantial new information. Also, the very purpose of Commission Rule 8.3 is to limit the situations in which a renomination would be considered. The burden must be on the

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nominator to demonstrate substantial new information. Further, the Commission should interpret Rule 8.3 as a “high hurdle,” in order to be consistent with an orderly planning process. The Commission should make specific findings as to which information is substantial new information and how that information is sufficient to overcome the general rule of not allowing a renomination. Under the Commission’s own rules, the New Nomination has not met the standards for the Commission to consider it.

Finally, B&F is concerned about the process. It believes that any determination to allow the further processing of the New Nomination must be made by the full Commission only after B&F has the opportunity to be heard in a noticed hearing.

* * *

B&F believes that it is unfair to the Commission to be pulled into consideration of legal matters such as to vested rights. However, that is what the New Nomination does. It appears that the nominator may be trying to impede B&F’s vested rights. Beyond that, there is a very important policy matter at stake here. As a matter of good planning, consideration of historic resources should be fully integrated into the planning process. That is exactly what happened in the case of B&F’s vested approvals. But it needs to be a two-way street: a sound and orderly planning process must be integrated into the HCM consideration process. To consider the New Nomination would be to ignore the City’s extensive planning and approval process for B&F’s vested approvals. Any benefit of the doubt must be given to the owner—especially an owner with vested approvals, such as B&F.

For the reasons outlined in this letter and the attachments, we respectfully request that the Commission decline any further consideration or processing of the New Nomination.

Thank you for your time and consideration of this matter. Please do not hesitate to contact me with any questions.

Sincerely,



William F. Delvac

Enclosures: Attachment 1 – Vesting Analysis (February 19, 2021)
Attachment 2 – Teresa Grimes Memorandum

cc: Ken Bernstein, OHR
Alex Gorby, B&F Associates
Teresa Grimes, Historic Resource Consultant

Attachment 1

7901-7909 W. BEVERLY BOULEVARD

VESTING ANALYSIS

OVERVIEW

As you know, in 2010, the Cultural Heritage Commission (“Commission”) previously found that the Theater did not meet the criteria for designation as an HCM (Case No. CHC-2010-520-HCM). In 2013, B & F obtained a Vesting Zone Change (“VZC”) and other entitlements (the “Land Use Approvals”; Case No. CPC-2009-3271-ZC-HD-ZAA-SPR-ZAD) and a Vesting Tentative Tract Map (“VTTM”) (Case No. VTT-71061) from the City. The Land Use Approvals permit demolition of the Theater, except for the street-facing façades, and construction of a mixed-use residential development with ground-floor commercial uses on the property (the “Project”). The City prepared an EIR for the Project, which specifically concluded that the Theater was not a historic resource.

Thus, this is not a case where the Commission is considering a first HCM nomination before entitlements were approved for the Project. Instead, this HCM nomination is being considered seven years after the approval of the Project. The Land Use Approvals for the Project are valid until February 1, 2024 (as per the attached extension letter from the City).

The VZC includes Q conditions that vest the approved Project plans. The Q conditions expressly provide for maintenance of only the façade, terrazzo flooring, and coffered ceiling at the main Theater entrance, as a project design feature. The VTTM also vests the property’s existing zoning and facilitates the extension of the Land Use Approvals in 2016. Moreover, under State laws to protect and streamline housing development, including Senate Bill (SB) 330 and the Housing Accountability Act (HAA), the City’s previous determinations as to the property’s historic status and the Project’s zoning compliance are fully vested.

Given these vested approvals and State laws, B & F believes that the City does not have the right to designate the Theater as an HCM. We note that the City’s right to designate might be different if the Land Use Approvals did not include a VZC, and if the vested conditions of approval did not specifically approve the Project plans maintaining the Theater façade.

The Commission’s Rules and Operating Procedures, adopted July 5, 2018 (“Commission Rules”), cannot supersede the Municipal Code or State law. The Commission Rules give the Commission limited discretion to consider a new nomination when a previous nomination has been denied. However, those provisions are inapplicable here, where the Commission turned down a nomination, the City subsequently certified the Project EIR concluding that the Theater is not a historical resource, and the property owner obtained a vested approval to build the Project retaining the Theater façade only.

Even if the City were to improperly designate the Theater, the City may not, during the time the approvals remain vested, impose any different or additional conditions other than the existing Q conditions, which as noted require preservation of the façade and not the remainder of the building.

In approving the VZC in 2013, the City approved the Project plans by legislative action (Ordinance No. 182,515, effective June 3, 2013). The VZC vested B & F’s right to build the Project so long as the Land Use Approvals remain in effect. Therefore, B & F may build the Project in conformance with the

approved Q conditions, without interference from the City's other code provisions, rules, and regulations, even if they were in effect at the time of the approval.

To require preservation of more than the façade, the City would have to take an additional legislative action in the nature of a zone change to modify the Q conditions. This is exactly what B & F's vested rights under the VZC prohibit the City from doing, along with providing the owner an unfettered right to build the Project in accordance with the approved Q conditions. (See *Davidson v. County of San Diego* ("*Davidson*"; [Attachment A](#)) (1996) 49 Cal.App.4th 639, 649 [vested rights are immune from divestment through ordinary police power regulations, but may be impaired or revoked if the authorized use constitutes a menace to public health and safety or a public nuisance].)

PROJECT APPROVALS

2010 HCM Nomination

On April 1, 2010, the Theater was nominated for designation as an HCM. At its meeting on June 3, 2010, the Commission voted to deny the nomination, finding that the Theater did not meet the criteria for historic or cultural significance under LAMC Section 22.171.7. (See Commission Staff Letter of Determination dated June 21, 2010.)

2013 Project Approvals

The City approved the VTTM on February 1, 2013 and the Land Use Approvals on February 15, 2013. As noted, the City prepared an EIR for the Project, and that EIR was Certified by the City Council. Based on the Commission's 2010 determination and substantial additional evidence in the record, the EIR concluded that the Theater was not a historical resource. The Project description and findings expressly contemplate demolition of the Theater and retention of the street-facing façade only.

As noted, the Land Use Approvals include a VZC from C2-1VL to (T)(Q)RAS4-1D. The approved Q conditions provide, among other things, that:

- the use and development of the property shall be in substantial conformance with the Plot plan and elevations attached to the administrative file (Condition A.1.);
- the existing street-facing elevations shall be maintained in place (Condition A.11.); and
- certain plan notations be added detailing the treatment of the existing façade (Condition A.12.).

By approving these Q conditions, the Project plans and façade maintenance—which necessarily involve demolition of the remainder of the Theater—effectively became part of the zoning of the property.

2016 Extension

The VTTM had an original expiration date of February 1, 2016. By State law, the VTTM expiration date was extended to February 1, 2018.

The Land Use Approvals had an original expiration date of February 15, 2019. On February 4, 2016, the City confirmed the extension of the VTTM until February 1, 2024. (See VTT-71061 – Extension of Time, February 4, 2016; [Attachment B](#).) The extension letter also states that the Land Use Approvals, including the VZC, are synchronized with the VTTM pursuant to LAMC Section 12.36.G.3 and were also extended to February 1, 2024. LAMC Section 12.36 G.3. provides: "Legislative Approvals granted in conjunction

with a Subdivision Approval . . . may be extended for the full time limit of the Subdivision Approval, including time extensions pursuant to Article 7 of this Code, for the purpose of recordation of an approved map.”

Therefore, the Land Use Approvals—and the vesting protection under the VZC—remain in full force and effect until February 1, 2024. As such, the City cannot designate the Theater as an HCM in a manner that would impair the Project’s vested rights under the VZC and Q conditions.

VESTING ZONE CHANGE ORDINANCE

Background

The City has a long-established process for vesting approvals by vesting zone changes to encourage sound planning and certainty in development. It has been more than 25 years since former Mayor Richard Riordan announced, on March 6, 1995, the years long effort for development reform led by former Planning Commission President Dan Garcia who chaired the Development Reform Committee. (See Mayor Richard J. Riordan, Transmittal: Recommendations for Development Reform, March 6, 1995; [Attachment C](#)). The efforts started as a result of a real estate recession and with an awareness by the Planning Department that reforms were needed to streamline the approval process.

There were scores of recommendations and directives to a wide range of City Departments. One of the initiatives that resulted was an amendment to the Municipal Code to create a process for vesting zone changes and vesting conditional use permits. This occurred just one year after the Mayor’s announcement. (See [Ord. No. 170966](#), adopted March 19, 1996 ([Council File No. 94-1923-S17](#))).

Code Provisions

The VZC provisions are similar to, but distinct from, the VTTM provisions under the Municipal Code and State Subdivision Map Act. (Compare LAMC § 12.32 Q. [vesting zone changes] and LAMC § 17.15 [vesting tentative maps].) Notably, both the VZC ordinance and the City’s VTTM ordinance are broader than the protections ordinarily afforded with a vesting map under the Subdivision Map Act. These ordinances vest not only the applicable zoning standards, but also project-specific conditions of approval. LAMC Section 12.32 Q.2(a) provides, in part:

The approval of a vesting application ***shall confer a vested right to proceed with a development in substantial compliance with*** the rules, regulations, ordinances, zones and officially adopted policies of the City of Los Angeles in force on the date the application is deemed complete, and with the conditions of approval imposed and specifically enumerated by the decision maker in its action on the vesting application case. [Emphasis added.]

Similarly, LAMC Section 17.15 provides, in part:

The approval or conditional approval of a vesting tentative map ***shall confer a vested right to proceed with development in substantial compliance*** with the ordinances, policies and standards in effect on the date the application is deemed complete, and with the conditions of approval imposed and specifically enumerated by the Advisory Agency [Emphasis added.]

The potential scope of the vesting protections under these ordinances is similar. But the degree of protection afforded by a VZC is even stronger than that afforded by a VTTM, because a VZC is a

legislative act of the City. Unlike ordinary conditions of approval, Q conditions approved by VZC become part of the fully vested zoning of the property and can only be changed by a subsequent legislative act.

Moreover, both the VZC and VTTM ordinances provide more robust protection than the comparable State Subdivision Map Act provision. See California Government Code (CGC) Section 66498.1, which provides:

When a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards described in Section 66474.2.

There is no mention of conditions of approval in either CGC Section 66498.1 or Section 66474.2.

Analysis

The VZC ordinance was adopted to benefit and protect project approvals for a definite period. As discussed, the Project's VZC adopted the Q conditions cited above, including the approved site plan with specified façade maintenance and elevations.

By approving these Q conditions, the right to build the Project under these conditions effectively became part of the zoning of the property. Based upon LAMC Section 12.32 Q.2.(a), B & F has a "vested right to proceed with a development in substantial compliance with" these Q conditions.

California courts have held that local ordinances may confer vested rights earlier than available under the judicial vested rights doctrine. (*Davidson*, 49 Cal.App.4th at 647 [citing *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 56].) Here, the City accelerated the vesting of the Land Use Approvals under the VZC ordinance. Although the Project has not yet pulled building permits and commenced work, the Project's VZC confers a vested right to develop the Project in substantial conformance with the Q conditions even though construction has not commenced.

These vested rights—including the right to substantially demolish the Theater and retain only the façade—cannot be abrogated by a subsequent HCM nomination. As such, the City cannot accept any nomination that could potentially impede on the Project's vested rights. Even if the nomination were accepted, the City cannot take any actions or impose any conditions that would impair the Project's vested rights.

Preserving the Theater beyond the façade would require an additional legislative act to modify the Q conditions. The City cannot generally abdicate its police power, but new regulatory impositions on vested rights must be "sufficiently necessary to the public welfare as to justify the impairment." (*Davidson*, 49 Cal.App.4th at 649 [quoting *In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 592].)

In *Davidson*, the Court of Appeal held that a property owner's vested rights to construct a crematorium did not, as a matter of law, prohibit a local agency from enacting new crematorium regulations necessitated by public health and safety concerns. (*Id.* at 650.) In another case applying *Davidson*, by contrast, the Court of Appeal found that there was not sufficient evidence to justify the impairment of a landowner's vested right to construct a crematorium. (*Stewart Enterprises, Inc. v. City of Oakland* ("*Stewart*"; Attachment D) (2016) 248 Cal.app.4th 410, 422.) Although there were concerns about what impacts the crematorium might have on the public and local businesses, there was no evidence that the proposed crematorium in particular, which was approved by the local air quality management district,

posed a danger to public health, nor was there evidence of any actual economic threat to neighboring businesses. (*Id.* at 422-23.)

This case is even easier to distinguish from *Davidson* than is *Stewart*. Here, there are no public health or safety concerns whatsoever. The Project would affirmatively support neighboring businesses.

As the Court of Appeal noted in *Davidson*, “The usual exercises of police power in the land use context are not directly related to danger or potential danger to the health and safety of the public.” (*Davidson*, 49 Cal.App.4th at 650 [listing down-zoning regulations, subdivision density limitations, and height requirements as examples]). Historic preservation is akin to the typical zoning regulation cited in *Davidson*. The proposed HCM nomination is not sufficiently necessary to the public welfare to justify a potential impairment of the Project’s vested rights. Moreover, the Theater has previously been considered and rejected as an HCM, it was thoroughly evaluated in the Project EIR, and it has been conclusively determined not to be a historical resource.

As such, B & F believes that the Project’s vested Q conditions under the VZC prohibit the Theater’s renomination as an HCM.

OTHER SOURCES OF VESTING PROTECTION

VTTM

As noted above, the City’s VTTM ordinance goes beyond the vesting protection provided by the State Subdivision Map Act. Like the VZC ordinance, the City’s VTTM ordinance specifically provides for vesting of the Project’s conditions of approval. Here, the Project’s vesting Q conditions (unlike the VTTM conditions of approval) include the approved plans and façade maintenance, and thus are the critical vesting conditions barring the HCM renomination. That said, the VTTM provides additional vesting protection against future changes in City laws, and as discussed above was the mechanism for extending the Land Use Approvals under LAMC Section 12.36 G.3.

State Law: SB 330

In recent years, the State Legislature has passed or strengthened several laws to protect and streamline housing production.

Under SB 330 (CGC Section 65913.10), the City must determine whether the site of a proposed housing development project is a historic site at the time the application for the housing development project is deemed complete. The City must make this determination for purposes of any state or local law that requires such a determination to be made. And, this determination must remain valid during the pendency of the housing development project for which the application was made.

Here, the proposed HCM renomination would impede an approved and vested housing development project. SB 330 prohibits such actions once a project application is deemed complete. If SB 330 vests a project’s historic status at such an early stage, then surely the same policy should apply to an already-approved project. This is especially true where the City determined legislatively to provide vesting to the Project.

Moreover, this is not a case where the City missed an opportunity to evaluate the Theater. The Theater's historic status was exhaustively analyzed and conclusively rejected in the prior 2010 HCM nomination and in the Project EIR.

The City's determination that the property has no historical resources must remain in effect during the pendency of the Project. As noted above, the Project approvals are effective into 2024.

State Law: Housing Accountability Act

Like SB 330, the HAA limits the City's ability to impose certain conditions that would impact housing production. The HAA applies to all multi-family housing developments, including market-rate projects, that comply with all applicable, objective general plan and zoning criteria.

In a prior, similar matter, the City concluded that the HAA constrained the City's ability to apply subjective criteria that would result in a loss of size or density. This was the basis for denying an appeal of a project at 1421-1439 W. Adams Blvd. (See [Appeal Recommendation Report, dated February 18, 2020 for Case No.: DIR-2019-2727-CCMP](#)).

Last year, the City lost the District Square case (see [Attachment E](#)), where a court held that the APC's denial of that project violated the HAA. In that case, the project had not yet been approved and there was no vesting approval. With this property and Project, the facts are even stronger in the owner's favor. Further, it is our understanding that on one or more other occasions, the City has found that the HAA was applicable to HPOZ approvals. While the circumstances of the HPOZ appeal may be somewhat different than an HCM designation, the very purpose of designation would be to preclude the construction of a significant portion of the Project or reduce the number of already-approved units. The same policy arguments under the HAA strongly suggest that the City cannot accept the HCM nomination.

CRITERIA FOR RENOMINATION

As discussed above, due to the Project's VZC and vested Q conditions, the City cannot accept a new HCM nomination for the Theater. Teresa Grimes, the Project's historic resources consultant, is separately preparing an analysis regarding the proposed renomination. We understand that this analysis will show that, even if the Project were not vested, the renomination would not meet the criteria for consideration under Section 8.3 of the Commission's Rules and Operating Procedures.

CONCLUSION

As noted above, this is not a case where the Commission is considering a first HCM nomination during the Project entitlement phase. On the contrary, the Theater's previous HCM nomination and historic status have been conclusively denied. The Project has been approved and is fully vested by the VZC and VTTM. The property is effectively zoned to permit demolition of the Theater.

The only way the Commission could consider the renomination were if the Q conditions were amended by legislative act—which is exactly what the Project's vested rights prohibit in this case. Any attempt to undo the Land Use Approvals and reduce the Project's approved housing now is patently unfair, disruptive to a sound and orderly planning process, and directly counter to State laws and policies. As such, B & F respectfully submits that the Commission must not re-hear the previously declined nomination.

Thank you again for your consideration. As mentioned above, I would like the opportunity to discuss this with you as well.

Attachment A

49 Cal.App.4th 639

Court of Appeal, Fourth District, Division 1,
California.

Kenneth W. DAVIDSON, Plaintiff and
Respondent,

v.

COUNTY OF SAN DIEGO et al.,
Defendants and Appellants.

No. D021478.

|
Sept. 10, 1996.

|
Review Denied Dec. 18, 1996.

Synopsis

Property owner filed complaint for declaratory relief and petition for writ of mandate, seeking order compelling county to consider his building permit application to construct crematorium in light of regulations in existence at time of application. The Superior Court, San Diego County, No. 667421, J. Michael Bollman, J., entered judgment in favor of property owner and directed that county process application for building permit without regard to new regulations requiring major use permit and 650-foot set-back. County appealed. The Court of Appeal, [Haller](#), Acting P.J., held that: (1) judicial vested rights doctrine did not grant property owner right to have his application considered under regulations as they existed at time of application for building permit; (2) county ordinance, however, entitled property owner to have his application considered only under those zoning provisions in effect on date that application was filed; and (3) property owner's vested rights under county ordinance could be impaired through subsequent police power enactments if necessary to protect public health and safety.

Reversed and remanded.

West Headnotes (11)

- [1] **Administrative Law and Procedure** — Prospective or retroactive effect
Statutes — Language and Intent; Express

Provisions

Governmental agencies may generally apply new laws retroactively where such intent is apparent.

1 Cases that cite this headnote

- [2] **Constitutional Law** — Retrospective laws and decisions; change in law

Retrospective application of new laws may be unconstitutional if it deprives person of vested right without due process of law. [U.S.C.A. Const.Amend. 14](#).

- [3] **Zoning and Planning** — Change of regulations as affecting right

Absent equitable estoppel, upon which judicial vested rights doctrine is based, governmental agency may change zoning and planning requirements late into development process in spite of property owner's expenditure of substantial sums.

1 Cases that cite this headnote

- [4] **Zoning and Planning** — Change of regulations as affecting right

Property owner did not have vested right, under judicial vested rights doctrine, to development of crematorium upon his land where he had not obtained building permit at time of passage of ordinance which changed requirements and had not performed substantial work or incurred substantial liabilities in good faith reliance upon any issued permit.

10 Cases that cite this headnote

[5] **Zoning and Planning** 🔑 Change of regulations as affecting right

Zoning ordinance was intended to confer vested right to have building permit application reviewed and considered in light of regulations existing on date of application. San Diego, Cal., County Zoning Ordinance § 1019(a).

[2 Cases that cite this headnote](#)

[6] **Zoning and Planning** 🔑 Change of regulations as affecting right

Property owner had vested right to construct crematorium when he applied for building permit pursuant to local zoning ordinance which was intended to confer vested right to have application reviewed and considered in light of regulations existing on date of application. San Diego, Cal., County Zoning Ordinance § 1019(a).

[2 Cases that cite this headnote](#)

[7] **Zoning and Planning** 🔑 Change of regulations as affecting right

Property owner's vested right under local zoning ordinance to have ordinances applied as they existed at time he applied for building permit to construct crematorium did not prohibit county from enacting new crematorium regulations necessitated by public health and safety concerns and applying those regulations to property owner under its police power. San Diego, Cal., County Zoning Ordinance § 1019(a).

[3 Cases that cite this headnote](#)

[8] **Municipal Corporations** 🔑 Surrender or restriction of power by contract or license

Government entity may not, through contract or legislation, abdicate its police power.

[9] **Constitutional Law** 🔑 Constitutional guarantees in general

Public entities may impair vested rights when necessary to protect health and safety of public.

[3 Cases that cite this headnote](#)

[10] **Zoning and Planning** 🔑 Change of regulations as affecting right
Zoning and Planning 🔑 Vested or property rights

Vested rights doctrine in land use context is subject to qualification that such vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if use authorized or conducted thereunder constitutes menace to public health and safety or public nuisance; public welfare demands may even require complete destruction of vested property rights.

[4 Cases that cite this headnote](#)

[11] **Zoning and Planning** 🔑 Change of regulations as affecting right

New land use regulations imposed by county on property owner's crematorium project after he applied for building permit would not impair his vested rights to issuance of permit if new regulations, which required major use permit and 650-foot set-back, were reasonably necessary to prevent operation of crematorium from being danger or nuisance to public. San

Diego, Cal., County Zoning Ordinance §§ 1019(a), 2545(b), 2585(b), 6907(b).

[2 Cases that cite this headnote](#)

Attorneys and Law Firms

****618 *642** Lloyd M. Harmon, Jr., County Counsel, [Diane Bardsley](#), Chief Deputy County Counsel, and Valerie Tehan, Deputy County Counsel, for Defendants and Appellants.

Worley, Schwartz, Garfield & Rice and [Donald R. Worley](#), San Diego, for Plaintiff and Respondent.

Opinion

[HALLER](#), Acting Presiding Justice.

The County of San Diego, Board of Supervisors of San Diego County and Lauren M. Wasserman, Director of the County's Department of Planning and Land Use (collectively County) appeal from a judgment in favor of Kenneth W. Davidson, directing the County to process Davidson's application for a building permit for a crematorium under the regulations effective when the application was made. The trial court found a zoning ordinance conferred vested rights at the time Davidson applied for the building permit; and as a matter of law, the County could not apply new regulations to Davidson's project. We conclude the court erred because vested rights may be impaired by subsequent police power enactments reasonably necessary to protect the public's health and safety.

FACTUAL AND PROCEDURAL BACKGROUND

In 1981, the County enacted San Diego County Zoning Ordinance¹ section 1019(a), which stated:

"EFFECT OF AMENDMENTS UPON PENDING APPLICATIONS

"a. Any application for a permit or other approval regulated in any manner by the provisions of this Zoning Ordinance shall only be required to meet the ***643** provisions of this Ordinance that were in effect on the date that application is filed."

Before Davidson bought property in Spring Valley (zoned M54), he determined section 1019(a) and other County regulations required only site plan approval and a building permit before constructing a crematorium. Davidson wrote to the County requesting it confirm his belief, which it did. He then paid an architect and engineers to prepare plans for construction of a crematorium.

****619** When Davidson sought a waiver of site plan review, the County referred the matter to the Spring Valley Community Planning Group (Group), which advised the County on zoning issues on an ad hoc basis. The Group held a two-hour hearing on May 25, 1993, during which "there was spirited, vocal opposition to installation of a crematorium" on Davidson's property. On June 8, 1993, the Group held another lengthy meeting, during which it denied Davidson's request for site plan review waiver.

The County Board of Supervisors (Board) learned in May or June 1993 there were two or three crematoriums proposed in Spring Valley. A June 30, 1993 report by the County's planning commission stated:

"In recent months three crematorium proposals have surfaced involving M54 locations in the unincorporated County. These uses have previously been uncommon in the County areas. Public reaction to these proposals has been negative, with widespread concern raised regarding: 1) the potentially high nuisance characteristics of these uses; and 2) the lack of control the County will have over such uses since no discretionary permit regulating their operations is required.

"... The present Zoning Ordinance allowance of crematoriums by right without a discretionary review in the M54 zone does not allow the County to regulate the performance of these uses or mitigate their impacts to the community. Allowing crematoriums upon approval of a Major Use Permit (as is the case in eight other zones at present) would permit the County to scrutinize such facilities and impose appropriate conditions to ensure that they will not become a nuisance to neighboring properties."

On the same date, the Board approved the request of Supervisors Leon Williams and Dianne Jacob to have staff prepare an ordinance amending existing zoning regulations to require a major use permit for a crematorium in the M54 zone.

Davidson submitted site plans and filed an application for a crematorium building permit on July 8, 1993.

***644** On July 14, 1993, the Board held a hearing to consider a moratorium prohibiting applications for or issuance of permits for crematoriums in the M54 zone, pending adoption of the major use permit requirement. Minutes from the meeting state:

“The Public Health and Safety findings supporting the adoption of the proposed Urgency Moratorium Ordinance are the following: certain proposed crematoriums in the M54 Use Regulations may have nuisance impacts on the surrounding neighborhood due to the potential for particulate and odor emissions and psychological distress arising from the handling and cremation of human remains in the proximity of existing residences.

“The San Diego Air Pollution Control District has been contacted regarding the nature of crematorium emissions. The engineer that processes APCD permits for crematoriums informed [Department of Planning and Land Use] staff that although crematoriums are designed for complete combustion of human remains, small amounts of fine particulate matter and combustion gasses are emitted from even well-run operations. Such emissions are legal at low levels and are normally not visible except occasionally for a few seconds at the time of operation start-up. However, visible and/or excessive emissions can occur at times of equipment failure or operator error. Also, odors may occasionally occur if crematorium combustion processes [are] not operating properly. APDC also stated it is possible for small amounts of fine ash to fall out on nearby property, although it is usually not visually noticeable. Small amounts of toxic emissions can also occur at some crematoriums due to combustion of materials such as plastics.”

Several members of the public spoke at the hearing. Among them were a man living approximately 80 feet east of Davidson’s proposed crematorium, who voiced concerns over the amount of smoke emanating from a crematorium in Lakeside, and a woman living either 800 feet or yards from a crematorium in Los Angeles, who stated her eyes burned and “you can actually taste the fumes. I ****620** have to have gum beside my bed ... because you inhale it and you wind up tasting it, you’re coughing, you’re choking, your eyes are burning.”

The Board adopted a moratorium on accepting applications or approving pending applications for crematorium building permits and directed counsel to

determine whether pending applications for crematoriums could be made subject to new regulations in light of section 1019(a). On July 21, 1993, the Board enacted a provision requiring a major use permit for a crematorium in the M54 area. (Section 2545(b).)

The County refused to process Davidson’s permit application until he applied for and received a major use permit. On August 5, 1993, Davidson ***645** filed a complaint for declaratory relief and a petition for writ of mandate, seeking an order compelling the County to consider his building permit application in light of those regulations in existence at the time of the application.

On October 27, 1993, the Board adopted section 2585(b), which prohibited a crematorium from being placed less than 650 feet from a residence. On the same date, the Board adopted section 6907(b), which stated:

“Exception to Section 1019. Notwithstanding Section 1019, no application for a building permit for a Funeral and Interment Services: Cremating use type shall be accepted or approved where the proposed use or facility would violate Section 2545(b) [major use permit requirement] or Section 2585(b) [650-foot set-back from residential property].”

Apparently Davidson could not comply with the 650-foot set-back requirement, but would had to have obtained a variance from that requirement.

The case was tried before the court on May 20, 1994, and the court issued its judgment and order on June 3, 1994. It stated in part:

“It is undisputed that Davidson filed his building permit application on July 8, 1993, while Zoning Ordinance section 1019 was in full force and effect and before any subsequent Zoning Ordinance amendments regarding crematoriums went into effect.

“I find as a matter of law that the Board of Supervisors did not have the authority to circumvent the express language of section 1019 by retroactively applying a Zoning Ordinance amendment creating an exception to section 1019 for crematoriums to Davidson’s pending application. Although the Administrative Record reflects that the Board of Supervisors was motivated by concerns for the health, welfare and safety of the public, I find that, *under any circumstances, those concerns would not be sufficient to override the rights expressly conferred upon an applicant by Zoning Ordinance section 1019*, and rights vested in Davidson by his reliance upon and compliance with section 1019. While Davidson has presented a viable argument that the application of the exception to section 1019 would

constitute unlawful discrimination, the Court finds it unnecessary to reach that issue in light of its decision on section 1019.” (Italics added.)

The court issued a peremptory writ of mandate directing the County “to process ... Davidson’s site plan and building permit applications according to the ordinances and regulations in existence when Davidson filed his building permit application on July 8, 1993.”

On appeal, the County contends the court erred because a public entity cannot abdicate its future exercise of police power where necessary to *646 protect the public. We agree and conclude section 1019(a) did not preclude the County as a matter of law from retroactively applying the major use permit or 650-foot set-back requirements to Davidson’s project.

DISCUSSION

I. Vested Rights in the Land Use Context

[1] [2] Governmental agencies may generally apply new laws retroactively where such an intent is apparent. (See *In re Marriage of Buol* (1985) 39 Cal.3d 751, 756, 218 Cal.Rptr. 31, 705 P.2d 354.) Retrospective application may be unconstitutional, however, if it deprives a person of a vested right without due process of law. **621 (*Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122, 47 P.2d 716.)

Avco Community Developers, Inc. v. South Coast Regional Com. (Avco) (1976) 17 Cal.3d 785, 791–799, 132 Cal.Rptr. 386, 553 P.2d 546, sets forth the judicial vested rights doctrine as applied to land use: “It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he [or she] acquires a vested right to complete construction in accordance with the terms of the permit. [Citations.] Once a landowner has secured a vested right the government may not, by virtue of a change in the zoning laws, prohibit construction authorized by the permit upon which he [or she] relied.” (*Id.* at p. 791, 132 Cal.Rptr. 386, 553 P.2d 546.) The court held, “neither the existence of a particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the

basis of a vested right to build a structure which does not comply with the laws applicable at the time a building permit is issued.” (*Id.* at p. 793, 132 Cal.Rptr. 386, 553 P.2d 546.) “[T]he rights which may ‘vest’ through reliance on a government permit are no greater than those specifically granted by the permit itself. [Citations.]” (*Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 866, 201 Cal.Rptr. 593, 679 P.2d 27.)

[3] Absent equitable estoppel, upon which the judicial vested rights doctrine is based, a governmental agency may change requirements late into the development process in spite of the property owner’s expenditure of substantial sums.² In 1979, in order to ameliorate the harsh result of *Avco*, the Legislature enacted a statute establishing a property development agreement *647 procedure (Gov.Code, §§ 65864–65869.5). (Curtin, *California Land Use and Planning Law*, Solano Press Books (16th ed. 1996), p. 178.) “[D]evelopment agreements ... between a developer and a local government limit the power of that government to apply newly enacted ordinances to ongoing developments. Unless otherwise provided in the agreement, the rules, regulations, and official policies governing permitted uses, density, design, improvement, and construction are those in effect when the agreement is executed ([Gov.Code,] § 65866).” (*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1193, fn. 6, 278 Cal.Rptr. 375, 805 P.2d 329.)

As another solution to *Avco*, the Legislature in 1984 established a new procedure for obtaining a “vesting tentative map” (Gov.Code, §§ 66498.1–66498.9) when the Subdivision Map Act requires the filing of a tentative map. (See Gov.Code, § 66474.2, subd. (a).) “The most notable feature of a vesting tentative map is that on its approval or conditional approval, the right vests in the subdivider to proceed with development in ‘substantial compliance with the ordinances, policies and standards’ in effect on the date on which the subdivider’s application was deemed complete.” (*Bright Development v. City of Tracy* (1993) 20 Cal.App.4th 783, 788, 24 Cal.Rptr.2d 618.)

Local ordinances may also confer vested rights earlier than available under the judicial doctrine. For instance, *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 56 Cal.Rptr. 672, 423 P.2d 824, concerned a City and County of San Francisco enactment “immunizing outstanding [building] permits from subsequent changes in the zoning ordinances....” (*Id.* at p. 38, 56 Cal.Rptr. 672, 423 P.2d 824.) In other words, the provision gave developers vested rights upon receiving a valid building permit, as opposed to having to

spend substantial sums in reliance on the permit prior to obtaining such rights.

II. Davidson's Vested Rights Under Section 1019(a)

The County argues Davidson had no vested rights because “[r]ights conferred by section **622** 1019 are derived from the police power and can be taken away pursuant to the police power.” The determination of whether Davidson had vested rights, however, is not made by looking at the effect of **648** the County’s subsequent enactments but is made as of the time he applied for the building permit.³

^[4] The County alternatively asserts *Avco* applies, and since Davidson did not obtain a building permit prior to the new crematorium regulations, he was subject to the more restrictive requirements. *Avco* is inapplicable as we are not concerned with whether Davidson had a vested right under the judicial doctrine, which he did not, but with whether section 1019(a) conferred a vesting earlier than available under the *Avco* doctrine.

^[5] ^[6] A court must “ ‘give effect to statutes according to the usual, ordinary import of the language employed in framing them.’ [Citation.]”⁴ (*Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 847, 244 Cal.Rptr. 682, 750 P.2d 324.) While normally a developer must comply with regulations adopted after application for a building permit (*Avco, supra*, 17 Cal.3d at p. 795, 132 Cal.Rptr. 386, 553 P.2d 546), the clear language of section 1019(a) shows it was intended to confer the vested right to have a building permit application reviewed and considered in light of the regulations existing on the date of application. We thus conclude Davidson had such a vested right when he applied for the building permit.

III. Vested Rights May Be Impaired Through Subsequent Police Power Enactments Necessary To Protect Public Health or Safety

^[7] The County contends even if Davidson had a vested right, section 1019(a) did not prohibit it as a matter of law from enacting new crematorium regulations necessitated by public health and safety concerns. We agree.

^[8] ^[9] A governmental entity may not, through contract or legislation, abdicate its police power. (*Carty v. City of Ojai* (1978) 77 Cal.App.3d 329, 342, 143 Cal.Rptr. 506.) It is well-settled in California that public entities may impair vested rights where necessary to protect the health and safety of the public. As held by our high court:

“Retroactive legislation, though frequently disfavored, is not absolutely proscribed. The vesting of property rights, consequently, does not render them immutable: ‘Vested rights, of course, may be impaired ‘with due process of law’ under many circumstances. The state’s inherent sovereign power includes the so-called ‘police power’ right to interfere with vested property rights whenever reasonably **649** necessary to the protection of the health, safety, morals, and general well being of the people.... The constitutional question, on principle, therefore, would seem to be, not whether a vested right is impaired [by a change in the law], but whether such a change reasonably could be believed to be sufficiently necessary to the public welfare as to justify the impairment.” ‘ [Citations.]’ (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 592, 128 Cal.Rptr. 427, 546 P.2d 1371, fns. omitted.)

^[10] The vested rights doctrine in the land use context “is subject ... to the qualification that such a vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance. [Citations.]” (*Highland Development Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 169, 186, 215 Cal.Rptr. 881 (italics added), disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11, 29 Cal.Rptr.2d 804, 872 P.2d 143.) Public welfare demands may even require the complete destruction of vested property rights. **623** (*Sunset Amusement Co. v. Board of Police Commissioners* (1972) 7 Cal.3d 64, 80, 101 Cal.Rptr. 768, 496 P.2d 840.)

^[11] The appropriate inquiry is whether the new regulations imposed by the County on Davidson’s project were “ ‘sufficiently necessary to the public welfare as to justify the impairment.’ ” (*In re Marriage of Bouquet, supra*, 16 Cal.3d at p. 592, 128 Cal.Rptr. 427, 546 P.2d 1371.) “Probably the single most important factor to be considered in determining whether a particular impairment is constitutionally permissible is the nature and extent of the impairment. ‘The severity of the impairment measures the height of the hurdle the ... legislation must clear.’ [Citations.] Other important factors to be considered are the nature, importance and urgency of the interest to be served by the challenged

legislation; and whether the legislation was appropriately tailored and limited to the situation necessitating its enactment. [Citations.]” (*Donlan v. Weaver* (1981) 118 Cal.App.3d 675, 682, 173 Cal.Rptr. 566.)

Davidson asserts an owner with vested rights under a development agreement or vesting tentative map is immune from subsequent police power regulations no matter what their purpose, and by analogy the same protection is afforded by section 1019(a). He fails to acknowledge, however, that notwithstanding the rights created by either a development agreement or a vesting tentative map, the local agency may apply subsequent regulations to the project if it determines failure to do so would create a condition dangerous to the public health or safety. (Gov.Code, §§ 65865.3, subd. (b) and 66498.1, subd. (c)(1).)

The usual exercises of police power in the land use context are not directly related to danger or potential danger to the health and safety of the public. *650 For instance, ordinances or regulations down-zoning from one use to another, limiting subdivision densities, or imposing height requirements would not ordinarily be so related. Davidson had the right to have his building permit application processed without consideration of any such later-enacted provisions. We conclude, however, the trial court erred in finding as a matter of law the County could under no circumstances apply the major use permit and 650-foot set-back requirements to Davidson’s pending

permit. To the contrary, the regulations could be applied to Davidson’s project if they were reasonably necessary to prevent the operation of a crematorium from being a danger or nuisance to the public.⁵

DISPOSITION

The judgment is reversed and the matter is remanded to the trial court for a new trial on the issue of whether the County’s major use permit and 650-foot set-back requirements were sufficiently necessary to the public welfare to justify impairment of Davidson’s vested rights. Davidson to bear costs on appeal.

McDONALD and PATE,* JJ., concur.

All Citations

49 Cal.App.4th 639, 56 Cal.Rptr.2d 617, 96 Cal. Daily Op. Serv. 7107, 96 Daily Journal D.A.R. 11,592

Footnotes

- 1 All “section” references are to the San Diego County Zoning Ordinance unless otherwise specified.
- 2 For instance, in *Avco*, the developer, after receiving a zoning approval, final subdivision map and rough grading permit, spent over \$2 million installing storm drains, streets, culverts and utilities and incurred liabilities of another \$740,000. Nonetheless, the court held there was no vested right since the developer had no building permit. In *Oceanic California, Inc. v. North Central Coast Regional Com.* (1976) 63 Cal.App.3d 57, 133 Cal.Rptr. 664, the court held the developer had no vested rights even though it had spent almost \$27,000,000 in subdividing 2,000 lots.
- 3 We note that under the County’s analysis, a property owner could virtually never obtain vested rights immunizing it against subsequent changes in development regulations.
- 4 This rule applies equally to the construction of local ordinances. (*County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668, 114 Cal.Rptr. 283.)
- 5 We do not reach Davidson’s argument that application of the new regulations to his project would constitute unlawful discrimination. The trial court found it unnecessary to reach that issue, and Davidson may raise it on retrial.
- * Judge of the San Diego Superior Court sitting under assignment by the Chairperson of the Judicial Council.

End of Document

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Attachment B

**DEPARTMENT OF
CITY PLANNING**

CITY PLANNING COMMISSION

DAVID H. J. AMBROZ
PRESIDENT

RENEE DAKE WILSON
VICE-PRESIDENT

ROBERT L. AHN
CAROLINE CHOE
RICHARD KATZ
JOHN W. MACK
SAMANTHA MILLMAN
VERONICA PADILLA
DANA M. PERLMAN

JAMES K. WILLIAMS
COMMISSION EXECUTIVE ASSISTANT II
(213) 978-1300

**CITY OF LOS ANGELES
CALIFORNIA**



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
(213) 978-1271

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-1273

FAX: (213) 978-1275

INFORMATION
<http://planning.lacity.org>

February 4, 2016

Alex Gorby (A) (O)
B & F Associates, a Limited Partnership
710 Wilshire Boulevard, Suite 409
Santa Monica, CA 90401

RE: VTT-71061
Related Case: CPC-2009-3271-ZC-HD-
ZAA-SPR-ZAD
Address: 7901 Beverly Boulevard
Planning Area: Wilshire
Council District: 5

Lauren Finkel
Craig Lawson & CO., LLC
3221 Hutchison Ave, Suite D
Los Angeles, CA 90034

EXTENSION OF TIME

On February 1, 2013, the Advisory Agency conditionally approved Vesting Tentative Tract Map No. 71061. In accordance with the provisions of Section 66452.6(e), Article 2, Chapter 3 of the Government Code, and Section 17.07 or 17.56-A of the Los Angeles Municipal Code, the Advisory Agency hereby grants a 6 year extension, totaling 9 years, from the decision date for the recording of the final map for Tract No. 71061 located at 7901 Beverly Boulevard in the Wilshire Community Plan.

Pursuant to AB 116, all maps are automatically granted an additional two years as long as those maps were approved after January 1, 2000 and have not expired before July 11, 2013

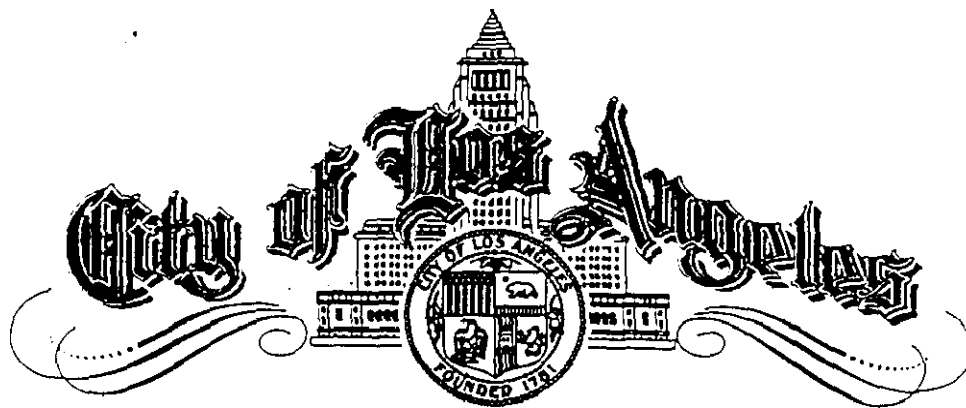
Therefore, the new expiration date for the subject vesting tentative tract map is February 1, 2024 and no further extension of time to record a final map can be granted. The associated case number CPC-2009-3271-ZC-HD-ZAA-SPR-ZAD is synchronized per 12.36G (3) and will expire February 1, 2024.

Vincent P. Bertoni
Director of Planning

Ralph Avila
Senior City Planner

DSW: RA: SK

Attachment C



CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 847-2489

OFFICE OF THE MAYOR

RICHARD J. RIORDAN
MAYOR

March 6, 1995

TRANSMITTAL: RECOMMENDATIONS FOR DEVELOPMENT REFORM

Honorable Councilmembers:

There have been many recent reports which have documented the widespread dissatisfaction of our constituents with the inefficiency of the 'non-system' development system in the City of Los Angeles. The costs to our city in lost jobs, lost capital, lost opportunity, and sheer waste--have skyrocketed. The urgency for reform cannot be underestimated. But while the importance of changing how we do business has been embraced by most everyone, we must take the necessary action in the form of new laws, policies and departmental practices that ensure implementation and compliance with these goals.

The recommendations that follow (Attachment A) and the directives set forth in my Executive order (Attachment B) are drawn from the February 7, 1995 report issued by the Development Reform Committee (DRC). Established by Councilman Hal Bernson and myself, the DRC submitted definitive actions needed to improve the City's performance in making land use decisions and implementing its permitting process., Led by Dan Garcia, Senior Vice President of Real Estate Planning at Warner Bros. (and former president of the City Planning Commission), the committee identified a comprehensive set of land use and transportation reforms to make Los Angeles more business and community friendly.

The findings documented in the DRC report reinforced those already presented in the 1991 Zucker Audit and the 1993 Robert L. Scott and William Christopher Code Simplification for Permit Streamlining Report. Key issues raised by these prior reports point specifically to a permit processing and discretionary entitlement system which would: 1) have a customer oriented environment; 2) include consistent and minimal standards; 3) eliminate interdepartmental redundancies by promoting coordination, and 4) systematically evaluate fees and financing mechanisms for appropriateness.

I look forward to working with Council President John Ferraro and the Ad Hoc Committee on Development Reform which he has charged with reviewing and forwarding recommended actions to Council. I am designating two members of my staff to work with Council offices and General

Managers to monitor, coordinate and assist with implementation of these reforms

Attachment A is a list of those recommendations forwarded to Council for immediate review and consideration. Included in the recommendations is an item to create a Fee Study Group which will review and make recommendation to the Council regarding the examination of fees and assessment of exactions.

Attachment B is an Executive Order, effective today, which specifies the actions and activities that I have directed the General Managers to implement. The commitment to change how the City conducts business must start at the top and be accounted for throughout all departmental staff.

Attachment C is a chart which depicts the intent and direction of the development reform recommendations and provides a process path for measuring the effectiveness of our services.

Attachment D includes letters from General Managers who have worked cooperatively with my office, and who already in many circumstances, have begun to institute the process for change. Their comments are provided here for your information.

Attachment E is a matrix summary of DRC recommendations. Where possible, similar recommendations have been combined and grouped by category. Recommendations that have already been approved by Council are also noted.

DISCUSSION

Los Angeles must implement governmental reforms in order to correct the widely held view that this city is not an economically healthy place to live, work and conduct business. At the center of this perception is a City development system and process which is unfriendly to its customers and is riddled with ambiguous regulations, onerous procedures and unfair costs.

It is not acceptable to me that the City's customers (homeowners, non-profit corporations, contractors, developers and businesses) are so dissatisfied with the service they receive and the 'hoops' they must jump through. A recent survey conducted by Yankelovich Partners of 501 persons seeking building permits, found that 50% of the contractors--those individuals who most rely on the system for their livelihood--avoid working in Los Angeles because they experienced the system bureaucracy as time consuming and unpredictable. Well over 50% of the homeowners surveyed stated the system is too costly, too frustrating and too bureaucratic. A large majority of homeowners when asked if they had an opportunity to do it again, said they would not. Any business with this reputation would be out of business.

Presently, permitting requires extensive professional assistance and time, thus excluding many property owners from considering any type of renovation. Every day our offices are inundated with letters and telephone calls from constituents complaining about the permit system and seeking relief. For those who can afford it, the system has created a cottage industry of expeditors and attorneys skilled at navigating these cases through the bureaucracy at great cost to our customers. In all, the system's greatest victims are those who are least able to afford it.

The City's entitlement process is unpredictable, time and resource intensive, and needlessly difficult. This unpredictability creates delays and increases the cost to homeowners and developers attempting to build or create businesses in Los Angeles. Additional discretionary procedures, conditions, and requirements above and beyond current adopted plans, frustrate applicants and neighborhood organizations who rely on government decisions to be clear and uniform.

Perhaps the area ripest for reform in Los Angeles is the permitting process -- interdepartmental procedures have become as cumbersome as the entitlement process. Los Angeles' permitting system has a reputation for being unfriendly, redundant and inconsistently applied. Many departments' responsibilities have evolved into maintaining an outdated system at the expense of providing good customer service and assistance. The recommended administrative reforms in this transmittal contain following:

- Services focused around a customer-friendly environment, rather than around administrative function and technical expertise;

- Services streamlined and consolidated to give the customer access to all permitting functions in a single location;

- A single permit checklist procedure developed to facilitate processing permit applications through all departments; and

- Established performance standards which encourage and provide direction for all employees and management

Finally, the City must take a critical look at how it determines fees. Ironically, most applicants had no argument with fees, if they could receive some certainty that they would not be required to pay more ~~after~~ they received departmental go-ahead. To be regionally competitive, the City must identify and settle all fees and exactions at the beginning of the project. Customers/applicants must know the costs associated with their project. Neighboring cities can do it. and the City of Los Angeles can do it too.

While the essence of the 83 DRC recommendations remains intact, this transmittal sets forth those recommendations which have not already been approved by Council and which have evolved from discussions with the City Attorney and General Managers.

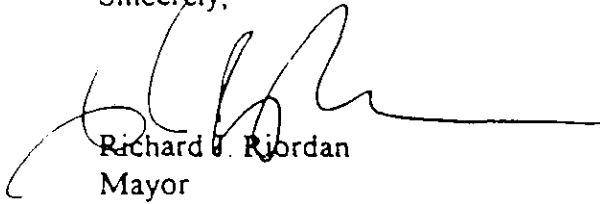
Once this complex plan is implemented, as illustrated in Attachment C. 80% of the applicants entering the process will continue to have their permits approved the same day. The remaining 20% either will be approved within 30 days. or immediately assigned a case manager to ensure applications can be located and monitored as they move through the discretionary review process.

I have issued an Executive Order (Attachment B) which directs the appropriate departments to use their managerial authority to implement those DRC recommendations which fall under their purview. General Managers and their staff provided valuable information for these reforms. They have been involved in this process from the beginning working with the DRC and the Mayor's staff. Their

responses (Attachment D) are in line with these recommendations and in some cases departments have already taken the lead and have started making changes.

Together--we, the Council, Mayor, General Managers, city employees--must work with all sectors of the community to bring fairness, certainty, new culture, and streamlined operations to a system which is currently characterized by none of these. I look forward to working with you through the legislative review process and to the adoption and implementation of these measures to reform the City's development process and to restore Los Angeles to the number one spot as the county's most livable City.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard B. Jordan', with a long horizontal flourish extending to the right.

Richard B. Jordan
Mayor

Attachments

ATTACHMENT A

RECOMMENDATIONS

That the City Council

1. Direct the Department of Planning to expedite the preparation of community and district plan updates with the incorporation of overlay zones and specific plans, such that all updates will be completed by July 1996.
2. Direct the Planning Department with assistance from the Department of Transportation, other affected departments, and the cooperation of the City Attorney, to submit within 60 days, established procedures for City departments to contract with professional firms for the review of draft EIRs.
3. Request the City Attorney with the assistance of the Planning Department and the Environmental Affairs Department to publish a simplified update of the City's CEQA guidelines, within 90 days.
4. Direct the Planning Department with cooperation from the City Attorney to prepare an ordinance, within 60 days, which would increase density for commercial and residential uses at or near MTA transit stations and rail corridors, consistent with the City's Land Use Transportation Policy.
5. Direct the City Administrative Officer with affected departments to prepare, within 180 days, an assessment report with recommendations regarding the identification and financing of the adequate infrastructure improvements needed to support 2010 population projections using long term debt financing, assessment districts, State or federal funding strategies, or other appropriate means.
6. Direct the Planning Department with assistance from the City Attorney and the Department of Transportation to prepare an ordinance, within 60 days, which provides that all relevant City departments will be precluded from adding any other discretionary conditions, requirements, or approvals once the entitlement process has concluded.
7. Direct the Planning Department and the Building and Safety Department with assistance from the City Attorney to prepare an ordinance, within 90 days, which would provide "grandfather" protection from any subsequent legislative changes to a development project once the project application has been accepted and physical construction has begun.
8. Request the City Attorney with assistance from the City Administrative Office, to prepare an ordinance, within 90 days, which freezes development fees for a specified time from receipt of a development application and for one year during the project approval process. Additionally the ordinance would limit to once a year, the times City permit fees could be increased.
9. Direct the Planning Department with assistance from the City Attorney to amend the zoning code to replace the current Site Plan Review process with objective development standards and criteria, within 180 days.

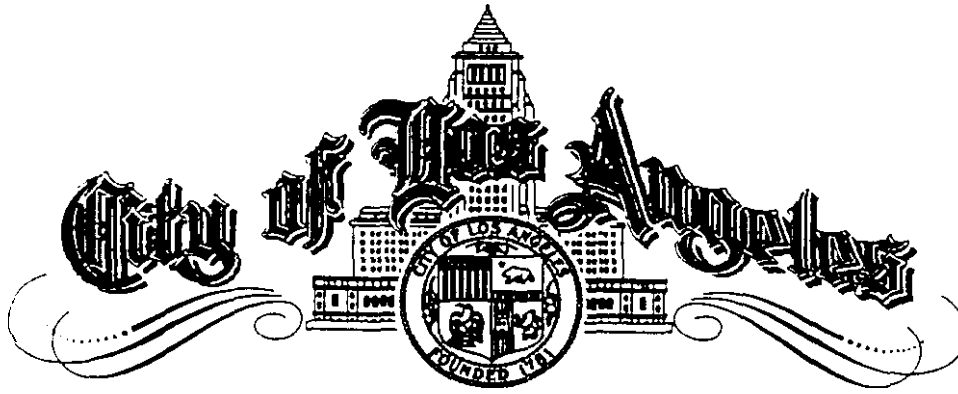
10. Direct the Planning Department with assistance from the City Attorney to amend the **Specific Plans** in a manner which substitutes discretionary project permits and design review procedures with objective development criteria and standards, within 180 days.
11. Direct the Planning Department and request the City Attorney, to develop a Simplified Public Hearing process, within 90 days, which provides for: a single noticed hearing; procedures covering the content of written notices; the radius for mailed notices; newspaper publication and posting requirements; and other administrative details which will apply to hearings and appeals for all entitlement approvals.
12. Direct the City Administrative Office with the assistance of the Information Services Division and other affected departments, to propose an **interdepartmental** computerized system/network to calculate all prospective construction permit fees for use by City departments and the public. within 120 days.
13. Direct the Building and Safety Department to coordinate with the Public Works Department, the preparation of a report. within 30 days, regarding the feasibility of allowing Building and Safety plan checkers to issue "A" permits for public improvements.
14. Direct the Building & Safety Department and the Public Works Department, with assistance from the City Attorney to prepare a report, within 30 days, to Council regarding licensing and bonding architects and engineers to self-certify plan checks for minor improvements.
15. Direct the Planning **Department**, the Transportation Department and the Fire Department with assistance from the City Attorney to prepare an ordinance, within 60 days, which would amend the zoning code to allow the recording of a reciprocal assess easement in lieu of an approved street map for internal vehicular circulation crossing multiple lots within business parks and retail shopping centers."
16. Request the City Attorney with the cooperation of the City Administrative office to prepare an ordinance, within 60 days. which would amend the Municipal Code to limit the collection of an Arts Development Fee to certain new developments and interior modifications. (e.g. prohibited on housing, manufacturing, and industrial **projects/uses**).
17. Request the City Attorney with the assistance of the Building and Safety Department and the City Administrative **Office** to prepare an ordinance. within 90 days, which would impose an administrative non-compliance fee for continued non-compliance with time extensions created by ordinance or Building Code provisions, or construction without a permit.
18. Direct the Department of Building and Safety to prepare a proposal, within 60 days, phasing the elimination of the mechanical/electrical testing laboratories and "new" products division.
19. Request the Mayor's Office and the City Attorney with assistance of the Chief Legislative Analyst and the City Administrative Office to establish a Fee Study Group consisting of representatives of public, private and interested persons. which will prepare a preliminary report back to Council within 90 days regarding the following

- a. a review of all City permit processing fees charged by department, the amount and disposition of permit fees collected for the past three years, and the nature and purpose of each fee.
- b. a proposal to amend the Municipal Code that requires new development to pay only its fair share of exaction costs which such costs are intended to benefit the surrounding community as a whole.
- c. a proposal to amend the Municipal Code to require that development fees and exactions be utilized within five years of their collection for their stated purposes, or else be refunded with interest to the applicant. Additionally, that special trust funds be established to monitor collections and expenditures.
- d. a report of all discretionary conditions imposed by Department and a discussion of how determinations are made.
- e. a review of alternative funding sources and financing mechanisms for funding public improvements
- f. establish permit fee 'ceilings' to be imposed on different categories of development projects.
- g. a proposal to amend the Municipal Code to limit the total amount of City fees and exactions for a project using a proportional formula based on square footage by development category
- h. a proposal to amend the Municipal Code to establish a fee for all appeals which is based on estimated costs of processing such appeals, and upon conclusion of the appeal process any excess collection is refunded to the appellant(s). Additionally, discuss reducing the fee by 50% to an interested party when the party has obtained at least 15 signatures from property owners within 300 feet of the proposed development.
- i. a proposal to defer development fees and exactions to the latest possible date, or at the time when a certificate of occupancy is issued,
- j. a proposal to amend the Municipal Code to eliminate the Housing Linkage Fee notice requirement. and any future imposition of fees unless specific findings are made that direct impacts exist.
- k. a proposal to amend the Municipal Code to waive or reduce fees for "public benefit" projects such as. developing or providing affordable housing, public institutions, jobs-housing balance, jobs creation, economic growth, transportation system improvements
- l. a proposal to amend the Municipal Code to allow complete waiver of permit fees in the event of disasters, and for economically depressed areas.

ATTACHMENT B

EXECUTIVE ORDER

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CITY HALL
LOS ANGELES, CALIFORNIA 90012
(213) 847-2489

OFFICE OF THE MAYOR

RICHARD J. RIORDAN
MAYOR

March 6, 1995

Executive Directive No. 7 • Riordan Series

TO THE HEADS OF ALL DEPARTMENTS OF CITY GOVERNMENT

SUBJECT: Development Reform

In recent years, there has been growing recognition that the City's development process has not been conducive to economic growth and does not adequately serve the needs of business, developers and homeowners. Several reports have been made documenting the dire consequences the development process has had on the City's economy and revenue base and calling for reform. Most recently, Progress L.A., a group of business leaders, real estate developers, and housing providers released a report entitled, "Developing in the City of Los Angeles - Cost, Confusion & Contempt," and attributed paramount importance to development reform in sustaining Los Angeles' competitiveness with neighboring cities and revitalizing economic growth within the City.

In the Fall of 1993, the Development Reform Committee was established by Councilman Hal **Bernson** and myself to examine the City's operations and make recommendations to improve the City's permitting and entitlement process. On February 7, 1995, the DRC came forward with 83 recommendations to achieve this goal.

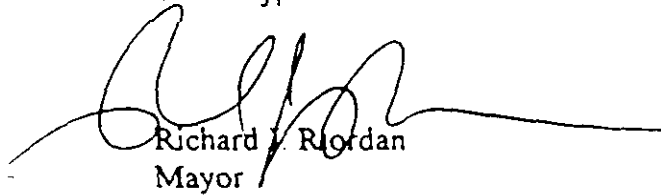
The DRC recommendations which I support offer solutions to the three critical areas of reform: streamlining the permit and entitlement process; making the process more predictable; and achieving fairness in fees and exactions. The continued cooperation and input from City departments has been instrumental in determining how to implement the recommendations to ensure meaningful and productive change for our City. Further to these discussions, I am setting forth various directives in Attachment "A" to be accomplished by the **Departments** of Building and Safety, Environmental Affairs, Fire, Personnel, Planning, Public Works, Recreation and Parks, and Transportation to effect operational changes consistent with the DRC recommendations. All City departments are expected to cooperate fully with these departments as they institute and coordinate reform measures. Additional directives may follow as our implementation of development reform gets underway and further issues surface.

Executive Directive No. 7
Page Two
March 6, 1995

The attention of **all affected** departments to implementing these directives at the soonest possible date will constitute a tremendous service to the citizens and clients of the City of Los Angeles. I will be assigning a person **from** my **staff** to assist you **with** implementation. In the meantime, if you have any questions regarding the directives or issues concerning the targeted deadlines, please feel **free** to discuss the matter with Rae lames, Deputy Mayor.

Thank you in advance for your cooperation towards advancing development reform

Sincerely,



Richard J. Riordan
Mayor

RJR:tp

Attachment

ATTACHMENT "A"

The Department of Building and Safety is directed as follows:

- (1) By May 1995, update, w-issue and market a comprehensive checklist for customers who **are** undertaking construction projects. (P-2)
- (2) By May 1995, submit to the Building and Safety Commission for recommendation to Council, a proposal regarding the elimination of the mechanical/electrical laboratories. (C-1)
- (3) By May 1995, submit a joint progress report with the Fire Department on the undergoing effort to eliminate redundant plan check and inspection functions. Work with the Fire Department to eliminate redundancies by July 1995. (S-17)
- (4) By June 1995, prepare a report addressing the feasibility of transferring the responsibility **for** the sign-off on historic buildings required by CEQA to the Planning Department. (S-12)
- (5) By July 1995, update and market for new permit applicants a preliminary plan check process which identifies, to the greatest extent possible, the requirements, fees, and conditions necessary to obtain an over the counter permit or an extended plan check. (P-1)
- (6) By July 1995, coordinate and establish with all affected departments, **a single collection** counter for all fees attributable to permit processing. (DRC S-3)
- (7) By July 1995, establish and market a departmental procedure, **after** coordinating with affected departments, which **will** provide a pre-construction/development "requirements" conference for proposed projects. (P-3)
- (8) By July 1995, prepare a report to the Building & Safety Commission which identifies all the steps, department staff, time frames involved, fees and information an applicant is **required** to provide for each approval rendered by the Building & Safety Department. (S-21, C-17)
- (9) By August 1995, work **with** the Planning Department to **make** available a comprehensive user friendly handbook (or series of handbooks) which guides applicants through the City's permit, entitlement and development process, including CUPs, zoning changes and rules and procedures pertaining to the public hearing and appeal process. (p-18)
- (10) By September 1995, organize department operations to create a case management process for all development projects from plan submittal through construction and Certificate of Occupancy (S-1)

The Department of Environmental Affairs is directed as follows:

- (1) By August 1995, coordinate with the Planning Department in the preparation of a comprehensive user friendly handbook which guides applicants through the environmental review process. (P-18)
- (2) By September 1995, work with the Departments of Planning and Transportation to **finalize** recommendations and prepare a report regarding centralizing CEQA administration in one department. (S- 12)
- (3) By October 1995. coordinate with the Department of Planning, the City Attorney and **affected** City departments in preparation of a City CEQA manual addressing thresholds of significance, related project requirements, mitigation measures and updated City CEQA Guidelines. (P-18)

The Department of Fire is directed as follows:

- (1) By May 1995, submit a joint progress report with the Building and Safety Department on the undergoing effort to eliminate redundant plan check and inspection functions. Work with the Building and Safety Department to eliminate redundancies by July 1995. (S-17)
- (2) By July 1995, prepare a report to the Fire Commission which identifies all the steps, department staff, time frames involved, fees and information an applicant is required to provide for each approval rendered by the Fire Department in conjunction with the development process. (S-21, C-17)
- (3) By September 1995, make available a Fire Safety Users Manual that instructs applicants on how to successfully complete **fire** and life-safety plan review and administrative steps for alternate means of compliance. (P-18)

The Department of Personnel is directed as follows:

- (1) By September 1995, work with the affected City departments in establishing performance standards for personnel involved in the development process, which might include customer, peer, management, subordinate and reverse evaluations. (S-24)

The Department of Planning is directed as follows:

- (1) By May 1995, designate appropriate department personnel as "Case Managers" and assign to each application needing Planning Department review. The case manager will: serve as the point person for that application; conduct a pre-entitlement phase project review conference. provide applicant with a comprehensive checklist of needed entitlements and discretionary approvals; coordinate the preparation of necessary staff reports; coordinate

resolution of inter-department disputes; and advance the application through the completion of the entitlement and environmental review process, including all public hearings. (S-6)

- (2) By May 1995, in conjunction with the Departments of Public Works Engineering, Building and Safety, Transportation, Environmental Affairs and Fire, formalize and complete implementation of a master application process which requires only one application and provides contemporaneous processing of all required discretionary approvals and development agreements. (S-5)
- (3) By May 1995, work with the Department of Transportation to prepare a report recommending a uniform transportation policy, and a second report regarding the merging of transportation planning and policy functions in a single department, both to be submitted to the Planning Commission and Transportation Commission for review and recommendation. (P-12)
- (4) By May 1995, institute department policy and procedures whereby discretionary conditions, requirements, exactions and mitigation measures are identified and communicated to the applicant as early in the entitlement process as possible, and the inclusion of any additional discretionary approvals once the entitlement process has concluded is strongly discouraged. This policy should be disseminated in writing to all pertinent Planning Department personnel. (P-5)
- (5) By May 1995, submit a proposal to the Planning Commission for review and recommendation to create and regularly update Program EIRs, including a Transportation Element and projected costs, for community plans so that "tiered" EIR review can be implemented. (S-15)
- (6) By June 1995, institute department policy and procedures whereby comments to EIR drafts for all but the most complicated projects are made/obtained within 60 days after receiving the initial draft. This policy should be disseminated in writing to all Planning Department personnel. (S-13)
- (7) By June 1995, prepare a proposal for consultant and staff services to expedite the updates of community and district plans, including incorporation of specific plans, to reflect current development patterns, ensure consistency between planning and zoning, and guide development for at least the next 10 years. (P-14)
- (8) By July 1995, prepare a report to the Planning Commission which identifies all departmental approvals, technical reports and studies required for discretionary projects and the steps, department staff, time frames involved, fees and information an applicant is required to provide for each discretionary approval. (S-21, C-17)
- (9) By August 1995, make available a comprehensive user friendly handbook (or series of handbooks) which guides applicants through the City's permit, entitlement and development

process, including CUPs, zoning changes and rules and procedures pertaining to the public hearing and appeal process. This effort should be coordinated with the Departments of Building and Safety, Fire, Transportation, Environmental Affairs and Public Works Engineering. (P-18)

- (10) By September 1995, prepare a report regarding centralizing CEQA administration in one department, and work with the Departments of Transportation and Environmental Affairs in formulating the recommendations contained in the report. (S-12)

The Department of Public Works, Bureau of Engineering is directed as follows:

- (1) By July 1995, prepare a report to the Board of Public Works Commissioners which identifies all the steps, department staff, time frames involved, fees and information an applicant is required to provide for each approval rendered by Public Works Engineering in conjunction with the development process. (S-21, C-17)

The Department of Recreation and Parks is directed as follows:

- (1) By June 1995, prepare a report for the Recreation and Parks Commission's review and recommendation which analyzes how Quimby fees and other park and recreation fees are used and how they can be reduced given the rate at which fees are committed. (P-20)

The Department of Transportation is directed as follows:

- (1) By May 1995, coordinate with the Department of Planning to formalize and complete implementation of a master application process which requires only one application and provides contemporaneous processing of all required discretionary approvals and development agreements. (S-5)
- (2) By May 1995, work with the Department of Planning to prepare a report recommending a uniform transportation policy, and a second report regarding the merging of transportation planning and policy functions in a single department, both to be submitted to the Planning Commission and Transportation Commission for review and recommendation. (P-12)
- (3) By May 1995, institute department policy and procedures whereby discretionary conditions, requirements, exactions and mitigation measures are identified and communicated to the applicant as early in the entitlement process as possible, and the inclusion of any additional discretionary approvals once the entitlement process has concluded is strongly discouraged. This policy should be disseminated in writing to all Transportation Department personnel. (S-7)
- (4) By May 1995, institute department policy and procedures whereby comments to EIR drafts for all but the most complicated projects are provided within 60 days after receiving the initial

draft. This policy should be disseminated in writing to all pertinent Transportation Department personnel (S-I 3)

- (5) By June 1995, assist the Planning Department in preparing a proposal to create and regularly update Program EIRs, including a Transportation Element, for community plans so that "tiered" EIR review can be implemented. (S-15)
- (6) By July 1995, prepare a report to the Transportation Commission which identifies all departmental approvals, technical reports and studies required for discretionary projects and the steps, department staff, time frames involved, fees and information an applicant is required to provide for each approval. (S-21, C-17)
- (7) By September 1995, work with the Departments of Planning and Environmental Affairs to formulate recommendations and prepare a report regarding centralizing CEQA administration in one department. (S- 12)

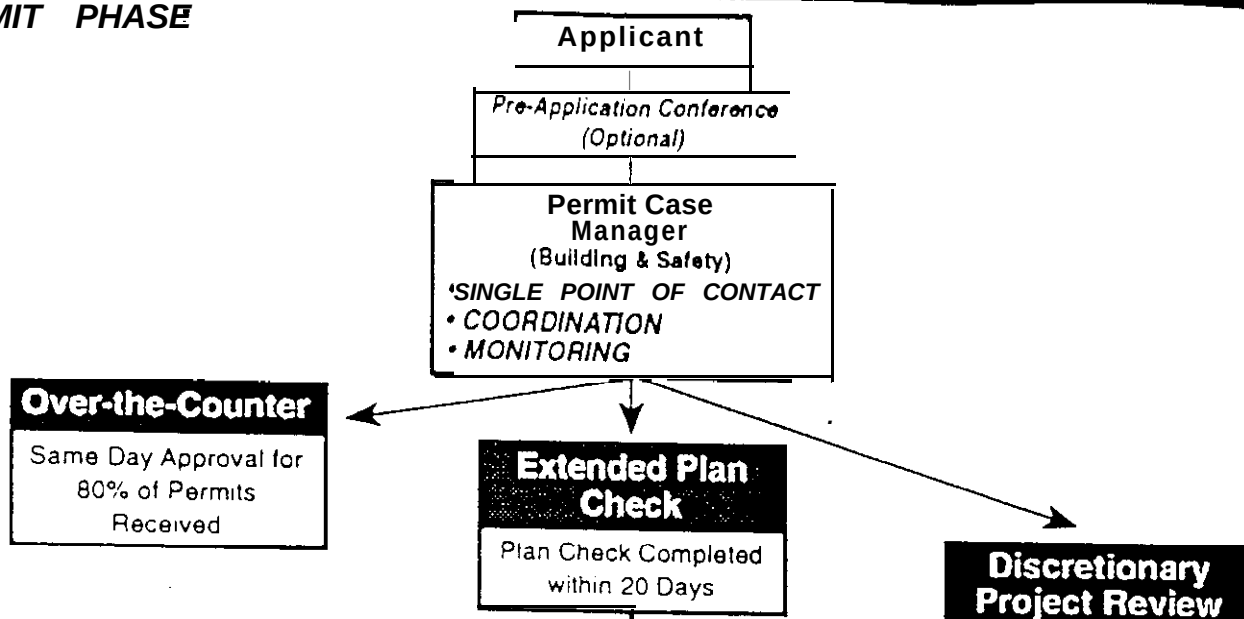
Note: Directives are derived from the cited recommendation set forth in the matrix entitled, "Summary of Development Reform Committee Recommendations."

ATTACHMENT C

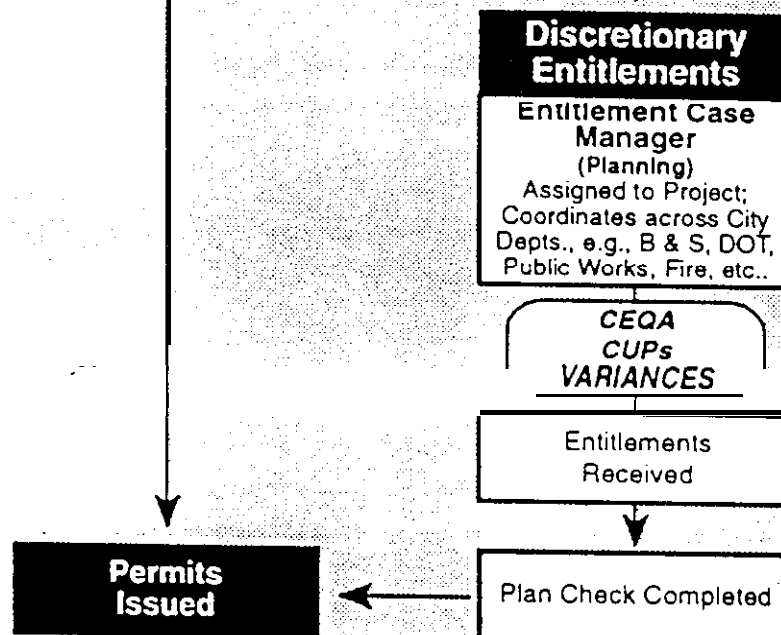
PROCESS CHART

SIMPLIFYING THE DEVELOPMENT PROCESS

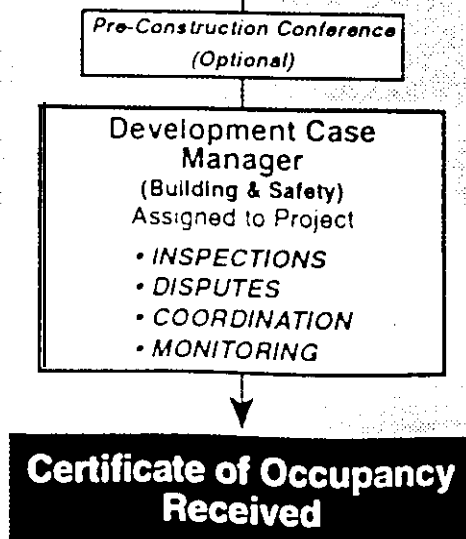
PERMIT PHASE



ENTITLEMENT PHASE



CONSTRUCTION PHASE



ATTACHMENT D

DEPARTMENT	COMMENTS
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CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: March 1, 1995

TO: Honorable Richard J. Riordan, Mayor

FROM : Arthur J. Johnson, Jr., General Manager
Department of Building and Safety 

SUBJECT: RESPONSE TO DEVELOPMENT REFORM COMMITTEE (DRC)

The Department of Building and Safety has reviewed the Development Reform Committee (DRC) report and finds it to contain many significant recommendations for improving the entitlement and permitting process.

Items P-1, 2, 16, 19 and S-S, 6, 12, 13, S-21, S-26 of the report impact the Department of Building and Safety to various degrees. These items can be implemented and require no further comment. On item S-18 covering self certification, it is recommended that the Department be allowed to work with its Building Industry Advisory group to explore feasibility of such a program. On item S-4 it is recommended that "A" permits remain in public works and that the Department meet with them to identify possible changes in procedures. The Department concurs with the concept of item S-17.

The Department would recommend on item S-1 that a service manager be assigned for customer assistance on request. The Department would publicize this service to every applicant. Items P-3, 17, and S-20 do not require a code change, the service and information is already being provided. For item S-24, standards are already in place for plan check, but the Department recommends a consultant to assist it in establishing standards for inspection.

Item S-25 is presently being implemented. On item C-1 the Department would like to meet with industry to determine if they want this service eliminated. Concerning items S-2 & 3, P-13, C-3, 7, 12, 13, 16 & 17, the Department will work with the Council Oversight Committee to review fees and provide information requested. Finally, the Department is opposed to item S-27 as it would add another layer to the permit process with questionable benefit to the customer.

We are in full support of the goals of the DRC report and will move forward to facilitate any improvement to our existing procedures and to cooperate with the Mayor, Council, and Departments to bring about workable solutions to the many problems experienced in the permit process.

If further clarification is needed please call Richard Holguin, Chief of Building Bureau, at 847-7733.

RH:mm23dl.wp

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CITY OF LOS ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR
February 28, 1995

DEPARTMENT OF
PUBLIC WORKS
BUREAU OF
ENGINEERING
ROBERT S. HORII
CITY ENGINEER
650 SOUTH SPRING ST., SUITE
LOS ANGELES, CA 90014-19

Honorable Mayor Richard J. Riordan
Room 305, City Hall
200 N. Spring Street
Los Angeles, Ca. 90012

Attention: Rae James, Deputy Mayor

Dear Mayor Riordan:

RE: DEVELOPMENT REFORM COMMITTEE (DRC) REPORT (SUMMARY MATRIX)

The Bureau of Engineering has reviewed the DRC Report and commend them for a thorough effort with some excellent recommendations. Many of the recommendations affecting us have already been, or are being, implemented.

There are two specific recommendations that we would like to address:

Number S-4 recommends that "A" Permits be issued by the Department of Building and Safety rather than the Department of Public Works. It is our understanding that this was done because it was felt that the issuance of the driveway permit concurrently with the building permit would facilitate the permitting process.

"A" Permits are issued for a variety of work such as curbs, gutters, driveways and sidewalks (both new and repair) and utility trench resurfacing. Many "A" Permits do not involve a Building and Safety project. Transferring the function will require the moving of existing records and the training of Building and Safety staff because these permits are different from anything that Building and Safety does, plus the work is inspected by Public Works Inspectors; therefore, it is recommended that the issuance of "A" Permits remain with the Department of Public Works.

ADDRESS ALL COMMUNICATIONS TO THE CITY ENGINEER

AN EQUAL EMPLOYMENT OPPORTUNITY - AFFIRMATIVE ACTION EMPLOYER

RECYCLE AND REUSE YOUR PAPER

Mayor Richard Riordan

-2-

February 28, 1995

Number S-19 recommended that some Department of Transportation design functions be transferred to the City Engineer's office. We have met with representatives of the Department of Transportation and Bureau of Street Lighting and have agreed to improve coordination and utilize parallel instead of sequential processing. In addition, a computerized monitoring system operated by the Bureau of Engineering to track all "B" Permit projects will be established. We believe this will accomplish the recommendations of the Development Reform Committee.

My staff and I will be pleased to discuss any of these matters with you at your convenience.

Sincerely,

A handwritten signature in cursive script, reading "Robert S. Horii".

ROBERT S. HORII
City Engineer

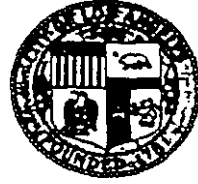
RSH/LLL/kem

cc: Art Johnson, Bldg. & Safety
Bob Yates, Transportation
George Eslinger, St. Ltg.
Lillian Kawasaki, Env. Afrs.

CITY OF LOS ANGELES

CALIFORNIA

DEPARTMENT OF
ENVIRONMENTAL AFFAIRS



RICHARD J. RIORDAN
MAYOR
March 1, 1995

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GENERAL MANAGER
200 N. SPRING ST.
ROOM 1500, MS 177
LOS ANGELES, CA 90012
(213) 237-0462

Honorable **Richard** Riordan, Mayor
City of **Los** Angeles
Room 305 City Hall

Dear Mayor Riordan:

The Environmental Affairs Department (EAD) would like to commend the Development Reform Committee (DRC) and Councilmember Hal Bemson, through his Code Simplification Task Force, for their diligent efforts to improve the City's **land use** development process. We appreciate the thoroughness with which the Development **Reform** Committee prepared its report on this important issue and are hopeful that **its** implementation will lead to a better entitlement process to enhance both economic development and liveability in the City. Additionally, we thank you for this opportunity to participate in the **DRC's** work by providing these comments on their report.

The **EAD** is currently engaged in a number of activities that the DRC has included as recommendations in its report. In particular, we established a Citywide **CEQA** Committee in cooperation with the Planning Department, the Department of Transportation, and other City departments. This committee was created in recognition of the need to improve the City's environmental review process. The Committee recommended the preparation of a CEQA Manual. The CEQA Manual will focus on several key issues raised by the DRC, including defining clear, objective thresholds of significance, setting forth standardized methodologies, and analysis of related projects/cumulative impacts (Summary Matrix Nos. P-18, S-15, S-10).

By addressing methodological and legal requirements regarding related projects and cumulative impact assessments, the CEQA Manual will provide greater clarity for both City staff and project proponents on whether, how, and to what extent mitigation for cumulative impacts is required. This will ensure that greater certainty is brought to the development process. However, we should note that the **DRC's** recommendation (S-10) that a list of "related projects" be deemed final "as of the date of the project application" may not be permissible under CEQA which prescribes that all "reasonably foreseeable" projects be included in the draft EIR, even if they could not have been foreseen until after the application has been deemed complete. The use of a Master EIR may prove to be a practical alternative in determining what are related projects and will be considered as part of the CEQA Manual effort.

The CEQA Manual will also include recommendations regarding the use of tiered, master, program, focused, and staged EIRs (S-15). Additionally, elements of the CEQA Manual can be used to revise the **EAD's** Community Guide to CEQA to describe the City's environmental review process in a simple and understandable format (P-18)

The update of the City's CEQA Guidelines, as recommended by the DRC (P-18), is also a priority for the City. Related to the CEQA Manual, the CEQA Guidelines are the City's guidance document for complying with the statutory requirements of CEQA. To expedite this recommendation, the City Attorney with the assistance of EAD, Planning, and the Citywide CEQA Committee should be involved in this revision.

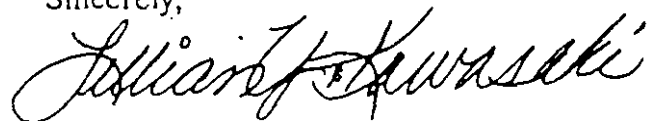
The DRC also recommends (P-1 1) that the City establish procedures relative to the preparation and review of draft EIRs by professional firms with City staff assuming a greater coordinating role. We fully agree that objective standards for the preparation and review of draft EIRs must be developed. The CEQA Manual will provide guidance on the preparation of draft EIRs and will also address the appropriate level of review for administrative draft EIRs. In addition, we would recommend that an analysis be conducted to determine whether, how, and to what extent consultants can be used in the review of draft EIRs mindful that the City cannot delegate its legal responsibility to conduct its own independent environmental review.

As you undertake the issue of fees, exactions, and mitigation, it is important to distinguish between fees for administrative processing and mitigation measures required under CEQA. The cost of mitigation measures cannot be limited by formula since CEQA requires that mitigation be imposed to prevent or correct a project's environmental impacts to levels that are considered insignificant (unless overriding considerations are adopted). However, by clearly defining thresholds of significance, the CEQA Manual should provide greater certainty in establishing the nexus between a project and its impacts.

Also, while there is clearly a need to bring speed and certainty to the City's development process, it is important to ensure that full and complete public participation continues to be encouraged and available. The DRC's recommendation that the City identify all requirements, exactions, and mitigation measures prior to any public hearing could be interpreted as precluding public input into those determinations. The public must be assured of the value of their role in the development process.

As the important work of the DRC is developed and implemented, we would suggest that there are three key issues that have yet to be addressed: prioritization, availability of adequate resources, and the establishment of a means to oversee, evaluate, and ensure continued progress. We look forward to working with your office, the City Council, and with City departments on these key issues and on ensuring an effective development process in the City of Los Angeles.

Sincerely,

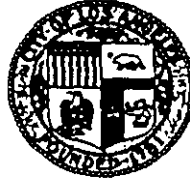
A handwritten signature in black ink, appearing to read "Lillian Y. Kawasaki". The signature is fluid and cursive, with a large initial "L" and "K".

Lillian Y. Kawasaki
General Manager

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RICHARD J. RIORDAN
MAYOR

DEPARTMENT OF FIRE
200 NORTH MAIN STREET
LOS ANGELES, CA 90012
DONALD O. MANNING
CHIEF ENGINEER
AND
GENERAL MANAGER

March 1, 1995

Deputy Mayor Rae James
Mayor of the City of Los Angeles
Room 305, City Hall

Dear Deputy Mayor James:

Resoonse to Development Reform Committee Summary Matrix

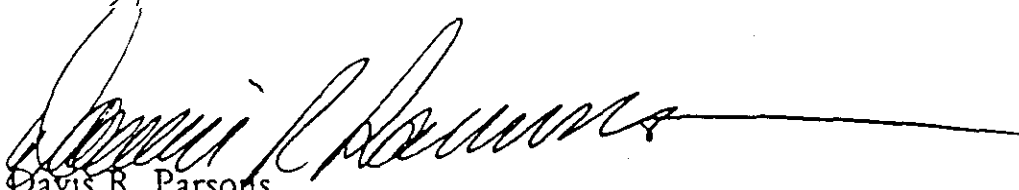
Of the 83 Development Reform Committee recommendations, 33 have direct application to the Fire Department's plan review process. Recommendation No. S-17 (coordinating the Fire Department and the Department of Building and Safety plan review) is the only recommendation that requires specific comment. The issue has been dealt with in large part by the recent transfer of responsibility of 5,000 plan reviews per year from the Fire Department to the Department of Building and Safety. The issue is continuing to receive scrutiny by both departments and is currently undergoing Meet and confer with the respective employee organizations. Both Departments agree that the current process, as recently modified, need only to be "fine tuned," with respect to specific plan check and inspection responsibilities.

The Fire Department **does** not anticipate any additional Department cost associated with this transfer of responsibility, except economic considerations negotiated by the CAO and the United Firefighters of Los Angeles City (UFLAC).

Deputy Mayor Rae James
March 1, 1995
Page 2

Fire Department administration and personnel involved in the development and plan review process are committed to a service-oriented approach to their responsibilities.

Very truly yours,



Davis R. Parsons
Fire Marshal

DRP:DLH:ml:DRCREPLY

CITY OF **LOS** ANGELES
CALIFORNIA



RICHARD J. RIORDAN
MAYOR

CITY PLANNING
COMMISSION

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MARNA SCHNABEL

ANTHONY N. R. ZAMORA

RAMONA HARO
SECRETARY

(213) 485-5071

DEPARTMENT OF
CITY PLANNING

ROOM 361, CITY HALL
200 N. SPRING ST.
LOS ANGELES, CA 90012-4801

CON HOWE
DIRECTOR

FRANKLIN P. EBERHARD
DEPUTY DIRECTOR

(213) 237-1986

GORDON B. HAMILTON
DEPUTY DIRECTOR

(213) 237-1818

ROBERT H. SUTTON
DEPUTY DIRECTOR

(213) 237-1818

FAX (213) 237-0552

February 21, 1995

Honorable Richard J. Riordan
Mayor, City of Los Angeles
Room 305, City Hall
Mail Stop 370

Dear Mayor Riordan:

Since the release of the DRC Report, the Department has begun a careful review of each of its recommendations and has had the opportunity to discuss them in more detail with other agencies and your office. This letter is to provide some summary comments.

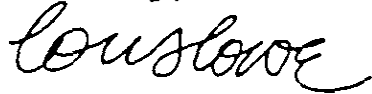
First, it is important and useful that the DRC Report looked at all parts of the development process, including the construction phase. In terms of the entitlement phase, the Report utilized and built on previous work including the Zucker Audit and Councilman Bernson's Task Force. A number of earlier recommendations, such as joint hearings and our weekly inter-agency Project Permit Network (PPN) meetings, have been instituted and are showing results.

While actions that are already underway will continue, we urge early guidance from the Council and your office on the new recommendations so that we can concentrate our efforts on the proposals that have the support of the Council and Mayor. That review also requires a prioritization of proposals because there are not enough staff resources available, in this agency at least, to accomplish all the recommendations at once. I believe it is well recognized that a number of the recommendations have costs associated with them in terms of staff and equipment. This Department will work closely with your office and the Council to advise on those costs and prioritization of proposals.

Honorable Richard J. Riordan
February 21, 1995
Page 2

The key to an efficient development process is the **cooperation** of all the agencies that have some responsibility, and I am committed to working with the other General Managers on implementation as directed by the Mayor and Council.

Sincerely,



CON HOWE
Director of Planning

CH:ml

cc: /Rae Franklin James, Deputy Mayor

a: riordan.doc

:

CITY OF LOS ANGELES

CALIFORNIA

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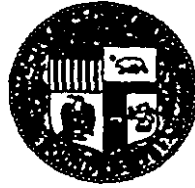
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DEPARTMENT OF
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GEORGE A. ESLINGER
DIRECTOR

600 SOUTH SPRING STREET
14TH FLOOR
LOS ANGELES, CA 90014
847-6400
FAX: 847-5388

February 23, 1995

Honorable Richard Riordan, Mayor
Room 302, City Hall

Attention: Rae James, Deputy Mayor

Dear Mayor Riordan:

DEVELOPMENT REFORM COMMITTEE (DRC) REPORT

The DRC Report and recommendations highlight the improvements that will serve the development community and the city well if properly implemented.

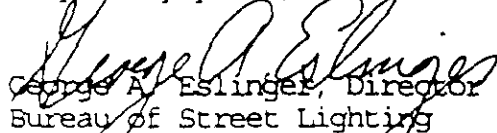
Street lighting is not specifically addressed in the Report. The Bureau of Street Lighting is not a permit issuer but is involved in many projects which require public improvements.

We have already begun discussions with the Department of Planning, Department of Transportation, and Bureau of Engineering concerning the issues of: a) a real time project tracking system, b) requirements for and the importance of concurrent processing in lieu of serial processing, c) accelerated use of electronic transmission of data, and other steps that we believe will accomplish the intentions of the DRC Report.

We are also anxious to participate in a citywide cost accounting system that would provide for fee allocation by department and an accessible cost reporting system. Monthly statements should be available to both city agencies and private developers (electronically). We believe such information would facilitate resolution of many of the cost issues addressed in the Report.

We are committed to working cooperatively with all involved to achieve the results intended by the DRC Report.

Very truly yours,


George A. Eslinger, Director
Bureau of Street Lighting

GAE/cr (FEXEEX1/2009)

cc: Con Howe, Director of Planning
Bob Yates, General Manager, Department of Transportation
Bob Horii, City Engineer

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: February 24, 1995

To: The Honorable Richard Riordan, Mayor

From: 
Robert R. Yates, General Manager
Department of Transportation

Subject: DEVELOPMENT REFORM COMMITTEE

The Development Reform Committee (DRC) report fairly points out there are many reasons why development has decreased in the City of Los Angeles over the last several years, significant among them being a complicated and time-consuming entitlement and permitting process. This process has evolved from the many environmental and land use laws, regulations, ordinances and policies that have been promulgated at the federal, State and local level in response to rapid growth periods in the last decade. While we believe that meaningful change must also address the underlying legal constraints, we agree that the report contains many recommendations that can and should be implemented immediately. Of the 83 recommendations, we would embrace many, some have been or are being implemented, and there are a few which we believe would be clearly counterproductive.

The concept that all involved agencies should exhibit a sense of urgency in facilitating the entitlement and permitting process is not only reasonable but well underway toward implementation. We have received comments and letters from private sector representatives attesting to the staffs renewed commitment to positive and cooperative partnership. This effort to streamline our procedures has been carried out within the Department and jointly and cooperatively with the Planning Department and others over the past two years.

Project coordination meetings are being held when new developments and expansion plans are brought to the City for review. Policy and project meetings are held monthly at the General Manager level with LADOT, City Planning, Bureau of Engineering, and Bureau of Street Lighting. Similar meetings are held at other staff levels. We fully support the categorizing of all available project mitigation measures, review and verification of permit and other charges and a **recordation** of date and time expended on all steps of the permit/entitlement process. This information should be maintained and available to the Mayor, Council, departments, boards of commissioners, applicants and the public.

The area of disagreement with the DRC report is the proposed the transfer of one of the core functions of the Department, geometric and traffic signal design, to the Bureau of

Engineering. The Design Division provides direct support to many other parts of the Department. Its removal from the Department would not serve the Department's mission or necessarily improve the permit process.

It appears this recommendation seeks to address the issue of timeliness of the review process. We have met with other departments to develop an alternative process, one that (1) increases accountability and compresses processing time, (2) **does** not cause severe impacts on other Department programs, (3) provides concurrent processing of permit applications, (4) establishes maximum review time limits for each agency, (5) provides for dispute resolution, and (6) tracks all processing milestones and provides information to all parties.

With our commitment and building on related improvements made to date by the Department, the goals of the DRC report are achievable. We are prepared to work cooperatively with the Mayor and City Council to refine and implement many of the recommendations contained in the DRC report in a timely manner.

RRY:jcv

ATTACHMENT E

DRC RECOMMENDATIONS SUMMARY MATRIX

SUMMARY OF DEVELOPMENT REFORM COMMITTEE RECOMMENDATIONS

NO.	Recommendation	Required Action(s)
Streamlining the Development Process		
Permit Phase		
S-1	Merge CISED and LDCC functions in the Building & Safety Department and designate personnel in this unit to be Project Service Managers responsible for coordinating permit application intake, routing and obtaining sign offs, or referring the application to a Planning Dept. Case Manager if the project requires special or discretionary review.	Mayor/Council budgetary and personnel actions.
S-2	Acquire software and equipment to support public computer terminals where customers can access fee information.	Mayor/Council budgetary action.
s-3	Develop a single counter which identifies, quantifies and collects permit fees for each affected department.	Executive Directive
s-4	Provide that Building & Safety checkers can issue "A" permits for public improvements.	Mayor/Council action.
Entitlement Phase		
s-s	Establish a Unified Discretionary Development Application Process (UDAP) which requires only one master application and provides contemporaneous processing of all required discretionary approvals and development agreement, if any.	Executive Directive.
S-6	Assign a Planning Department case manager to each application needing Planning Dept. review who shall be responsible for all necessary staff reports, coordinating resolution of inter-department disputes and advancing the application through the entire entitlement and environmental review process, including all public hearings.	Executive Directive.
i-7	Require the assigned case managers to provide applicant with a report delineating all necessary discretionary approvals and any conditions discernable at the time the application is submitted. Report should be made available to applicant at least 3 working days before a public hearing.	Mayor/Council action.

NO.	Recommendation	Required Action(s)	1
S-8	Direct Planning Department to complete for the Planning Commission's review, a strategic plan to update its Geographic Information System's (GIS) mapping systems and software, link main facilities to remote sites using Local Area Networks (LANs), and increase staff size and training. Department to report back to Planning Commission with recommendations.	Mayoral Executive Directive to initiate strategic plan.	
S-9	Allow recordation of a reciprocal access easement in lieu of a private street map approval for vehicular access across multiple lots within a retail or business center.	Mayor/Council action.	
S-10	Restrict the formation of a "related projects list" to a single list updated as of the date of the project application.	Planning Dept. to establish procedure and implement.	
S-11	Issue a single written determination within 15 calendar days of public hearing detailing all decisions made.	Mayor/Council action.	
S-12	Centralize CEQA administration in one department.	Mayor/Council budgetary and personnel actions	
S-13	Require all city departments to review submitted documents and provide technical information for the draft EIR, including traffic and transportation studies, within 60 days. Departments may still comment on the draft EIR during the circulation period.	Executive Directive.	
S-14	Develop a procedures manual for City contracted EIR preparers to facilitate completion of the environmental review process and rendering of proposed mitigation measures within one year or less, depending on complexity.	Executive Directive.	
S-15	Prepare and regularly update Program EIRs, including a Transportation Element, for community plans and implement "tiered" EIR review so that existing analyses and studies, including master, program, focused and staged EIRs can be utilized and built upon. Once an EIR traffic data base is established, require that proposed modifications be processed within 10 working days. Include a multi-modal mitigation and implementation program which identifies all available resources.	1. Executive Directive. 2. Mayor/Council budgetary action.	
S-16	Designate a single time frame for applicants and interested parties to file appeals to decisions made at the public hearing.	Mayor/Council action.	

No.	Recommendation	Required Action(s)
Construction Phase		
S-17	Consolidate Fire Dept. and Building & Safety plan checking and inspection functions for new construction.	Implementation in progress. Executive Directive to further implementation.
S-18	Allow licensed and bonded architects and engineers can self-terry plan checks for a class of "exempted" minor improvements, including [hose for single family homes.	Mayor/Council action.
s-19	Consolidare Dept. of Transporcarion geometric and signal design units and traffic engineering functions of the Bureau of Engineering.	Mayor/Council budgetary and personnel actions.
S-20	Vest Board of Building & Safely Commissioners with jurisdiction to hear appeals on srop work orders.	Implemented.
Other Recommendations		
s-21	Require departments of Planning, Building & Safety, Transportation and Fire to prepare a one-time report for their respective Commission which: (i) identifies all discretionary approvals, technical reports and srudies required by rhe department, (ii) in rendering decisions on applications, information the applicant is required to provide, rhe fees charged, the various steps, and department staff, and rime frames involved at each step, and (iii) makes recommendations to minimize discretionary acts.	Executive Directive.
S-22	Prepare a report for Planning Commission review which assesses oprimum scope of Zoning Administrator's authority and jurisdiction in light of revised land use system.	Executive Directive.
S-23	Direct Dept. of Public Works to prepare for the Board's review recommendations to streamline rhe street vacation process.	Executive Directive.
i-24	Establish performance standards for personnel involved in rhe development process, including customer evaluations, and peer, management, subordinate and reverse evaluation interviews.	Executive Directive.
i-25	Provide funding to increase level of staff and management training for development-related personnel, including customer service and skill development training.	Mayor/Council budgetary action.

No.	Recommendation	Required Action(s)
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S-26	Align department budgets to support recommendations and implementation of development reform.	Mayor/Council budgetary action.
S-21	Explore feasibility and benefits of an all-inclusive Development Department charged with responsibility of all development reviews and approvals.	Mayor/Council action to initiate study.
Making the Development Process More Predictable		
Permit Phase		
P-1	Require Project Service Managers to orchestrate and conduct a pre-entitlement phase project review conference where applicant obtains information and counseling on project requirements, necessary permits, approvals, fee estimates, etc., based upon proposed project.	Implementation in Progress. Executive Directive to further implementation.
P-2	Require Project Service Managers to provide applicants with a comprehensive checklist for needed items for each permit or approval.	Implementation in progress. Executive Directive to further implementation.
P-3	Require Case Managers to orchestrate and conduct a multi-departmental pre-construction conference prior to completion of plan check to finalize compliance and generate written report detailing any agreements or outstanding issues as a result of conference.	Mayoral Executive Directive to reinforce existing practice.
Entitlement Phase		
P-4	Require Case Managers to orchestrate and conduct a pre-entitlement phase project review conference for discretionary projects where applicant obtains information and counseling on project requirements, necessary approvals, hearings, fee estimates, etc. based upon proposed project.	Implementation in progress. Executive Directive to further implementation.
P-5	Adopt as City policy that all discretionary conditions, requirements, exactions and mitigation measures which will be required in light of the proposed project be identified as early in the entitlement process as possible, and discouraging the inclusion of any additional discretionary approvals once the entitlement process has ended.	Mayoral Executive Directive to reinforce existing practice.

No.	Recommendation	Required Action(s)
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P-6	Establish uniform public hearing procedures covering content of written notices, radius for mailed notices, time period for notice to be given, publication and posting requirements, and other administrative, as well as procedural details applicable to hearings and appeals for entitlement approvals.	Mayor/Council action.
P-7	Amend the Zoning Code to replace the Site Plan Review process with objective development standards and criteria.	1. Mayor/Council to designate task force to recommend objective standards and criteria. 2. Mayor/Council action.
P-8	Amend Specific Plans substituting objective development criteria and standards in place of discretionary project permits and design review procedures.	1. Mayor/Council to designate task force to recommend objective standards and criteria. 2. Mayor/Council action.
P-9	Amend Zoning Code to incorporate the desired development standards of all existing Interim Control Ordinances (ICOs) and moratoriums into the underlying zoning, and limit future and existing ICOs and moratoriums to a 1 year time limit, with 1 year extension.	Mayor/Council action.
P-10	Amend Zoning Code to eliminate requirement for Conditional Use Permits (CUPs) for certain categories of projects deemed to have minimal impact to public health and welfare.	1. Mayor/Council to designate task force to recommend eligible project categories. 2. Mayor/Council action.
P-11	Establish procedures to contract out the preparation of EIRs.	Executive Directive.
P-12	Direct Dept. of Transportation to commission a study recommending a regionally accepted and standardized methodology for transportation and traffic studies to achieve uniform policies and procedures and changes which will achieve better coordination between city departments and the MTA, and exploring the feasibility of housing all transportation planning and policy functions in a single department.	1. Executive Directive. 2. Mayor/Council budgetary action.

No.	Recommendation	Required Action(s)
P-13	Implement the Land Use/Transportation Policy prepared by the City and MTA and adopted by Council (11/2/93 (CF 93-0478) to guide land use circulation patterns around transit station areas, and increase density for commercial and residential uses at or near transit stations and along MTA corridors consistent with current joint planning efforts between the City and MTA.	Mayor/Council action,
P-14	Expedite the updates of community and district plans, including incorporation of specific plans, to reflect current development patterns, ensure consistency between planning and zoning, and guide development for at least the next 10 years. Explore feasibility of utilizing revenues from Building & Safety to update general plan in lieu of imposing a special fee,	Executive Directive.
Construction Phase		
P-15	Amend Zoning Code to provide "grandfather" protection to applicants against subsequent legislative changes once construction phase commences.	Mayor/Council action
P-16	Require an economic impact report and public hearing before the Building & Safety Commission prior to referral to Council on proposed new building and safety regulations or ordinances.	Mayor/Council action.
P-17	Subject to state and federal law, amend Building Code to prohibit (unless a compelling case can be made for an order to comply) imposition of new or modified building requirements once physical construction has commenced which differ from those approved during the plan checking process. Provide that exceptions require written justification, supervisory approval, and any appeal heard and acted upon within 3 days by senior management.	Executive Directive or Mayor/Council action.
Other Recommendations		
P-18	Prepare a user friendly handbook or series of handbooks which guides applicants through the City's permit and development process, including CUPs, zoning changes, appeals, environmental reviews, fire and life-safety plan review, updated CEQA guidelines, and rules and procedures pertaining to the public hearing process.	1. Executive Directive. 2. Mayor/Council budgetary action.

No.	Recommendation	Required Action(s)
P-19	Conduct a management audit which recommends department management structures to implement development reform, including (i) the optimal level of discretion to be afforded department employees in issuing permits, conducting inspections, and the like; (ii) optimal time frames in rendering various approvals, plan checks, etc.; (iii) permitting procedures; (iv) the conformance of department procedures and policies with Federal and State law; and (v) any other items deemed relevant to improving development procedures.	Mayor/Council budgetary action.
P-20	Direct Dept. of Rec. & Parks to prepare report for Commission's review which analyzes how Quimby fees and other park and recreation fees are used and how they can be reduced given the rate at which the fees are committed.	Executive Directive.
P-21	Complete implementation plan for the General Plan Transportation Element which lists all related transportation infrastructure improvements identified at the corridor level citywide.	Executive Directive.
Making the Development Process Less Costly		
D-1	Eliminate Building & Safety's mechanical and electrical testing laboratories and "new products" division.	Mayor/Council budgetary and personnel action.
D-2	Eliminate special processing fees for dedicated staff or special development processing services.	Mayor/Council action.
D-3	Provide that the appropriate Commission review all fees imposed on an applicant for reasonableness, necessity, nexus, correlation to project impacts and mitigation measures, and adopt findings in support of the total fees charged.	Mayor/Council action.
D-4	Provide that new development only pays its fair share of exaction costs intended to benefit the immediately surrounding community as a whole; prohibit imposition of fees beyond project's impact.	Mayor/Council action.
D-5	Require that development fees and exactions must be utilized for the purpose for which they are imposed within a specified time frame or refunded to the applicant, with interest accrued thereon, and that interest accrued on fees collected should accrue to the fee trust fund, not the General Fund.	Mayor/Council action to reinforce State law.

No.	Recommendation	Required Action(s)
C-6	Review the Capital Improvement Program in relation to the General Plan Infrastructure Element and adopt as City policy that all existing and possible alternative public financing mechanisms for infrastructure improvements be first pursued and establish long-term financing mechanisms to fund such infrastructure such as federal and state funding strategies, special taxes, assessment districts and other long-term financing mechanisms.	Council Resolution.
C-7	Establish caps on the total amount of development and processing fees to be imposed on development projects based upon project type and proportionality analysis.	Mayor/Council action.
C-8	Base fees for appeal of discretionary development approvals on the actual cost of processing appeal, and reduce said fee by 50% when interested parties have obtained signatures of at least 15 persons in favor of the project who reside or own property within 300 feet of the proposed project. Refund unexpended fee to appellant. Repeal nominal fees charged to interested parties.	Mayor/Council action.
C-9	Defer development fees and exactions to the latest possible date in order to reduce applicant's front-end equity requirements.	Mayor/Council action.
C-10	Eliminate requirement that applicants be liable for housing linkage fees which have not yet been adopted, and eliminate adopted housing linkage fees on all development except where specific findings are made that such fees are warranted due to direct project impacts.	Mayor/Council action.
C-11	Clarify that the Arrs Development Fee is applicable to new construction only. Prohibit imposition of said fee on manufacturing and industrial building uses, remodelings, tenant improvements, etc.	Mayor/Council action.
C-12	Waive or reduce fees for certain categories of projects providing a qualified public benefit, i.e. affordable and senior housing, job-housing balance, public institution, job creation, etc.	1. Mayor/Council to designate task force to recommend eligible project categories. 2. Mayor/Council action.
c-13	Institute a permanent waiver of permitting/building fees in event of a disaster for rebuild activity within economically impacted areas.	Mayor/Council action.

Attachment D

248 Cal.App.4th 410
Court of Appeal, First District, Division 1, California.

STEWART ENTERPRISES, INC., et al.,
Plaintiffs and Respondents,
v.
CITY OF OAKLAND et al., Defendants
and Appellants.

A143417
|
Filed June 23, 2016

Synopsis

Background: Landowner which had obtained building permit to construct crematorium brought action for administrative mandamus after city passed emergency ordinance requiring a conditional use permit to operate new crematoria. The Superior Court, Alameda County, No. RG12646176, [Evelio Grillo, J.](#), granted petition, and city appealed.

Holdings: The Court of Appeal, [Humes, P.J.](#), held that:

[1] landowner had vested right to construct crematorium pursuant to building permit;

[2] application of emergency ordinance requiring a conditional use permit “prohibited” landowner’s crematorium project within meaning of city permit-vesting ordinance;

[3] court used correct standards of review in evaluating whether emergency ordinance was sufficiently necessary to the public welfare to justify the impairment of landowner’s vested right; and

[4] evidence did not establish a sufficient threat to the public welfare justifying impairment of landowner’s vested right.

Affirmed.

West Headnotes (10)

[1] **Administrative Law and Procedure** — Evidence; questions of law or fact
Constitutional Law — Retrospective laws and decisions; change in law
Statutes — Language and Intent; Express Provisions

Governmental agencies may generally apply new laws retroactively where such an intent is apparent; retrospective application may be unconstitutional, however, if it deprives a person of a vested right without due process of law. [U.S. Const. Amend. 14.](#)

[2] **Zoning and Planning** — Permits, certificates, and approvals in general

Whether landowner had a vested right under city permit-vesting ordinance was a question of statutory interpretation reviewed de novo.

[3] **Zoning and Planning** — Vested or property rights

Under the judicial vested-rights doctrine, a party acquires a vested right in a building permit if the party has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government.

[1 Cases that cite this headnote](#)

[4] **Zoning and Planning** — Change of regulations as affecting right

Under city permit-vesting ordinance, which shielded the holder of a lawfully issued building

permit from having to comply with any subsequently adopted zoning regulations if such regulations would “prohibit the construction authorized by said permit,” landowner had vested right to construct crematorium pursuant to building permit, even if subsequent emergency ordinance requiring a conditional use permit was lawfully passed and the city council intended it to override the permit-vesting ordinance.

1 Cases that cite this headnote

[5] **Zoning and Planning** ➡ Change of regulations as affecting right

Determination as to whether landowner had a vested right in building permit under ordinance is not made by looking at the effect of the city’s subsequent enactments but is made as of the time landowner obtained the permit.

1 Cases that cite this headnote

[6] **Zoning and Planning** ➡ Change of regulations as affecting right

Application of emergency ordinance requiring a conditional use permit to operate new crematoria “prohibited” landowner’s crematorium project, for which landowner had acquired building permit, within meaning of city permit-vesting ordinance which shielded the holder of a lawfully issued building permit from having to comply with any subsequently adopted zoning regulations if such regulations would “prohibit the construction authorized by said permit,” as, once the emergency ordinance was applied to the project, landowner was no longer allowed to build the crematorium because it did not have a conditional use permit, even if the possibility existed that landowner could acquire a conditional use permit.

[7] **Zoning and Planning** ➡ Permits, certificates, and approvals in general

Trial court used correct standards of review in evaluating whether city’s emergency ordinance requiring a conditional use permit to operate new crematoria was sufficiently necessary to the public welfare to justify the impairment of landowner’s vested right under building permit to construct crematorium; court first determined that the emergency ordinance’s impairment was not justified unless the ordinance involved an extraordinary exercise of police power required to address a menace to public health and safety or a public nuisance, as opposed to ordinary police power, court then concluded, without reweighing the evidence, that there was no evidence in the record of any threat to the public welfare and that evidence was insufficient to justify the impairment of the vested right. [Cal. Civ. Proc. Code § 1094.5](#).

[8] **Administrative Law and Procedure** ➡ De novo review; plenary, free, or independent review

Administrative Law and Procedure ➡ Review using standard applied below

Generally, whether an agency has proceeded lawfully is a legal question that the trial court and appellate court both review de novo. [Cal. Civ. Proc. Code § 1094.5\(b\)](#).

2 Cases that cite this headnote

[9] **Zoning and Planning** ➡ Change of regulations as affecting right

Evidence did not establish a sufficient threat to the public welfare justifying impairment of landowner’s vested right to construct crematorium pursuant to building permit; while there were concerns about what impacts the crematorium might have on the public and local businesses, there was no evidence that proposed

crematorium in particular, which was approved by local air quality management district, posed a danger to public health, nor was there evidence of any actual economic threat to neighboring businesses.

[10] Zoning and Planning ➡ Vested or property rights

The vested rights doctrine in the land use context is subject to the qualification that such a vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance.

8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 1005 et seq.

administratively appealed a determination that the emergency ordinance applied to its proposed crematorium, but Oakland's planning commission (Planning Commission) denied the appeal. Stewart then brought this action, which included administrative mandamus claims, against the City of Oakland, the City Council, and the Planning Commission (collectively, the City).

The trial court granted one of Stewart's claims petitioning for writ of administrative mandamus, ruling that Stewart had a vested right in the building permit based on a preexisting local ordinance and that the emergency ordinance was not sufficiently necessary to the public welfare to justify an impairment of that right. On appeal, the City argues that (1) Stewart had no vested right; (2) even if Stewart had a vested right, it was not impaired; and (3) even if Stewart had a vested right that was impaired, the impairment was supported by substantial evidence. We are not persuaded by these arguments and affirm.¹

I.

****679** Alameda County Superior Court, Honorable Evelio Grillo, (Super. Ct. No. RG12646176).

Attorneys and Law Firms

Counsel for Appellants: Burke, Williams & Sorensen, [Kevin D. Siegel](#), Oakland, [Barbara J. Parker](#), City Attorney, [Heather B. Lee](#), Deputy City Attorney.

Counsel for Respondents: Wendel, Rosen, Black & Dean, [Les A. Hausrath](#) and [Todd A. Williams](#), Oakland.

Opinion

[HUMES](#), P.J.

***412** In May 2012, Stewart Enterprises, Inc., and SE Combined Services of California, Inc. (collectively, Stewart), obtained a building permit to construct a crematorium on a site in East Oakland. Five days later, the Oakland City Council (City Council) passed an emergency ordinance requiring a conditional use permit (CUP) to operate new crematoria. Stewart ***413**

Factual and Procedural Background

In 2011, Stewart began the process of obtaining approval to operate a crematorium at 9850 Kitty Lane in East Oakland. The Kitty Lane property was in an area zoned as "Commercial Industrial Mix 2" (CIX-2).² A CUP was required for "extensive ****680** impact" civic activities in the CIX-2 zone, but "general manufacturing" was permitted so long as it was not within 300 feet of a residential zone. (Oakland Mun. Code, §§ 17.10.240, 17.10.570, some capitalization omitted.) At the time, Oakland Municipal Code (OMC) section 17.10.240B defined extensive impact civic activities to include "[c]emeteries, mausoleums, and columbariums," but the category did not expressly include crematoria.

Stewart obtained a zoning clearance after City staff determined that the proposed crematorium was a permissible general manufacturing use in the CIX-2 zone. In November 2011, BAAQMD granted Stewart authority to construct the crematorium. In its risk assessment, BAAQMD deemed the ***414** health "risk levels ... acceptable" and recommended that Stewart follow certain

measures to avoid triggering more stringent requirements, including limiting cremations to 3,000 bodies annually.

Stewart purchased the Kitty Lane property in January 2012 and took additional steps toward opening a crematorium, representing a total investment of about \$ 2 million. On May 10, 2012, Stewart obtained a building permit to make structural improvements and install a crematorium. At the time the permit was issued, OMC former section 17.102.040(A) (the permit-vesting ordinance) provided in relevant part, “Whenever any subsisting building permit ... has been lawfully issued beforehand, ... neither the original adoption of the zoning regulations nor the adoption of any subsequent rezoning or other amendment thereto shall prohibit the construction, other development or change, or use authorized by said permit[.]”³

Meanwhile, Stewart’s plan to operate a crematorium had raised concerns in the surrounding community, and these concerns were brought to the attention of the City Council president. In early May 2012, a draft “interim ordinance” was filed that required a CUP for new crematorium activity. On May 15, after the draft ordinance was revised to become an “emergency ordinance,” the City Council held a public hearing to consider its adoption. At the hearing, community members and representatives from an environmental organization expressed concern about the crematorium’s potential negative impact on public health and business development in East Oakland. They supported a CUP requirement to permit the public to obtain additional information and to have further input before the crematorium was built.

Written materials were also presented for the City Council’s consideration. The Alameda County Public Health Department (PHD) submitted a letter expressing its support for a CUP requirement. The PHD noted both the “potential health impacts” of crematoria generally and its “understand[ing]” that the planned crematorium in particular would “emit a range of pollutants,” citing a report prepared by BAAQMD before it cleared Stewart to build. After pointing to the high rates of [asthma](#) in East Oakland, the PHD concluded, “Given the existing disproportionate burden of disease, a public process is necessary to protect community health.” In ****681** addition, a petition signed by dozens of community members “ask[ed] that the City of Oakland refuse to rubber-stamp the application for a crematorium ... at 9850 Kitty Lane” so that they could first be provided with “a full explanation of the environmental and health impacts a crematorium would have ... and an opportunity for [their] concerns to be heard and addressed.”

***415** At the hearing’s conclusion, the City Council adopted the emergency ordinance. Under section 3 of the emergency ordinance, “[c]rematoriums or existing crematoria uses expanded shall only be permitted upon the granting of a major conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 of the Planning Code.” Under section 4, “[n]o building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not yet vested pursuant to the provisions of State law shall proceed without complying with this ordinance.”⁴ As required for emergency ordinances under Oakland City Charter section 213, the ordinance contained a recital that it was “necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community,” based on its other recitals that (1) “crematoria emit particulate matter and other toxic pollutants” and “the possibility of trucking many thousands of bodies into Oakland from the Bay Area and beyond would add to those emissions, increase traffic congestion, and tax Oakland’s infrastructure”; (2) “the Airport Area Gateway is a recently revitalized corridor, [and] a regional cremation center [could] displace retail activities and compromise the economic opportunities of the Airport Area Gateway plan”; and (3) “[a] [r]egional cremation center in Oakland would impact the total environment of our neighborhoods and backslide efforts to address the cumulative impacts of environmental inequalities in less than fortunate areas of Oakland.”

The day after the City Council hearing, the Oakland Planning and Zoning Director sent Stewart a letter informing it that the emergency ordinance applied to crematorium activity at the Kitty Lane property. The letter told Stewart that “[a]s a result, [it could] not proceed with any development or establishment of a Crematorium in reliance on the building permit or otherwise” without first obtaining a CUP. Stewart appealed this determination to the Planning Commission.

In August 2012, the Planning Commission held a public hearing on Stewart’s appeal. At the hearing, several community members again voiced concerns about the impact on public health and businesses, and they reiterated their position that a CUP requirement was necessary to allow for adequate public input before the crematorium was built. In addition, community members submitted hundreds of form letters asking the Planning Commission to deny the appeal based on similar concerns. The Planning Commission also heard from a local business association, which advocated for a CUP based on the public’s need to participate in the process and obtain “critical information about the facility,

including the effects it may have on the environment, ***416** public health, and the local economy.” In addition, the PHD submitted a letter that was substantially the same as the one it had previously submitted to the City Council. The Planning Commission ****682** denied Stewart’s appeal by a vote of three to two.

Stewart then brought this lawsuit, alleging 11 causes of action. Among them were two causes of action petitioning for administrative mandamus on the grounds that the Planning Commission’s application of the emergency ordinance impaired a vested right of Stewart’s under either the permit-vesting ordinance or state law, and four causes of action petitioning for traditional mandamus to set aside the emergency ordinance based on various theories of its invalidity. The trial court sustained the City’s demurrer to the cause of action alleging that Stewart had a vested right under state law, as well as to some of the other non-mandamus claims that are not relevant to this appeal. The parties agreed to litigate the five remaining mandamus claims and postpone consideration of the other surviving causes of action.

In August 2013, after the parties briefed the mandamus claims and a hearing was held, the trial court granted Stewart’s claim petitioning for a writ of administrative mandamus based on a vested right under the permit-vesting ordinance. The court determined that the permit-vesting ordinance conferred a vested right on Stewart, that this right was impaired by the application of the emergency ordinance to Stewart’s project, and that the City had failed to identify sufficient evidence of “an urgent threat to the public welfare justifying the abrogation of vested rights.” Stewart was therefore entitled to a writ compelling the Planning Commission to vacate its denial of Stewart’s administrative appeal and “to enter an order sustaining the appeal and concluding that, under [the permit-vesting ordinance], Stewart’s previously issued building permit [was] not subject to the [emergency ordinance].” The court denied the traditional mandamus claims without prejudice, finding their resolution unnecessary “[b]ecause the writ of administrative mandamus [would] afford Stewart the relief it seeks.” Over a year later, after Stewart eventually dismissed the remaining unresolved claims, the court entered judgment and the writ was issued.

II.

Discussion

In its claim petitioning for administrative mandamus based on the permit-vesting ordinance, Stewart sought to overturn the Planning Commission’s decision to apply the emergency ordinance to the proposed crematorium as a “prejudicial abuse of discretion” under ***417** Code of Civil Procedure section 1094.5, subdivision (b).⁵ “Abuse of discretion is established if the [agency] has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (§ 1094.5, subd. (b).) Among other arguments, Stewart contended that the application of the emergency ordinance was an abuse of discretion because it violated Stewart’s vested right under the permit-vesting ordinance.

^[1]“Governmental agencies may generally apply new laws retroactively where such an intent is apparent. [Citation.] Retrospective application may be unconstitutional, however, if it deprives a person of a vested right without due process of law.” (*Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 646, 56 Cal.Rptr.2d 617 (*Davidson*).) *Davidson* is the primary decision guiding our analysis, as it is factually similar and provides a framework for determining whether a new enactment may constitutionally deprive a party of a vested right conferred by a local ordinance.

In *Davidson, supra*, 49 Cal.App.4th 639, 56 Cal.Rptr.2d 617, a county zoning ordinance ****683** provided that any permit application needed to comply with only the zoning regulations “ ‘that were in effect on the date that application was filed.’ ” (*Id.* at pp. 642–643, 56 Cal.Rptr.2d 617.) The plaintiff filed an application to build a crematorium at a time when doing so “required only site plan approval and a building permit.” (*Id.* at p. 643, 56 Cal.Rptr.2d 617.) About two weeks later, the county board of supervisors “enacted a provision requiring a major use permit for a crematorium” in the applicable zone and “refused to process [the plaintiff’s] permit application until he applied for and received a major use permit.” (*Id.* at pp. 643–644, 56 Cal.Rptr.2d 617.) The Court of Appeal held that the earlier ordinance conferred on the plaintiff a “vested right to have [his] building permit application reviewed and considered in light of the regulations existing on the date of the application.” (*Id.* at p. 648, 56 Cal.Rptr.2d 617.) The county could constitutionally impair that right if “the new regulations imposed ... on [the plaintiff’s] project were ‘ ‘sufficiently necessary to the public welfare as to justify the impairment,’ ” ’ ” however, and the case was remanded for the trial court to consider that issue. (*Id.* at pp. 649–650, 56 Cal.Rptr.2d 617.)

Consistent with *Davidson, supra*, 49 Cal.App.4th 639, 56 Cal.Rptr.2d 617, we must resolve three issues here: (1) whether Stewart had a vested right in the building permit under the permit-vesting ordinance; (2) if so, whether the emergency ordinance impaired that right; and (3) if there was a vested right that was impaired, whether the impairment was justified because it was sufficiently necessary to the public welfare.

***418 A. Stewart Had a Vested Right in the Building Permit Under the Permit-vesting Ordinance.**

The City first argues that the requirement of a CUP for new crematoria imposed by the emergency ordinance trumped any right the permit-vesting ordinance may have otherwise conveyed. We disagree.

^[2] ^[3]Whether Stewart had a vested right under the permit-vesting ordinance is a question of statutory interpretation we review de novo. (*T & A Drolapas & Sons, LP v. San Francisco Residential Rent Stabilization & Arbitration Bd.* (2015) 238 Cal.App.4th 646, 651, 189 Cal.Rptr.3d 361; *Cassidy v. California Bd. of Accountancy* (2013) 220 Cal.App.4th 620, 627, 163 Cal.Rptr.3d 346.) We therefore turn to the applicable law. As *Davidson, supra*, 49 Cal.App.4th 639, 56 Cal.Rptr.2d 617 explains, there are various bases for finding a vested right. First, under the judicial vested-rights doctrine, a party acquires a vested right in a building permit if the party “has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government.” (*Id.* at p. 646, 56 Cal.Rptr.2d 617, quoting *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791, 132 Cal.Rptr. 386, 553 P.2d 546.) Second, certain state statutes confer vested rights based on development agreements and vesting tentative maps. (*Davidson*, at pp. 646–647, 56 Cal.Rptr.2d 617.) Finally, “[l]ocal ordinances may ... confer vested rights earlier than available under the judicial doctrine.” (*Id.* at p. 647, 56 Cal.Rptr.2d 617.) As Stewart essentially concedes, the permit-vesting ordinance provides the only potential basis for finding a vested right here.

^[4] ^[5]The City relies on various canons of statutory interpretation and cases supporting its general authority to impose a CUP requirement and override preexisting legislation through an emergency ordinance in arguing that the emergency ordinance here “controls” over the permit-vesting ****684** ordinance. These arguments are misdirected. The determination whether Stewart had a vested right in the building permit “is not made by

looking at the effect of the [City’s] subsequent enactments but is made as of the time” Stewart obtained the permit. (*Davidson, supra*, 49 Cal.App.4th at pp. 647–648, 56 Cal.Rptr.2d 617.) And under its plain terms, the permit-vesting ordinance conveyed a vested right because it shielded the holder of a lawfully issued building permit from having to comply with any subsequently adopted zoning regulations if such regulations would “prohibit the construction ... authorized by said permit.” (See *id.* at p. 648, 56 Cal.Rptr.2d 617 [“clear language” of ordinance “show[ed] it was intended to confer the vested right to have a building permit application reviewed and considered in light of the regulations existing on the date of the application”].) Even if we assume, as the City argues, that the emergency ordinance was lawfully passed and the City Council intended it to override the permit-vesting ordinance, the City offers no argument as to why the permit-vesting ordinance failed to ***419** confer a vested right on Stewart when Stewart obtained the building permit. We agree with Stewart that, based on the permit-vesting ordinance, it had a vested right to construct the crematorium as authorized by the permit.

B. The Emergency Ordinance’s Application to the Proposed Crematorium Impaired Stewart’s Vested Right.

The City next claims that even if Stewart had a vested right in the building permit, the application of the emergency ordinance to the project did not impair that right because requiring a CUP did not amount to “prohibiting” the crematorium’s construction. We are not persuaded.

We review de novo the meaning of the permit-vesting ordinance. (*T & A Drolapas & Sons, LP v. San Francisco Residential Rent Stabilization & Arbitration Bd.*, *supra*, 238 Cal.App.4th at p. 651, 189 Cal.Rptr.3d 361; *Cassidy v. California Bd. of Accountancy*, *supra*, 220 Cal.App.4th at p. 627, 163 Cal.Rptr.3d 346.) In doing so, “we use the same rules applicable to statutes.” (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1183–1184, 78 Cal.Rptr.3d 572.) Under those rules, “[o]ur fundamental task ... is to determine the [legislative] intent so as to effectuate the [ordinance’s] purpose.” (*Ailanto Properties, Inc. v. City of Half Moon Bay* (2006) 142 Cal.App.4th 572, 582, 48 Cal.Rptr.3d 340.) We begin by “examin[ing] the statutory language, giving it a plain and commonsense meaning.... If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd, [unintended] consequences[.]” (*Ibid.*)

¹⁶¹The City argues that the application of the emergency ordinance to Stewart's project impaired no vested right conferred by the permit-vesting ordinance because the latter ordinance only "proscribed the application of legislation to 'prohibit' a project, whereas the [emergency ordinance] imposed [a] CUP requirement." Reasoning that the emergency ordinance merely "require[d] further discretionary review" instead of outright "prohibiting" the construction of a crematorium, the City concludes that the permit-vesting ordinance was "inapplicable." The trial court rejected this position, stating, "To impose a condition on a building permit is to prohibit the project until the property owner satisfies the condition. If the condition were one that the property owner could unquestionably satisfy by unilateral action, without requiring the public entity's discretionary approval, the analysis might differ. Here, however, an application for a CUP can be denied. Such a denial would ****685** plainly 'prohibit' Stewart from completing 'the construction ... or use authorized by [the] permit.' "

We agree with the trial court's reasoning. To "prohibit" is defined as "[t]o forbid by law" or "[t]o prevent or hinder." (Black's Law Dict. (8th ed. ***420** 2004) p. 1248, col. 1.) Under either definition, the emergency ordinance "prohibited" the construction of a crematorium as authorized by Stewart's building permit. Once the emergency ordinance was applied to the project, Stewart was no longer allowed to build the crematorium because it did not have a CUP. The possibility that Stewart could regain the right to build the crematorium if it applied for and was granted a CUP does not change this fact: a project can be "prohibited" even if the fulfillment of certain contingencies might at some later date reauthorize it. Therefore, we conclude that the application of the emergency ordinance impaired Stewart's vested right under the permit-vesting ordinance to build the crematorium.

C. The Record Lacks Evidence that the Impairment of Stewart's Vested Right Was Sufficiently Necessary to the Public Welfare.

Finally, the City contends that the impairment of Stewart's vested right by the emergency ordinance was justified because the impairment was sufficiently necessary to the public welfare. Again, we disagree.

1. The trial court's standards of review.

¹⁷¹The City first argues that the trial court used incorrect standards of review in evaluating whether the emergency ordinance was sufficiently necessary to the public welfare to justify the impairment of Stewart's vested right. We conclude otherwise.

The trial court reasoned that the question " 'whether the new regulation[] imposed ... on [the vested right-holder]'s project [was] " ' "sufficiently necessary to the public welfare as to justify the impairment" ' " ['] " was "one of law that a court reviews de novo, as it essentially involves an evaluation in light of due process principles of the justification for a legislative enactment." (Quoting *Davidson, supra*, 49 Cal.App.4th at p. 649, 56 Cal.Rptr.2d 617.) To resolve that question, the court also considered "whether evidence in the record support[ed] a finding that the [emergency ordinance] was necessary to address 'a menace to the public health and safety or a public nuisance' " and concluded that the City had not identified any evidence of "an actual threat to public health and safety." (Quoting *Davidson*, at p. 649, 56 Cal.Rptr.2d 617.) This approach was entirely proper.

¹⁸¹As we previously mentioned, an abuse of discretion under [section 1094.5](#) exists if an agency "has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (§ 1094.5, subd. (b).) Generally, whether an agency has proceeded lawfully is a legal question that the trial court and appellate court both review de novo. (***421** *Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166, 1173–1174, 92 Cal.Rptr.2d 257.) We agree with the trial court that the particular issue here—whether the emergency ordinance was sufficiently necessary to the public welfare to justify the impairment of a vested right—is a question of law and thus subject to de novo review. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1128–1130, 61 Cal.Rptr.2d 207 [discussing standard of review applicable to issue whether the impairment of vested contractual right was constitutional].)

"However, this does not mean that ... de novo review [applies] to all factual findings ****686** underlying" the asserted justification for the impairment of Stewart's vested right. (*Board of Administration v. Wilson, supra*, 52 Cal.App.4th at pp. 1129–1130, 61 Cal.Rptr.2d 207.) To the extent the Planning Commission's decision rested on a determination of historical facts involving the crematorium's potential impact on the public welfare, a separate standard of review also applied. (See § 1094.5, subd. (c); see also *Wilson*, at pp. 1129–1130, 61

Cal.Rptr.2d 207.) We will assume, without deciding, that the City is correct that the trial court was required to apply the substantial-evidence standard in reviewing the Planning Commission's factual findings, as opposed to the less deferential "independent judgment" standard that sometimes applies under [section 1094.5](#). ([§ 1094.5, subd. \(c\)](#); see *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816, fn. 8, 85 Cal.Rptr.2d 696, 977 P.2d 693.)⁶

The trial court's approach was consistent with these standards. First, the trial court determined that the emergency ordinance's impairment of Stewart's vested right was not justified unless the ordinance "involve[d] an extraordinary exercise of [the City's] police power required to address 'a menace to the public health and safety or a public nuisance,' as opposed to an 'ordinary police power regulation[]' of the sort to which a vested right is 'immune.' " (Quoting *Davidson, supra*, 49 Cal.App.4th at p. 649, 56 Cal.Rptr.2d 617.) Then, it concluded that there was no evidence in the record of any threat to the public welfare that was serious enough to satisfy this legal standard. In doing so, the court did not reweigh the evidence, specifically noting that it was not applying the independent judgment standard of review. Instead, it concluded that the evidence revealed merely "[a] desire for transparency and public participation" and "speculation that [the] project might conceivably affect public health" that together were, as a matter of law, insufficient to justify the impairment of Stewart's vested right.

***422** In contending that the trial court applied the wrong standards of review, the City incorrectly assumes that the question whether an impairment of Stewart's vested right was justified is a factual issue and equates the de novo standard of review applicable to questions of law with the independent judgment standard under [section 1094.5, subdivision \(c\)](#) that is sometimes applicable to an agency's factual findings. But as explained above, the issue whether the impairment was justified was ultimately a legal issue the court correctly reviewed de novo, and the court made clear it was not applying the independent judgment standard to any factual issues. The City therefore fails to convince us that the court's approach was erroneous.

2. The record lacks evidence of any sufficiently adverse impact on the public welfare to justify the impairment of Stewart's vested right.

¹⁹The City next argues that "substantial evidence of negative impacts to the environment, public health[,] and businesses" justified the impairment of Stewart's vested right. It relies on numerous items, including the PHD letters, statements made at both hearings, the public's letters and petitions, and concerns expressed by local businesses. As did the trial court, we conclude that none of this evidence establishes a sufficient threat to the public welfare.

****687** The City relies on a number of cases that "upheld local agency land use decisions based on liberal and broad interpretations of what constitutes substantial evidence of impacts to public welfare." For example, *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842 affirmed a county's denial of an application for a permit to build an addition to a single-family home. (*Id.* at p. 332, 25 Cal.Rptr.2d 842.) Observing that "the concept of public welfare encompasses a broad range of factors, including aesthetic values as well as monetary and physical ones, and that a concern for aesthetics and 'character' is a legitimate governmental objective," the court held that neighbors' concerns about "traffic, parking, safety, noise and nuisance problems" was sufficient evidence to support the county's finding that the addition would threaten the public welfare. (*Id.* at pp. 337–338, 25 Cal.Rptr.2d 842.) Similarly, *Harris v. City of Costa Mesa* (1994) 25 Cal.App.4th 963, 31 Cal.Rptr.2d 1 held that there was substantial evidence to justify the denial of a CUP to build a second unit for a residence where neighbors objected that the unit would invade their privacy and was incompatible with the neighborhood's character. (*Id.* at pp. 965–966, 973–974, 31 Cal.Rptr.2d 1.)

¹¹⁰We agree with the City that, as a general principle, "the public welfare" is an expansive concept. None of the cases the City cites, however, involved the impairment of a vested right. Where the issue is whether such impairment is sufficiently necessary to be constitutional, it is not enough to ***423** identify evidence of an impact on some aspect, no matter how minor, of the public welfare. As *Davidson* explained, "The vested rights doctrine in the land use context 'is subject ... to the qualification that such a vested right, while immune from divestment through ordinary police power regulations, may be impaired or revoked if the use authorized or conducted thereunder constitutes a menace to the public health and safety or a public nuisance.' " (*Davidson, supra*, 49 Cal.App.4th at p. 649, 56 Cal.Rptr.2d 617, some italics omitted.) Thus, "[t]he usual exercises of police power in the land use context"—akin to those at issue in *Harris v. City of Costa Mesa, supra*, 25 Cal.App.4th 963, 31 Cal.Rptr.2d 1, *Desmond v. County of Contra Costa*,

supra, 21 Cal.App.4th 330, 25 Cal.Rptr.2d 842, and cases like them—do not justify the impairment of a vested right because they “are not directly related to danger or potential danger to the health and safety of the public.” (*Davidson*, at pp. 649–650, 56 Cal.Rptr.2d 617.) Although such regulations are arguably justified by the public welfare in its broader sense, *Davidson* establishes that only regulations “reasonably necessary to prevent ... a danger or nuisance to the public” justify the impairment of a vested right. (*Id.* at p. 650, 56 Cal.Rptr.2d 617.)

The City reads *Davidson* differently, contending that although that decision “cited a case which had suggested the relevant inquiry was whether impairment of a vested right was necessary to prevent ‘a menace to the public health and safety or a public nuisance,’ ” it “did not apply this heightened ‘menace’ standard” but instead applied the “ ‘sufficiently necessary to the public welfare’ ” standard. (Quoting *Davidson*, *supra*, 49 Cal.App.4th at p. 649, 56 Cal.Rptr.2d 617.) We disagree with the City’s interpretation of *Davidson*. As discussed above, *Davidson* clearly distinguished between more pedestrian public-welfare concerns that justify normal regulations and the threats to the public safety or health required to justify the impairment of vested rights. *Davidson*’s language about danger to the public health or safety does not establish a separate standard but is rather an explanation of what “sufficiently necessary to the public welfare” means in this context. Consistent **688 with *Davidson*, the trial court determined that the evidence of the public’s “desire for transparency and ... participation” “would easily afford a rational basis for an ordinance applicable to proposed projects” if no vested right were implicated, but it did not constitute “actual evidence” of an effect on the public health or any other sufficiently serious impact on the public welfare necessary to impair a vested right.

We agree with the trial court’s assessment of the record. The vast majority of the evidence the City cites establishes there were concerns about what impacts the crematorium *might* have on the public and local businesses. Indeed, in advocating for a CUP requirement many community members explicitly relied on their

desire to get more information about the crematorium before it was built. But although the record is full of statements about which chemicals crematoria in general can emit and the public-health *424 problems, particularly *asthma*, that East Oakland residents face, there is no evidence that Stewart’s crematorium in particular posed a danger to public health. If anything, the BAAQMD risk assessment and approval of construction strongly suggest otherwise. Similarly, even if we assume that a threat to an area’s businesses might otherwise justify the impairment of a vested right, the record reveals concerns that the crematorium might negatively impact businesses in the area but fails to disclose evidence of any actual economic threat. Therefore, we conclude there was insufficient evidence of a danger or nuisance to the public that justified the City’s application of the emergency ordinance to Stewart’s project.

III.

Disposition

The judgment is affirmed. Respondents are awarded their costs on appeal.

Margulies, J., and *Dondero*, J., concurred.

All Citations

248 Cal.App.4th 410, 203 Cal.Rptr.3d 677, 16 Cal. Daily Op. Serv. 6626, 2016 Daily Journal D.A.R. 6229

Footnotes

- 1 As a result, we need not consider Stewart’s alternative arguments for affirming the judgment, including its contention that the emergency ordinance, by its own terms, exempts rights that vest under a local ordinance.
- 2 In its brief, Stewart cites various documents that the trial court did not have before it when ruling: staff reports that accompanied ordinances involving the CIX-2 zone, which the court declined to take judicial notice of, emails between City Council members’ staff and others, which the court declined to augment the administrative record with, and a mission statement of the Bay Area Air Quality Management District (BAAQMD), which was never submitted for the court’s consideration below. Because these documents are unnecessary to our disposition, we need not address Stewart’s arguments that we may properly consider them.

- 3 OMC section 17.102.040 was repealed in 2013. (Oakland Ord. No. 13172, § 3.)
- 4 In 2014, the City Council adopted permanent regulations for crematoria, including them in the same category of “extensive impact civic activities” as cemeteries, mausoleums, and columbaria.
- 5 All further statutory references are to the Code of Civil Procedure.
- 6 In turn, on appeal we stand in the trial court’s shoes and also review the Planning Commission’s factual findings for substantial evidence. ([Saad v. City of Berkeley \(1994\) 24 Cal.App.4th 1206, 1212, 30 Cal.Rptr.2d 95.](#))

Attachment E

CIV-130

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JEFFER MANGELS BUTLER & MITCHELL LLP MATTHEW D. HINKS (Bar No. 200750); SEENA M. SAMIMI (Bar No. 246335) 1900 Avenue of the Stars, 7th Floor Los Angeles, California 90067-4308 TELEPHONE NO.: 310-203-8080 FAX NO. (Optional): 310-203-0567 E-MAIL ADDRESS (Optional): mhinks@jmbm.com; ssamimi@jmbm.com ATTORNEY FOR (Name): District Square, LLC		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse		
PLAINTIFF/PETITIONER: District Square, LLC DEFENDANT/RESPONDENT: City of Los Angeles		
NOTICE OF ENTRY OF JUDGMENT OR ORDER (Check one): ☒ UNLIMITED CASE (Amount demanded exceeded \$25,000) ☐ LIMITED CASE (Amount demanded was \$25,000 or less)		CASE NUMBER: 20STCP00654

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on (date): **October 20, 2020**
2. A copy of the judgment, decree, or order is attached to this notice.

Date: November 6, 2020

Matthew D. Hinks

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)


(SIGNATURE)

ATTACHMENT

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JEFFER MANGELS BUTLER & MITCHELL LLP
MATTHEW D. HINKS (Bar No. 200750)
mhinks@jmbm.com
SEENA M. SAMIMI (Bar No. 246335)
ssamimi@jmbm.com
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

Attorneys for Petitioner DISTRICT SQUARE, LLC

FILED
Superior Court of California
County of Los Angeles

10/20/2020

Sherril R. Carter, Executive Officer / Clerk of Court

By: J. De Luna Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DISTRICT SQUARE, LLC, a Delaware limited liability company,

Petitioner,

v.

CITY OF LOS ANGELES, a municipal corporation, and DOES 1 through 25, inclusive,

Defendants and Respondents

Case No. 20STCP00654

[Assigned for all purposes to James C. Chalfant, Department 85]

[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE

Petition Filed: Feb. 14, 2020
Trial Date: September 24, 2020

1 **WHEREAS**, on February 14, 2020, Petitioner District Square, LLC (“Petitioner”) filed
2 against Respondent City of Los Angeles (“Respondent”) a Verified Petition for Writ of Mandate and
3 Complaint for Declaratory Relief (the “Petition”) alleging causes of action arising out the
4 disapproval by Respondent of Petitioner’s proposed housing development project (the “Project”)
5 processed by Respondent under Case Nos. DIR-2018-3204-SPR-SPP-1A and ENV-2018-3205-SE;

6 **WHEREAS**, on September 23, 2020, the Court issued a ruling tentatively granting the
7 Petition;

8 **WHEREAS**, the Petition came on for trial on September 24, 2020, in Department 85 of this
9 Court. Petitioner appeared through its counsel, Matthew D. Hinks and Seena Samimi of Jeffer,
10 Mangels, Butler & Mitchell LLP; Respondent appeared through its counsel, Ernesto Velazquez of
11 the Office of the Los Angeles City Attorney;

12 **WHEREAS**, upon the conclusion of the trial, the Court adopted its tentative ruling as the
13 final ruling (the “Final Ruling”) of the Court;

14 **WHEREAS**, the Court, having read the submissions of the parties to this action, including
15 the Petition, briefs, and matters judicially noticed, and having read and considered the administrative
16 record, and the arguments of counsel;

17 **THE COURT DOES HEREBY ORDER, ADJUDGE AND DECREE**, as follows:

- 18 1. Judgment is entered in favor of Petitioner on the First and Second Causes of Action alleged in
19 the Petition for the reasons set forth in the Final Ruling, attached hereto as Exhibit 1.
- 20 2. The Court finds that (1) Respondent acted in bad faith within the meaning of Government Code
21 § 65589.5(k)(1)(A)(ii) in connection with its disapproval of the Project; and (2) in light of the
22 finding of bad faith, a writ of mandate shall issue directing Respondent to approve the Project.
- 23 3. A writ of mandate shall issue ordering Respondent to:
 - 24 a. Set aside, vacate and annul the determination of the South Los Angeles Area Planning
25 Commission at its meeting on November 19, 2019, granting the appeals from the decision
26 of the Director of Planning and disapproving the Project; and
 - 27 b. Approve the Project within 45 days of the issuance of the writ of mandate
- 28 4. This matter shall be remanded for further proceedings in compliance with the writ of mandate.

- 1 5. Petitioner shall recover its costs of suit from Respondent.
- 2 6. Petitioner shall recover its attorney's fees from Respondent pursuant to a motion to determine the
- 3 reasonableness of the amount.
- 4 7. The Court hereby reserves jurisdiction in this action until there has been full compliance with the
- 5 writ.

6
7 DATED: 10/20/2020



A handwritten signature in black ink, appearing to read "J. Chalfant".

James C. Chalfant / Judge
Honorable James C. Chalfant
Judge of the Superior Court

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11 Respectfully submitted this 16th day of October, 2020 by

12
13 JEFFER MANGELS BUTLER & MITCHELL LLP

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16 By: A handwritten signature in black ink, appearing to read "M. Hinks".

MATTHEW D. HINKS

17 Attorneys for Petitioner DISTRICT SQUARE, LLC

EXHIBIT 1

FILED
Superior Court of California
County of Los Angeles
SEP 24 2020
Sherri K. Langer, Executive Officer/Clerk
By _____, Deputy

District Square, LLC v. City of Los Angeles,
20STCP00654

~~Tentative~~ decision on: (1) motion to strike:
granted; (2) petition for writ of mandate:
granted

Petitioner District Square, LLC ("District Square") seeks a writ of mandate directing Respondent City of Los Angeles ("City") to set aside its decision denying Petitioner's proposal to construct a housing development project ("Project"). Petitioner separately moves to strike the Letter of Determination ("LOD") from the Administrative Record found at AR 628-38.

The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioner District Square commenced this proceeding on February 14, 2020. The Petition alleges in pertinent part as follows.

Petitioner proposed to construct the Project, consisting of 577 housing units in a mixed-use building at 3650-3700 South Crenshaw Boulevard and 3450-3500 Obama Boulevard (the "Property"). The Project is consistent with all of the development regulations of both the Crenshaw Corridor Community Plan ("Specific Plan") and the Los Angeles Municipal Code ("LAMC"). The Project does not benefit from any legally permitted development incentives or density bonuses under either the State Density Bonus Law or the City's Transit Oriented Communities ("TOC") Program. The proposed 577 units fall considerably below the allowable base density (722 units) permitted by the underlying zoning and the maximum development potential under the TOC Program (1,302 units). Petitioner voluntarily agreed to restrict 11% of the Project units (63 units) for workforce housing at deed-restricted reduced rent levels for a 30-year covenant period.

The Director of Planning ("Director") approved the Project on June 28, 2019. The Project approval was appealed by a group of development opponents, who successfully convinced the South Los Angeles Area Planning Commission ("APC") to reverse the Director's approval.

The APC violated the Housing Accountability Act ("HAA") when it granted the appeal and denied the Project. The APC—over the objections of its Planning staff and the advice of the Deputy City Attorney—ignored the mandate of the HAA restraining the ability of local governments to deny housing development projects. The HAA demands approval when a proposed housing development project complies with applicable objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete. The APC did not attempt to justify its decision under the HAA, did not make a single public health and safety finding—a necessary HAA predicate for denying a code-compliant housing development—and issued no written findings at all.

The APC abused its discretion by granting the appeal because it failed to proceed in the manner required by law, its decision is not supported by a preponderance of the evidence, no findings were made to support the decision reached, and it applied an erroneous standard by failing to articulate how the preponderance of the evidence (as required by the HAA) supported its

decision.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Association for a Scenic Community v. County of Los Angeles, (“Topanga”) (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceeded without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

CCP section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). Land use decisions do not typically involve vested rights requiring independent review. See PMI Mortgage Insurance Co. v. City of Pacific Grove, (1981) 128 Cal.App.3d 724, 729. The granting of a permit or variance does not infringe on the fundamental vested rights of adjoining property owners. Bakman v. Dept. of Transportation, (1979) 99 Cal.App.3d 665, 689-90. A landowner does not have either an easement for air and light in the absence of an express covenant (Katcher v. Home Savings & Loan Assn., (1966) 245 Cal.App.2d 425, 429), and there is no vested right in the enforcement of a zoning ordinance. Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach, (2001) 86 Cal.App.4th 534, 552.

“Substantial evidence” is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency’s decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 (“[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

The agency’s decision at the hearing must be based on the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The decision-maker is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. *Id.*

C. Governing Law

1. Housing Accountability Act

The Legislature adopted the HAA in 1982 to “significantly increase the approval and construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters.” Gov’t Code¹ §65589.5(a)(2)(K).

The Legislature significantly amended the HAA, effective January 1, 2018, to strengthen its provisions, expand its applicability, and increase local governments’ liability for violations. The HAA found that California is in the midst of a housing crisis that is “partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing,” §65589.5(a)(1)(B). The HAA should be “interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing.” §65589.5(a)(2)(L).

Nothing in the HAA relieves the local agency from complying with, *inter alia*, the California Environmental Quality Act (“CEQA”). §65589.5(e).

A housing development project “shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.” §65589.5(f)(1)(4).

Section 65589.5(j)(1) provides:

“When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.” (emphasis added).

¹ All further statutory references are to the Government Code unless otherwise stated.

The HAA defines a “specific, adverse impact” as a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” §65589.5(j)(1)(A). The Legislature’s intent is that conditions that would have a specific, adverse impact upon the public health and safety should arise infrequently. §65589.5(a)(3).

If a permitting agency considers a proposed housing development project to be inconsistent with “an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision,” it must provide the applicant with written documentation identifying and explaining the claimed inconsistency within either 30 or 60 days of the submittal of a complete application, depending upon the size of the project. §65589.5(j)(2)(A). Absent timely notice, the project is deemed to be in compliance with all applicable standards as a matter of law. §65589.5(j)(2)(B).

If the court finds that an agency acted in bad faith in disapproving a project in violation of the HAA, the appropriate remedy is an “order or judgment directing the local agency to approve the housing development project.” §65589.5(k)(1)(A)(ii). “Bad faith” “includes, but is not limited to, an action that is frivolous or otherwise entirely without merit.” §65589.5(l).

Section 65589.5(j) applies to market rate housing as well as affordable housing. Honchariw v. County of Stanislaus, (“Honchariw”) (2011) 200 Cal.App.4th 1066, 1070. The HAA Act applies to all residential housing developments and takes away an agency’s ability to deny residential projects based upon subjective development policies. Id. at 1072-77.

The City bears the burden of proving that its decision conforms to the conditions specified in section 65589.5. §65589.6.

2. SB 743 CEQA Exemption

The SB 743 statutory CEQA exemption applies to residential and mixed-use projects that are: (1) proposed within a transit priority area; (2) undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified; and (3) consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets. Pub. Res. Code §21155.4.

D. Statement of Facts²

1. The Project

Petitioner District Square owns the Property, which is currently vacant. AR 229. The Property is adjacent to major transit stops and within 500 feet of the Metro Expo Line’s Crenshaw Station and across Obama Boulevard from the planned location of a new station along the Metro

² Both Petitioner and the City request judicial notice of (1) LAMC section 11.5.7 (Exs. 1, A), (2) LAMC section 16.05 (Exs. 2, B). Petitioner also requests judicial notice of City Charter section 245 (Ex. 3). The City also requests judicial notice of the Southern California Association of Governments’ 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (Ex. C). The requests are granted. Evid. Code §452(b), (c).

Crenshaw/LAX light rail line currently under construction. AR 423, 428. The Property is zoned C2-2D-SP, designated for Regional Commercial uses, and located within Subarea A of the Specific Plan (the West Adams-Baldwin Hills-Leimert Community Plan), a designated TOD area. AR 423. The Property is surrounded by a mix of commercial and residential uses. AR 423.

On June 4, 2018, Petitioner submitted an application for approval of a Project Permit Compliance Review under LAMC section 11.5.7 and Site Plan Review under LAMC section 16.05 to permit the construction of the Project. AR 127.

On January 2, 2019, the City formally deemed the Project application to be complete, stating that the next major milestone would be completion of CEQA environmental review after the City determined the appropriate environmental analysis for the Project. AR 227.

Petitioner filed a revised application in February 2019, making adjustments to the amount of proposed square footage and units to be built. AR 229. As revised, the Project consisted of an approximately 648,157 square foot mixed-use Project containing 577 residential units and 93,016 square feet of commercial floor area in a 75-foot tall, six-story building with 934 parking spaces in one subterranean level and one ground level. AR 229.

2. The Director's Decision

On June 28, 2019, the Director approved the Project Permit Compliance and a Site Plan Review for the Project. AR 473.

The Director found the Project to be statutorily exempt from CEQA pursuant to the SB 743 Statutory Exemption. Pub. Res. Code §21155.4. AR 473. The Project is located in a transit priority area, is consistent with the Specific Plan, and is consistent with the Southern California Association of Governments' 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS"). AR 428.

For Project Permit Compliance, the Director found that the Project substantially complies with the applicable regulations, findings, standards, and provisions of the Specific Plan. AR 424-27.

For the Site Plan Review, the Director found that the Project meets the requirements for Site Plan Review in that (a) it is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable Specific Plan (AR 429-34), (b) consists of an arrangement of buildings and structures that will be compatible with existing and future development on adjacent and neighboring properties (AR 435-36), and (c) provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties. AR 437.

3. The Appeals

On July 12, 2019, two appeals were filed challenging the Director's approval of the Project. One appeal was filed by Damien Goodman and the Crenshaw Subway Coalition ("Goodmon") (AR 621-27), and a second appeal was filed by Lori Higgins ("Higgins"). AR 617-20.

Goodmon's appeal asserted that the Project fails to meet the requirements for Site Plan Review and Project Plan Review compliance and also violates, among other things, the Specific Plan, the General Plan, CEQA, SB 743, and the Specific Plan. AR 625. Goodmon contended that the Project is part of a pattern and practice on behalf of the City to intentionally displace and discriminate against low-income minority residents. AR 625.

Higgins' appeal stated that she had not received any notification of the changes to the site plan, which she alleged were significant. AR 620. The changes would negatively affect Higgins and other residences of the area and they should have been notified of the changes at the time they were submitted. AR 620.

Petitioner District Square's counsel responded in a letter dated November 13, 2019, explaining why the HAA compels the approval of the Project. AR 594-98. The letter noted that the HAA provides for private enforcement, a court may order a city to approve a project if it acts in bad faith to disapprove the project, and that the plaintiff would be awarded attorney's fees except in an unusual circumstance. AR 596-97.

The Project received support from community organizations. AR 550, 561, 562, 565, 568, 570, 572, 589.

The Planning Department issued a staff report addressing the appeal issues, recommending that the APC deny the appeals and sustain the Director's Determination. AR 600-16. The report reiterated the Director's previous findings that the Project meets Site Plan Review and Project Permit Compliance requirements, including substantial compliance with the General Plan and the Specific Plan. AR 607-09. The Project also meets the requirements for the SB 743 CEQA exemption. AR 610-12.

4. The APC Hearings

a. September 17, 2019

The APC heard the Goodman and Higgins appeals on September 17, 2019. AR 1164-89. Albert Lord ("Lord"), a deputy to City Council President Herb Wesson, spoke on behalf of Goodman, expressing concern that the Project was a six-story development of 577 luxury apartment units and would be unaffordable to the neighborhood's current residents and result in increased rent prices and displacement. AR 1169-72. He advocated that the neighborhood needs retail stores, not residential development that will push existing tenants out. AR 1171.

Higgins also spoke, expressing her concern about the Project's height and parking adequacy, which was literally in her backyard. AR 1179. She also argued that local homeowners should have been given input and the Project "tears into the fabric of the distinctly historical Leimert Parking Community". AR 1181. She advocated for issues of permitted parking, a sound barrier, traffic mitigation and construction mitigation. AR 1182.

Planning Department staff presented the findings and conclusions that the Director relied upon in issuing his approval of the Project. AR 1172-78. He noted that the Project complies with the Specific Plan and substantially complies with the Site Plan Review process, neither of which required a public hearing. AR 1176. The Project's 577 units would not cause direct displacement and did not seek any development incentives by the zoning and Specific Plan requirements; therefore, no affordable units were covenanted. AR 1177. He further noted that the Project was exempt under SB 743. AR 1177.

With District Square's consent, the hearing was continued to November 19, 2019. AR 1187-88.

b. November 19, 2019

On November 19, 2019, Planning Department staff, with legal assistance from the Deputy City Attorney, spoke in favor of the Project, summarizing the staff report and recommending

denial of the appeals. AR 1196-1205. The Deputy City Attorney explained the SB 743 exemption, including that a qualifying project is covered by the EIR analysis of the Specific Plan as a matter of law. AR 1204. He further explained that the Project meets the Southern California Association of Government's ("SCAGs") planning document criteria (RTP/SCS) because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05.

Goodmon argued that the Project developer was literally on trial for bribing a public official. AR 1205. He contended that the Project does not meet the RTP/SCS criteria because people from low-income communities may face displacement because gentrification places market pressure on people to relocate. AR 1206. This would lead to transit dependent people moving away from the very transit facilities that are built for them. AR 1206-07. The RTP/SCS recommends that agencies be sensitive to the possibility of gentrification and employ strategies to mitigate potential negative impacts and are encouraged to pursue the production of permanent affordable housing by deed restrictions. AR 1207. Goodmon contended that the Project violated the RTP/SCS and this alone was legal justification for the appeal. AR 1207, 1239.

Goodmon further argue that the Project should not be found to be statutorily exempt from CEQA pursuant to the SB 743 Statutory Exemption because the City did not have any published SB 743 policies. AR 1208. There are multiple Special Plan policies violated by the Project, including LU 11 and LU 63-8. The Project area is an area identified by the City as an area at a high risk for displacement. AR 1208. An income of over \$120,000 per year is required to afford a market rate apartment unit like those proposed by the Project, while the median household income in the area is approximately \$37,000-\$44,000. AR 1209. There is a connection between indirect displacement from projects of this scale and the surrounding area. AR 1238-39. There are other violations such as inadequate infrastructure. AR 1210. 1237-39.

Lord read a document from City Council President Wesson advocating that luxury apartments are designed to strengthen the economy and neighborhoods, but too many of these developments are being built in neighborhoods that have suffered disinvestment for reasons of "discrimination and racism in the banking and real estate industry." AR 1211. Development projects should help build an area in need of economic investment and not force out longtime residents. AR 1211. The area needs affordable housing, not this Project. AR 1212.

Higgins testified that the Project was egregious, has doubled in size, is in her backyard, and is a behemoth. AR 1213.

Several other members of the public testified that the Project's lack of affordable housing would cause displacement of residents currently living in the area. AR 1224-29, 1231-35. Housing developments like the Project cause residents to leave their communities because they can no longer afford the rent in that particular area (AR 1226), people in the Project area do not earn incomes needed to afford market-rate rent (AR 1227, 1229), affordable housing is needed to avoid displacement (AR 1233), and the Project area is suffering from homelessness (AR 1235).

District Square's representative spoke, summarizing the key features of the Project, noting that the Project site is vacant and the Project conforms with each development standard and design guideline of the Specific Plan. AR 1215. The Project provides for commercial retail spaces, open space, and residential units in five distinct building block pattern. AR 1216. With respect to the RTP/SCS, he noted that its policies promote transit-oriented development and the Project provides new housing directly across from a rail station and meets those policies. AR 1218. He noted that

no affordable housing is required for the Project under the Specific Plan, the LAMC, or any law. AR 1219. Notwithstanding, the applicant is voluntarily offering to restrict 11% of the units (63) to workforce housing, which would ensure that rents for those units would be fixed for an extended period and subject to City oversight. AR 1219. He also warned that the HAA prevented it from denying Project approval unless it made written findings of a direct and unavoidable impact on public health or safety and the APC had no evidence to make such findings. AR 1221.

The Deputy City Attorney explained to the commissioners that the Project could only be denied if the Commission found, based upon a preponderance of evidence in the record, that the Project would entail significant health or safety impacts that could not be mitigated other than by denying the Project. AR 1242-48. He indicated that the existing record would not support a claim that homelessness, gentrification, and displacement meets the HAA requirement of an adverse health or safety impact because it is too vague, and the APC should seek a continuance if it wanted to obtain information on that subject. AR 1244. He explained that the HAA limits the ability of local governments to reject housing developments without making written findings and warned the APC that a violation of the HAA could result in attorney's fees and penalties. AR 1246-47. He advised the APC to give staff an opportunity to develop more information, but the applicant would have to agree. AR 1247-48. The applicant declined a continuance. AR 1249.

Planning staff reiterated that the Project is consistent with all applicable zoning and General Plan criteria as set forth in the Planning Director's determination. AR 1250-51. The Project seeks no incentives and staff cannot make findings arbitrarily and require affordable housing. AR 1250-51. Gentrification and displacement are looked at for the particular project and this Project is vacant and involves no direct displacement. AR 1252.

The deliberations commenced with Commissioner Willis:

"I believe, due to the fact that this Project is a mixed-use project, it will not benefit our community due to the fact that it does not have any affordable housing for our residents. Therefore, the Project is not congruent to the South Los Angeles plan. It will weaken our community economically. Now the applicant mentioned that affordable housing is not a prerequisite or a requirement. I think that it should be a strong consideration for the residents in our community economically." AR 1252 (emphasis added).

Commissioner Anderson stated that she "agree[d] with" Commissioner Willis "no matter what the laws that are written, you have to be about the people. I see no empathy in the applicant at all. It's all about the policies that are written. And so we need to go back and look at and see what gentrification is doing. AR 1253.

Commissioner Stern concluded that the Project was not compatible with the Specific Plan's policies to create "a compatible and harmonious relationship between residential and commercial development" and "quality of life for the City's existing and future residents." AR 1255.

The Deputy City Attorney attempted to intervene and suggested that the APC take a break so that he and the commissioners could discuss how "to articulate how you can satisfy both of these findings and mak[e] sure that we can identify the information that we do have available to support the direction you're trying to go." AR 1255-56.

The APC did not do so. Instead, Commissioner Anderson then made a motion to “grant the appeal and overturn the Planning Director’s determination, because it doesn’t provide affordable housing for residents, therefore there is no economic growth in our community.” AR 1256. The motion was seconded by Commissioner Willis and unanimously approved. AR 1256.

The APC’s minutes, signed by the commissioners on or about November 19, 2019, reflect that the APC granted the appeals and overturned the Director’s approvals of the Project Permit Compliance and Site Plan Review. AR 1194.

5. The LOD

On May 15, 2020, the APC issued the LOD³ discussing denial of the Project. AR 628-38. The LOD summarized the testimony given at the hearing and included findings for the Project’s non-compliance with the General Plan, the Specific Plan, and the RTP/SCS. AR 631-36. The LOD also found that, because the Project did not sufficiently account for concerns of gentrification and displacement, it did not comply with the goals and policies of the Specific Plan and did not qualify for the requirements for the SB 743 CEQA exemption. AR 631-36.

E. Petitioner’s Motion to Strike

Petitioner District Square moves to strike the LOD (AR 628-38) from the Administrative Record, asserting that it is a fabrication created after-the-fact to justify the APC’s decision and cannot be considered a “final decision” for the purposes of CCP section 1094.6(c). Petitioner argues there is no evidence the APC ever adopted the LOD, which does not reflect the APC’s findings. Mot. at 5, 7. Petitioner also asserts that the APC lost jurisdiction over the appeal by the time the LOD was mailed. Mot. at 6.

The administrative record in a mandamus case shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case. CCP §1094.6(c).

The court shall (a) strike out any irrelevant, false, or improper matter inserted in any pleading; and (b) strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. CCP §436.

1. The LOD Is Not the APC’s Findings

Petitioner contends that the APC was the decision-maker for the appeal and the LOD must be stricken because there is no evidence that the APC approved it. Mot. at 5-6; Reply at 4-5. Petitioner notes (Mot. at 6; Reply at 4-5) that the LOD is not signed by any of the APC commissioners and only bears the signature of an Executive Assistant. AR 630. A single planner apparently drafted the LOD to bolster the APC decision and there is no indication that it was ever reviewed or discussed by the APC. Samimi Decl., ¶¶ 4-6, Exs. 2-3.

Petitioner also asserts that the LOD does not actually reflect the findings made by the APC at the November 19, 2019 hearing, and it also includes findings that the APC did not consider.

³ As discussed *post*, Petitioner’s motion to strike the LOD from the Administrative Record is granted and the LOD is only included for completeness of the discussion.

The most egregious example is that the LOD states that the APC determined that the Project is not exempt under CEQA (AR 633), but the APC never even mentioned CEQA or CEQA issues. AR 1252-56. Mot. at 7-8; Reply at 2-4. While the APC commissioners overturned the Project's approval based on their concerns about gentrification, the transcript of the proceedings reflects that they never rejected the Director's adoption of the CEQA exemption. See AR 1196-1258. The commissioners similarly did not reference the specific provisions of the General and Specific Plans identified in the LOD. AR 1252-56.

An agency's quasi-judicial land use decision is subject to the Topanga rule. See City of Rancho Palos Verdes v. City Council, (1976) 59 Cal.App.3d 869, 885. The APC's decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Topanga, *supra*, 11 Cal.3d at 15. Less formality is required for the findings in land use cases, which are sufficient if they inform the parties and the court whether the decision is based on lawful principles. *Id.* at 514-16. A transcript of taped oral remarks by the decision-maker at a public hearing when rendering a decision can be considered. City of Carmel-by-the-Sea, *supra*, 71 Cal.App.3d at 92. The agency's oral findings need not be stated with the precision required in judicial proceedings. Where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision, it has long been recognized that the decision should be upheld if the agency in truth found those facts which as a matter of law are essential to sustain its decision. Craik v. County of Santa Cruz, (2000) 81 Cal.App.4th 880, 884-85.

A city council need not make express findings of its own in reach a decision and may incorporate by reference a staff report as its implied findings on the matter. McMillan v. American General Financial Corp., (1976) 60 Cal.App.3d 175, 183-85. Also, the adoption of a subordinate entity's findings may obviate the need for separate findings from the reviewing agency. Carmel Valley View, Ltd. v. Board of Supervisors, (1976) 58 Cal.App.3d 817, 823. However, a mere recitation of statutory language, terse statements, and boilerplate findings do not contain sufficient details to bridge the analytic gap. Glendale Memorial Hospital & Health Center v. State Dept of Mental health, (2001) 91 Cal.App.4th 129; City of Carmel-by-the-Sea v. Board of Supervisors, (1977) 71 Cal.App.3d 84, 91.

The City argues that the LOD simply memorializes the APC's findings. The City contends that the commissioners' comments at the November 19, 2019 hearing sufficiently bridge the analytical gap between the testimony of the appellants and commenters and the APC's findings. The commissioners were not required to orally name the specific provisions implicated by their findings and their general statements that the Project did not comply due to concerns about gentrification and displacement suffice to support the LOD's more detailed analysis. Opp. at 12-14.

The court need not address the consistency between the witness testimony at the November 19, 2019 hearing and the commissioner's comments because the issue in the instant motion is whether the LOD constitutes the APC's findings. The City does not address Petitioner's contention that the APC never saw or adopted the LOD. The City makes a conclusory statement that the LOD constitutes the APC's final decision under CCP section 1094.6(b), but it cites no evidence contradicting Petitioner's assertion that the APC never saw or approved the LOD. Opp. at 9-10. This means that the LOD is merely a staffer's opinion of the findings that would support the APC's decision, which is insufficient to make it the APC's decision.

2. The APC Lost Jurisdiction

Petitioner argues that the APC's jurisdiction over the appeal had long been terminated by the May 15, 2020 date the LOD was mailed. Mot. at 6-7; Reply at 5-6.

The APC shall act on an appeal from the Director's Permit Compliance Review decision whether a project conforms to the requirements of a specific plan within 75 days of the expiration of the appeal period or any additional period mutually agreed upon by the applicant and the APC. LAMC §11.5.7C.6(c). The APC's failure to act within this time period shall be deemed a denial of the appeal. *Id.* The APC shall make the same findings for the Permit Compliance Review that are required to be made by the Director, the findings shall be supported by the record, and they shall indicate why the Director erred in determining the project's compliance with the specific plan. LAMC §11.5.7C.6(d)

The APC shall render its decision from an appeal of the Director's Site Plan Review in writing within 15 days after completion of the hearing. LAMC §16.05H.4. If the APC fails to act within the time specified, the Director's action shall be final. *Id.* The decision shall be in writing, based upon the evidence in the record, and be supported by findings that the project (1) is in substantial conformance with the General Plan, applicable community plan, and any applicable specific plan, (2) consists of an arrangement of buildings and structures (including height, bulk and setbacks, off-street parking facilities, loading areas, light, landscaping trash collection and other pertinent improvements that is or will be compatible with existing and future neighboring developments, and (3) provides recreational and service amenities to improve habitability for its residents and minimize impact on neighboring properties. LAMC §§ 16.05F, 16.05.H.4.

The City issued the LOD on May 15, 2020, approximately six months after the November 19, 2019 hearing. The City states that the "time specified" by LAMC section 16.05 H.4 is 75 days of the filing of the appeal as set forth in LAMC section 16.05 H.3. The City notes that all parties agreed to the November 19, 2019 hearing date and the APC cannot be deemed to have failed to timely hear the appeals. AR 1183-88. Opp. at 10-11. The City also argues that the delay in issuing the LOD after the hearing is irrelevant because the time limit requirements are directory rather than mandatory unless a contrary jurisdictional intent is clearly expressed. *Edwards v. Steele*, (1979) 25 Cal.3d 406, 410. The City contends that no such directory requirement exists for LAMC sections 11.5.7C.6(c) and 16.05 H.4. Opp. at 11.

Putting aside the fact that both LAMC sections 11.5.7C.6(c) and 16.05 H.4 clearly require a written decision within a specific number of days (15 days after the hearing for LAMC section 16.05 H.4 and 75 days after the appeal is filed or any mutually agreed extension for 11.5.7C.6(c)), and both provide a consequence of appeal denial for failure to adhere to the deadline, the City misses the point. In this motion, Petitioner is not arguing that the Director's decisions should be deemed approved because the APC's written decision was untimely (although it makes that argument in its mandamus papers). Rather, Petitioner is arguing that the LOD issued after the LAMC deadlines cannot constitute the APC's decision.⁴

The court agrees. The APC had no jurisdiction to make a final decision six months after

⁴ As Petitioner notes, the LOD states that the APC's decision is final upon the mailing date of the LOD. AR 630. Reply at 6. This is a tacit admission that the APC failed to act within the requisite deadlines.

the hearing and the LOD cannot constitute its final decision.⁵

3. Conclusion

The unrefuted evidence is that the APC did not review or approve the LOD. While the City argues that the LOD memorializes the APC's decision, it is merely a staffer's opinion of what the APC did and therefore is irrelevant. Petitioner also has demonstrated that the LOD cannot constitute the APC's final decision because the APC had no jurisdiction to act by the time the LOD was issued.

The motion to strike is granted. The LPD is an irrelevant post-approval document that should not be part of the Administrative Record. *See Wagner Farms, Inc. v. Modesto Irrigation District*, (2006) 145 Cal.App.4th 765, 778 (map and enlargement of aerial photograph created after agency decision did not reflect agency proceedings and not part of CEQA record of proceedings); *El Morro Community Association v. California Department of Parks & Recreation*, (2004) 122 Cal.App.4th 1341, 1359 (news letter and release showing post-decision changes to project and list of EIRs for projects near project site were not before agency excluded from CEQA record).

F. Petition for Writ of Mandate

Petitioner District Square argues that the APC erred because the HAA required approval of the Project, which was exempt from CEQA.

1. The Project Is a "Housing Development Project"

The HAA applies to "housing development projects," defined, *inter alia*, as "[m]ixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use." §65589.5(h)(2)(B). The Project consists of 577 residential units and 93,016 sf of non-residential uses in a 648,157 square foot building (*i.e.*, less than 15% non-residential uses). AR 229, 243, 418, 600. The Project is a "housing development project" under the HAA, and the City does not dispute this fact.

2. The Project Complies with All Applicable General Plan and Zoning Standards

Absent public health or safety findings and if a project complies with CEQA, section 65589.5(j) requires approval of a housing development projects which "complies with applicable, objective general plan, zoning, and subdivision standards and criteria...". §65589.5(j)(1).

The Project is deemed compliant with the City's applicable objective standards and criteria as a matter of law since (1) the Project application was deemed complete on January 2, 2019 and (2) the City gave no written notice of non-compliance explaining the inconsistencies within 60 days. §65589.5(j)(2)(A)(ii). In these circumstances, the HAA provides that the Project "shall be deemed consistent, compliant and in conformity" with all applicable plans, programs, policies, ordinances, standards, requirements, and other similar provisions. §65589.5(j)(2)(B).⁶

⁵ The APC presumably could have adopted additional findings six months after making a final written decision, but it did not purport to do so.

⁶ Under the HAA, a project is deemed consistent with applicable standards and policies "if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity."

3. The City Cannot Establish by a Preponderance of the Evidence that the Project has a Specific Adverse Impact on Public Health or Safety

Under the HAA, the exception to a local agency's compelled approval of a housing development project that is compliant with all relevant objective zoning standards takes place where a local government makes written findings, based on a preponderance of the evidence, that the project would have an unavoidable adverse impact on public health or safety that cannot be feasibly mitigated in any way other than rejecting the project or reducing its size. §65589.5(j)(1).

As District Square argues, the City abused its discretion when it denied the Project because (1) its findings do not support its decision and (2) there is no evidence of a potential health or safety impact justifying a denial. Pet. Op. Br. at 15.

a. The APC's Findings Are Inadequate

The APC's decision to deny the Project was based on a single point: "it doesn't provide affordable housing for residents, therefore, there's no economic growth in our community." AR 1256. In their comments at the November 19, 2019 hearing, the commissioners focused upon a desire for affordable housing and concerns over gentrification, residential amenities, the nature of the proposed commercial tenants, and their perceptions of compatibility and harmony between the residential and commercial development and quality of life. AR 1252-55.

District Square first argues that the APC failed to make its finding in writing as required by section 65589.5(j)(1). Pet. Op. Br. at 17.

There is a transcript and the three APC commissioners signed the APC minutes. At least the signed minutes qualify as a writing under section 65589.5(j)(1). However, the minutes, even when coupled with the transcript, are inadequate under LAMC section 11.5.7C.6(c), which requires the APC to make the same findings for Project Compliance Review as the Director is required to make, they must be supported by the record, and they must indicate why the Director erred in determining the project's compliance with the specific plan. They also are inadequate under LAMC section 16.05H.4, which requires the Site Plan Review to in writing, based on the record, and supported by findings from LAMC section 16.05F (concerning (a) conformance with the General Plan, (b) height, bulk, and setback requirements, and parking, and (c) recreational and service amenities). Even taken collectively, the transcript and minutes did not purport to make the required findings. While an "Executive Assistant" signed the LOD long after the APC's deadline to act (AR 630), this document was never approved by the APC and is not part of the Administrative Record.⁷

In fact, the APC's single issue finding addresses a subjective socioeconomic issue and does

§65589.5(f)(1)(4). There is substantial evidence in the record that the Project complies with the all use, density, height, story, floor area ratio, parking, open space and other requirements of the LAMC and governing land use plans. AR 418, 423, 424-37, 1216. The Director confirmed as much in the Director's Determination (AR 418-39), as did Planning Department staff and the Deputy City Attorney at the November 19, 2019 hearing. AR 1196-1205.

⁷ Because the APC failed to comply with the deadlines under LAMC sections 11.5.7C.6(c) and 16.05H.4, those provisions require that the appeals from the Director's Project Compliance Review and Site Plan Review be deemed denied.

not even purport to address “public health or safety” concerns that are “significant, quantifiable, direct, and unavoidable.” §65589.5(j)(1)(A). As the Court of Appeal explained, section 65589.5(j) prevents local agencies from using a subjective development policy as a basis to deny a qualifying housing development. *See Honchariw, supra*, 200 Cal. App. 4th at 1076-77, 1079 (finding that project site was not “physically suited for development” does not amount to health or safety impact under section 65589.5(j)). The simple fact is that market rate housing developments are entitled to the same section 65589.5(j) protections as affordable housing developments. *Id.* at 1074-75.⁸ Pet. Op. Br. at 16.

b. There Is No Evidence of Health or Safety Impacts

The City has the burden of proof to show public health or safety impacts. §65589.6. As District Square argues, the City must show by a preponderance of the evidence (1) an impact to health or safety; (2) that is “significant, quantifiable, direct, and unavoidable”; (3) “based on objective, identified written public health or safety standards, policies, or conditions”; (4) that cannot be mitigated or avoided absent denial of the Project. §65589.5(j)(1)(A)-(B). Pet. Op. Br. at 17.

The Administrative Record contains no evidence that the APC’s socioeconomic concerns about gentrification and displacement have any bearing on public health and safety, let alone a significant, quantifiable direct and unavoidable impact based on objective and written health and safety standards. *See* §65589.5(j)(1)(A).

4. The City’s Attempt to Support the APC Decision

Based on the HAA, the APC was required under section 65589.5(j)(1) to approve the Project as a housing development project that complies with all applicable General Plan and zoning standards and criteria because there is no evidence or finding of public health and safety impact unless the Project is non-compliant with CEQA.

The City’s opposition notes that it need only make one of the three necessary findings – CEQA environmental clearance, Project Permit Compliance, and Site Plan Review – in the negative to deny approval. *See Levi Family Partnership, L.P. v. City of Los Angeles*, (2015) 241 Cal.App.4th 123, 130. Opp. at 9. The City seizes upon CEQA as a life raft in an attempt to save the APC’s decision.

a. The Timing of CEQA Analysis Does Not Require Denial of the Entitlements

The City notes that the HAA does not relieve a local government from complying with CEQA (§65589.5(e)) and that completion of environmental review under CEQA is required before a project can be approved. Guidelines⁹ §15004(a). Opp. at 12. . The City argues that HAA

⁸ Since the APC made no unavoidable public health or safety impact finding, it necessarily made no finding that “there is no feasible method to satisfactorily mitigate or avoid the adverse impact ... other than the disapproval of the housing development project.” §65589.5(j)(1)(B).

⁹As an aid to carrying out the CEQA statute, the State Resources Agency has issued regulations called “Guidelines for the California Environmental Quality Act” (“Guidelines”), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

findings can be made only after the City is satisfied with the “adequacy of its environmental documents.” Guidelines §15020. Hence, the specific adverse public health or safety impact findings required by section 65589.5(j) cannot be made until adequate environmental review under CEQA is complete. The City relies on Schellinger Brothers v. City of Sebastopol, (“Schellinger Brothers”) (2009) 179 Cal.App.4th 1245 and argues that it was unable to find the Project exempt from CEQA pursuant to the SB 743 statutory exemption. AR 1252-55. The City concludes that, without completion of the necessary CEQA review, it could not violate the HAA by wrongly disapproving Petitioner’s housing development project. Opp. at 12-13.

The City’s argument depends entirely upon a premise that the APC rejected the Director’s determination that the Project is exempt from CEQA under SB 743 Pub. Res. Code section 21155.4. This premise is false. The APC made no CEQA findings at all in the transcript of the APC’s proceedings (AR 1196-258) or the APC minutes. AR 1194. The premise of the City’s opposition simply fails.

District Square also points out (Reply at 3-4) that the City misapprehends the CEQA process. An agency’s review of project entitlements is designed to run concurrently with its CEQA review, not consecutively:

“The Legislature further finds and declares that it is the policy of the state that ... [l]ocal agencies integrate the requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively, Pub. Res. Code § 21003 (emphasis added).¹⁰

See also Guidelines §15004(c) (“The environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively.”); Bakersfield Citizens for Local Control v. City of Bakersfield, (2004) 124 Cal. App. 4th 1184, 1200 (“environmental review is not supposed to be segregated from project approval”); California Clean Energy Comm. v. City of San Jose, (2013) 220 Cal. App. 4th 1325, 1341 (allowing an agency to “segregat[e] environmental review ... from the project approval” would “skirt the purpose of CEQA”). Indeed, consideration of project entitlements must initially occur concurrently with the CEQA process because the agency must determine whether the project is even subject to CEQA, which requires consideration of whether the entitlements confer the agency with discretionary authority over the project. Pub. Res Code §21080(a), (b)(1); Guidelines §15002(i). Reply at 4-5.

District Square is correct that, even if *arugendo* the APC had rejected the SB 743 statutory exemption, it was not compelled to reject the Project entitlements and cease processing the Project application. Instead, the City would be required to determine whether the Project was statutorily or categorically exempt from CEQA on other bases (Guidelines §§ 15260-333), and, if not, prepare

¹⁰ District Square correctly notes that, while Pub. Res. Code section 21003 does not compel concurrent CEQA and project entitlement review, it suffices to rebut the City’s argument that CEQA review must be conducted prior to consideration of the Project’s entitlements. Reply at 4, n.1.

an initial study, negative or mitigated negative declaration, or EIR. Guidelines §15002(k). The APC could not reject the Project outright. Reply at 6.

The City's reliance on Schellinger Brothers, *supra*, 179 Cal.App.4th at 1245, is misplaced. There, a developer claimed that a city violated the HAA in failing to approve its housing development project and sought mandamus to compel the city to certify a long-delayed EIR after the city council decided that the draft EIR required recirculation to address new issues. *Id.* at 1250, 1253. The appellate court held that it could not order the local agency to certify the EIR, noting that the HAA "specifically pegs its applicability to the approval, denial or conditional approval, of a 'housing development'" project which is something that can only occur until after the EIR is certified." *Id.* at 1262.

Schellinger Brothers did not hold that a city may deny project entitlements that are consistent with the HAA by declining to certify an environmental document. It only held that the HAA does not compel any outcome for environmental review. *Id.* at 1262 ("the [HAA] has no provision automatically approving EIRs if local action is not completed within a specified period"). Reply at 5. Therefore, the timing of the City's evaluation of entitlements is not dependent upon an earlier determination of environmental review. The City must defer project approval, but it may not deny entitlements, when the environmental review is not complete.

b. The Record Does Not Contain Substantial Evidence to Support a Finding That the Project is Not Statutorily Exempt

Apart from the lack of CEQA findings, the Administrative Record lacks substantial evidence to support a determination that the Project does not qualify for a SB 743 statutory exemption.

The City notes that it has discretion to select the mode of CEQA analysis and to determine whether an exemption applies. Guidelines §15061. Opp. at 14. The SB 743 exemption is intended to exempt from CEQA mixed-use development projects that meet certain criteria. Public Resources Code section 21155.4 exempts a housing development project from CEQA if "[t]he project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in [] a sustainable communities strategy." The relevant sustainable communities strategy for the Project area is the RTP/SCS. The SB 743 statutory exemption requires a finding of consistency with the RTP/SCS's applicable policies specified for the project area. Pub. Res. Code § 21155.4. Opp. at 13.

The City notes that the intent of the RTP/SCS is, among other things, to meet the goals of reducing greenhouse gas emissions as set forth by Senate Bill (SB) 375 and by Assembly Bill (AB) 32. RJN Exh. C, pp. 15, 17, 40, 137, 184, 185, 194. According to the City, the RTP/SCS sets forth how gentrification and displacement can undermine these goals. The RTP/SCS "Land Use Strategies" section titled "Combating Gentrification and Displacement" directs jurisdictions in the SCAG region "to continue to be sensitive to the possibility of gentrification and work to employ strategies to mitigate its potential negative community impacts." The RTP/SCS further states: "Affordability is becoming a significant issue in many communities, particularly in urban areas after the implementation of a new rail line, transit station, or other major public investment. Housing unaffordability can undermine the overall goals of the RTP/SCS because it can contribute to suburban sprawl, longer job commutes, and higher greenhouse gas emissions." Opp. at 13-14.

The City contends that the record contains substantial evidence that the Project is not

consistent with the RTP/SCS policies regarding gentrification and displacement, and cites AR 1206-09, 1225-29, 1231-35, 1237-39, 1252-55. Opp. at 13-14.

The purported gentrification and displacement policies of the RTP/SCS cited by the City are irrelevant because the Project must be deemed consistent with all RTP/SCS policies as a matter of law pursuant to section 65589.5(j)(2)(B). If the City felt the Project was inconsistent with an "applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," it was required to provide timely written notice explaining its reasoning. §65589.5(j)(2)(A). Absent timely notice, the Project must be deemed consistent the RTP/SCS's policies. §65589.5(j)(2)(B). The City provided no such notice for the cited TRP/SCS policies. Reply at 7-8. Moreover, the RTP/SCS policies cited by the City are subjective, not objective, and cannot not provide grounds to deny the Project under section 65589.5(j)(1).

Additionally, the record does not contain substantial evidence that the Project is inconsistent with the cited RTP/SCS subjective policies. The City admits that the purpose of the RTP/SCS is to reduce greenhouse gas emissions and argues that the Project is inconsistent with this goal because it would not combat gentrification and displacement. In support of this conclusion, the City cites only to statements made by local residents and a political operative who were dissatisfied with the Project's lack of affordable housing and who contended that the Project will lead to displacement and gentrification because local residents would be "priced out" of the neighborhood. AR 1206-09, 1225-29, 1231-35, 1237-39, 1252-55.

The subjective policies of RTP/SCS cannot be presented by local residents and political subordinates. Plainly, it is impossible for the development of 577 new housing units on vacant lots, including 11% deed restricted and devoted to workforce housing, to have a direct impact of displacement. No one would be directly displaced from their home by the Project.

There remains the relatively new social engineering concept of indirect displacement. Theoretically, a market rent project – wrongly described by the local residents as "luxury housing" – could have an incremental impact on the neighborhood's property values. That incremental impact could have a cumulative impact with other market rate housing projects to raise property values in the neighborhood. In turn, those increased property values could result in increased overall rents and price out existing local residents from the neighborhood.

District Square argues that logic dictates that the Project will result in an increase in the supply of neighborhood housing which will lead to lower rents. Reply at 8. While the court does not agree that this conclusion necessarily follows from the development of market rent housing, the concept of indirect displacement ignores a component of market rate housing. A market rent housing project will attract tenants who can afford to pay that market rent. Presumably, those tenants will have more money to spend than neighborhood tenants residing in affordable housing. Those market rent tenants will spend some of that money at local businesses in the neighborhood, including small businesses owned by local residents. Thus, the economics of adding market rent housing to a poor neighborhood well may be good economically for all residents. These economic issues are not self-evident and must be presented by experts, of which there were none at the APC hearing.

Moreover, social displacement is only relevant to RTP/SCS policies if it would lead to increased greenhouse gas emissions. The City apparently assumes that the persons indirectly displaced by the Project's market rate housing will be replaced by wealthier persons who do not use public transportation or who would commute longer distances. As District Square notes, there

is no such evidence in the record. Reply at 8.¹¹

5. The Declaratory Relief Claim

Petitioner's declaratory relief cause of action seeks a declaration that (a) the City failed to issue written findings consistent with the dictates of the HAA, (b) the deadlines for the City to act under the LAMC have all expired, (c) the APC appeals are deemed denied under LAMC sections 11.5.7.C.6.c-d and 16.05.H.4, and City Charter section 245, and (d) the City acted in bad faith in denying the Project such that Petitioner is entitled to a judgment and order under section 65589.5(k). Pet. Op. Br. at 19.

The City correctly argues that Petitioner is not entitled to declaratory relief because an action for a declaratory judgment is not appropriate to review the validity of an administrative decision. Selby Realty Co. v. City of San Buenaventura, (1973) 10 Cal.3d 110, 127. Administrative mandamus is the exclusive means of challenging an administrative determination involving the application of a law to a specific property. City of Santee v. Superior Court of San Diego County, (1991) 228 Cal.App.3d 713, 718. The HAA also states that any action brought to enforce its provisions shall be brought pursuant to CCP section 1094.5, §65589.5(m). The APC's decision may not be challenged through declaratory relief, and the declaratory relief cause of action is subsumed within the mandamus claim and is ordered to be dismissed. Opp. at 18.

District Square notes that no case stands for the rule that an action for declaratory relief can never be joined in a mandamus case. District Square contends that its declaratory relief claim does not challenge the APC's actions, but rather seeks an adjudication of its rights in light of the APC's actions, including declarations that (1) the deadlines for the City to act under the LAMC have expired and the APC appeals are deemed denied under LAMC sections 11.5.7.C.6.c-d and 16.05.H.4, and City Charter section 245; and (2) the City acted in bad faith in denying the Project.

¹¹ The City contends that its denial of the Site Plan Review was justified because the APC found that the Project (1) conflicts with General Plan policies to "provide cultural facilities or other community-oriented facilities" and did not "propose professional offices or other high-quality job-generating uses", (2) is inconsistent with the Specific Plan's "neighborhood character" policies and is not "contextually sensitive", and (3) does not "create a compatible and harmonious relationship between residential and commercial development." Opp. at 16.

The City notes that the Project Permit Compliance findings must include a finding that "the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible." LAMC §11.5.7C.2(b). The City argues that the APC did not have the adequate CEQA analysis necessary to make the Project Permit Compliance finding because it found the Project was not statutorily exempt and the Director made no mitigation findings for the APC to evaluate. Opp. at 14-15.

As discussed *ante*, the APC did not deny the SB 743 statutory exemption and did not address the findings required by LAMC sections 11.5.7C.2(b) and 16.05H.4. Even if *arguendo* the APC made findings for the Site Plan Review and Project Permit Compliance, those findings would violate the HAA because the Project is deemed consistent with all of these policies as a matter of law. §65589.5(j)(2)(B). Reply at 8-9.

All of this is subsumed within the administrative mandamus claim. *See post*.

6. The City's Bad Faith Actions Compel a Decision That the City Must Approve the Project

The HAA provides that, if a local agency acts in bad faith in disapproving a housing development project in violation of its provisions, in violation of the HAA, the court is empowered to enter an "order or judgment directing the local agency to approve the housing development project." §65589.5(k)(1)(A)(ii). "Bad faith" is defined as including, but not limited to, "an action that is frivolous or otherwise entirely without merit." § 65589.5(l).

District Square notes that the word "frivolous" means "clearly insufficient on its face"¹² or "lacking in any arguable basis or merit in either law or fact".¹³ *See also* Peake v. Underwood, 227 Cal. App. 4th 428, 440 (2014) (Under CCP section 128.7, "[a] claim is factually frivolous if it is 'not well grounded in fact' and it is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.'"). Pet. Op. Br. at 18.

The City adds that case law establishes more than one standard for the term "frivolous." Burkle v. Burkle, (2006) 144 Cal.App.4th 387, 401 ("frivolous" means conduct that is "objectively unreasonable"); Millennium Corporate Solutions v. Peckinpugh, (2005) 126 Cal.App.4th 352, 360 ("frivolous" means done "for an improper motive" or "indisputably has no merit"). Opp. at 17. The City argues that the APC's decision was not frivolous because it was not "objectively unreasonable," not done "for an improper motive," and does not indisputably lack merit. The APC's decision was based on CEQA, on the objectives and policies in the General Plan Framework Element and Specific Plan, and on genuine concern for the welfare of the community. Opp. at 17.

In this case, the Project was virtually a "by right" project in which District Square was asking for no special incentives or variance. The only possible bases for the APC not to approve the Project were the SB 743 categorical exemption and the HAA's public health or safety exception. City staff twice explained this in detail to the APC.

On September 17, 2019, Planning Department staff informed the APC that the Project complies with the Specific Plan and substantially complies with the Site Plan Review process, the Project did not seek any development incentives and therefore no affordable units were required, and the Project was exempt under SB 743. AR 1177. The Deputy City Attorney explained the SB 743 exemption, including that a qualifying project is covered by the EIR analysis of the Specific Plan as a matter of law. AR 1204. He further explained that the Project meets the RTP/SCS planning criteria because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05.

On November 19, 2019, Planning Department staff again recommended denial of the appeals. AR 1196-1205. Staff reiterated that the Project is consistent with all applicable zoning and General Plan criteria. AR 1250-51. The Project seeks no incentives and staff cannot make findings arbitrarily and require affordable housing. AR 1250-51. Staff looks at gentrification and displacement for a particular project and this Project is vacant and involves no direct displacement. AR 1252.

¹² Black's Law Dictionary, https://blacks_law.enacademic.com/11624/frivolous

¹³ The Law Dictionary, <https://law.enacademic.com/1524/frivolous>

The Deputy City Attorney reiterated that the Project meets RTP/SCS criteria because it is within the zoning and Special Plan and the developer was not asking for any exceptions or variances. AR 1204-05. The Deputy City Attorney added that the Project could only be denied if the Commission found, based upon a preponderance of evidence in the record, that it would entail significant health or safety impacts that could not be mitigated other than by denying the Project. AR 1242-48. He indicated that the existing record would not support a claim that homelessness, gentrification, and displacement met the HAA requirement of an adverse health or safety impact because it is too vague. AR 1244. He explained that the HAA limits the ability of local governments to reject housing developments without making written findings and warned the APC that a violation of the HAA could result in attorney's fees and penalties. AR 1246-47.

Despite this advice and in the face of these warnings, the APC granted the appeals and denied the Project approval solely because "it doesn't provide affordable housing for residents, therefore there is no economic growth in our community." AR 1256. The individual commissioners ignored the Project's "by right" lack of affordable housing and the HAA's requirements that the Project must be deemed to comply with all local standards: (1) "Now the applicant mentioned that affordable housing is not a prerequisite or a requirement. I think that it should be a strong consideration for the residents in our community economically." AR 1252 (Commissioner Willis); (2) "[N]o matter what the laws that are written, you have to be about the people.... [S]o we need to go back and look at and see what gentrification is doing. AR 1253 (Commissioner Anderson); (3) the Project is not compatible with the Specific Plan's policies to create "a compatible and harmonious relationship between residential and commercial development" and "quality of life for the City's existing and future residents." AR 1255 (Commissioner Stern).

The APC clearly acted in bad faith and acted on its own frolic and detour, egged on by a political liaison and the testifying residents to impose its own view of appropriate public policy -- *i.e.*, to take a stand against gentrification. It matters not that the APC believed it was acting in the community's best interest. The APC does not set policy and it does not create law; its obligation is to apply existing law to evaluation of a project. The Legislature concluded in the HAA that local governments are impeding housing development by imposing subjective policies that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing. §65589.5(a)(1)(B). That is exactly what the APC did by imposing its own views that gentrification is bad, displacement (even indirect displacement) must be accounted for, and the need for affordable housing trumps all. That is not the law, and there can be no legitimate dispute that the APC acted knowingly and deliberately to violate the law.

Compounding this deliberate violation, District Square notes that -- after it filed suit in February 2020 and knowing that the APC had violated the law -- the City attempted to mask the APC's intentional violation by issuing the LOD six months after-the-fact, which made false representations intended to bolster the APC's decision. Pet. Op. Br. at 18. The City's mandamus opposition is based entirely on the false LOD findings, in particular seizing upon the LOD's "phony CEQA finding" to make a specious argument that CEQA somehow compels the denial of the Project. Pet. Op. Br. at 18.

The City's bad faith justifies an "order or judgment directing the local agency to approve the housing development project" and District Square's entitlement to an award of reasonable

attorney's fees and costs of suit. §65589.5(k)(1)(A)(ii). Pet. Op. Br. at 18.

G. Conclusion

The Petition is granted. The City is directed to approve the Project within 45 days of the writ's issuance. §65589.5(k)(1)(A)(ii). District Square is entitled to an award of attorney's fees pursuant to a motion to determine the reasonableness of the amount. *See id.* The court will retain jurisdiction to ensure that the judgment is carried out. *Id.*

Petitioner District Square's counsel is ordered to prepare a proposed judgment and writ of mandate, serve them on counsel for the opposing parties for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment and writ along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for October 20, 2020 at 1:30 p.m.

PROOF OF SERVICE

DISTRICT SQUARE LLC vs. CITY OF LOS ANGELES

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On October 16, 2020, I served true copies of the following document(s) described as **[PROPOSED] JUDGMENT GRANTING PEREMPTORY WRIT OF MANDATE** as follows:

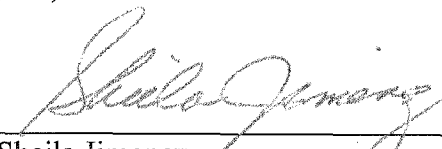
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address sjimenez@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 16, 2020, at Los Angeles, California.



Sheila Jimenez

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SERVICE LIST

Michael N. Feuer
Terry Kaufman-Macias
Ernesto Velazquez
Office of the Los Angeles City Attorney
200 North Main Street, 701 City Hall East
Los Angeles, CA 90012
Telephone: (213) 978-8248
Fax: (213) 978-8214
ernesto.velazquez@lacity.org

Attorneys for Respondent City of Los Angeles

PROOF OF SERVICE

DISTRICT SQUARE LLC vs. CITY OF LOS ANGELES

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1900 Avenue of the Stars, 7th Floor, Los Angeles, CA 90067-4308.

On November 6, 2020, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT OR ORDER** as follows:

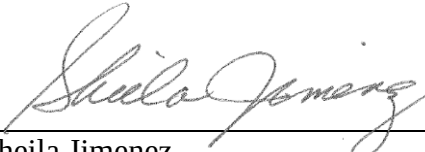
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Jeffer Mangels Butler & Mitchell LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address sjimenez@jmbm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 6, 2020, at Los Angeles, California.



Sheila Jimenez

SERVICE LIST

Michael N. Feuer
Terry Kaufman-Macias
Ernesto Velazquez
Office of the Los Angeles City Attorney
200 North Main Street, 701 City Hall East
Los Angeles, CA 90012
Telephone: (213) 978-8248
Fax: (213) 978-8214
ernesto.velazquez@lacity.org

Attorneys for Respondent City of Los Angeles

Attachment 2

MEMORANDUM

Date: March 2021
For: B & F Associates LLC
Subject: Fairfax Theater, 7901-09 Beverly Boulevard, Los Angeles
From: Teresa Grimes

INTRODUCTION

The Fairfax Theater is located at 7901-09 Beverly Boulevard in the City of Los Angeles. Constructed in 1930, the building includes the theater with an entrance on Beverly Boulevard as well as retail storefronts oriented towards Fairfax Avenue. At its meeting on April 1, 2010, the Los Angeles Cultural Heritage Commission (Commission) voted in favor of taking a Los Angeles Historic-Cultural Monument (LAHCM) nomination under consideration. At its meeting on June 3, 2010, the Commission voted to decline the nomination. Subsequent to this process, a proposed project incorporating the street-facing elevations of the Fairfax Theater into a new mixed-use building was approved. In 2016, the entitlements for the project were extended to 2024. The Los Angeles Office of Historic Resources, the staff for the Commission, have received a new LAHCM nomination for the Fairfax Theater. A Commission subcommittee is in the process of comparing the old (2010) and new nominations to determine if the new nomination is eligible for reconsideration as a LAHCM.

LOS ANGELES CULTURAL HERITAGE ORDINANCE

The Los Angeles City Council adopted the Cultural Heritage Ordinance in 1962 and amended it in 2018 (Sections 22.171 *et seq.* of the Administrative Code). The Ordinance created a Cultural Heritage Commission and criteria for designating Historic-Cultural Monuments (LAHCM). The Commission is comprised of five citizens, appointed by the Mayor, who have exhibited knowledge of Los Angeles history, culture and architecture. Two of the five current members were on the Commission in 2010 and voted to decline the LAHCM nomination for the Fairfax Theater. The other current members of the Commission have been appointed since 2010.

A site, building, or structure of particular historic or cultural significance to the City of Los Angeles may be designated a LAHCM if it meets one or more of the following criteria:

1. The proposed LAHCM is identified with important events of national, state, or local history, or exemplifies significant contributions to the broad cultural, economic or social history of the nation, state, city or community; or
2. The proposed LAHCM is associated with the lives of historic personages important to national, state, city, or local history;

3. The proposed LAHCM embodies the distinctive characteristics of a style, type, period, or method of construction; or represents a notable work of a master, designer, builder, or architect whose individual genius influenced his or her age.¹

Unlike the National and California Registers, the Ordinance makes no mention of concepts such as physical integrity or period of significance. Moreover, properties do not have to reach a minimum age requirement, such as 50 years, to be designated as LAHCMs.

CULTURAL HERITAGE COMMISSION RULES AND OPERATING PROCEDURES

The Cultural Heritage Commission adopted rules and operating procedures in 2018 that address new applications for previously-declined nominations.² A new application for a previously-declined nomination may not be placed on an agenda unless a subcommittee of the Commission determines one of the following events have occurred:

- Substantial new historic information has been documented which makes the latest application materially different from the previous application.
- Subsequent architectural rehabilitation which meets the U.S. Secretary of the Interior's Standards for Rehabilitation (Standards) has been completed.

As the Fairfax Theater has not been rehabilitated according to the Standards since 2010, it is ineligible for a new nomination on the grounds that it now possesses architectural integrity. Therefore, the only grounds for considering a new nomination is the revelation of substantial new historic information. The table below provides a comparison between the old and new nominations to ascertain the discover of new information.

¹ Los Angeles Administrative Code § 22.171.7.

² Cultural Heritage Commission Rules and Operating Procedures, Los Angeles Department of City Planning, adopted July 5, 2018.

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
Statement of Significance	“The Fairfax Theater also stands as a distinctive cultural monument being associated with the Fairfax neighborhood and Jewish community and its architectural, cultural, and social development.” “The Fairfax Theater is an important example of early Art Deco theater architecture, which meets the requirements of the Cultural Heritage Ordinance because of the high quality of the design and the retention of its original form detailing, and integrity.	“It is identified with...for association with development of the Fairfax neighborhood into the ‘symbolic focus’ of the Jewish community and the development of SurveyLA’s Beverly -Fairfax Commercial Planning District.” “It embodies the distinctive characteristics of a style, type, period, or method of construction as an excellent example of Art Deco style neighborhood theater.”	Both nominations make the same argument for significance under Criterion 1 and Criterion 3 of the Cultural Heritage Ordinance. The 2020 nomination contains extraneous information related to the Beverly Fairfax National Register Historic District as well as the Beverly Fairfax Commercial Planning District. The Beverly Fairfax National Register Historic District is located between Rosewood Avenue on the north, Beverly Boulevard on the south, Orange Grove Avenue on the west, and Gardner Street on the east. It does not include Fairfax Avenue or any of the commercial buildings on Beverly Boulevard. SurveyLA identified the area in 2015 and called it the Orange Grove Avenue – Gardner Street

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
			Multi-Family Residential Historic District. It was listed in the National Register in 2018. The listing is not “substantial new historic information” and has no bearing on whether the Fairfax Theater is eligible for designation under Criterion 1. The Beverly Fairfax Commercial Planning District was identified by SurveyLA in 2015 as ineligible for listing under national, state, and local historic district programs for lack of integrity. As such, buildings (like the Fairfax Theater) were not evaluated as contributing or noncontributing. It is worth noting that there is no such tool as a “Planning District” in Los Angeles, although there are Community Design Overlays (CDO) that contain design guidelines to enhance the character of a neighborhood. Fairfax Avenue does not have a CDO. The

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
			SurveyLA evaluation of Fairfax Avenue is not “substantial new historic information” and has no bearing on whether the Fairfax Theater is eligible for designation under Criterion 1. In 2015, the Fairfax Theater was evaluated by SurveyLA in the context of Commercial Development and the theme of Neighborhood Theaters. The summary statement of significance follows: "Excellent example of a 1930s neighborhood movie theater with associated commercial storefronts, located on a prominent corner in the Wilshire area. A rare remaining example of a 1930s theater in the Beverly-Fairfax area. Reflects the importance of movie theaters as entertainment venues for the growing population. Due to alterations including theater entrance modifications, storefront alterations, and

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
			window replacements, the property does not retain sufficient integrity for listing in the National Register." A new survey evaluation is not "substantial new historic information" but rather a differing professional opinion. It is worth noting that the Fairfax Theater was not evaluated in the context of Architecture and the theme of the Art Deco style and it was evaluated ineligible for listing in the National Register for lack of integrity.
Construction Date	1929-1930	1929-1930	Both nominations note that construction began in 1929 and completed in 1930.
Architect	W.C. Pennell	W.C. Pennell	Both nominations provide biographical information about Pennell, but do not argue he was a master architect. Thus, the information is not pertinent to the argument for architectural significance.

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
Contractor	William Simpson Construction Co.	William Simpson Construction Co.	The 2020 nomination contains information about the William Simpson Construction Co., while the 2010 nomination does not. However, the 2020 nomination does not argue the company was a master builder. Therefore, the additional information is not pertinent to the argument for architectural significance.
Property Owner	1929, Nelson Stein	1929 -1960, Nelson Stein 1960-1970, Haig M. Prince 1970-present, B and F Associates	The 2020 nomination contains biographical information about Stein and Prince, while the 2010 nomination does not. However, the additional information is not pertinent to the argument for cultural significance.
Theater Operator	1929-1959, Fairfax Theater Co. owned by Harry Srere, Gus A. Metzger and Charles A. Nichthauser	1929-1959, Fairfax Theater Co. owned by Harry Srere, Gus A. Metzger and Charles A. Nichthauser 1959, Fox West Coast Theaters 1969, Lou Shaw Productions (failed attempt to convert	The 2020 nomination contains biographical information about Gus A. Metzger and the Srere family, two of the three owners of the Fairfax Theater Co. The 2010 nomination included only basic information about the owners. The 2020 nomination also includes information about

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
		Theater to live theatrical venue) 1970, National General Theaters (parent company of Fox West Coast Theater) 1973, Mann Theaters 1981, Kurstin Theaters (converts single auditorium into triplex) 1986, Cineplex Odeon (remodel) 2001, Laemmle 2007, Regency 2010, Closed	the Fairfax Theater Co., while the 2010 nomination does not. The 2020 nomination makes vague connections to the Jewish ancestry of the owners and the significance of the building. The 2020 nomination does not make the requisite connection for this to be substantial new information. The 2020 nomination provides a full history of the Theater operation but is not pertinent to the argument for cultural significance.
Information Supporting Cultural Significance	The Theater operated as movie theater, concert hall and community auditorium. The Theater was used to sneak preview movies and hosted live entertainment such as concerts conducted by	The Theater is the most prominent building in the Beverly-Fairfax Commercial Planning District. The funds that helped build many of the Jewish institutions in the Fairfax	Both nominations argue that the building is culturally significant for its association with the Jewish community. Both nominations mention events, concerts, performances, etc. that are irrelevant to the argument for

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
	Salvatore Santaella on Sundays. A variety of Jewish organization used the Theater. They included the Associates of Jewish Orphans Home; Jewish Center Association; Hadassah; Temple Etz Jacob, and Fairfax Temple. During World War II, propaganda films and war bond events were held at Theater. Gene Autry performed at two benefits in 1951. Eleanor Roosevelt gave campaign speech for Kennedy. Yaacov Meridor paid a visit to the Theater. In 1967, the film <i>Naked Among Wolves</i> premiered at the Theater.	community were raised at events staged at the Theater. The first Jewish deli and kosher market on Fairfax were located in the building. The shops and offices were magnets for the Jewish community. The Theater attracted businesses and people to the area. Within three months of an article in the LA Times announcing the construction of the Theater, E. Clem Wilson announced he would constructing a building across the street. The Theater hosted over forty special events including fundraisers, WWII victory bond drives, community meetings, community parties, puppet shows, concerts, and celebrations.	cultural significance. The 2020 nomination provides more detailed information about events sponsored by Jewish groups than the 2010 nomination, but it is not clear that this is substantial enough new information.

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
	<i>Oh Calcutta!</i> Was performed at the Theater in 1969. Later, the Theater played Russian language films on weekend mornings.	The first benefit for the Beverly Fairfax JCC were held at the Theater in 1935. Between 1947 and 1977 the congregation Etz Jacob held High Holiday services in the Theater. A weeklong screening of USC student films in 1968 including <i>THX</i> by George Lucas. Eleanor Roosevelt appeared at a rally to support JFK's presidential bid and her son's senate campaign. The Theater was one of several used for Filmex in 1981. In the late 1980s, the Theater hosted a benefit to fund AIDS research. In 2002, monthlong midnight shows of <i>Hedwig and the Angry Inch</i>.	

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
Information Supporting Architectural Significance	The Theater is an outstanding example of a neighborhood movie house and performance hall, yet with all the hallmarks of a prominent, first-run theater, such as the Pantages. That it remains in use as a theater makes it even more unique. Designed in 1929 and completed in 1930, the Theater is among the earliest Art Deco theaters in Los Angeles.	The Theater successfully incorporates a distinctive Art Deco style design with its long commercial frontage and culminates with Theater entrance bay and stepped tower. Comparison with Art Deco movie palaces is inappropriate. The Theater opened in 1930, seven years before any other movie theater in the neighborhood. Other entertainment venues such as Pan Pacific Auditorium also followed.	Like the 2010 nomination, the 2020 nomination includes background information on the Art Deco style. However, the 2020 nomination does not explicitly evaluate the building in the context of Art Deco architecture other than the summary statement of significance. While the 2010 nomination compares the building to other examples, the 2020 nomination states that such a comparison with other examples is inappropriate. The 2020 nomination, like the SurveyLA evaluation, places the emphasis on the building type rather than the architectural style. The SurveyLA eligibility standards for neighborhood theaters identify the physical features of the building type, but do not provide guidance for the evaluation of theaters in the context of design. Theaters are

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
			not eligible under Criterion 3 because they possess the physical features of theaters; rather they must be significant in the context of theater design. An extreme version of this logic would be designating a house as a LAHCM because it embodies the distinctive characteristics of a house.
Alterations	Alterations mainly date to 1986 and were noted as follows: Marquee • Original structure refurbished Storefronts and Interiors • Original wooden doors removed and replaced with metal-framed glass doors • Original steel display window frames removed and replaced with aluminum • Original recessed entryways	Alterations are listed in chronological order as follow: 1947 ticket booth replaced 1969 marquee altered 1981 single auditorium converted to triplex 1986 remodel included the theater interior and marquee 2010 permit to “remove plaster ceiling,” but may not have been executed Other alterations noted included the aluminum	Both nominations attached the building permit record for the property as required by the City. However, the 2010 nomination acknowledges many more alterations to the building that the 2020 nomination. The 2010 nomination argues that the exterior alterations are mainly cosmetic and reversible. The author of the 2020 nomination did not have access to the building interior and relied on the 2010 nomination.

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
	reconfigured flush with sidewalk • Original second story window openings resized • Original steel second story windows removed and replaced with aluminum • Blocking up of transoms • Interiors repeatedly altered by tenants Rooftop Sign • Removed Lobby • Original wooden doors replaced and with metal-framed glass doors • Mural removed above doors • Original sloped floor leveled • Walls tiled between poster cases • Handicapped access ramp installed	windows on second story and “some” storefront fenestration	

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
	• Original lighting removed and replaced • Original concession counter removed and replaced Ticket Booth • Replaced (1946) Vestibule • Faux Art Deco ceiling installed Restrooms • Remodeled Auditorium • Reconfigured; main theater north half of original auditorium; east and west theaters south half (1981) • Original seats removed and replaced throughout • Original ceiling covered by dropped ceiling of foam panels in east and west theaters • Walls lined with drywall and felt panels in east and west theaters		

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
	- Faux Art Deco sconces installed in east and west theaters Backstage - Equipment removed - Original curtains removed - Original pipe organ removed Second Floor - Altered by reconfiguration of auditorium and addition of multiple projection booths		
Integrity	Assessment not provided.	Building retains all aspects of integrity, although integrity of design and materials have been diminished by alterations.	The 2010 nomination did not assess the integrity of the building, while the 2020 nomination concluded that the building retained all aspects of integrity. The 2020 nomination differs from the SurveyLA evaluation, which concluded the building was ineligible for listing in the National Register for lack of integrity.

TABLE 1: COMPARISON BETWEEN 2010 AND 2020 NOMINATIONS

Category	2010 Nomination	2020 Nomination	Grimes Comments
			An altered property may still have sufficient integrity for the California Register if it maintains the potential to yield significant scientific or historical information or specific data, which is unlikely to be the case with this property. Therefore, the building would be ineligible for listing in the California Register for lack of integrity.

Hermosa Beach Office
Phone: (310) 798-2400
Fax: (310) 798-2402

San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522



Chatten-Brown, Carstens & Minter LLP

2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
www.cbcearthlaw.com

Amy Minter
Email Address:
acm@cbcearthlaw.com

Direct Dial:
310-798-2400 Ext. 3

January 26, 2021

Via Email

Ken Bernstein (ken.bernstein@lacity.org)
Shannon Ryan (shannon.ryan@lacity.org)
Katie Knudson (katie.knudson@lacity.org)
Office of Historic Resources
Department of City Planning
221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012

Re: Accessory Dwelling Units in Historic Districts

Dear Mr. Bernstein, Ms. Ryan, and Ms. Knudson,

On behalf of the West Adams Heritage Association (WAHA) and the Adams Dockweiler Heritage Organizing Committee (ADHOC), we write to address the City's process for approving accessory dwelling units (ADUs) in historic districts. As an initial matter, WAHA and ADHOC would like to make clear that they are incredibly supportive of the use of ADUs as a means of addressing California's housing crisis. We believe ADUs can be designed to be compatible with the historic districts they are located within while still providing needed housing.

Our concern is that a number of ADUs recently approved by the City in historic districts, in particular within the National Register Historic Districts located in the University Park area, have been designed in a manner that is incompatible with the historic district and fails to follow the Preservation Plan for this area. Members of WAHA and ADHOC and other stakeholders have been informed by City staff that the City believes it is unable to require revisions to ADU projects that adversely impact contributor resources in historic districts due to recent updates to state law addressing ADUs. We disagree with this conclusion and in this letter address the City's ability and responsibility to avoid such impacts under both state law and the City's ADU ordinance, while still allowing development of ADUs.

I. State ADU Law Requires Local ADU Ordinances to Prevent Impacts to Historic Resources.

Recent updates to California's statewide ADU law do set limits on local jurisdictions' ability to prohibit ADU development. The updated Government Code section 65852.2 requires a local agency to ministerially approve ADUs under set circumstances if the agency does not adopt a local ADU ordinance or update its existing ordinance pursuant to state law updates. However, if a local agency does choose to the adopt or update its ADU ordinance, Government Code section 65852.2, subdivision (a)(1)(B)(i) establishes several requirements for what that local ADU ordinance must contain, plainly stating that an ordinance adopted by a local agency to provide for the creation of ADUs:

shall do all of the following...(B)(i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, **setback**, landscape, **architectural review**, maximum size of a unit, **and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources**. These standards shall not include requirements on minimum lot size.

(emphasis added.)¹

The City updated its local ADU ordinance in 2019 and, pursuant to the requirements of state law, the ordinance must include standards to prevent adverse impacts to California and National² Register designated resources. The City's ordinance should also provide for architectural review and establish acceptable setbacks for ADUs.

The California Office of Historic Preservation agrees that local agencies retain the ability to protect historic resources through design review and by setting standards to prevent impacts to resources listed on the California Register:

¹ WAHA and ADHOC have also heard concerns from the City regarding the need to comply with SB 330. SB 330 addresses housing development projects, not ADUs. It was adopted after Government Code section 65852.2 was updated and does not include any further revisions to the Government Code relating to ADU approvals.

² Historic resources listed on the National Register are automatically listed on the California Register.

Local ADU Ordinance with Design Review

While every local agency must approve an ADU if it consistent with state law, it has the opportunity to pass a local ADU ordinance that imposes standards on ADUs including, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review and the maximum size of a unit. While this provision is not specific to historic properties, it does allow the adoption of design review standards that could benefit historic properties and neighborhoods.

Prevention of Adverse Impacts on California Register Properties

In addition, an agency may impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places [Californian Register of Historical Resources].

(https://ohp.parks.ca.gov/?page_id=29972.)

Thus, any claims that the City is unable to impose design standards or prevent impacts to designated historic resources is belied by the requirements of the updated state law.

II. The City's Updated ADU Ordinance Must Prevent Adverse Impacts to Historic Resources.

The City updated its ADU ordinance in December 2019, thus the City's ordinance must include architectural review standards and standards to prevent adverse impacts to resources listed on the California Register. The City's updated ADU ordinance identifies development standards for ADUs, requiring that ADUs:

Comply with all applicable objective provisions required pursuant to Chapter 1 of this Code, including provisions stated in the underlying applicable zone and height district, Specific Plan, Historic Preservation Overlay Zone, Community Planning Implementation Overlay and other applicable zoning ordinances, policies or other documents established pursuant to Chapter 1, Article 3 of this Code. In any instance where there is conflict, this subdivision shall govern.

(LA City Ordinance No. 186481, Sec 2, subd. (c) [LAMC 12.22.A.33].)

To the extent the City interprets its own ADU ordinance as being unable to prevent adverse impacts to resources listed on the California Register because only unspecified objective standards are being imposed, its ordinance does not comply with the requirements of Government Code section 65852.2, subdivision (a)(1)(B)(i). Moreover, that state law specifically allows architectural review provides for the City's broad consideration of design features. Compliance with only objective standards may be inadequate to prevent impacts to California Register resources. In fact, as discussed below, as enforced by the City in a number of instances, compliance with only unspecified standards the City considers to be objective has resulted in adverse impacts to several contributor resources in the St. James National Register District.

III. The City Has Failed to Enforce Objective Preservation Plan Standards.

WAHA and ADHOC believe the City's ordinance fails to comply with state law requirements for ADU ordinances to prevent adverse impacts to designated resources by restricting consideration to unidentified objective standards. The City has adopted the University Park HPOZ Preservation Plan to prevent adverse impacts to this historic preservation overlay zone, which includes three National Register Historic Districts. Failure to comply with any of this Plan's provisions would result in adverse impacts to these historic resources.

The City has claimed it will only enforce those provisions in the Preservation Plan it deems to be objective, but the City has not specified which provisions it considers to be objective and which provisions it will not enforce. Even if it were appropriate to consider only objective provisions of the Preservation Plan, the City failed to require compliance with a number of objective standards from the University Park HPOZ Preservation Plan in several recent ADU projects located in the St. James Park National Register Historic and approved ADU projects with adverse impacts to these historic resources. WAHA and ADHOC submitted detailed comments to the City, identifying the ability to construct an ADU on 2142 Portland Street and without significant impacts to the resources, but the

City failed to enforce the objective Preservation Plan standards that would prevent these impacts. Recent examples include, but are not limited to, the following:

2142 Portland Street is the site of the historic Tillotson House, a contributing resource to the St. James Park National (and California) Register Historic District. The City recently approved a two-story tall ADU, as an addition over a one story non-conforming garage constructed in 1950, in the front yard setback for this resource. (See Exhibit 1, p. 1.) This ADU project fails to comply with several objective provisions of the University Park HPOZ Preservation Plan (“Preservation Plan”).

The Preservation Plan includes the following objective provisions:

- “New residential structures should be placed on their lots consistent with the existing historic setbacks of the block on which they are located.” (Preservation Plan p. 90.)
- “Identify and respect the pattern of front and rear setbacks for the block. While side and rear setbacks may vary, the traditional siting relationships should be maintained.” (Preservation Plan p. 92.)
- “Respect the prevailing setback, i.e. the most commonly occurring setback and lot coverage of the historic properties on the block face on which the building will be sited.” (Preservation Plan p. 95.)
- “New secondary structures should be located behind the line of the rear wall of the house.” (Preservation Plan p. 104.)

WAHA and ADHOC presented evidence clearly showing the prevailing and the historic front yard setback for the 2100 block of Portland Street and that the new construction for the ADU would be located within that setback. They also identified locations for the ADU on the site that would not conflict with these Preservation Plan provisions. Despite it being noncompliant with the objective limit on construction in the prevailing and historic front yard setback for the block, the City approved the ADU as proposed in the historic front yard setback.

2301 Scarff Street is also a contributing resource to the St. James Park National (and California) Register Historic District. A recently approved ADU project at this site includes the destruction of the original historic fabric of the carriage house/garage that is being renovated into an ADU. Of particular concern is the ADU project's removal of the historic garage doors. This ADU project also includes the use of vinyl windows. (See Exhibit 1, p. 2.) These features of the ADU adversely impact the historic resource and fail to comply with following objective provisions of the Preservation Plan:

- “The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.” (Preservation Plan p. 47.)
- “Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.” (Preservation Plan p. 47.)
- “Preserve the materials and design of historic windows and their surrounds, including hardware.” (Preservation Plan p. 53.)
- “Repair windows or doors wherever possible instead of replacing them. Replacement of existing windows should be allowed only when the photographic evidence is provided to the Board by the homeowner that the windows are too deteriorated and cannot be rehabilitated.” (Preservation Plan p. 54.)
- “When replacement of these windows is necessary, replacement windows should match the historic windows in size, shape, arrangement of panes, materials, hardware, method of construction, and profile. True divided-light windows should be replaced with true divided-light windows, and wood windows with wood windows.” (Preservation Plan p. 54.)
- “Preserve the materials and design of historic doors and their surrounds.” (Preservation Plan p. 58.)

- “The size, scale, and proportions of historic doors on a façade should be maintained. Filling in or altering the size of historic doors, especially on primary facades, is inappropriate.” (Preservation Plan p. 58.)
- “When replacement of doors is necessary, replacement doors should match the historic doors in size, shape, scale, glazing, materials, method of construction, and profile.” (Preservation Plan p. 58.)
- “Aluminum windows should not be allowed within the district.” (Preservation Plan p. 99.)

The ADU project at 2301 Scarff Street removes, instead of repairing, historic windows, and replaces wooden windows with vinyl, contrary to the objective provisions in the Preservation Plan, adopted to reduce impacts to historic resources. The project also fails to comply with objective Preservation Plan provisions by including the removal of historic fabric, the historic garage door, and replacement of the historic door with a door that does not match the historic garage door in size, shape, scale, materials or profile.

2336 Scarff Street is another contributor resource to the St. James Park National (and California) Register Historic District. This through lot includes two existing residences, one facing Scarff Street and one facing St. James Park. Each includes a garage to the south of the main buildings, and the garages are a prominent part of the historic setting and streetscape. The ADU project would convert each of these garages into ADUs by removing historic fabric, adding windows and doors, and completely changing the primary façade of the historic garages and adding a faux brick finish to this façade that is inconsistent with the historic character of the resource. The ADU would change the roof form of the existing garages from hipped to gabled and would add a secondary roof. (See Exhibit 1, p. 3-4.) The ADU plan also calls for parking in the St. James Park front setback. This project would also be inconsistent with a number of objective Preservation Plan provisions.

- “Adding new windows on primary facades is inappropriate.” (Preservation Plan p. 53.)

- “Preserve the materials and design of historic doors and their surrounds.” (Preservation Plan p. 58.)
- “The size, scale, and proportions of historic doors on a façade should be maintained. Filling in or altering the size of historic doors, especially on primary facades, is inappropriate.” (Preservation Plan p. 58.)
- “Preserve the historic roof form.” (Preservation Plan p. 66.)
- “The introduction of faux finish not characteristic of a particular style period should be avoided. (Preservation Plan p. 76.)
- “New additions should not be built on the primary façade or facades or the front half of the side facades. Additions should be located at the rear of the structure whenever possible, away from the main architectural façade.” (Preservation Plan p. 81.)
- “Parking areas should be located to the rear of the structure.” (Preservation Plan p. 87.)
- “[M]aterials such as pressed hardboard or vinyl that replicate the appearance of historical materials should not be allowed.” (Preservation Plan p. 102.)

This ADU project was improperly approved with additions to the main façade of the existing garages, an addition that adds non-historic windows and faux finishes. It also removes the historic fabric of these resources.

Members of WAHA and ADHOC provided comments regarding how the existing garages could be converted to ADUs in compliance with the Preservation Plan provisions at 2142 Portland Street and 2301 Scarff Street. Despite this, the City required no changes in the ADM project based on the approval forms that erroneously checked a box stating that the projects comply with the Preservation Plan.

To demonstrate the ability to fit an ADU within an historic district, without detracting from the historic significance, WAHA and ADHOC have provided examples of several well-designed ADUs in the City that both provide housing and comply with the Preservation Plan. (Exhibit 2, examples located at 2643 Orchard Avenue, 2754 ½ Kenwood Avenue, 2665 ½ Orchard Avenue and 2340 Portland Street.) WAHA and ADHOC have also prepared a case study identifying the impactful features of improperly designed ADUs and contrasting them with the features of well-designed positive examples of ADUs in historic districts. (Exhibit 3.)

Conclusion

The City must revise its process for approving ADUs in historic districts so that impacts to these resources can be avoided and architectural review can be implemented, as required by state ADU law. Additionally, current approvals need to be revised to meet the requirements of the law, as detailed in this letter. WAHA and ADHOC look forward to working with the City to make these necessary revisions, both in the process and potentially in the City's ADU ordinance, to ensure our important historic resources are properly protected when ADUs are approved.

Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Minter", is written over a light blue horizontal line.

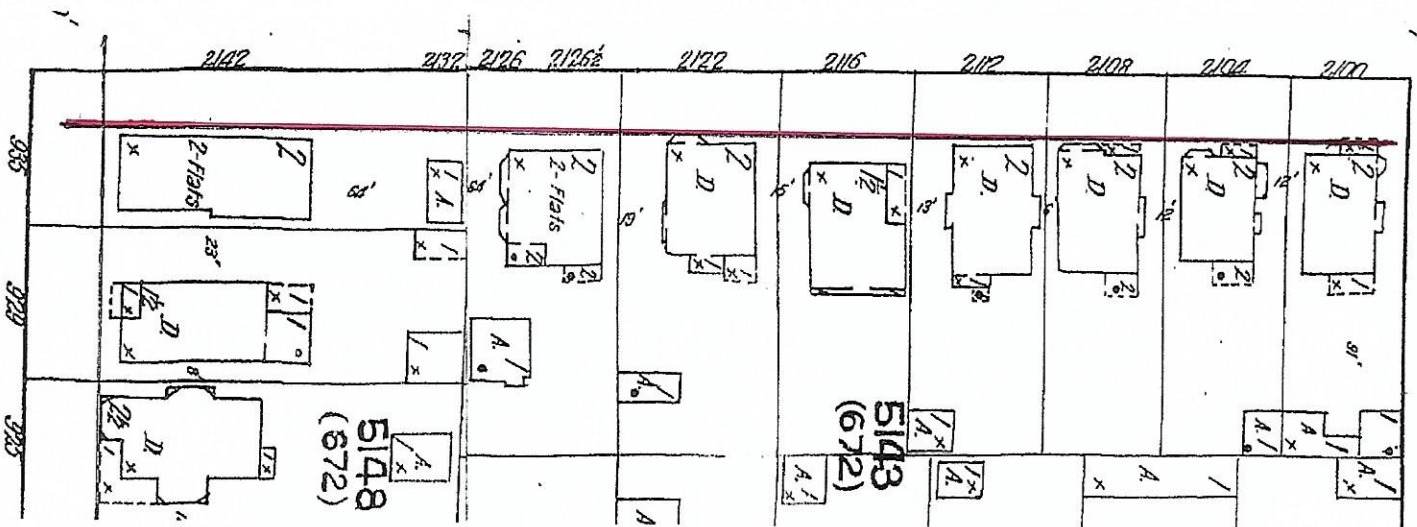
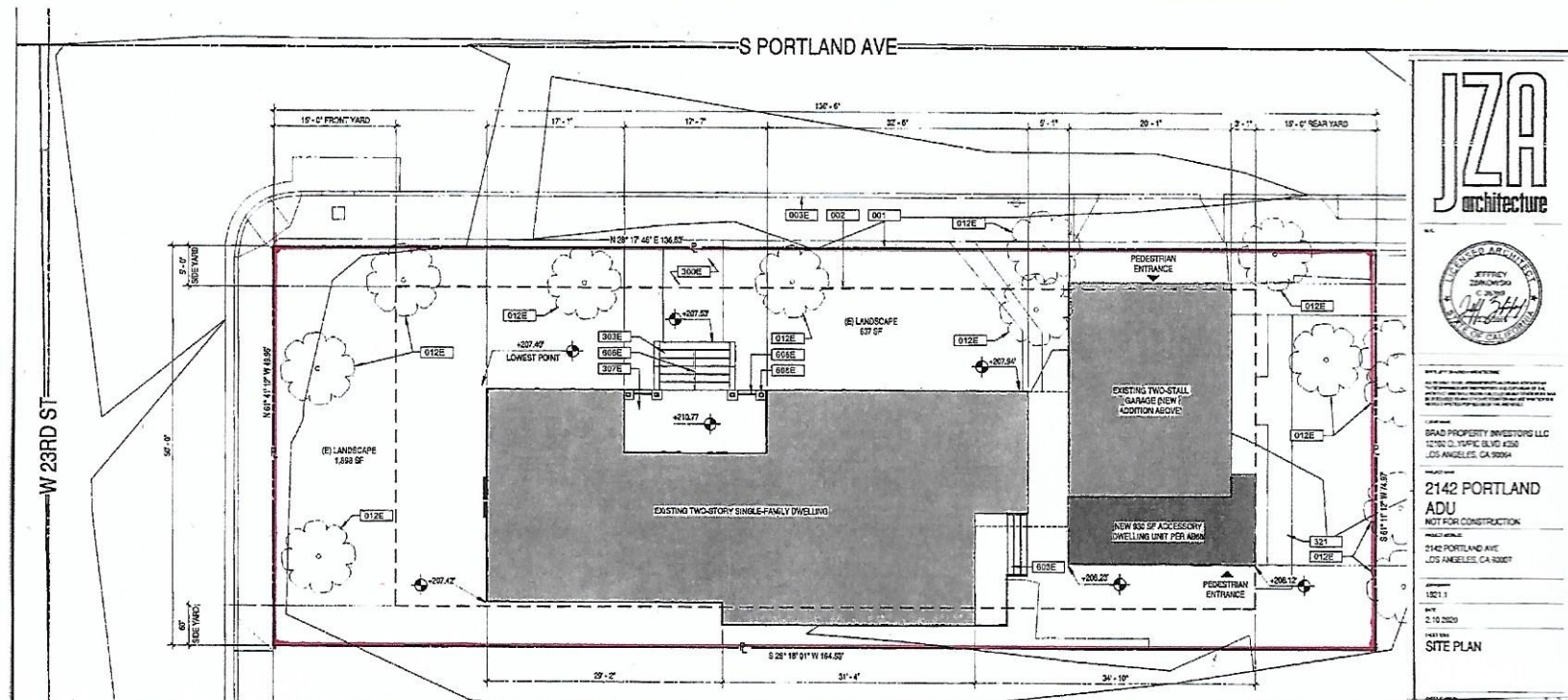
Amy Minter

Exhibits:

- 1) Examples of ADUs with adverse impacts
- 2) Examples of ADUs that are compatible with historic districts
- 3) Case study examples of good and bad ADUs

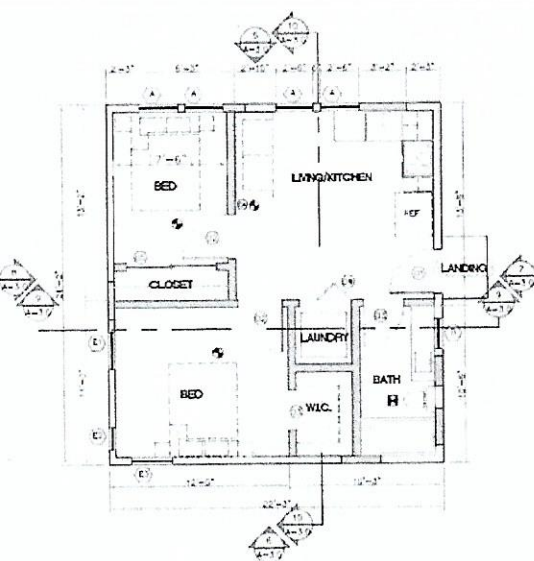
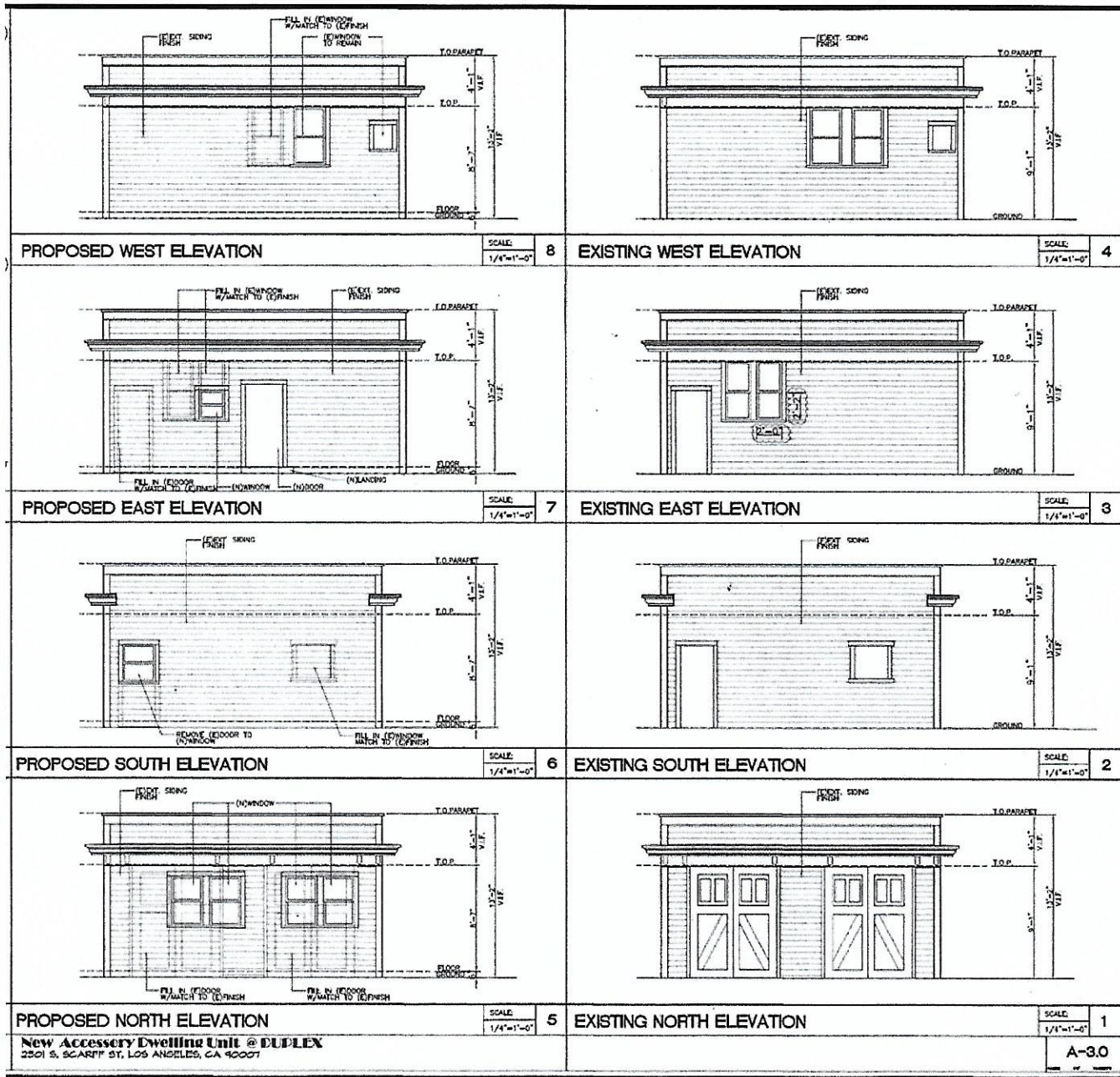
cc: Cultural Heritage Commission
Los Angeles Conservancy

EXHIBIT 1



W. 21ST

West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies



PROPOSED FLOOR PLAN

RESIDENTIAL DESIGN GUIDELINES - INFILL

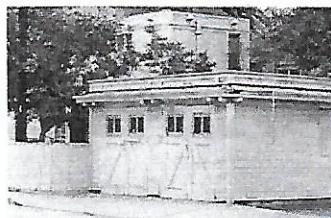
UNIVERSITY PARK HPOZ PRESERVATION PLAN -JULY 14, 2005

8.15 Constructing Detached Secondary Structures (New Garages, Accessory Structures, & Detached Units)

PURPOSE AND INTENT

Garages and accessory structures can make an important contribution to the character of an historic neighborhood. Although high style "carriage houses" did exist historically, garages and other accessory structures were typically relatively simple structures architecturally, with little decorative detail. Quite often these structures reflected a simplified version of the architectural style of the house itself, and were finished in similar materials.

Unfortunately, many historic garages and accessory structures have not survived to the present day, perhaps because the structures were often built flush with the ground, without a raised foundation. Therefore, many homeowners in historic areas may need to confront the issue of designing a new secondary structure.



West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies



ARCHITECT
JZA architecture

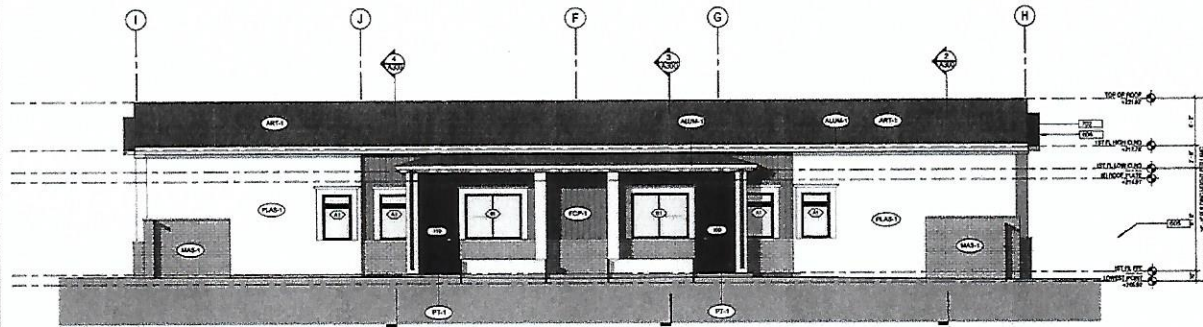
SCARFF ST ADU DUPLEX

2206-2208 SCARFF ST
LOS ANGELES, CA 90007

2017

7/28/2020

3D VIEWS



KEYNOTES

- 000 LG UNIT TANK - REFER TO GWS FOR CAPACITY
- 001 ALUM. STAIRS (PLAN 1)
- 002 ALUM. STAIRS (PLAN 1)
- 003 HORIZONTAL W/ C/W/ P/ R/ O/ S
- 004 NO FASHIONS
- 005 NO FASHIONS
- 006 NO FASHIONS
- 007 TANKS, WATER, W/ R/ O/ S
- 008 MECHANICAL SEPARATION

JZA
architecture



SHEET NOTES

1. ALL DIMENSIONS UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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19. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
20. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

ARCHITECT
JEFF ZUCKERMAN ARCHITECTURE
2206-2208 SCARFF ST
LOS ANGELES, CA 90007

STRUCTURAL ENGINEER
SEE BLUE PRINTS
2206-2208 SCARFF ST
LOS ANGELES, CA 90007

DATE
2017

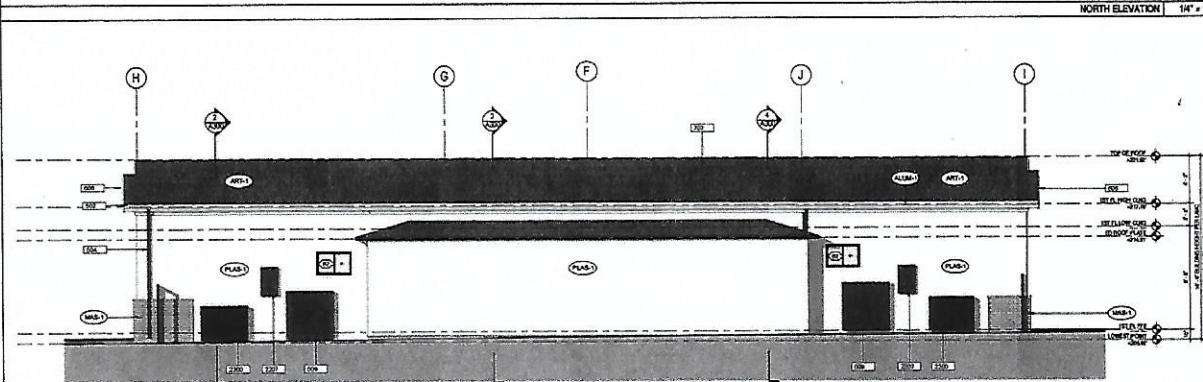
7/28/2020

SCARFF ST ADU
DUPLEX

2206-2208 SCARFF ST
LOS ANGELES, CA 90007

2017

7/28/2020



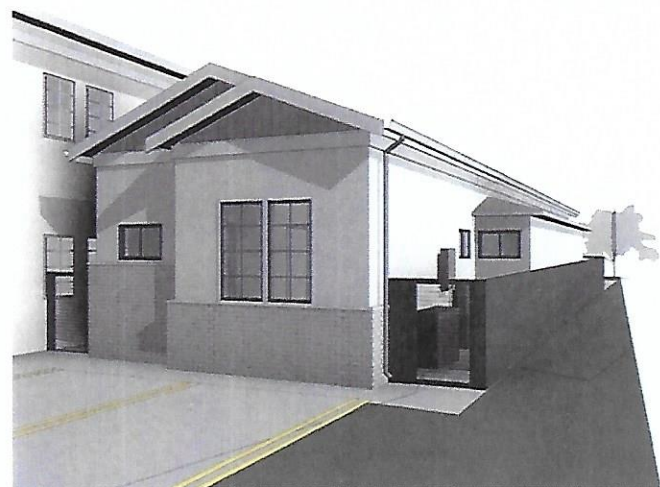
NORTH ELEVATION 1/4" = 1'-0" 1

SOUTH ELEVATION 1/4" = 1'-0" 2



COURTYARD 3D VIEW

2



SW CORNER

1

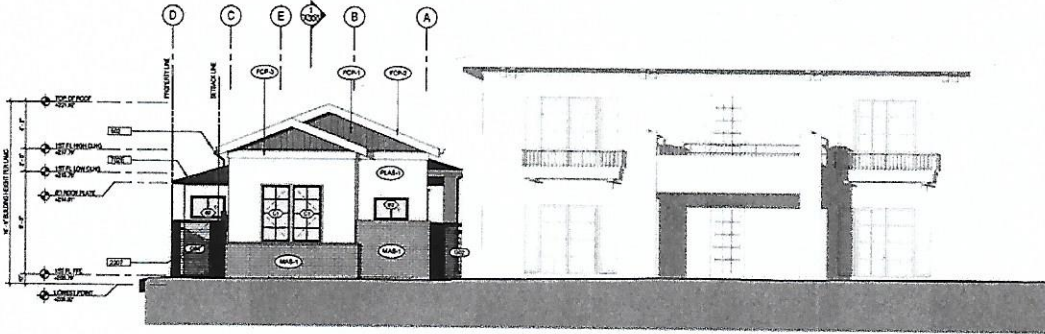
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architecture



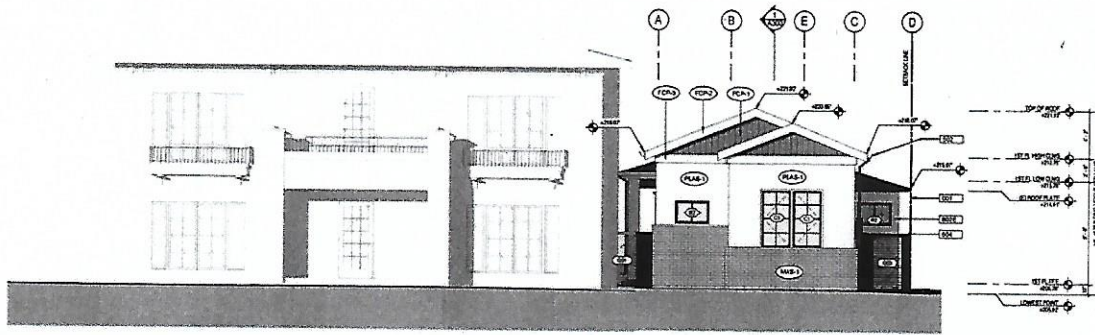
ARCHITECT
JEFF ZUCKERMAN ARCHITECTURE
2206-2208 SCARFF ST
LOS ANGELES, CA 90007

STRUCTURAL ENGINEER
SEE BLUE PRINTS
2206-2208 SCARFF ST
LOS ANGELES, CA 90007

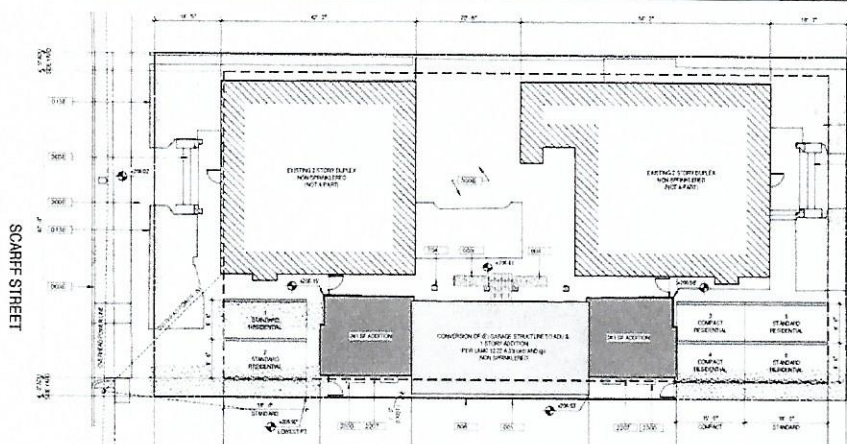
West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies



ST. JAMES ELEVATION 1/4" = 1'-0"



SCARFF ELEVATION 1/4" = 1'-0"



SCARFF STREET

ST. JAMES PL

KEYNOTES

- 01 PROPERTY LINE
- 02 EXISTING EXTERIOR WALLS
- 03 EXISTING EXTERIOR WALLS
- 04 EXISTING EXTERIOR WALLS
- 05 EXISTING EXTERIOR WALLS
- 06 EXISTING EXTERIOR WALLS
- 07 EXISTING EXTERIOR WALLS

JZA
architecture



SHEET NOTES

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
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SCARFF ST ADU DUPLEX

2017
7.26.2020

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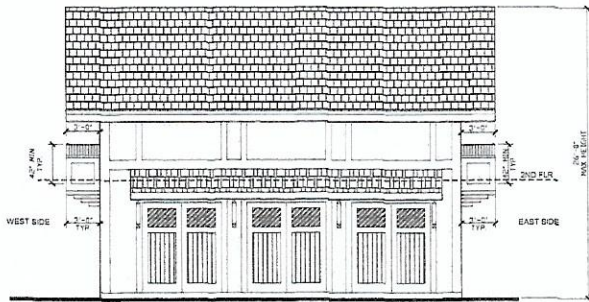
SCARFF ST ADU DUPLEX

2017
7.26.2020

EXHIBIT 2

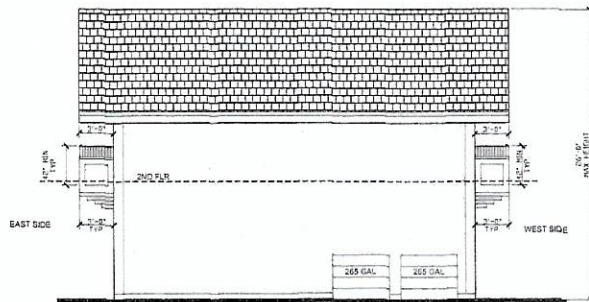
West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies

BALCONY RAILING NOTE: ALL BALCONIES PROVIDE MIN 42" HIGH GUARDS WITH MAXIMUM 4" CLEAR SPACING OPENING BETWEEN RAILS PER (R312.1.2).



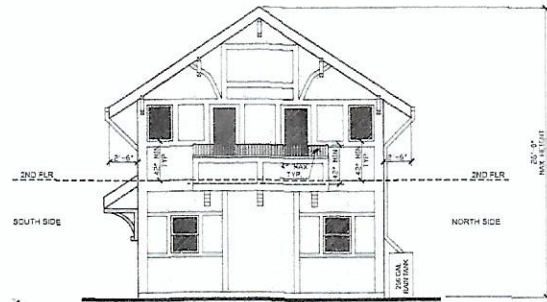
PROPOSED SOUTH ELEVATION (FRONT)
SCALE: 1/4" = 1'-0"

BALCONY RAILING NOTE: ALL BALCONIES PROVIDE MIN 42" HIGH GUARDS WITH MAXIMUM 4" CLEAR SPACING OPENING BETWEEN RAILS PER (R312.1.2).



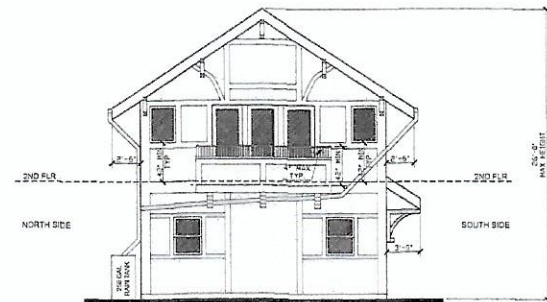
PROPOSED NORTH ELEVATION (REAR)
SCALE: 1/4" = 1'-0"

BALCONY RAILING NOTE: ALL BALCONIES PROVIDE MIN 42" HIGH GUARDS WITH MAXIMUM 4" CLEAR SPACING OPENING BETWEEN RAILS PER (R312.1.2).



PROPOSED EAST ELEVATION (SIDE)
SCALE: 1/4" = 1'-0"

BALCONY RAILING NOTE: ALL BALCONIES PROVIDE MIN 42" HIGH GUARDS WITH MAXIMUM 4" CLEAR SPACING OPENING BETWEEN RAILS PER (R312.1.2).



PROPOSED WEST ELEVATION (SIDE)
SCALE: 1/4" = 1'-0"

EXTERIOR MATERIAL NOTES
BODY TO BE PAINTED STUCCO TO MATCH FRONT
STRUCTURE IN MATERIAL AND FINISH AND COLOR
ALL TRIM TO BE WOOD TO MATCH FRONT STRUCTURE
ALL WINDOWS TO BE WOOD WITH MINERAL DETAILING
TO MATCH BUT NOT REPLICATE THE FRONT
STRUCTURE

SHOWER: SW 1203
BATH: SW 1018
KITCHEN: SW 1018
LIVING: SW 1018
BEDROOM: SW 1018
HALL: SW 1018
CLOSET: SW 1018
PORCH: SW 1018
GARAGE: SW 1018
EXTERIOR COLOR NOTES

SHOWER: SW 1203
BATH: SW 1018
KITCHEN: SW 1018
LIVING: SW 1018
BEDROOM: SW 1018
HALL: SW 1018
CLOSET: SW 1018
PORCH: SW 1018
GARAGE: SW 1018
EXTERIOR COLOR NOTES

2700 LLC
OWNERSHIP ENTITY
C/O CARLOS TRAMER/ALICE ANA
2700 S. HUNTER ST.
LOS ANGELES, CA 90007
PHONE: (310) 438-5455

NEW DETACHED ACCESSORY DWELLING UNIT
2643 ORCHARD AVE
2641 ORCHARD AVE, LOS ANGELES, CALIFORNIA 90007

MICHAEL NIGOSIAN
ARCHITECT
13744 LINDEN BLVD #102
LOS ANGELES, CA 90044
PHONE: (310) 821-0971
EMAIL: MICH@MICHAELNIGOSIAN.COM



DATE: 2/20/16
JOB: 2643 ORCHARD

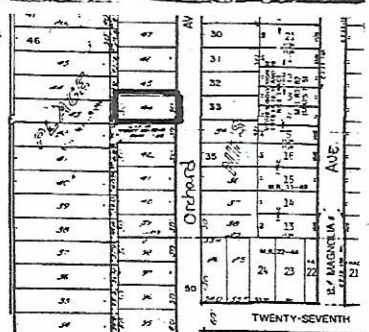
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21. Sources (List books, documents, surveys, personal interviews and their dates).

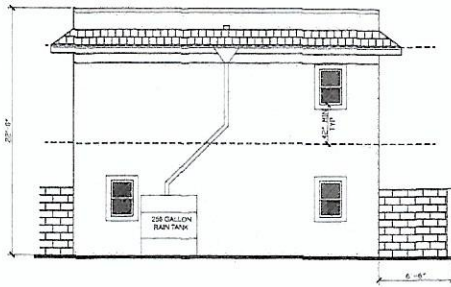
Dept. of Building & Safety
Los Angeles County Archives
Los Angeles City Directory 1905,

22. Date form prepared 9/83 revision/update
By (name) OF 1982 R. Iredale form
Organization: Bur of Engineering
Address: 200 N. Spring St.
City: Los Angeles Zip: 90012
Phone: 485-6556

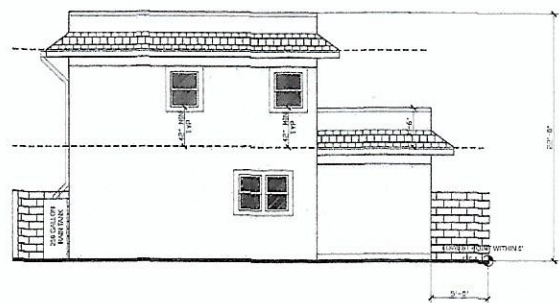


West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies

ANT GRAFFITI NOTES:
JNT GRAFFITI-TREATING MATERIAL SHALL BE APPLIED TO ALL EXTERIOR WALLS TO A MINIMUM OF 10'-0" SEE SHEET C-04 FOR MATERIAL SPECIFICATIONS AND NOTES.



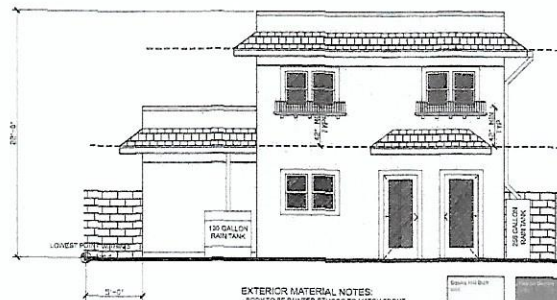
PROPOSED EAST ELEVATION (REAR)
SCALE 1/4" = 1'



PROPOSED NORTH ELEVATION (SIDE)
SCALE 1/4" = 1'



PROPOSED WEST ELEVATION (FRONT)
SCALE 1/4" = 1'



PROPOSED SOUTH ELEVATION (SIDE)
SCALE 1/4" = 1'

EXTERIOR MATERIAL NOTES:
BODY TO BE PAINTED STUCCO TO MATCH FRONT STRUCTURE IN INTERNAL AND EXTERIOR COLOR. ALL TRIM TO BE PAINTED TO MATCH FRONT STRUCTURE. ALL WINDOWS TO BE WOOD WITH MINIMAL DETAILING TO MATCH BUT NOT REPLICATE THE FRONT STRUCTURE.

EXTERIOR COLOR NOTES:
BENJAMIN MOORE EXTERIOR PAINT COLORS:
BODY: EQUINE HELL DUFFY BBA 1158
TRIM: FALCON BROOKLYN BBA 1215
WINDOWS: FALCON BROOKLYN BBA 1215
ROOF: WEATHERED WOOD

ANAND & ANNIE KOLATKAR
OWNERS
2754 KENWOOD AVE
LOS ANGELES, CA 90007
PHONE: 415.672.0022

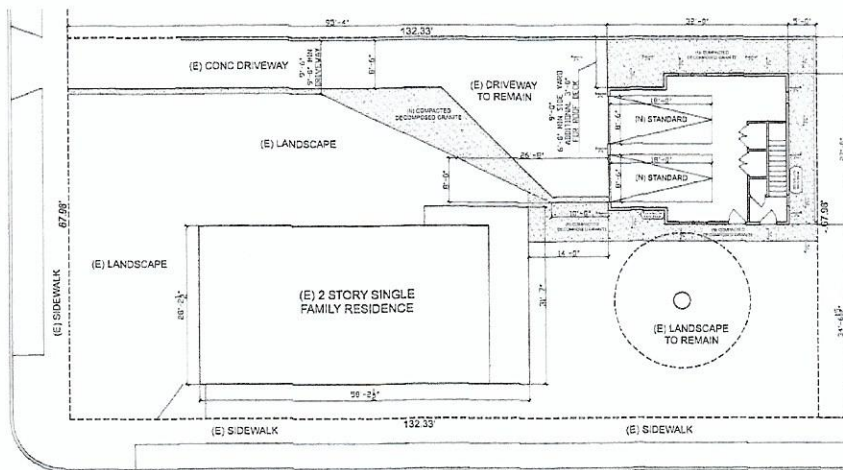
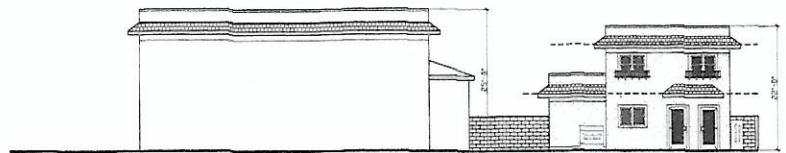
NEW ACCESSORY DWELLING UNIT OVER 2 CAR GARAGE
2754 1/2 KENWOOD AVENUE
2754 1/2 KENWOOD AVE, LOS ANGELES, CALIFORNIA 90007

MICHAEL NIGOSIAN
ARCHITECT
137 N. LANTANA BLVD #102
LOS ANGELES, CA 90012
PHONE: (213) 625-1071
EMAIL: MNNIGOSIAN@GMAIL.COM



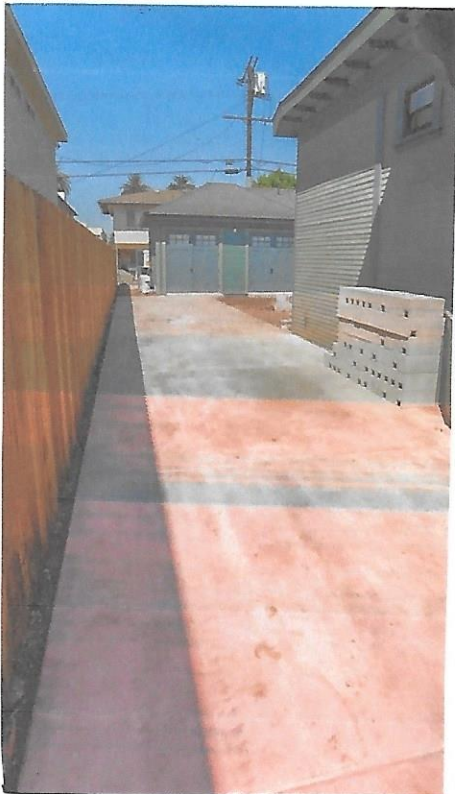
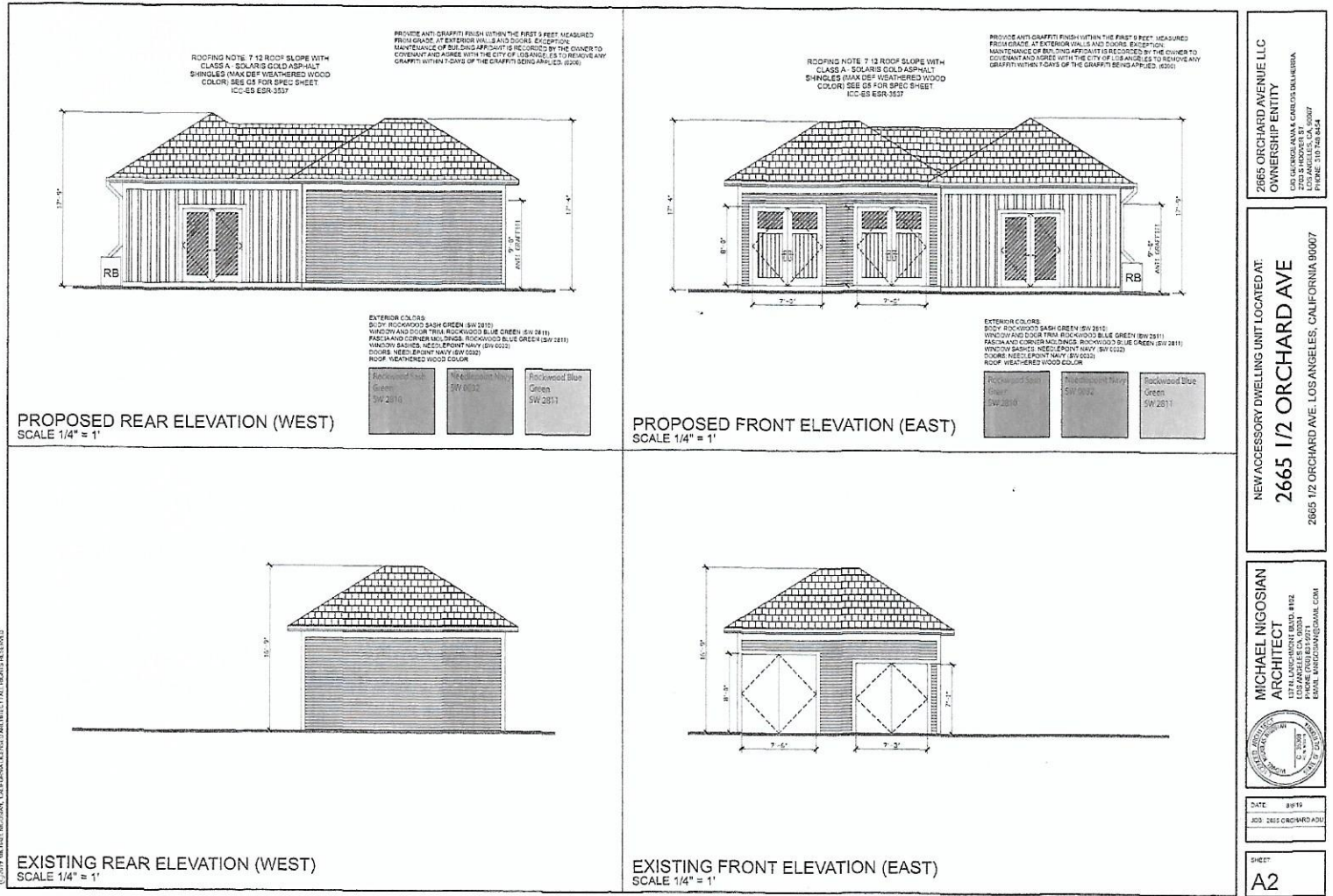
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JOB: KENWOOD ADU

SHEET
A2

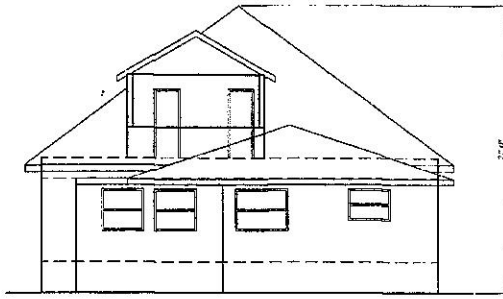


WEST 29TH STREET
CENTERLINE

West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies

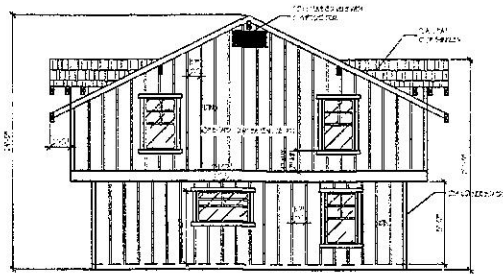


West Adams Heritage Association (WAHA) Accessory Dwelling Units (ADU) Case Studies



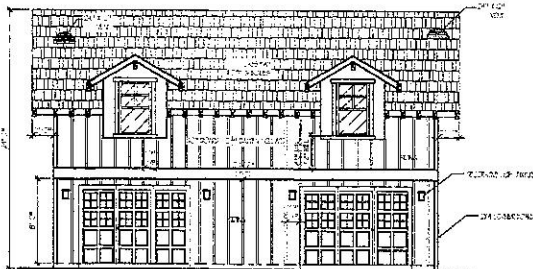
EXISTING FRONT BUILDING

SCALE 1/4" = 1'-0"



NEW REAR UNIT

SCALE 1/4" = 1'-0"

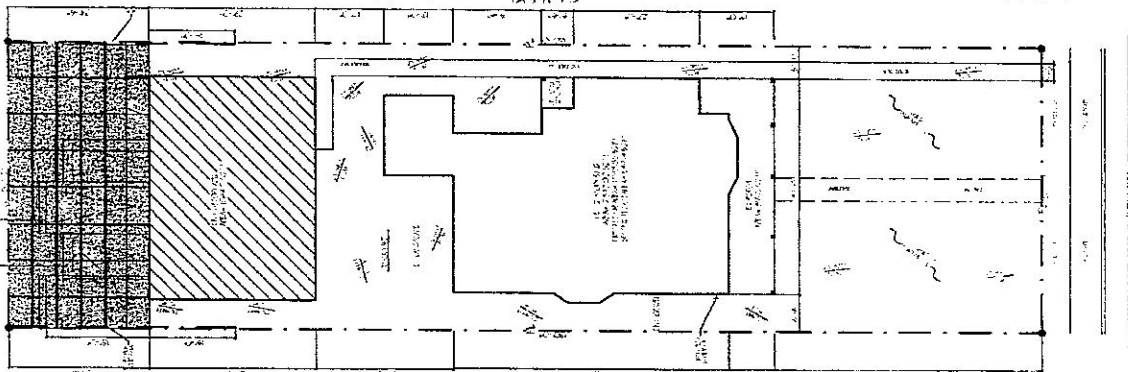


WEST ELEVATION

SCALE 1/4" = 1'-0"



EAST ELEVATION

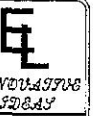


ERIC LUNA
15437 S DENVER AVE.
GARDENA, CA
90248
310-429-6388

PROPOSED TWO-STORY DUPLEX FOR
2340 S PORTLAND ST. LOS ANGELES, CA
90007

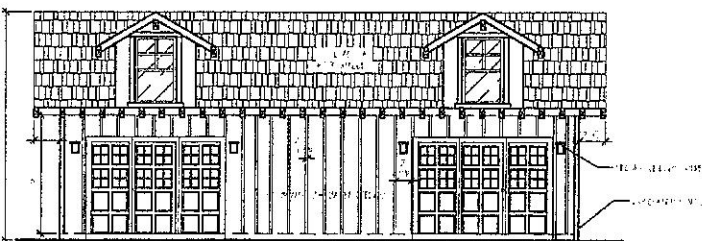
PROPOSED
WEST & EAST
ELEVATIONS

A-P.3



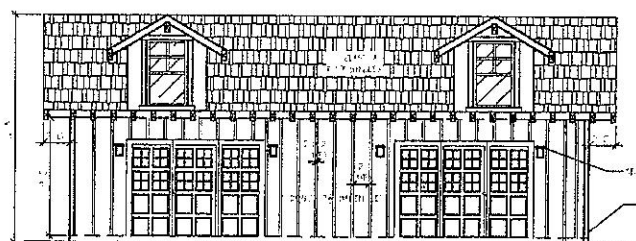
ERIC LUNA
15437 S DENVER AVE.
GARDENA, CA
90248
310-429-6388

PROPOSED 1-STORY ADU FOR
2340 S PORTLAND ST. LOS ANGELES, CA
90007



WEST ELEVATION

SCALE 1/4" = 1'-0"



EAST ELEVATION

SCALE 1/4" = 1'-0"

EXHIBIT 3

NOTES ON EXAMPLES

(A, B, C, D relates to OHR Case Study Examples)

BAD EXAMPLES

2142 Portland Street

C Garage Addition UPHPOZ

2301 Scarff Street

A Garage Conversion UPHPOZ

2336 Scarff Street

17 St. James Park

C Garage Addition UPHPOZ

GOOD EXAMPLES

2643 Orchard Avenue

D New Construction NUP-DRB

2754 ½ Kenwood Avenue

C Garage Addition AN-HPOZ

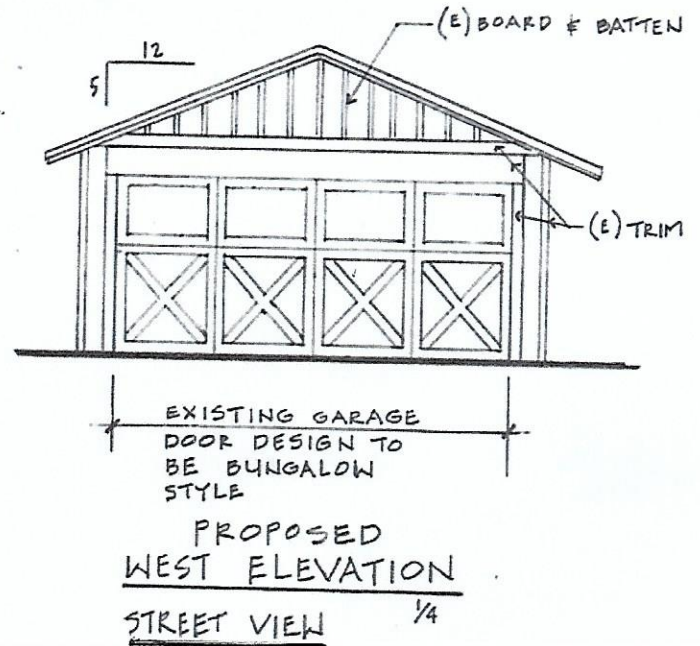
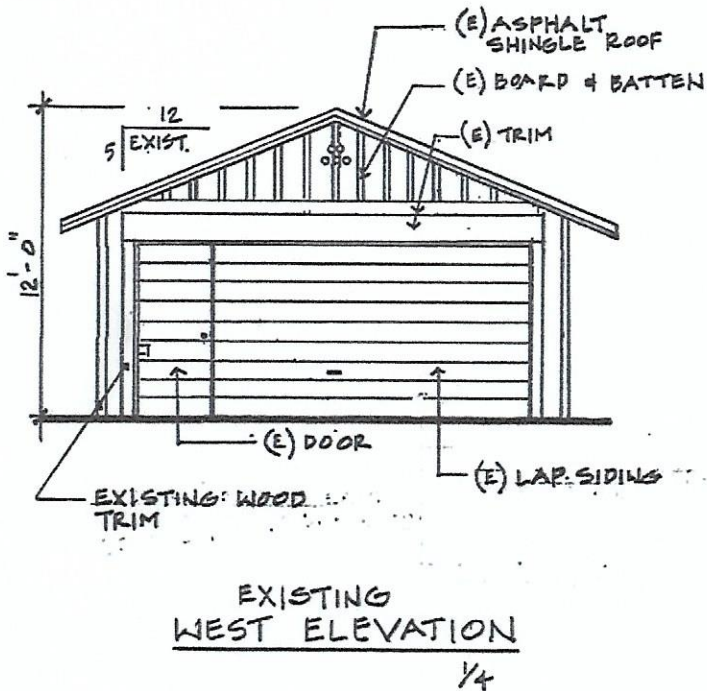
2665 ½ Orchard Avenue

B Garage Addition NUP-DRB

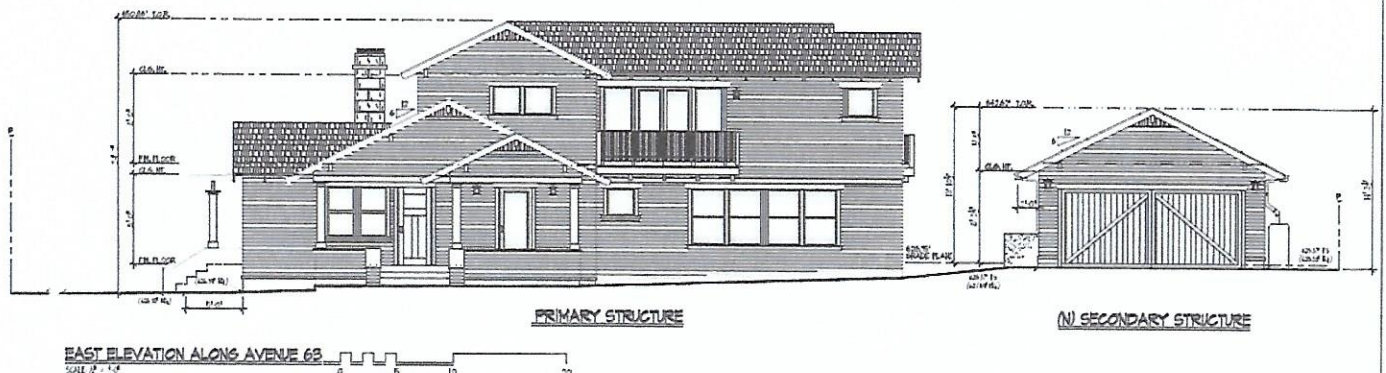
2340 Portland Street

D New Construction UPHPOZ

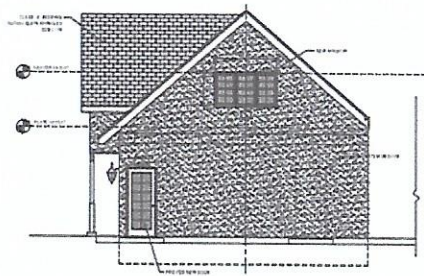
Example A: Garage Conversion



Example B: Garage Addition

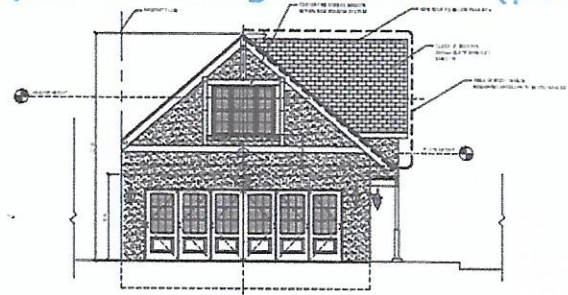


Example C: Garage Addition (part 2)



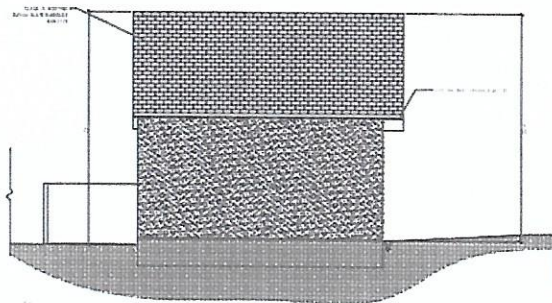
PROPOSED EAST ELEVATION
SCALE 1/4" = 1'-0"

2



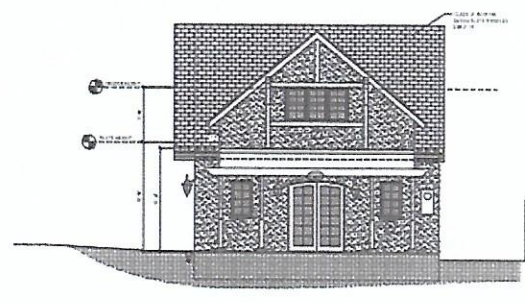
PROPOSED WEST ELEVATION
SCALE 1/4" = 1'-0"

1



PROPOSED NORTH ELEVATION
SCALE 1/4" = 1'-0"

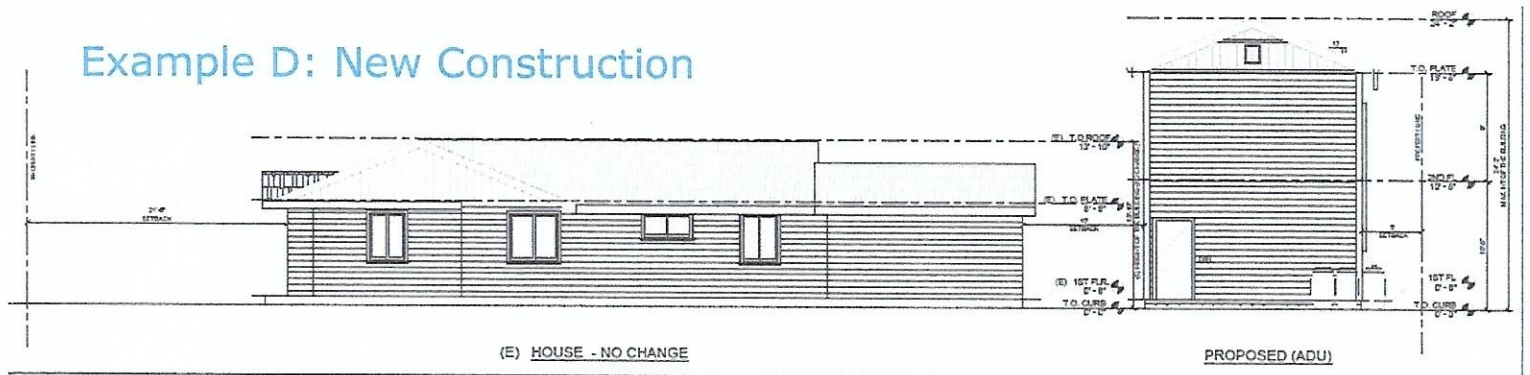
4



PROPOSED SOUTH ELEVATION
SCALE 1/4" = 1'-0"

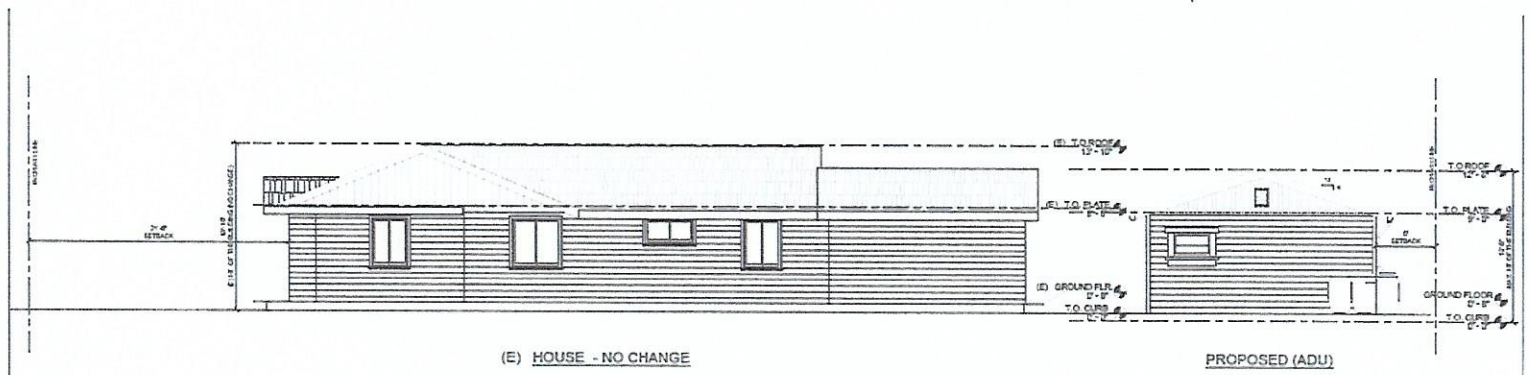
3

Example D: New Construction



(E) HOUSE - NO CHANGE

PROPOSED (ADU)



(E) HOUSE - NO CHANGE

PROPOSED (ADU)



523 West Sixth Street, Suite 826
Los Angeles, CA 90014

213 623 2489 OFFICE
213 623 3909 FAX
laconservancy.org

February 26, 2021

Sent Electronically

Ken Bernstein
Office of Historic Resources
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012
Email: ken-bernstein@lacity.org

RE: Accessory Dwelling Units (ADU) in Los Angeles Historic Districts

Dear Ken:

On behalf of the Los Angeles Conservancy I am writing to comment on Accessory Dwelling Units (ADU), specifically the review and approval procedures taking place within the city's historic districts (both HPOZ, California and National Register-listed). Our comments are in follow-up to the recent letter (January 26, 2021) from Chatten-Brown, Carstens & Minter on behalf of the West Adams Heritage Association (WAHA).

The Conservancy believes the concerns raised by WAHA are important and necessary to address, to determine how the City best perform its design review responsibility in a way that assures adequate protection for its historic districts. Based on our understanding of state law and local policies, we believe the City has a greater ability to perform design review for ADU projects in a way that can avoid adverse impacts.

California ADU law and the City's ADU ordinance both call out California Register-listed resources and establishing standards to prevent adverse impacts. The City's 2019 ADU ordinance identifies development standards for ADUs and specifically calls out and requires projects to comply with Historic Preservation Overlay Zones. For HPOZs (some of which are also listed at the state and national levels) the City's existing Preservation Plan for each HPOZ provides a clear mechanism for guiding design review.

We understand the recent passage of SB330 may be a complicating factor, in terms of establishing objective-only standards for design review. However, it would be helpful to clarify how this legislation regarding



housing development projects relates to the design review of ADUs within a system of historic districts established prior to the adoption of SB330. Also, if objective standards are deemed to be a requirement by the City, can you clarify how this was determined and the method by which objective standards are being defined within any given historic district? Even if this were required as part of SB330 compliance, we believe the City has significant latitude to determine existing Preservation Plan priorities as objective standards and therefore avoid adverse impacts as part of the design review process.

The various examples cited in Chatten-Brown, Carstens & Minter's letter are compelling, and raise concerns as the City's interpretation of ADU design review limitations will inevitably affect more historic districts. This provides an opportunity to address and fix the problem before it becomes more prevalent across the city.

Conclusion

The Conservancy fully supports and welcomes more ADU development throughout the city and within its historic districts, as a way to increase density and provide additional housing options. It is an approach we reference in our recent study, *Preservation Positive Los Angeles*, as we want ADUs to flourish citywide.

Design review and ADU production are not mutually exclusive, though projects often need strong guidance and adherence to standards to ensure historic features and compatibility are not unnecessarily impacted. It would appear the City has the full ability and tools available to guide ADU development through the existing design review process, while ensuring a "do no harm" approach for existing historic districts.

Chatten-Brown, Carstens & Minter's comments on behalf of WAHA raise some good questions. The Conservancy welcomes any opportunity where we all can come together to better understand the challenges, and determine how we can address them in a way that fully complies with state law and City policies while still protecting historic districts.

Thank you for all you and the Office of Historic Resources do to help protect our historic places. We look forward to talking more on this and please do not hesitate to contact me at (213) 430-4203 or afine@laconservancy.org should you have any questions.

Sincerely,



Adrian Scott Fine
Senior Director of Advocacy





APPLICATIONS:

APPEAL APPLICATION CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Instructions and Checklist

Related Code Section: The Los Angeles Municipal Code (LAMC) Section 11.5.13 (Ord. No. 186,338) established the appeal procedure to the City Council for California Environmental Quality Act (CEQA) determinations.

Purpose: *The Appeal* - A CEQA clearance can only be appealed if a non-elected decision-making body (ZA, APC, CPC, DIR) makes a determination for a project that is not further appealable. To initiate appeal of a CEQA document this form must be completely filled out with the required materials attached and filed within 15 calendar days from the final administrative decision, of the entitlement application.

General Information

Appealable CEQA documents:

- Certified Environmental Impact Report (EIR)
- Sustainable Communities Environmental Assessment (SCEA)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Categorical Exemption (CE)
- Sustainable Exemption (SE)

NOTE:

- Actions not appealable include an addendum, findings made pursuant to CEQA Guidelines Section 15162, or an action in which the determination does not constitute a project under CEQA.
- All CEQA appeals are heard by the City Council.
- This form is only for the appeal of Department of City Planning determinations: All other CEQA appeals are filed with the City Clerk pursuant to the LAMC Section 197.01.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

1. Case Information

Environmental Case Number: APM-2020-1018-ADU

Related Entitlement Case Number(s): _____

Project Address: 2142 Portland Street, L.A. CA 90007

Date of Final Entitlement Determination: n/a

The CEQA Clearance being appealed is a(n):

☒ EIR ☐ SCEA ☐ MND ☐ ND ☐ CE ☐ SE

2. Appellant Identity (check all that apply)

- ☐ Representative ☐ Property Owner ☒ Other Person
☐ Applicant ☐ Operator of the Use/Site

3. Appellant Information

Appellant Name: Jim Childs (NUPCA)

Company/Organization: North University Park Community Association

Mailing Address: 90 2326 Scarff St

City: Los Angeles State: CA Zip: 90007

Telephone: 213 747-2526 E-mail: jeanjim2341@att.net

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☒ Self ☒ Other: NUPCA

b. Is the appeal being filed to support the original applicant's position? ☐ Yes ☒ No

4. Representative/Agent Information

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

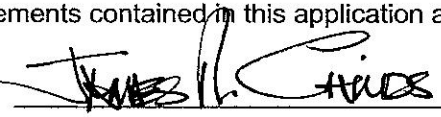
Telephone: _____ E-mail: _____

5. Appeal Justification

Attach a separate sheet providing your specific reasons for the appeal. Your reasons must state how you believe CEQA was incorrectly applied, providing a legal basis for the appeal.

6. Applicant's Affidavit

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: 10/7/2020

ENVIRONMENTAL APPEAL FILING REQUIREMENTS

Note: City Clerk prepares mailing list for CEQA appeals per LAMC Section 11.5.13 E.

- 1. Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates)
Each case being appealed is required to provide three (3) sets of the listed documents.

- ☐ Environmental Appeal Application (form CP-7840)
- ☐ Justification/Reason for Appeal
- ☐ Copies of the written Determination Letter, from the final appellate body, which must be a non-elected decision-making body

2. Electronic Copy

- ☐ Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Environmental Appeal Application.pdf", "Justification/Reason Statement.pdf", "Final Determination Letter.pdf"). No file should exceed 9.8 MB in size.

3. Appeal Fee

- ☐ Original Applicant - A fee equal to 85% of the original application fee of the Environmental case; provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- ☐ Other Persons - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified		☐ Original receipt and BTC receipt (if original applicant)

NORTH UNIVERSITY PARK COMMUNITY ASSOCIATION (NUPCA)

CEQA MASTER APPEAL FORM (CP-7840) CONTINUATION: ADM-2020-1018-ADU

CEQA Appeal Justification

2142 2140 Portland Street, LA, CA 90007

On behalf of the North University Park Community Association (N.U.P.C.A.) who are aggrieved parties, we object to and appeal the administrative clearance ("Clearance Letter") by Katie DeBiase of the Office of Historic Resources which arbitrarily found:

"This project complies with the following regulations in the University Park Preservation plan, Chapter 8" ¹

And arbitrarily dismissed the substantial evidence in the record that by placing an ADU in the front yard setback of a National Register Historic Property, there are significant impacts to the national register Tillotson House and to the District itself:

"The Staff's inappropriate approval of this ADUs' location within the front-yard setback is a direct result of a myopic "staff only" review. By subjectively approving the projects' location the City has created, for purposes of CEQA, a potential negative impact to not only to the subject property itself but to a character-defining feature of the historic streetscape, it's historic prevailing front-setback." ²

This project as currently designed does not comply with the University Park Preservation Plan nor with the Secretary of the Interior's Standards and Guidelines as explained in the ADHOC letter of September 25 to the Department of City Planning.

Originally perceived to be a staff oversight, the failure of staff to respond to repeated requests to evaluate this project in the context of its National Register listing and compliance with nationally recognized historic standards has fallen on deaf ears.

As a remedy staff should immediately comply with their own caveat:

"This Administrative Clearance is based on the information provided by the applicant. If, at a later date, this information is found to be incorrect or incomplete, this sign-off will become

¹ City of Los Angeles, Department of City Planning-Office of Historic Resources, ADM-2020-1010-ADU clearance letter, page 2

² ADHOC letter to Department of City Planning, Vince Bertoni, Kevin Keller, Ken Bernstein, from Jim Childs, page 3, September 25, 2020 via e mail

invalid and any development occurring at that time must cease until appropriate entitlements reobtained.”³

Absent such staff reconsideration, NUPCA is required to appeal the clearance because of the severe and irreparable harm to a National Register property and District that will be done to a federal historic resource should this project move forward.

1. This project is discretionary because it requires an evaluation whether it complies with the Preservation Plan (see Clearance letter page 2.) If it does not comply, then such administrative clearance should not be issued.
2. The National Register District requires unique evaluation and attention for compliance to nationally recognized historic standards. AB2299 specifically allows the city to: (B) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and **standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.**

Language in the state law removes this project as it is currently designed from ministerial to discretionary and therefore triggers CEQA review. No such review has been undertaken and staff has clearly ignored the fundamental inappropriateness of this project.

“The Departments’ responsibility to execute a process that fulfills the State’s priority for affordable housing and the mandates of the California Environmental Quality Act to protect local endangered historic properties must be met with effective resolutions. Approving a two-story residential building located in the historic prevailing frontyard setback of a federal historic district is a failed resolution. Adding onto a one-story preexisting non-contributing intrusion in the manner of the Project’s proposal has only doubled-down its negative impact and insured its sustainability as an intrusion for the foreseeable future”⁴

Because of the unique circumstances related to the placement and design of an ADU on this National Register property, the issuance of the Clearance letter for a project that neither complies with the Preservation Plan nor with the Secretary of the Interior’s Standards is arbitrary, conclusory and not supported by the facts.

Further this project is an exception to any categorical exemption.

“(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

³ City of Los Angeles, Department of City Planning-Office of Historic Resources, ADM-2020-1010-ADU clearance letter, page 2

⁴ ADHOC letter to Department of City Planning, Vince Bertoni, Kevin Keller, Ken Bernstein, from Jim Childs, page 3, September 25, 2020 via e mail

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”⁵

If the project complied with Chapter 8 of the Preservation Plan and the Secretary of the Interior’s Standards, then it is possible for a clearance to be issued but in this instance neither compliance was achieved.

“As a Contributor to the UP-HPOZ the property is subject to the provisions of the L.A. City Historic Preservation Overlay Zone Ordinance. Under that Ordinance all recognized historic resources are subject to compliance with the Secretary of the Interior’s Standards & Guidelines (S.I.S.G.) for historic resources. Compliance with the S.I.S.G. is also required by the City’s Planning Department for administrative purposes including CEQA for all listed historic properties on the National Register of Historic Places...

When a historic building in an HPOZ has proposed changes, the City relies on its’ compliance with the Preservation Plan in determining its’ implementation of the California Environmental Quality Act’s (CEQA) regulatory requirements. The City proffers that if a proposed project is in compliance with the Preservation Plan then it therefore has achieved compliance with CEQA and a Categorical Exemption is the appropriate level for the sign-off under its authority as the “Lead Agency”⁶

The failure of the clearance issuer to not seek compliance with the S.I.S.G (as AB 2299 allows and the HPOZ Ordinance requires) is a fatal error in the clearance action.

The error in the issuer’s stating that the project complies with Chapter 8 of the Preservation Plan is not supported by the facts and the objective text of the Plan. In the creation of the University Park Preservation Plan great care was taken to provide clear, objective, understandable guidelines. While the non-compliance with Chapter 8 was brought to the issuer’s attention on June 22, 2020 by email, there has been no response.

We incorporate by Reference the Preservation Plan. Briefly, Chapter 8.1 explains the importance of the setting and site of a historic structure *“The site design of am historic structure is an essential part of the neighborhood character”* and requires that *“The traditional character of residential front, side and rear yards should be preserved.* 8.9 requires that *“New additions should not be built on the primary façade or the front half of the side facades.”*

⁵ Authority cited: Section 21083, Public Resources Code; References: Sections 21084 and 21084.1, Public Resources Code

⁶ ASDHOC letter, Ibid.

Chapter 8.10 of the Plan requires that *“new residential structures should be placed on their lots consistent with the historic setbacks of the block on which they are located.”*

The submission plot plan perhaps was read inaccurately by the issuer because it provided not context and the perception may have been that this garage is in the rear. That is NOT the case.

Oddly, the issuer relied on a 1950 garage permit to justify this approval which is not in conformance to the Preservation Plan. Clearly double decking an incompatible existing garage in front and to the right of a historic structure and in the historic block face’ front yard setback has severe and negative impacts on the historic setting and how the historic resource is perceived.

“The recent decision to double-deck this preexisting non-historic garage and thereby codify it as a residential structure was not an appropriate ruling. The existing garage was not constructed in the rear-yard, as it would be under current regulations, but sited with half of its’ structure located in front of the primary façade of the historic Tillotson House. The 50s’ garage intrusion was an unfortunate choice made in an era without the cultural awareness of the importance of preserving our limited historic resources and their context.”⁷

Communities rely on the judicious implementation of its Plans and CEQA. The action in this case has been cursory and inadequate. There are further concerns that in this project application the developer has “piece-mealed’ his project requests to diminish the significance of the impacts which their actual project would create. For example, the division of the living room into 2 bedrooms and the change of a sun porch to a bedroom to create a total of 12 bedrooms in the main residence would trigger the neighborhood stabilization ordinance and a conditional use application. Such development should evaluate the whole of a project including the ADU and not isolate actions.

Further there are cumulative impacts from the practice of dividing rooms, reconfiguring the interior plans, adding ADUs that as this practice increases have cumulative impacts on traffic, circulation, parking, density, population dislocation, and housing.

Because of all the reasons cited in this appeal, OHR and the Department of City Planning failed on its obligations to apply the requirement of the University Park Preservation Plan, the Secretary of the Interior’s Standards and the California Environmental quality Act. I and the North University Park Community Association are aggrieved parties. ADM-2020-1018-ADU should be rescinded and environmental review be undertaken.

⁷ ADHOC letter, Ibid.



CITY OF LOS ANGELES
Department of City Planning – Office of Historic Resources
Figueroa Plaza | 221 N. Figueroa Street, Room 1350 | Los Angeles, CA 90012

ACCESORY DWELLING UNIT
Accessory Dwelling Unit (AB 2299 and SB1069)

Case Number:	ADM-2020-1010-ADU	Date: 2/14/2020
Project Address:	2142 S. Portland Street	
Legal Description:	Lot(s): <u>62</u> Block: <u>none</u> Tract: <u>Ellis Tract</u>	
Zoning:	[Q]RD2-1XL-O-HPOZ	
Project Description:	ADU: ☒ Attached ☐ Detached ☐ Conversion ☐ New Construction (PCIS): XXXXX-XXXXX-XXXXX Accessory Dwelling Unit Square Footage <u>930</u> Pursuant to AB 2299 and SB1069 in the University Park HPOZ for an addition to an existing garage for an Accessory Dwelling Unit (ADU). The 930 square-foot addition will be constructed on the accessory structure located at the north side of the property. The addition will be set back from the front of the existing garage by six feet, six inches and clad in a vertical wood board and batten siding. A horizontal wood clapboard siding will finish the small addition to the rear of the existing garage to provide differentiation. The cross gable roof will use composition shingles to match the existing house. Two double hung wood windows will be removed and thirteen new wood windows will be installed with double hung and fixed operation. All work to be completed per Exhibit A stamped and dated 2/14/2020.	
Related Case:		
Lot Area:	6,822 square feet	Number of Parking Spaces Provided: 2
Applicant Name:	Kevin Raley	
Applicant Contact Information:	Phone: 310-853-5004	Email: kevin@jzarch.la
Owner Name:		
Owner Contact Information:	Phone:	Email:

A HPOZ (Historic Preservation Overlay Zone) Plan Approval is not required (pursuant to AB2299 and SB1069) for the reasons below:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multi-family use and contains an existing permitted single-family dwelling.
- The accessory dwelling unit is either attached to the existing dwelling unit or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
- The total area of floor space for a detached second unit shall not exceed 1,200 square feet. Limits on total residential floor area on a lot apply separately and may limit allowable ADU square footage.
- The total area of floor space for an attached second unit shall not exceed 1,200 square feet, and shall not exceed 50 percent of the existing living area.
- No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- Detached ADUs shall be subject to the setback requirements set forth in LAMC 12.21 C.5
- No setback shall be required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
- Parking requirements for accessory dwelling units shall not exceed one parking space per unit or bedroom. These spaces may be provided as tandem parking on an existing driveway and within the required front yard.
- Parking shall not be required because one of the following is true:

- It is located within one-half mile of public transit
- It is within an historically significant historic district
- It is part of the existing property residence or existing accessory structure
- There is a car share vehicle located within one block of the ADU

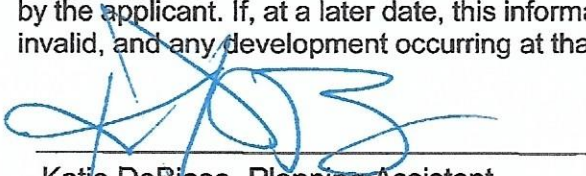
When converting the existing primary residence or legal existing accessory structure:

- ADU shall have independent exterior access
- The rear and side yard setbacks are sufficient for fire safety and the structure complies with Building and Residential codes
- The conversion doesn't involve the addition of floor area

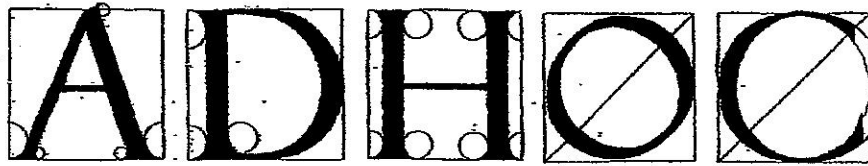
This application and project plans have been reviewed by the staff of the Office of Historic Resources, and **the proposed project complies with the applicable provisions of the Historic Preservation Overlay Zone Ordinance (LAMC 12.20.3, Ord. No. 184,903)** including all applicable Design Guidelines contained in University Park HPOZ Preservation Plan Section 8 as evidenced below:

Review Standards			
	Section	Regulation	complies
This project complies with the following regulations in the University Park HPOZ Preservation Plan:	Chapter 8	See University Park Preservation Plan for full text.	☒
This project does not comply with the following regulations in the University Park HPOZ Preservation Plan:	none	none	☐

The proposed Accessory Dwelling Unit must comply with all other regulations of its subject zone and all other provisions of the Los Angeles Municipal Code (LAMC) and must receive approval from the Los Angeles Department of Building and Safety (LADBS). This Administrative Clearance is based on the information provided by the applicant. If, at a later date, this information is found to be incorrect or incomplete, this sign-off will become invalid, and any development occurring at that time must cease until appropriate entitlements are obtained.



Katie DeBiase, Planning Assistant
Office of Historic Resources, HPOZ
Katie.debiase@lacity.org
(213) 847-3659



ADAMS DOCKWEILER HERITAGE ORGANIZING COMMITTEE

**ADM-2020-1010-ADU
2142 Portland Street**

Los Angeles Department of City Planning
200 N. Spring Street / Los Angeles Calif. 90012
Vince Bertoni, Director
213-978-1271 / Vince.Bertoni@lacity.org
Kevin Keller, Deputy Director
213-978-1272 / kevin.keller@lacity.org
Ken Bernstein, AICP
213-874-3652 / Ken.berstein@lacity.org

Greetings,

I am writing as the Chair of Adams Dockweiler Heritage Organizing Committee to protest the decision (2/14/2020) of OHR, HPOZ Planning Assistant Katie De Biase for the approval of a new ADU unit at 2142 Portland Street.

The approved ADU unit was unnecessarily and inappropriately located in the front-yard setback of the historic Tillotson House a contributing structure to the ST. JAMES PARK National Register Historic District. The historic house is also a Contributing building to the University Park Historic Preservation Overlay Zone.

As a Contributor to the UP-HPOZ the property is subject to the provisions of the L.A. City Historic Preservation Overlay Zone Ordinance. Under that Ordinance all recognized historic resources are subject to compliance with the Secretary of the Interior's Standards & Guidelines (S.I.S.G.) for historic resources. Compliance with the S.I.S.G. is also required by the City's Planning Department for administrative purposes including CEQA for all listed historic properties on the National Register of Historic Places.

The City of Los Angeles Ordinance relies on their approved Preservation Plans for existing H.P.O.Z.s to evaluate the extent of the required CEQA compliance. The University Park H.P.O.Z. Preservation Plan was the second Plan adopted, on July 14, 2005, by the City for an HPOZ. A Purpose & Goal of the Plan was to offer a thorough identification of the how and why a historic building can achieve compliance with the various Standards when seeking project changes such as restoration, rehabilitation, repair, alterations and additions.

When a historic building in an HPOZ has proposed changes, the City relies on its' compliance with the Preservation Plan in determining its' implementation of the California Environmental Quality Act's (CEQA) regulatory requirements. The City proffers that if a proposed project is in compliance with the Preservation Plan then it therefore has achieved compliance with CEQA and a Categorical Exemption is the appropriate level for the sign-off under its authority as the "Lead Agency".

The City Planning Department spent a great amount of effort in the creation of their "Preservation Plan Template" so that the various localized tailored-plans, when implemented, would be CEQA compliant for their administrative purposes. The University Park HPOZ Preservation Plan, excluding its eight appendices, has 137 pages of specific examples and directions needed to cover the implementation of the possible variations of CEQA-Standards.

Naturally this complexity can sometime result in conflicting requirements which then may require a subjective interpretation of the Plan's priorities. For example, when a Project's design has elements in conflict with some of the Standards but is in compliance with others, what is the needed mitigation for an approval? The Ordinance empowers the appointed H.P.O.Z. Boards and the Director of Planning to reach an authoritative decision based on their thorough review of the issues.

Although the City's simplified processing for CEQA can prove administratively effective for projects that have to comport with the City's code and regulations, it can fail when applied to an external demand as exemplified today by a myriad of California State laws. These new laws are aimed at regulating the housing crisis.

The State has issued mandated directives to local communities that can usurp their own zoning regulations thereby causing confusion as City staff tries to resolve the inherent conflicts. This is now the unfortunate fate of the historic Tillotson House. The Planning Department has approved plans for a two-story Accessory Dwelling Unit (ADU) attached to a non-historic preexisting non-conforming garage in response to the City's Attorney's interpretation of compliance with the State's authorization.

The project proposal for the ADU itself is not the issue. The University Park community embraces and has welcomed many affordable housing developments. Approvals for affordable housing developments have been a staple for the University Park HPOZ Board since its empowerment. The UP-Board's approvals for affordable housing projects, and for any other type of project were arrived at by interactive dialogue with the proponents to achieve consensus compliance with the Preservation Plan, thereby avoiding significant conflict with Secretary of the Interior's Standards and CEQA.

This consistently successful approach of consensus Board review is now abandoned by the Planning Department in exchange for their "Staff Only" interpretation procedures. It is not surprising that this exclusionary process is creating problems with

their ability in limiting potential impacts to CEQA and are now made more significant with the low-level needed for the issuance of a Categorical Exemption.

At its most recent training seminar for HPOZ Board members, the Department of Planning assured the participants that although the HPOZ Boards are denied, by policy, any input regarding the approvals for new infill ADUs, that their Planning Staff could and would carefully review the applications for compliance with the Plans, S.I.S.G. and CEQA.

They reported that, even under the new State rules, the City Attorney had advised that they still had some limited authority over design issues, especially in historic zone overlays. They explained that Planning Staff would now determine which of the Preservation Plan's requirements were "subjective", a lesser passive requirement, or "objective", an assertive and directive requirement to make the project compliant. I find this determination of what are subjective-vs-objective criteria itself to be subjective and little more than a ruse to justify simplified in-house decisions and to exclude any out-side questions of impropriety

That is the case in the Tillotson Project. The Staff's inappropriate approval of this ADUs' location within the front-yard setback is a direct result of a myopic "staff only" review. By subjectively approving the projects' location the City has created, for purposes of CEQA, a potential negative impact to not only to the subject property itself but to a character-defining feature of the historic streetscape, it's historic prevailing front-setback. I am attaching a copy of the 1922 Sanborn Insurance Map that clearly illustrates the historic front-yard setback along the east side of the 2100 block face. I am also attaching a copy of the CRA/LA Adams Normandie 4321 Project Area's land use map (1979) as a comparative.

The only change in the frontyard setback between the 1922 map and the 1970s CRA map is the inclusion of the 1950s added garage. The construction of a new auto garage in the 1950s predated any historic preservation concerns by the City's administrative authorities. There was no HPOZ, no OHR, no CHC, no CEQA just the same decades-old bad city planning, thereby its placement location was deemed satisfactory.

The historic development patterns throughout the North University Park Districts, as identified in the University Park Preservation Plan and exemplified in its five National Register Historic Districts feature many prevailing blockface setbacks that form the historic streetscape context for the Districts. The transformation of North University Park from its rural setting to an urban setting, by the subdivision of land into residential lots, began in the 1880s. The Pueblo's orchards, farms and ranches became the City's residential tracts. Entrepreneurs laid out blocks of Victorian homes. Individual developers were not bound by City code set-back regulations and the variations in the front-setbacks illustrated the various economic and cultural conditions in the moment.

The recent decision to double-deck this preexisting non-historic garage and thereby codify it as a residential structure was not an appropriate ruling. The existing garage was not constructed in the rear-yard, as it would be under current regulations, but sited with half of its' structure located in front of the primary façade of the historic Tillotson House. The 50s' garage intrusion was an unfortunate choice made in an era without the cultural awareness of the importance of preserving our limited historic resources and their context.

The negative impact by the intrusion of the one-story garage may not be enough to undermine the integrity of the historic resource. However reconstructing it as a two-story residential unit placed in front of the primary historic façade does create a far greater impact. If this were a proposed new project, other than an ADU, it would have been rejected by the Planning Department because of its' negative impact, a simple fact that now raises concerns about the integrity and practice of the Departments professed policy.

I find that the subjective choice by the Planning Department staff to locate the proposed infill ADU in the front-yard setback when several other viable on-site design options are readily available is capricious and an abuse of discretionary authority.

The applicant's Site-Plan (A000) illustrates ample open space on the north side-yard. This could have and should have been prioritized for possible reconfiguration of the non-conforming garage into the ADU. Additionally even the approved double-decking negative impact could have been reduced by limiting it to a position behind the primary façade and the prevailing front-setback. Instead they approved an arbitrary and pointless 6ft-6in setback from the garage's front façade. This new two-story intrusion effectively destroys the cohesive views and perceptions of the intact contiguous front-yard setback of this federally listed historic streetscape.

The 1922 Sanborn Map also shows an existing garage on the north side of the site. It is a common UP-Board procedure for an analysis of historic properties to evaluate out-buildings as well as the primary structure. Given the fact of a once preexisting historic garage onsite, developing a nexus between it and the ADU could have resulted in several design solutions that still would have resulted in a positive ADU project approval without causing the additional negative impacts or any exaggerated construction costs.

I am a recognized historic preservation consultant with over 35 years of practical experience in the University Park community. As the Chair of A.D.H.O.C. I was the advocate for the successful ST. JAMES PARK National Register Historic District nomination (1991). As A.D.H.O.C.'s Chair I also led the advocacy for the transition from CRA to the UP-HPOZ (2000). As the first appointed member (by the Cultural Heritage Commission) to the new UP-HPOZ Board I was an original drafter of the UP Preservation Plan itself (2005).

With a lifetime commitment to the historic preservation of University Park and especially to our National Register historic districts, it disturbs and grieves me when poor

decisions are made when creative solutions exist. The City policy has chosen to eliminate an empowered Board with a sitting architect whose continuing responsibilities are in safe guarding the communities' historic resources. Instead the City looks to its' overworked staff to resolve complex issues bereft of the viable authoritative Boards whose insights could still illuminate potential alternative resolutions.

The housing crisis and the political necessity to do something, anything to take action, may have resulted in poor legislation that just exacerbates the issues and has caused even more collateral damages. Although the Planning Department has proclaimed their ability to juggle their way though the problems this is one instance where it clearly failed.

The Departments' responsibility to execute a process that fulfills the State's priority for affordable housing and the mandates of the California Environmental Quality Act to protect local endangered historic properties must be met with effective resolutions. Approving a two-story residential building located in the historic prevailing frontyard setback of a federal historic district is a failed resolution. Adding onto a one-story preexisting non-contributing intrusion in the manner of the Project's proposal has only doubled-down its negative impact and insured its sustainability as an intrusion for the foreseeable future.

Moreover this failed resolution negates the Department's reliance on compliance with the Preservation Plan to issue their standard Categorical Exemption. A new two-story addition in the frontyard setback that insures a greater negative impact to the primary façade of the Tillotson Residence and the historic streetscape requires an Exception from the Categorical Exemption

I ask therefore that the Department rescind the DeBiase approval and eliminate the 2nd story intrusion of the front yard setback and require a new design that places the ADU element in the rear and or side yard. Absent the Departments willingness to engage in that process the Department should find for an Exception to the CE and review possible alternative mitigations to the negative impacts.



Jim Childs

Chair, Adams Dockweiler Heritage Organizing Committee

2341 Scarff Street, LA CA 90007 / 213-748-1656 / jeanjim2341@att.net

ADM-2020-1010-ADU
2142 Portland Street

COPY W. 21ST

1922
SANBORN
MAP

THOMPSON

5142
(2485)

5143
(672)

5146
(2485)

5148
(672)

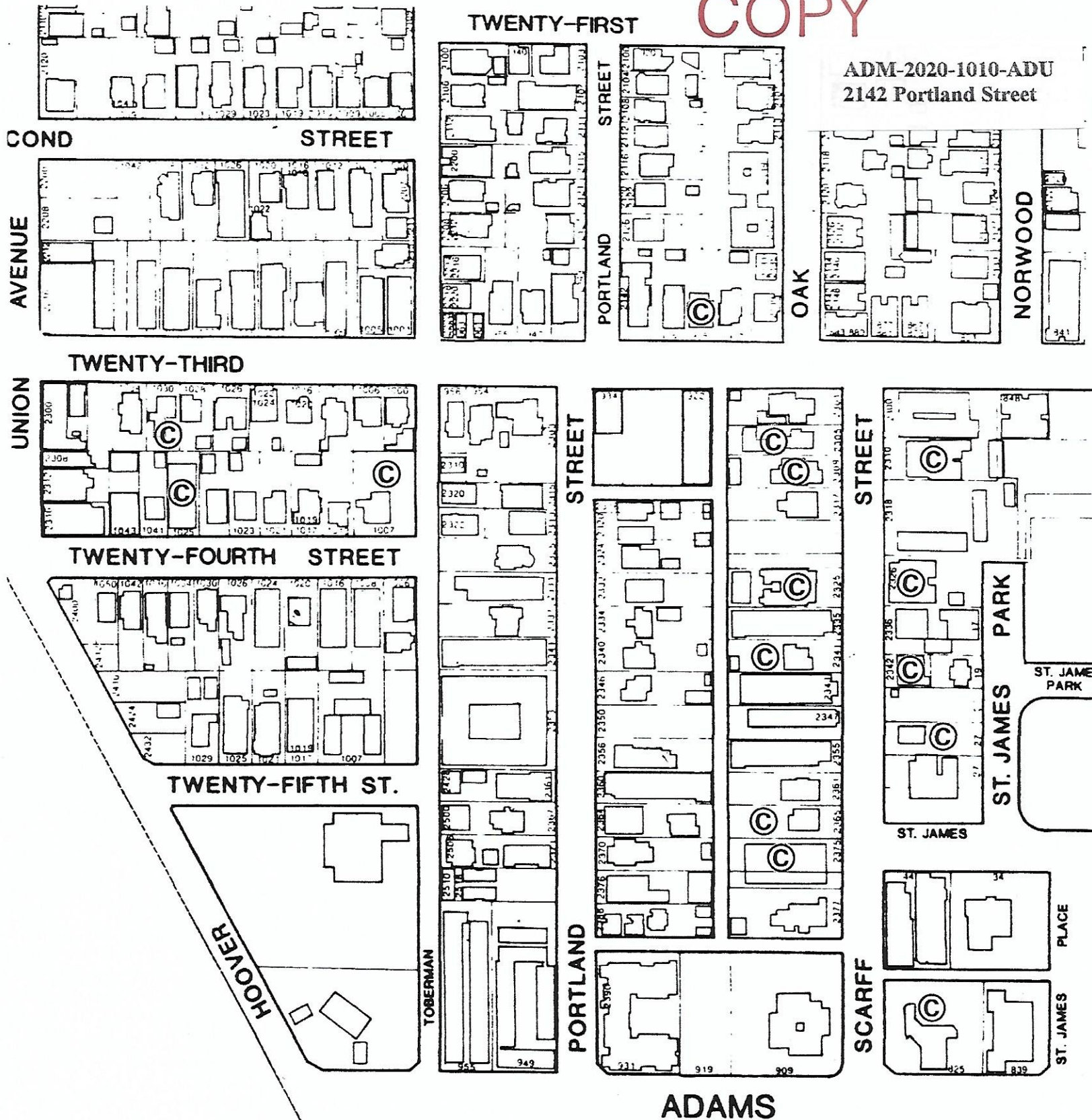
W. 23RD

COPY

G. & D.
Garage
CONCRETE, 12'
WOOD TRUSS RF
ON 15" x 16" PILES
15' APART
6-8" x 10"
2x4x8

COPY

ADM-2020-1010-ADU
2142 Portland Street



ADAMS NORMANDIE 4321 REDEVELOPMENT PROJECT
THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF LOS ANGELES, CALIFORNIA

United States Department of the Interior
National Park Service
**National Register of Historic Places
Registration Form**

This form is for use in nominating or requesting determinations of eligibility for individual properties or districts. See instructions in Guidelines for Completing National Register Forms (National Register Bulletin 16). Complete each item by marking "X" in the appropriate box or by entering the requested information. If an item does not apply to the property being documented, enter "N/A" for "not applicable." For functions, styles, materials, and areas of significance, enter only the categories and subcategories listed in the instructions. For additional space use continuation sheets (Form 10-900a). Type all entries.

1. Name of Property
historic name St. James Park Historic District
other names/alias number _____

2. Location
street & number _____
city, town Los Angeles state CA county Los Angeles code 037 zip code 90007
state California

3. Classification
Ownership of Property
☒ private
☒ public-local
☒ public-State
☒ public-Federal

Category of Property
☒ building(s)
☒ district
☒ site
☒ structure
☒ object

Number of Resources within Property
Contributing 86 Noncontributing 16 buildings
sites
structures
objects
87 16 Total
Number of contributing resources listed in the National Register

Name of related multiple property listing:

4. State/Federal Agency Certification

As the designated authority under the National Historic Preservation Act of 1966, as amended, I hereby request for determination of eligibility meets the documentation standards for registration in the National Register of Historic Places and meets the procedural and professional requirements set forth in my opinion, the property ☒ meets ☐ does not meet the National Register criteria. ☐ See continuation

Signature of certifying official

State or Federal agency and bureau

In my opinion, the property ☒ meets ☐ does not meet the National Register criteria. ☐ See continuation

Signature of commenting or other official

State or Federal agency and bureau

5. National Park Service Certification

I, hereby, certify that this property is:
☐ entered in the National Register
☐ See continuation sheet
☐ determined eligible for the National Register. ☐ See continuation sheet
☐ determined not eligible for the National Register.
☐ removed from the National Register.
other, (explain): _____

United States Department of the Interior
National Park Service
**National Register
Continuation**

Section number _____

92. All
947
Los
19

Th
a low-
entrance
reacher
the por
tripar
architectural

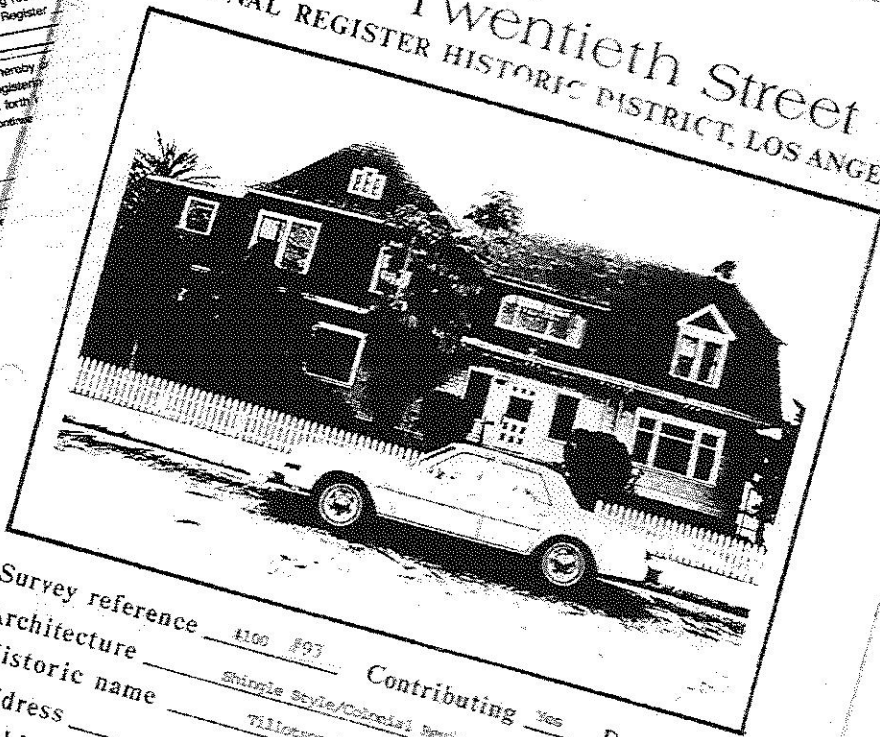
Built as a spec house, the first owner/resident who is listed at this address as a householder in the 1904 Los Angeles Directory. The house was apparently rented between 1901 and 1903.

93. Tillotson House
2142 Portland Street
Eisen & Hunt, Architects (prob.)
Ca. 1898

This is a handsome one-and-a-half story Shingle Style/Colonial Revival frame dwelling with a gambrel roof. Like its neighbor across the street at 2143 Portland the house fronts 23rd Street but is oriented toward Portland Street, providing an opportunity to create a much wider principal facade than is typical of the neighborhood outside St. James Park Tract. The animated roofline, which features a large cross gabled section and dormers, and the varied window treatments (transomed and solitary and grouped double-hung sash) are the key architectural elements (Alteration: The original inset entrance porch has been entirely enclosed).

This sophisticated design suggests the hand of an adept architect. It is probably the work of Eisen and Hunt, on account of stylistic similarities with their other West Adams work from this period of the late 1890's.

St. James Park
Twentieth Street
NATIONAL REGISTER HISTORIC DISTRICT, LOS ANGELES



Survey reference _____
Architecture #100 #97
Historic name Shingle Style/Colonial Revival
Address Tillotson House
Architect 2142 Portland St.
Builder Thomas Preston
Edwin S. Rowley

Adams Downes Historic District
County of Los Angeles, California
J. Clark, photographer, 1432 E. 5th St.
Location of negative: 2041 South St., LA, CA
Front facade, looking north, south east, west
Number 1 of 7
Guilbert & Margaret Hentschke
2142 Portland St.
Los Angeles, CA 90007



KEYNOTES

001	PROPERTY LINE	
002	BACKTRACK LINE	
003	(S) CONG CLUB NOT A PART.	
004	(S) STRUCTURE NOT A PART.	
005	(S) PIER, NOT A PART.	
006	(S) COCK WALK NOT A PART.	
007	(S) GOING STEPS NOT A PART.	
008	(S) ELEVATED CONG POOL NOT A PART.	
009	PAVED WALK ONLY	
010	(S) VID STAIR NOT A PART.	
011	(S) VID HANDRAIL NOT A PART.	

SHEET NOTES

[illegible]

THE UNIVERSITY OF CHICAGO

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CLINT KYLE
BRAD PROPERTY INVESTORS LLC
12100 OLYMPIC BLVD #350

LOS ANGELES, CA 90064

2142 PORTLAND
ADJ1

NOT FOR CONSTRUCTION

2142 PORTLAND AVE
LOS ANGELES, CA 90007

FOR RELEASE
1921.1

DATE 2.10.2020

PAGE 154
SITE PLAN

A000
B-1000 10-1000 A

A000

PERMIT SET

© 2005 Blackwell Publishing Ltd, *Journal of Internal Medicine* 258: 101–109

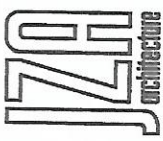
EXHIBIT A
page 1 of 13

CASE # ADM-2019-1010-ADM
Planner 13
Office of Historic Resources
Department of City Planning
City of Los Angeles
Date 2/14/2020

0156CJ

SITE PLAN	1/8" = 1'-0"	1
-----------	--------------	---

KEYNOTES



ARCHITECT
JERRY ZIMMONS ARCHITECTURE
1310 14TH ST. SUITE 204
SANTA MONICA, CA 90404

ALL INVESTORS ARE INVITED TO ATTEND AN OPEN HOUSE FOR THE NEWLY REFINISHED AND RELOCATED 12100 OLYMPIC BLVD. #250. THE OPEN HOUSE WILL BE HELD ON MONDAY, JANUARY 14, 2008, FROM 10:00 AM TO 12:00 PM. THE OPEN HOUSE WILL BE HELD AT 12100 OLYMPIC BLVD. #250, LOS ANGELES, CA 90004. FOR MORE INFORMATION, PLEASE CALL 310-441-1111.

PROJECT NAME
**2142 PORTLAND
ADU
NOT FOR CONSTRUCTION**

PROJECT ADDRESS:
2142 PORTLAND AVE
LOS ANGELES, CA 90007

DATE	2.10.2020
TIME	
1921.1	
2019-2020	

PROPOSED ELEVATIONS

A202

PERMIT SET

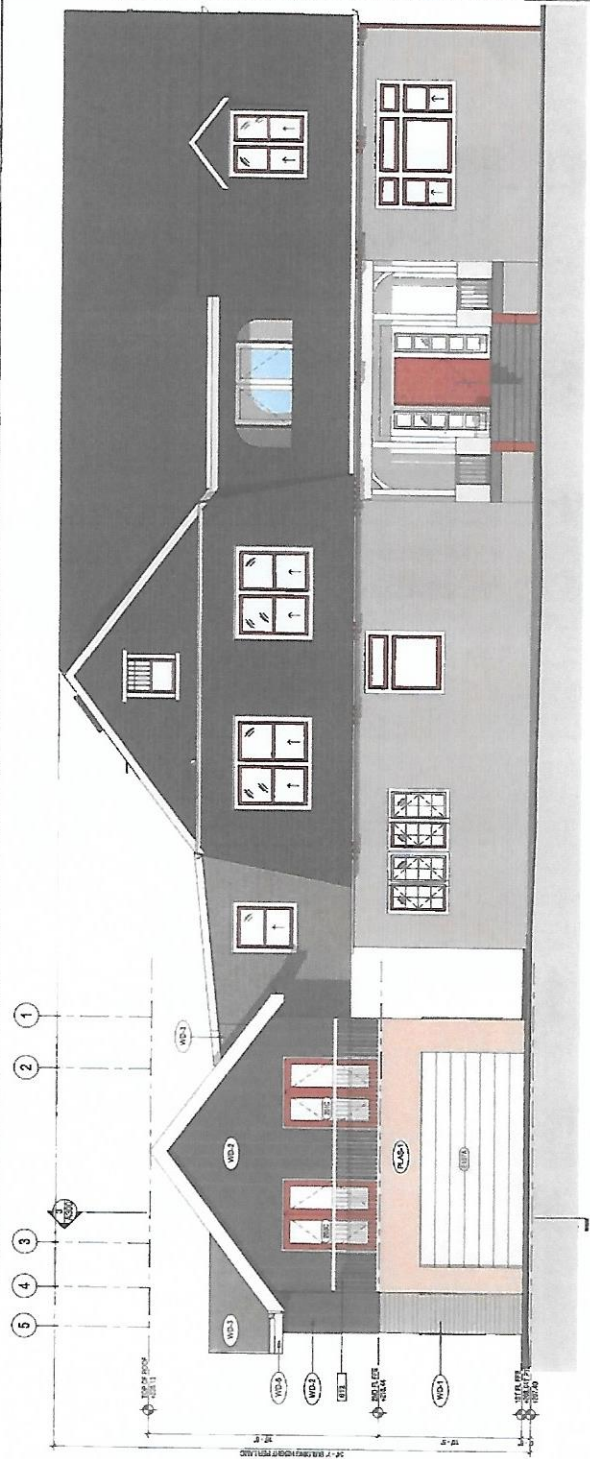
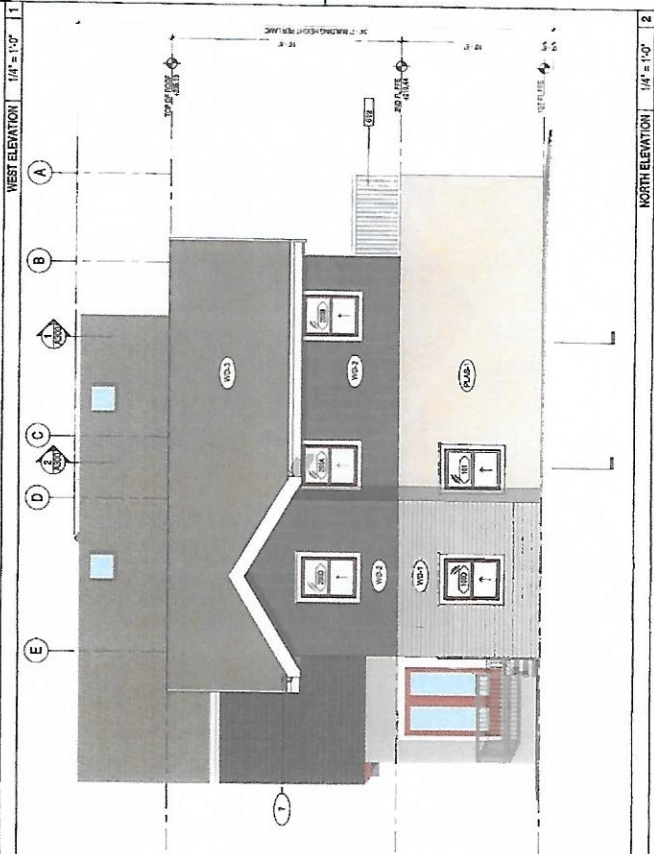
[illegible]

EXHIBIT A
page 11 of 13

CASE #. ADM-2020-1001-ADD
Planner. TR
Office of Historic Resources
Department of City Planning
City of Los Angeles
Date 2/14/2020

COPY

KEYNOTES



ARCHITECT
JEFFREY ZUCKERMAN
1015 WEST 10TH STREET, SUITE 200
SANTA MONICA, CA 90404

DATE: 11/14/2020
PROJECT: 2142 PORTLAND AVE
ADU
NOT FOR CONSTRUCTION

BRAD PROPERTY INVESTORS LLC
1100 CLAYTON BLVD #500
LOS ANGELES, CA 90004

2142 PORTLAND
ADU
NOT FOR CONSTRUCTION

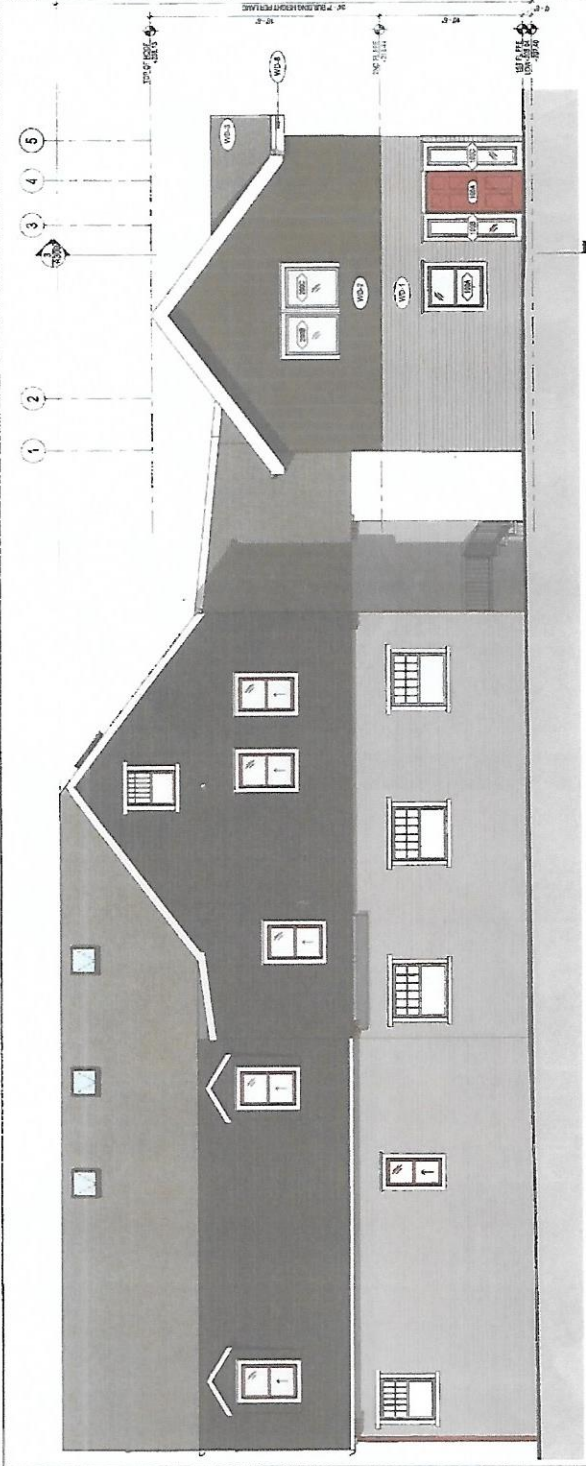
2142 PORTLAND AVE
LOS ANGELES, CA 90007

10/1/21
2/10/2020

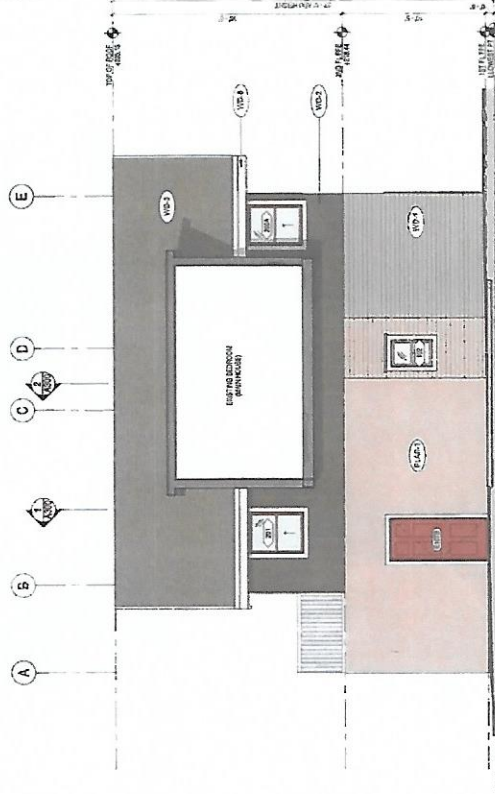
PROPOSED
ELEVATIONS

A203

PERMIT SET



EAST ELEVATION 1/4" = 1'-0"



SOUTH ELEVATION 1/4" = 1'-0"

MARK	DESCRIPTION	FINISH LEGEND	LOCATION	SPECIFICATION
FL-01	SMOOTH FINISH PLASTER		EXTERIOR FACADE	V.F. - MATCH EXISTING
WD-01	1 1/4" WOOD CLIPBOARD SERR		EXTERIOR FACADE	V.F. - MATCH EXISTING
WD-02	WOOD SHINGLE		ROOF	V.F. - MATCH EXISTING
WD-03	WOOD SHINGLE		ROOF	V.F. - MATCH EXISTING
WD-04	WINDOW TRAIL PERIMETER		EXTERIOR WINDOWS	V.F. - MATCH EXISTING
WD-05	WINDOW SASH & FRAME PERIMETER		EXTERIOR WINDOWS	V.F. - MATCH EXISTING
WD-06	1 1/4" WOOD ROOF FASCIA, PTD		ROOF	V.F. - MATCH EXISTING

EXHIBIT A

page 12 of 15

CASE # 20-00000000-00000000

Planner: JZA

Office of Historic Resources

Department of City Planning

City of Los Angeles

Date: 11/14/2020

Jean Frost

To: Katie DeBiase; daveraposa
Cc: catherine m estrada; lucycineli@gmail.com; Roland Souza; MFMalan@gmail.com; Steven Fader; lapatow@gmail.com; jeanjim2341@att.net; Laura Meyers; Shannon Ryan; Ken Bernstein
Subject: RE: 2142 S Portland Street

Thank you for your lucid e mail but I think you are missing some issues here.

From: Katie DeBiase [mailto:katie.debiase@lacity.org]
Sent: Wednesday, July 1, 2020 4:51 PM
To: daveraposa <daveraposa@aol.com>
Cc: Jean Frost <indiejean@att.net>; catherine m estrada <simpaticostudiola@gmail.com>; lucycineli@gmail.com; Roland Souza <roland.e.souza@gmail.com>; MFMalan@gmail.com; Steven Fader <sfader@stevenfaderarchitects.com>; lapatow@gmail.com; jeanjim2341@att.net; Laura Meyers <lauramink@aol.com>; Shannon Ryan <Shannon.Ryan@lacity.org>; Ken Bernstein <ken.bernstein@lacity.org>
Subject: Re: 2142 S Portland Street

Hi David,

State law regarding accessory dwelling units (ADUs) requires local governments to apply only objective development standards, which are specific, quantifiable requirements with no discretionary language. The guidelines of the Preservation Plan were written in a more flexible, subjective guideline format to allow for some flexibility and discretion on the part of the Board when it came to projects in the HPOZ. As state law requires that the review of ADUs be conducted through a streamlined ministerial process, without discretionary review by an HPOZ Board, it is up to staff to work with the applicants to design something compatible, but only using what is considered objective standards.

Please know that OHR staff encourage compliance with all of the Preservation Plan guidelines when working with applicants on designing their ADUs. Luckily, most applicants are receptive to our recommendations. However, savvy applicants will know that the law requires only compliance with objective standards and may push back on some of the recommendations we make with regard to the guidelines.

As for this specific project, the applicant was very receptive to our recommendations despite being very savvy in terms of knowing the law. He accepted the suggestion to set the ADU back away from the front of the garage as to not be a looming presence that overshadowed the primary structure. The garage was existing so we did not want to completely rebuild or re-side it. We felt that the differentiation between the garage, the ADU, and the primary structure allowed for each structure to be seen as a product of its own time and easily discernible as to what was original and what was new construction. While I agree that more similar siding on the garage could be an improved design feature, it is not a requirement for the ADU proposal as we have no objective standards requiring it.

Additionally, the HPOZ unit will be conducting a virtual Board Training in August to provide further education to the HPOZ Boards regarding ADUs and the process under which they are reviewed and approved. More information on the date and time will follow.

Thanks,
Katie

On Wed, Jun 17, 2020 at 7:06 PM daveraposa <daveraposa@aol.com> wrote:

Hi Katie,

Can you elaborate on the meaning of "objective standards" vs "subjective standards" both as how they are defined (if they are) in the actual written ordinances and as how the City Attorney is interpreting the ordinances for properties in HPOZ areas with clear Preservation Plan guidelines?

In the past, we had been assured that the planner could and would seriously take into consideration our Plan guidelines in his or her review and approval of an ADU design.

I am not clear from what you wrote as to what degree our Plan is or is not being considered when an ADU is reviewed by you.

Regarding this specific ADU, not that my opinion is being solicited, but for what it is worth: The design of the new two-story ADU addition- as best I can see the single sketch on my phone and without reading any of the detailed written information - appears to be reasonably sensitive to the house and neighborhood in that it seems to be wood sided and windowed. But I do wonder if there had been a discussion about the existing stucco exterior of the garage onto which the ADU is being grafted; from the sketch it appears that the existing stucco exterior remains. If so, would you feel comfortable suggesting that the existing non-original garage be sided with wood to be more compatible with it's new second story and with its original residence immediately adjacent?

Thanks,

David

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Katie DeBiase <katie.debiase@lacity.org>

Date: 6/17/20 6:16 PM (GMT-08:00)

To: Jean Frost <indiejean@att.net>

Cc: catherine m estrada <simpaticostudiola@gmail.com>, lucycineli@gmail.com, Roland Souza <roland.e.souza@gmail.com>, MFMalan@gmail.com, Steven Fader <sfader@stevenfaderarchitects.com>, daveraposa <daveraposa@aol.com>, lapatow@gmail.com, jeanjim2341@att.net, Laura Meyers <lauramink@aol.com>, Shannon Ryan <Shannon.Ryan@lacity.org>

Subject: Re: 2142 S Portland Street

Hello Jean,

You can access the plans submitted for approval at the following link. All Accessory Dwelling Unit proposals are reviewed ministerially and only objective standards can be applied. Please note that nearly all Preservation Plan guidelines have been deemed subjective per the City Attorney.

<https://planning.lacity.org/pdiscaseinfo/search/encoded/MjM1Nzc20>

Let me know if you have any questions.

Thanks,
Katie

On Wed, Jun 17, 2020 at 4:13 PM Jean Frost <indiejean@att.net> wrote:

Dear Katie,

First I hope you and yours are well during this very difficult time.

Perhaps you could help me with this request from a neighbor to understand what is being planned at this site.

Permit 20014-30000-01157 was cleared by you on April 10 for a 1st and 2nd story ADU addition to (east) garage attached to SFD. This property is both a contributor to the University Park HPOZ and also is a contributor to the St. James Park National Register District. While these approvals are not formally reviewed by the Board, the review by planning must ascertain that the plans are in compliance with the University Park Preservation Plan and the Secretary of the Interior's Standards.

A neighbor has observed building materials being delivered on site. No permit (according to ZIMAS) has yet been issued. Could you forward to the HPOZ Board and stakeholders a pdf of the plans submitted and reviewed by you to obtain HPOZ and OHR clearance?

Thanking you in advance.

In addition to the board members, please copy: indiejean@att.net, Cathy Estrada (simpaticostudiola@gmail.com), Lucycineli@gmail.com; Jim Childs (jeanjim2341@att.net), Roland Souza (Roland.e.souza@gmail.com), Laura Meyers (lauramink@aol.com)

--



Katie DeBiase
Planning Assistant | HPOZ Unit
Los Angeles City Planning

221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012
Planning4LA.org

Jean Frost

From: Lambert Giessinger <lambert.giessinger@lacity.org>
Sent: Friday, June 19, 2020 1:43 PM
To: Jim Childs
Cc: Jean Frost
Subject: Re: 2142 Portland

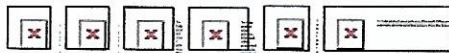
Hi Jim,

I do not recall seeing the project. As you may be aware, ADUs are exempt from design review.

Lambert



Lambert Giessinger
Architect
Los Angeles City Planning
221 N. Figueroa Street, Suite 1350
Los Angeles, CA 90012
Planning4LA.org
T: (213) 847-3648



On Wed, Jun 17, 2020 at 4:29 PM Jim Childs <jeanjim2341@att.net> wrote:
Greetings Lambert and I hope this email finds you well. I have a question.

Permit 20014-30000-01157 was cleared by OHR staff (Katie Debiase) on April 10 for a 1st and 2nd story ADU addition to (east) garage attached to SFD. This property is both a contributor to the University Park HPOZ and also is a contributor to the St. James Park National Register District. While these approvals are not formally reviewed by the Board, the review by planning must ascertain that the plans are in compliance with the University Park Preservation Plan and the Secretary of the Interior's Standards.

Did anyone ask you for your review of the plans for this National Register property addition?

Jim Childs
213 747 2526

Jean Frost

From: Jean Frost <indiejean@att.net>
Sent: Monday, June 22, 2020 2:05 PM
To: 'Katie DeBiase'
Cc: 'catherine m estrada'; 'lucycineli@gmail.com'; 'Roland Souza'; 'MFMalan@gmail.com'; 'Steven Fader'; 'daveraposa'; 'lapatow@gmail.com'; 'jeanjim2341@att.net'; 'Laura Meyers'; 'Shannon Ryan'
Subject: RE: 2142 S Portland Street

Dear Katie,

The new addition is NOT in the rear of the property as it may seem in the plans provided. It is in the front yard setback (as the orientation of the residence and front entry way is on Portland.) It hardly conforms to 8.1 or 8.9 of our Plan as your approval letter indicates. Please reconsider your evaluation and letter approval as your statement that it conforms to Chapter 8 of our Plan is questionable. This addition is in the front yard setback of a National register historic district as well as the HPOZ....

"New additions should not be built on the primary façade or facades or the front half of the side facades..."

The existence of a non-conforming garage should not be used to justify the deterioration of the historic setting with this proposed addition above the garage. Also there are questions regarding the permits for interior work done or lack of them which may trigger other issues beyond compliance with the preservation plan.

From: Katie DeBiase [mailto:katie.debiase@lacity.org]
Sent: Wednesday, June 17, 2020 6:16 PM
To: Jean Frost <indiejean@att.net>
Cc: catherine m estrada <simpaticostudiola@gmail.com>; lucycineli@gmail.com; Roland Souza <roland.e.souza@gmail.com>; MFMalan@gmail.com; Steven Fader <sfader@stevenfaderarchitects.com>; daveraposa <daveraposa@aol.com>; lapatow@gmail.com; jeanjim2341@att.net; Laura Meyers <lauramink@aol.com>; Shannon Ryan <Shannon.Ryan@lacity.org>
Subject: Re: 2142 S Portland Street

Hello Jean,

You can access the plans submitted for approval at the following link. All Accessory Dwelling Unit proposals are reviewed ministerially and only objective standards can be applied. Please note that nearly all Preservation Plan guidelines have been deemed subjective per the City Attorney.

<https://planning.lacity.org/pdiscaseinfo/search/encoded/MjM1Nzc20>

Let me know if you have any questions.

Thanks,
Katie

On Wed, Jun 17, 2020 at 4:13 PM Jean Frost <indiejean@att.net> wrote:

Dear Katie,

First I hope you and yours are well during this very difficult time.

Perhaps you could help me with this request from a neighbor to understand what is being planned at this site.

Permit 20014-30000-01157 was cleared by you on April 10 for a 1st and 2nd story ADU addition to (east) garage attached to SFD. This property is both a contributor to the University Park HPOZ and also is a contributor to the St. James Park National Register District. While these approvals are not formally reviewed by the Board, the review by planning must ascertain that the plans are in compliance with the University Park Preservation Plan and the Secretary of the Interior's Standards.

A neighbor has observed building materials being delivered on site. No permit (according to ZIMAS) has yet been issued. Could you forward to the HPOZ Board and stakeholders a pdf of the plans submitted and reviewed by you to obtain HPOZ and OHR clearance?

Thanking you in advance.

In addition to the board members, please copy: indiejean@att.net, Cathy Estrada (simpaticostudiola@gmail.com), Lucycineli@gmail.com; Jim Childs (jeanjim2341@att.net), Roland Souza (Roland.e.souza@gmail.com), Laura Meyers (lauramink@aol.com)

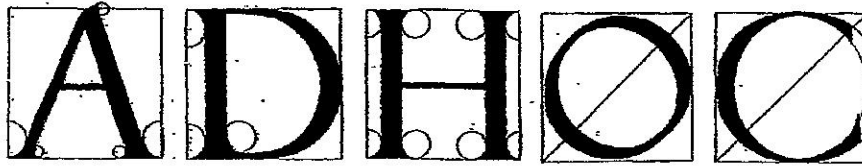
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Katie DeBiase
Planning Assistant | HPOZ Unit
Los Angeles City Planning

221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012
Planning4LA.org
T: (213) 847-3659

Staff Planner for:
Highland Park - Garvanza
University Park

Please keep all communication regarding your project on a single email thread. Starting multiple threads will delay case processing time.



ADAMS DOCKWEILER HERITAGE ORGANIZING COMMITTEE

**ADM-2020-4817-ADU
2336 SCARFF ST. & 17 ST. JAMES PARK
ST. JAMES PARK NATIONAL REGISTER HISTORIC DISTRICT**

Los Angeles Department of City Planning
200 N. Spring Street / Los Angeles Calif. 90012
Vince Bertoni, Director
213-978-1271 / Vince.Bertoni@lacity.org
Kevin Keller, Deputy Director
213-978-1272 / kevin.keller@lacity.org
Ken Bernstein, AICP
213-874-3652 / Ken.berstein@lacity.org

Greetings,

I am writing as the Chair of Adams Dockweiler Heritage Organizing Committee to protest the decision (2/14/2020) of OHR, HPOZ Planning Assistant Katie De Biase for the approval of two new ADU units at 2336 Scarff Street & 17 St. James Park, the Project site.

The two approved Auxiliary Dwelling Units (ADU) are for a "conversion-addition" to the twin double-garages which service the paired identical duplexes of the "J.J. Riddell Apartments". The Project property is listed as Contributing to the ST. JAMES PARK National Register Historic District (1991). The historic Riddell Apts. are also Contributors to the University Park Historic Preservation Overlay Zone (2000).

As Contributors to the UP-HPOZ the Project property is subject to the provisions of the L.A. City Historic Preservation Overlay Zone Ordinance. Under that Ordinance all recognized historic resources are subject to compliance with the Secretary of the Interior's Standards & Guidelines (S.I.S.G.) for historic resources. Compliance with the S.I.S.G. is also required by the City's Planning Department for administrative purposes including compliance with the California Environmental Quality Act (CEQA) for all listed historic properties on the California and the National Register of Historic Places.

The City of Los Angeles HPOZ Ordinance relies on their approved Preservation Plans for existing H.P.O.Z.'s to evaluate the extent of the required CEQA compliance. The University Park H.P.O.Z. Preservation Plan was the second Plan adopted, on July 14, 2005, by the City for an HPOZ. A Purpose & Goal of the Plan was to offer a thorough identification of the how and why a historic building can achieve compliance with the

various Standards when seeking project changes such as restoration, rehabilitation, repair, alterations and additions.

When a historic building in an HPOZ has proposed changes the City relies on its' compliance with the Preservation Plan in determining its' implementation of the California Environmental Quality Act's (CEQA) regulatory requirements. The City proffers that if a proposed project is in compliance with the Preservation Plan then it therefore has achieved compliance with CEQA and a Categorical Exemption is the appropriate level for the sign-off under its authority as the "Lead Agency". Conversely the opposite is true when a project is NOT in compliance with a Preservation Plan and a more thorough review of possible negative impacts must be reviewed.

The City Planning Department spent a great amount of effort in the creation of their "Preservation Plan Template" so that the various localized tailored-plans, when implemented, would be CEQA compliant for their administrative purposes. The University Park HPOZ Preservation Plan, excluding its eight appendices, has 137 pages of specific examples and directions needed to cover the implementation of the possible variations of the Secretary of the Interior's Standards.

Naturally this complexity can sometime result in conflicting requirements which then may require a subjective interpretation of the Plan's objective priorities. For example, when a Project's design has elements in conflict with some of the Standards but is in compliance with others, what is the needed mitigation for an approval? The Ordinance empowers the appointed H.P.O.Z. Boards and the Director of Planning to reach an authoritative decision based on their thorough review of the issues.

Although the City's simplified processing for CEQA can prove administratively effective for projects that have to comport with the City's code and regulations, it can fail when applied to an external demand as exemplified today by a myriad of California State laws. These new laws are aimed at regulating the housing crisis.

The State has issued mandated directives to local communities that can usurp their own zoning regulations thereby causing confusion as City staff tries to resolve the inherent conflicts. This now is the unfortunate fate of the paired historic duplex's double garages. The Planning Department has negligently approved plans for two Accessory Dwelling Units, one each, attached to a corresponding historic garage's front facade. The Department's justification: the City's Attorney's interpretation of required compliance with the State's authorization.

The project proposal for the ADU itself is not the issue. The University Park community embraces and has welcomed many affordable housing developments. Approvals for affordable housing developments have been a staple for the University Park HPOZ Board since its empowerment. The UP-Board's approvals for any project are arrived at by interactive dialogue with the proponents to achieve consensus compliance with the Preservation Plan, thereby avoiding significant conflict with Secretary of the Interior's Standards and CEQA.

This consistently successful approach of consensus Board review is now abandoned by the Planning Department in exchange for their “Staff Only” interpretation procedures. It is not surprising that this exclusionary process is creating problems with their ability in limiting potential impacts to historic resources. The impacts are now being made more significant than the low-level needed for the issuance of a Categorical Exemption.

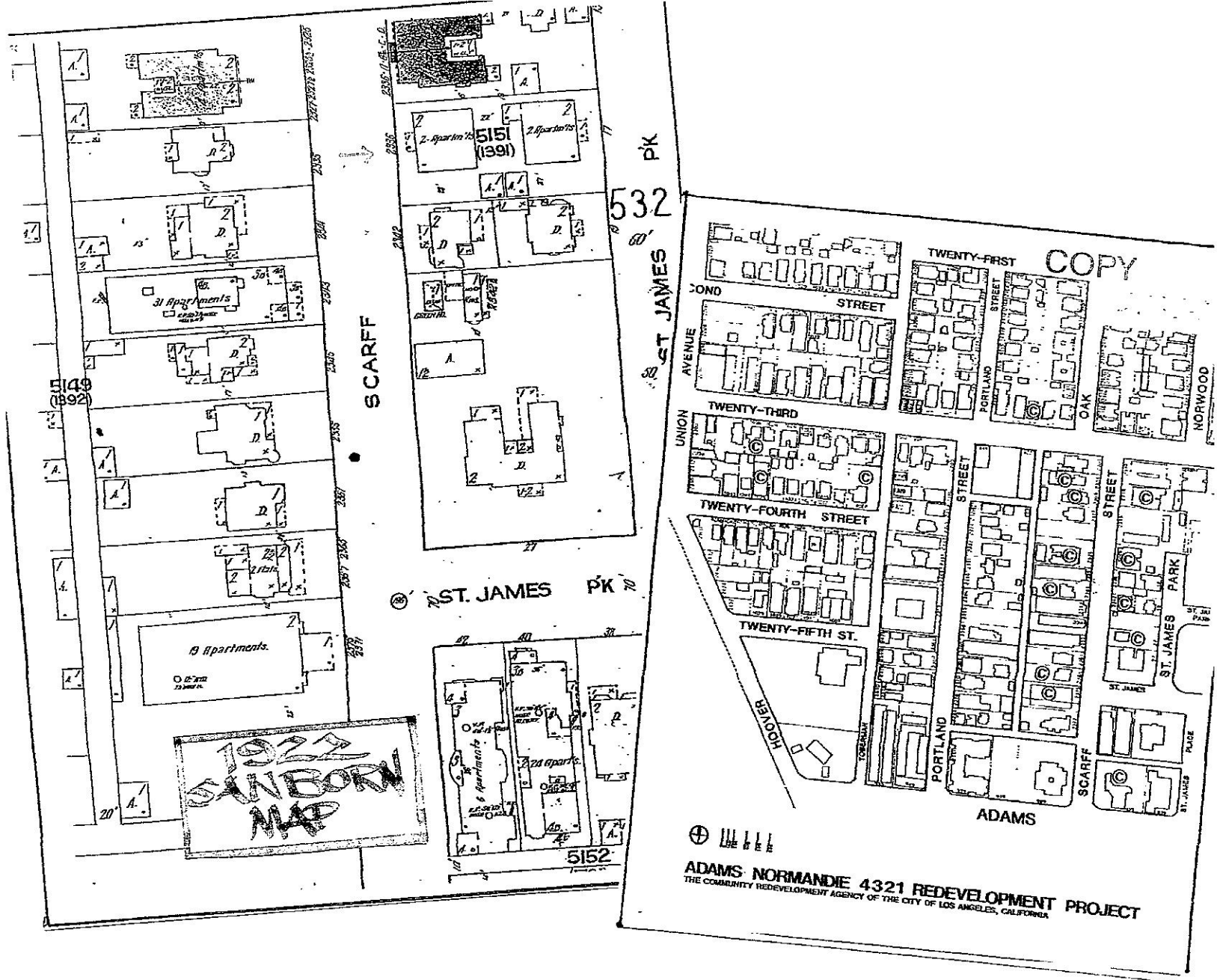
At a recent training seminar for HPOZ Board members, the Department of Planning assured the participants that although the HPOZ Boards are denied, by policy, any input regarding the approvals for new infill ADUs, that their Planning Staff could and would carefully review the applications for compliance with the Plans, S.I.S.G. and CEQA. They reported that, even under the new State rules the City Attorney had advised that they still had some limited authority over design issues, especially in historic zone overlays. They explained that Planning Staff would now determine which of the Preservation Plan’s requirements were “subjective”, a lesser passive requirement, or “objective”, an assertive and directive requirement to make the project compliant. I find this determination of what are subjective-vs-objective criteria itself to be subjective and little more than a ruse to justify simplified in-house decisions and to exclude any out-side questions of impropriety

That is the case in the Riddell Apts. project. The negative-impacts to the historic fabric by Staff’s inappropriate approval of these ADU conversion-additions’ is a direct result of a myopic “staff only” review. The City has created a de-facto demolition of the historic double-garages with their own subjective approval of the “conversion-alteration”. This improper approval has created significant negative impacts to not only the double-garage structures themselves and to the historic setting and context of the historic J.J. Riddell Apts. but also to the character-defining features of the historic Scarff & St. James Park streetscapes.

The UP-HPOZ historic patterns of development, as identified in the University Park Preservation Plan has three locations in which the through-lot development can be created: the 2300 block of Toberman-Portland, the 1900 & 2100 blocks of Norwood-Parkgrove and 2300 block of Scarff-St. James Park. The lot-to-lot development on these parcels created a majority of divided sub-standard lots each facing a historic street. A few lots however retained their full footprint which resulted in primary structures facing one street and its’ rear yard facing the other street.

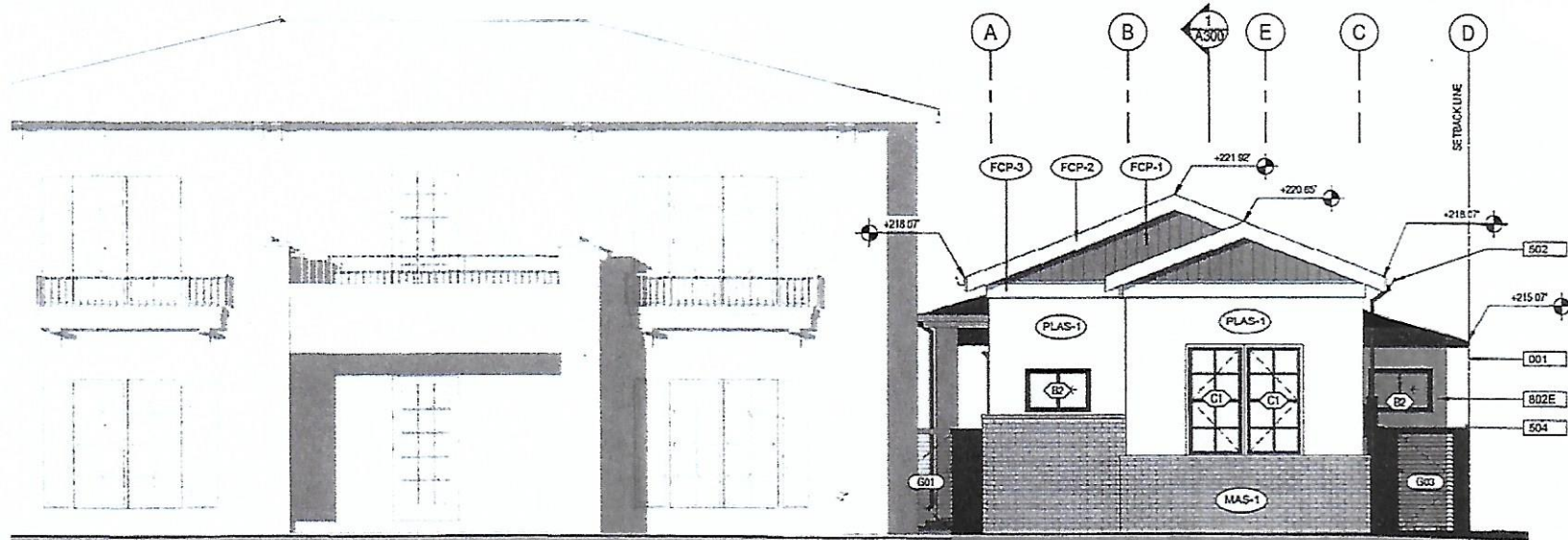
The historic J.J. Riddell Apts. at 2336 Scarff Street and 17 St. James Park are the only apartment complex to have twin primary structures, along with their identical accompanying garages each facing a different historic streetscape and contributing a unique visual and historic context to the National Register District.

The following copies of the 1922 Sanborn Insurance Map and the CRA/LA Adams Normandie 4321 Project Area’s existing land use map (1979) clearly illustrates the uniqueness of the streetscape setting.

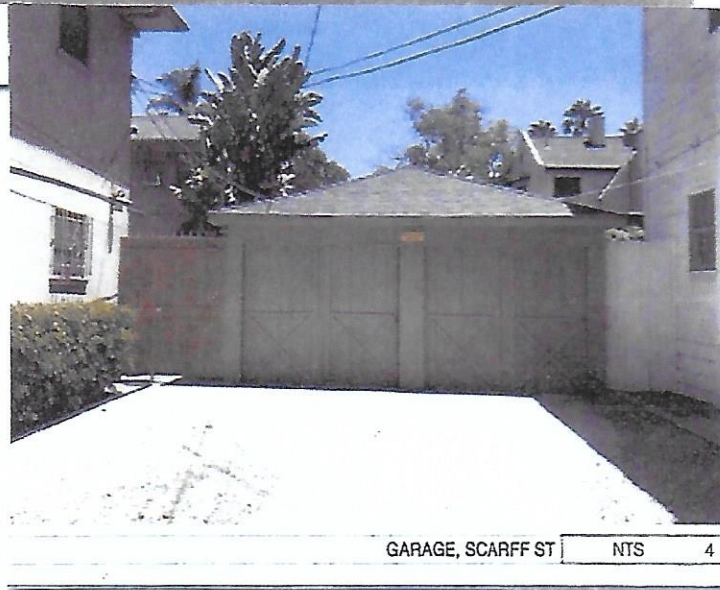


The formal symmetry of the Riddell Apt. complex through the use of a “mirrored” architectural design concept relied on the harmonic relationships between each duplex and its double-garage as well as their duplicative right-and-left elevations for each blockface to create a distinctive character-defining element to the National Register District. The original owner-developer’s exceptional decision to take advantage of the unusual opportunity of having a property with two historic streetscape frontages by placing a duplex on each side of the lot allowed for more prominent entrances for all of the units.

Another clever choice by the developer was the co-joining of what normally would have been two standard separate garages to the design of the unique double-garage. From the street view of either Scarff or St. James Park the corresponding garages appear atypical belying the unseen construction as a back-to-back with a shared common-wall structure.



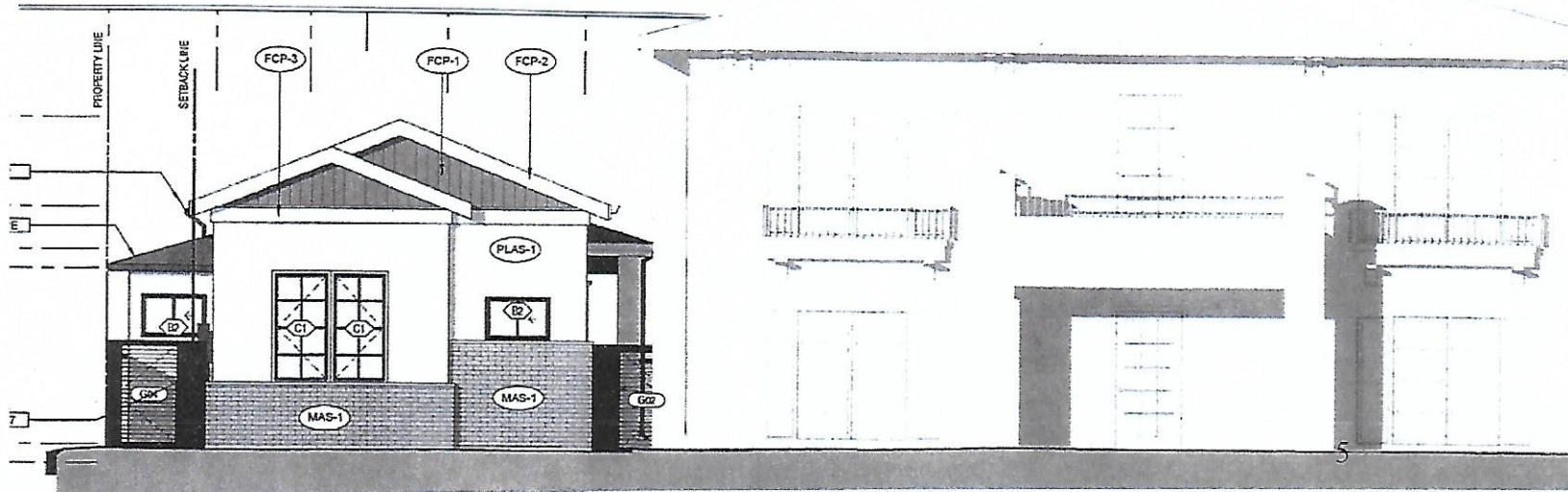
SCARFF ELEVATION 1/4" = 1'-0"



GARAGE, SCARFF ST NTS 4



GARAGE, ST JAMES PL NTS 6



ST. JAMES ELEVATION 1/4" = 1'-0"

The City's Historic Preservation Ordinance (184903) defines a demolition:
“9. **DEMOLITION** is the removal of more than 50% of the perimeter wall framing, the removal of more than 50% of the roof framing, or the substantial removal of the exterior of a façade in the Street-Visible Area.”

When we review the applicant's plans as submitted in the illustrations and photographs above it seems obviously clear that the existing historic fabric which constitutes the front facades of the Riddell Apts. double-garage is GONE. The Mediterranean Revival front façades of this special structure are gone. The 1920's classic wooden swing-out double-doors are gone. The character-defining hipped-roof is gone. There is nothing left. There is no argument that Planning Staff can make that their OHR **approved** design does not DEMOLISH the two historic front facades of the Riddell Apts.' double-garages.

That having been said, how this attack on the historic integrity of documented historic resources could be sanctioned by OHR. The Riddell Apts. are a City listed historic resource, a State listed historic resource, and a Federal listed historic resource whose standing under CEQA is unquestionable. Apparently it was non-vetted and myopically reviewed with no evaluation of the properties' historic significance and a consideration of impacts. The outrageous behavior of the Office of Historic Resources to review and approve a project proposal that has so obviously impacted a significant historic resource goes well beyond any specious issue on the parsing of Staff's objective-subjective interpretations.

Besides Staff's negligent decision to de-facto demolish the historic double-garage leaving only a partial remnant along the south property line the OHR approved a design for the new and non-compatible In-Fill additions. The new approved ADUs violate a myriad of University Park Preservation Plan's Goals, Objectives, Recommendations, and requirements. The UP-PP does not allow for aluminum or vinyl sliding windows, existing historic materials are to be preserved, repaired, or replaced in kind, “*New additions should not be built on primary façade or the front half of side facades*”, historic roof lines should be preserved, faux finish not characteristic of a particular style period should be avoided, and many more specific violations.

The OHR approved new ADU Duplex's design is void of any recommended compatibility with their corresponding primary twin-duplexes, the demolished historic structure, and is in flagrant violation of the UP-PP Residential Infill Design Guidelines:

*“A compatible design **must** respond to siting with respect to prevailing lot use patterns, orientation of the building to the lot, height, massing, pattern of window and door fenestration, and detail. Most importantly each project should respond to its surrounding context and help create a seamless transition from building type to building type.”*

Fundamental, and not subjective, historic preservation concepts were ignored. The “orientation” of a building, by example, is one of the first steps to take in planning any project. This Project's design has chosen to demolish the street orientation of the front

entrances of the double-garage in order to expand the new residential enlarged footprint forward into the driveways.

While new ADU addition expands the footprints 20 ft, forward along the driveways they have also had their entrances rotated 90% from an external street orientation to an internal yard orientation? The change of a buildings entrance, from the street-front to a side yard is itself a significant alteration to the patterns of development in the National Register historic district. Most historic residential buildings that have frontage on a blockface have their entrance in that frontage and not in a side yard.

The double-garage orientation was in design sympathy with the primary structures' front facade. The original double-garage roof was a "hip-roof" echoing the Mediterranean Revival roofs of the paired-duplexes. I will note that the original roofing material, Spanish-tile, was lost by a 1980's re-roof approval under CRA /LA. Now the new proposed ADUs' roof is side-gabled with the gable ends facing the historic streets and the new front-entrance orientation in the side yard.

The new ADUs' street facades fail to provide any architectural styling elements that have a positive relationship with either the primary on site historic structures or the development patterns along the blockface. The ADUs are not compatible with, but are an intrusion of non-contributing elements into a nationally important historic streetscape.

Frankly, I am unable to identify what exactly the ADUs' architectural style is supposed to be called. It does not appear to distinctively reflect any of the 17 Architectural Styles identified in the UP-PP found within the UP-HPOZ's period of significance. I believe that given its' low profile, one-story, horizontal massing, exterior siding split between faux brick cladding below, and stucco above, aluminum sliders, and recessed entrance it could be called Van Nuys Ranch and not be far off. Van Nuys Ranch or not, the new-addition building's design fails to achieve compatibility.

The University Park Preservation Plan contains the "Preservation Principles" of the "Secretary of the Interior Standards for Rehabilitation" that address new additions:

09. New additions, exterior alterations, or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion and massing that protect the integrity of the property and its environment.

10. New Additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

In addition to the clear directives for a proposed new construction's compliance with the needed methodology that insures the successful integration of the of the new with existing historic fabric, the Preservation Principles also instructs on the responsible management of historic resources:

01. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

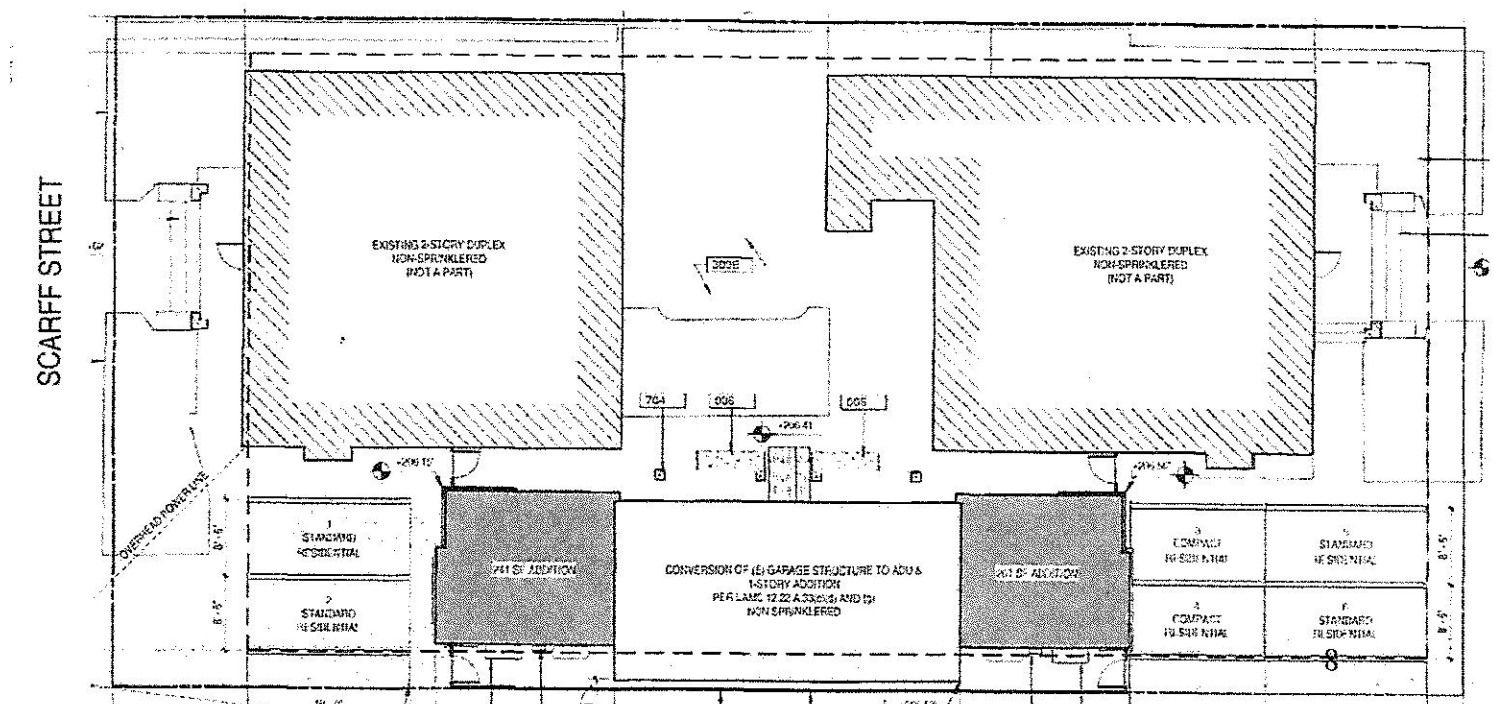
02. The historic character of a property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces and spatial relationships that characterize a property will be avoided.

05. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterizes a property shall be preserved.

The failure of the proposed new ADUs to comply with the Secretary's Standards is obvious and should have caused a re-think and historic-context review of the project proposal when it was first submitted to OHR. The Planning Department, having placed itself as the City's lead agency for purposes of CEQA, has the responsibility to insure that potential negative impacts to historic resources are identified and either eliminated or mitigated to a point of insignificance.

Many alternative design solutions and or project-goals could have been developed if the owner and architect had been advised to consider the potential negative impacts to the historic property they were altering. Beginning with the question of an addition or not, the possible alternative developments could have, as an example, included: retention of the rehabilitated double-garage and façade. Either one large multiple bedroom ADU unit or two separate ADU efficiency units could have been considered. Another option could have been for the adaptive reuse of the garage as one unit and a second unit, if warranted, developed as an attached rear unit within the rear yard open space. These concepts would have preserved the distinctive historic fabric, retained spatial relationships and allowed for reversible alterations.

The OHR approval of the doubling-up the size of the garages by the intrusion of two front additions, has also reduced the amount of the available parking and forced a site plan that violates City code restrictions of parking in the frontyard setback,



The housing crisis and the political necessity to do something, anything to take action, has resulted in poor legislation that just exacerbates the issues and has caused even more collateral damages. Several new California state laws have placed the Los Angeles City Planning Department's normal procedures for administering their responsibility as Certified Local Government under CEQA in conflict with itself. However Planning Staff has consistently proclaimed their ability to continue their high level of protection for historic resources and approve compatible in-fill and or conversions to an ADU and maintain CEQA compliance.

Approving this de-facto demolition of the historic double-garages and their replacement with non-compliant ADU duplex intrusions that in turn negatively impact the historic context of the federal historic district streetscapes, is a failed decision. There is a significant negative impact to the primary façades of the historic resources and to the context of historic streetscape, therefore an Exception from the Categorical Exemption is required.

OHR has failed in their approval for this Project. I ask therefore that the Department rescind the DeBiase ADM approval and a request a new design that insures that the ADU's are compatible with the historic context and setting. Absent the Departments willingness to engage in that process the Department should find for an Exception to the CE and review possible alternative mitigations to the negative impacts. The laws regarding ADUs allow for protection of our historic resources.



Jim Childs

Chair, Adams Dockweiler Heritage Organizing Committee

Chair, emeritus, University Park H.P.O.Z. Board

2341 Scarff Street, LA CA 90007 / 213-748-1656 / jeanjim2341@att.net

TO: Osama Younan, Charmie Huynh, Vladimir Arutyunyan
Los Angeles Department of Building and Safety
201 and 221 N. Figueroa Street / Los Angeles Calif. 90012

DATE: February 19, 2021

FROM: Jean Frost, Chair Policy Committee, NANDC (*via e mail*)

RE: Permit application No. 20016-30000-22826 / Plan Check No. B20WL03974
ADM-2020-4817-ADU
2336 Scarff St. & 17 St. James Park / University Park H.P.O.Z. / CD-1
ST. JAMES PARK NATIONAL REGISTER HISTORIC DISTRICT

Greetings,

I am writing as the Chair of the Policy Committee for the North Area Neighborhood Development Council (NANDC) to make an initial inquiry about the processing, by the Los Angeles Department of Building & Safety, of a permit application (No. 20016-30000-22826) for the development of two Auxiliary Dwelling Units (ADU) on a through lot at 2336 Scarff Street & 17 St. James Park. The subject property is a 'Contributor' to both the University Park Historic Preservation Overlay Zone and the St. James Park National Register Historic District.

Building and Safety staff is aware of the very recent policy review in response to the community's concerns about the Neighborhood Stabilization Ordinance's (NSO) application in historic neighborhoods. The heart of the NSO problems revolved around parking issues in the historic University District surrounding the University of Southern California's campus (USC). Issues were raised about inappropriate past sign-off policies that approved plans and exempted some developments from compliance with the NSO. Fortunately, City B&S and Planning staff corrected this non-conformance and we are very appreciative.

I would on behalf of the Policy Committee like to thank the City and stakeholders for stepping forward and acknowledging those concerns and taking steps to review and update the NSO review process. City staff, up and down the chain, has been responsive and collaborative in finding applicable solutions to fact-based Ordinance implementation.

It is this successful prior collaboration that leads me to seek your additional assistance with the latest issue that has arisen: the sign-off procedures for the approvals of Accessory Dwelling Units (ADUs.) Community wide concerns are growing as many past Planning Department ADU approvals are finally made public. To date, most of the critical concern has been about Planning Department's design compatibility approvals for the new ADUs in our historic neighborhoods. One catalyst for this letter is the above referenced historic lot on Scarff-St. James Park. I am attaching a nine-page letter from the Adams Dockweiler Heritage Organizing Committee to senior LA Planning Department

officials illuminating the errors made by the Office of Historic Resources staff in approving the proposed Project's design.

Of particular concern is the blinkered limitation placed on staff by policy decisions that apparently leave them without the tools necessary to require a developer to submit a compatible community design. This leads them to sign-off on any plans put before them as "By-Right." As you will find in the A.D.H.O.C. letter, there are myriad inappropriate design elements cited for their non-compliance with the University Park HPOZ Preservation Plan (UPPP) and the resulting negative impacts to State and Federal listed historic properties.

The increased community scrutiny of the Scarff-St. James Park ADU have initiated a thorough review by affected stakeholders. The additional eyes-on reviewers with various backgrounds have raised new questions about the process, including that of Building and Safety. It has been my goal since the problems became visible to have City staff available for answers to the community's questions about ADUs and the OHR signoffs for design compatibility and CEQA clearance as soon as possible. The additional concerns about the B&S involvement suggest that a joint presentation by OHR and B&S staff might prove the most fruitful.

Several of the identified problems seem to have some conflicting jurisdictional issues between B&S and the OHR. Some of the current issues for example center on what are perceived to be historic grandfathered "By-Right" exceptions to several current regulatory code requirements. I thought it would be appropriate if I asked for your clarifying answers to a few of those issues and other concerns. I believe your guidance about process will be instrumental in understanding where we need go next.

FIRST:

The L.A. Department of Building and Safety's (B&S) online data site "Certificate Information" reports: *permit application No. 20016-30000-22826 issued on 11/16/20 and (not yet cleared) for the construction of two ADU units at 2336 Scarff Street.*

Questions:

The permit application is for the Scarff Street twin duplex and there is no information about the second on-site duplex which has its front façade at 17 St. James Park and shares equally in the ADU double-garage conversion + addition project. Each of the twin duplexes has a separate address on a separate street but shares the same through-lot. (a). Are two permits are required? (b). If so, why isn't there a separate and simultaneous B&S permit application for 17 St. James Park? (c). If not why isn't the data for 17 St, James Park included on the application?

It appears the TWO ADUs are listed in ZIMAS as 2336 Scarff and 2336-2338 Scarff ignoring the two street primary facades and misleading a reviewer to consider the easterly ADU as a rear yard which it is not.

Existing Site Conditions:

The historic subject property has two primary front facades, each facing a different street, Scarff and St. James Park. Each frontage has one of the two historic twin-

duplexes sited along a side driveway with the existing front façade entrance doors of one end of the historic double-garage. It is crucial that decision makers consistently comprehend that the Project be viewed for its impacts to each individual historic streetscape. There are no secondary, out of sight, rear-yard, or insignificant structures on this site, there are only the two historic twin duplexes and their shared historic double-garage.

SECOND:

The City's Preservation Ordinance (184903 / LAMC 12.20.3) in its Section B. Definitions states: 9. *DEMOLITION is the removal of more than 50% of the perimeter wall framing, the removal of more than 50% of the roof framing, or the substantial removal of the exterior of a façade in the Street-Visible Area.*

The A.D.H.O.C. letter raised alarm about how OHR's design approval allowed for the removal of the historic double-garage's character-defining feature, the paired front façade double entrance doors, and its existing the hipped roof, a design feature that emulates the hipped roof on the primary structures, the twin duplexes.

- *The City has created a de-facto demolition of the historic double-garages with their own subjective approval of the "conversion-alteration". This improper approval has created significant negative impacts to not only the double-garage structures themselves and to the historic setting and context of the historic J.J. Riddell Apts. but also to the character-defining features of the historic Scarff & St. James Park streetscapes.*

The A.D.H.O.C. letter questioned how the OHR could approve project plans that contain a demolition of a historic structure without comment and not require a higher level of review of the California Environmental Quality Act (CEQA) than their issued Categorical Exception.

Questions:

The developers originally submitted their Project plans to B&S Plan-Check 9/14/20, reviewed by a Supervisor and corrections issued 11/24/20. The Project plans were cleared by OHR staff Katie DeBiase (now Knudson) on 12/08/20. There is nothing in the OHR approval that identifies the actual demolition of the historic garage as an integral element of the Project design. (a). Did B&S Plan-Check staff recognize and identify that the proposed conversion + addition plans resulted in a demolition under the Preservation Ordinance? (b). Did B&S Plan Check defer any response to the perceived demolition and forward the resolution to OHR because it was a "historic preservation" issue? (c). When B&S staff encounters questions concerning specific details about historic preservation requirements, do they seek concurrence from B&S senior staff or OHR staff? (d). Did the Plan Checker reach out to OHR about this demolition? (e). Is there adequate inter- departmental communication on policy issues for implementing historic preservation requirements?

THIRD:

Government Code Section 65852.2. Accessory Dwelling Units

*(1) A local Agency may, by ordinance, provide for the creation of accessory dwelling units in area zoned to allow single family or multifamily dwelling residential use, the ordinance **shall** do all of the following*

*(i) Impose standards on accessory dwelling units that include, but are not limited to, parking height, setback, landscape architectural review, maximum size of a unit, and standards that **prevent adverse impacts on any real property that is listed in the California Register of Historic Resources.***

Questions:

*The Planning Department's OHR staff is the empowered authority to administrate H.P.O.Z. issues including how a structure is considered as historic. However, B&S Plan-Check usually is often the first stop for project developers where they are referred to other departments for specific clearances such as H.P.O.Z. The Office of Historic Resources has already erred in their clearance approval of the Project flawed design by ignoring the ultimate "adverse impact" **demolition** of the "real property" a historic resource listed on both the California and National Register.*

The community's expectations in this case would be that a final Plan-Check review would accept all OHR approvals without question unless it has specific conflict with a non-historic B&S code and not even question their non-demolition interpretation. (a). Does B&S counter staff have independent authorities from the Planning's OHR staff to answer questions about historic preservation procedures? (b). In cases where there is disagreement between B&S and OHR about conflicting interpretations how are the issues resolved? (c). Given the current status, would the community be correct and, absent any correction by OHR, approve the plans as By-Right as an ADU?

FOURTH:

Government Code Section 65852.2. Accessory Dwelling Units continued:

*(vii) No setback shall be required for an extra living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, **and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure***

The OHR Cleared Project plans approve the "conversion" of the historic double-garage plus the new construction of an expanded "addition" in front of both the east and west facades. Although the Project's approval of a design that meets the requirements of the UPPP is the responsibility of OHR, there are new questions the about the footprint and site-plan review by B&S.

Questions:

The historic double-garage at 17 St. James Park and 2336 Scarff Street was constructed with its two front entrances facing east and west along the south property line. It is common in historic districts for any structure built along a property line to have grandfathered-rights to maintain that easement in spite of any code change since the original construction. The above referenced Government Code Section allows for an ADU to be built from a garage-conversion. The Code requires "no setback if it is

constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit.”

However, the Code also requires; “a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure”.”

The Code appears clear that a “conversion” can occur and maintain By-Right easements when it is in the same location and has the same dimensions but this ADU Project, with the two additions, does **not** have the same dimensions and it is not in the same location as the historic garage. (a). Since the Project is expanded beyond the boundaries of a “Conversion” has it lost its grandfathered rights to maintain a building on the property line? (b) Since the Project has destroyed the roof and front facades by exceeded the 50% loss factor shouldn’t this action be processed as the demolition it technically is? (c). Does the retention of just the south wall of the historic double-garage keep it from being a “demolition” and therefore protected? (d). If it is a “demo” and therefore there is no “conversion” possible, are the plans than processed as” new construction”? (e). A new construction would require a sideyard setback of the property line wouldn’t it? (f). Absent the expansion through a new horizontal addition, which changes the required “same dimensions” and “same location” and therefore requires setbacks are there other conditions that can restrict the grandfathered property line easements?

FIFTH:

Government Code Section 65852.2. Accessory Dwelling Units continued:

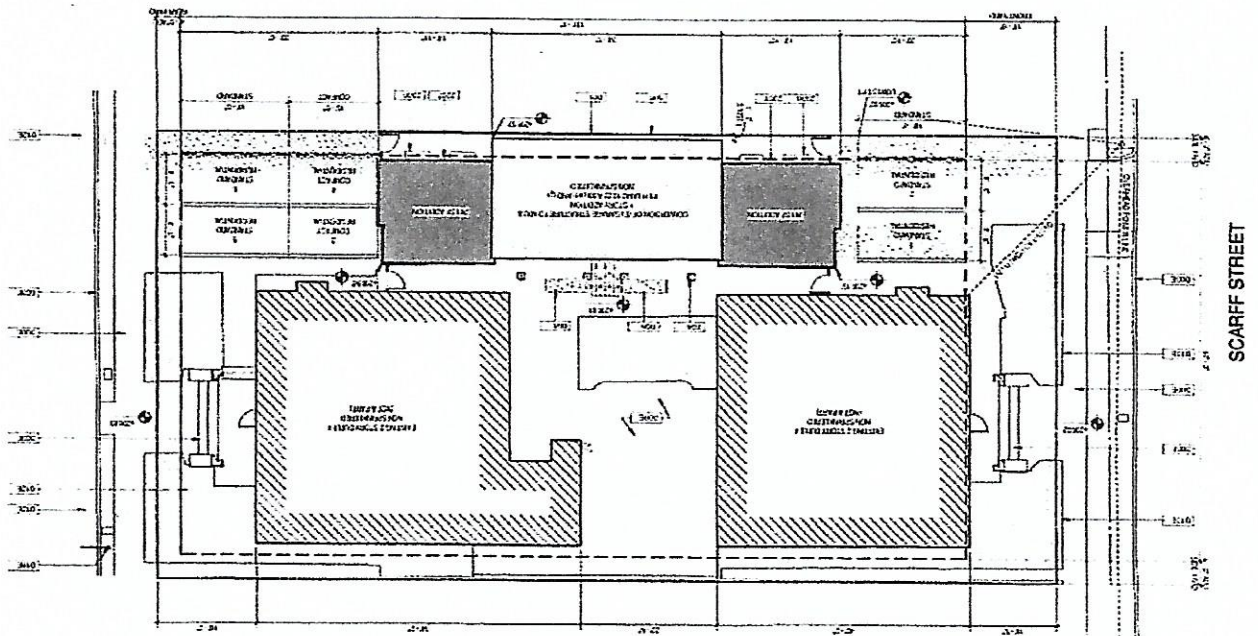
(xi) *When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those off-street parking spaces be replaced.*

(C.d.) (2) *Notwithstanding any other law, a local agency whether or not it has it has an adopted ordinance governing accessory dwelling units in accordance with subdivision (a) **shall not impose** parking standards for an accessory dwelling unit in any of the following instances: (2) The accessory dwelling unit is located within an architecturally and historically significant historic district,*

Questions:

The OHR Cleared Project plans show two parking spaces in front of the Scarff Street ADU and four parking spaces in front of the St. James Park ADU. The parking for two of the four spaces on St. James Park are located in the front yard setback. (a). If the replacement parking lost by “conversion” is not required by ADU code, why is it there? (b). Why is it approved? Is non-required parking allowed in the side-yard? (c). How far behind the primary front-façade must a setback in the side-yard parking be? (d). How can parking be approved in the front yard setback when it is not Project required?

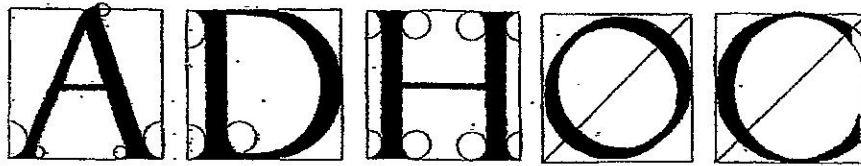
The following site-plan is taken from the applicant’s submission.



As with any new compliance issue with state laws, we ask for your assistance with this specific site as a way of learning what the community may expect in its application in future developments as well. While we are supportive of ADUs in their creation of housing, the details are particularly important. Thank you for listening to our questions about ADUs and assisting with our understanding.


Jean Frost
Chair, Policy Committee (NANDC)
213 747 2526

CC; ADHOC



ADAMS DOCKWEILER HERITAGE ORGANIZING COMMITTEE

**ADM-2020-4817-ADU
2336 SCARFF ST. & 17 ST. JAMES PARK
ST. JAMES PARK NATIONAL REGISTER HISTORIC DISTRICT**

Los Angeles Department of City Planning
200 N. Spring Street / Los Angeles Calif. 90012
Vince Bertoni, Director
213-978-1271 / Vince.Bertoni@lacity.org
Kevin Keller, Deputy Director
213-978-1272 / kevin.keller@lacity.org
Ken Bernstein, AICP
213-874-3652 / Ken.berstein@lacity.org

Greetings,

I am writing as the Chair of Adams Dockweiler Heritage Organizing Committee to protest the decision (2/14/2020) of OHR, HPOZ Planning Assistant Katie De Biase for the approval of two new ADU units at 2336 Scarff Street & 17 St. James Park, the Project site.

The two approved Auxiliary Dwelling Units (ADU) are for a "conversion-addition" to the twin double-garages which service the paired identical duplexes of the "J.J. Riddell Apartments". The Project property is listed as Contributing to the ST. JAMES PARK National Register Historic District (1991). The historic Riddell Apts. are also Contributors to the University Park Historic Preservation Overlay Zone (2000).

As Contributors to the UP-HPOZ the Project property is subject to the provisions of the L.A. City Historic Preservation Overlay Zone Ordinance. Under that Ordinance all recognized historic resources are subject to compliance with the Secretary of the Interior's Standards & Guidelines (S.I.S.G.) for historic resources. Compliance with the S.I.S.G. is also required by the City's Planning Department for administrative purposes including compliance with the California Environmental Quality Act (CEQA) for all listed historic properties on the California and the National Register of Historic Places.

The City of Los Angeles HPOZ Ordinance relies on their approved Preservation Plans for existing H.P.O.Z.'s to evaluate the extent of the required CEQA compliance. The University Park H.P.O.Z. Preservation Plan was the second Plan adopted, on July 14, 2005, by the City for an HPOZ. A Purpose & Goal of the Plan was to offer a thorough identification of the how and why a historic building can achieve compliance with the

various Standards when seeking project changes such as restoration, rehabilitation, repair, alterations and additions.

When a historic building in an HPOZ has proposed changes the City relies on its' compliance with the Preservation Plan in determining its' implementation of the California Environmental Quality Act's (CEQA) regulatory requirements. The City proffers that if a proposed project is in compliance with the Preservation Plan then it therefore has achieved compliance with CEQA and a Categorical Exemption is the appropriate level for the sign-off under its authority as the "Lead Agency". Conversely the opposite is true when a project is NOT in compliance with a Preservation Plan and a more thorough review of possible negative impacts must be reviewed.

The City Planning Department spent a great amount of effort in the creation of their "Preservation Plan Template" so that the various localized tailored-plans, when implemented, would be CEQA compliant for their administrative purposes. The University Park HPOZ Preservation Plan, excluding its eight appendices, has 137 pages of specific examples and directions needed to cover the implementation of the possible variations of the Secretary of the Interior's Standards.

Naturally this complexity can sometime result in conflicting requirements which then may require a subjective interpretation of the Plan's objective priorities. For example, when a Project's design has elements in conflict with some of the Standards but is in compliance with others, what is the needed mitigation for an approval? The Ordinance empowers the appointed H.P.O.Z. Boards and the Director of Planning to reach an authoritative decision based on their thorough review of the issues.

Although the City's simplified processing for CEQA can prove administratively effective for projects that have to comport with the City's code and regulations, it can fail when applied to an external demand as exemplified today by a myriad of California State laws. These new laws are aimed at regulating the housing crisis.

The State has issued mandated directives to local communities that can usurp their own zoning regulations thereby causing confusion as City staff tries to resolve the inherent conflicts. This now is the unfortunate fate of the paired historic duplex's double garages. The Planning Department has negligently approved plans for two Accessory Dwelling Units, one each, attached to a corresponding historic garage's front facade. The Department's justification: the City's Attorney's interpretation of required compliance with the State's authorization.

The project proposal for the ADU itself is not the issue. The University Park community embraces and has welcomed many affordable housing developments. Approvals for affordable housing developments have been a staple for the University Park HPOZ Board since its empowerment. The UP-Board's approvals for any project are arrived at by interactive dialogue with the proponents to achieve consensus compliance with the Preservation Plan, thereby avoiding significant conflict with Secretary of the Interior's Standards and CEQA.

This consistently successful approach of consensus Board review is now abandoned by the Planning Department in exchange for their “Staff Only” interpretation procedures. It is not surprising that this exclusionary process is creating problems with their ability in limiting potential impacts to historic resources. The impacts are now being made more significant than the low-level needed for the issuance of a Categorical Exemption.

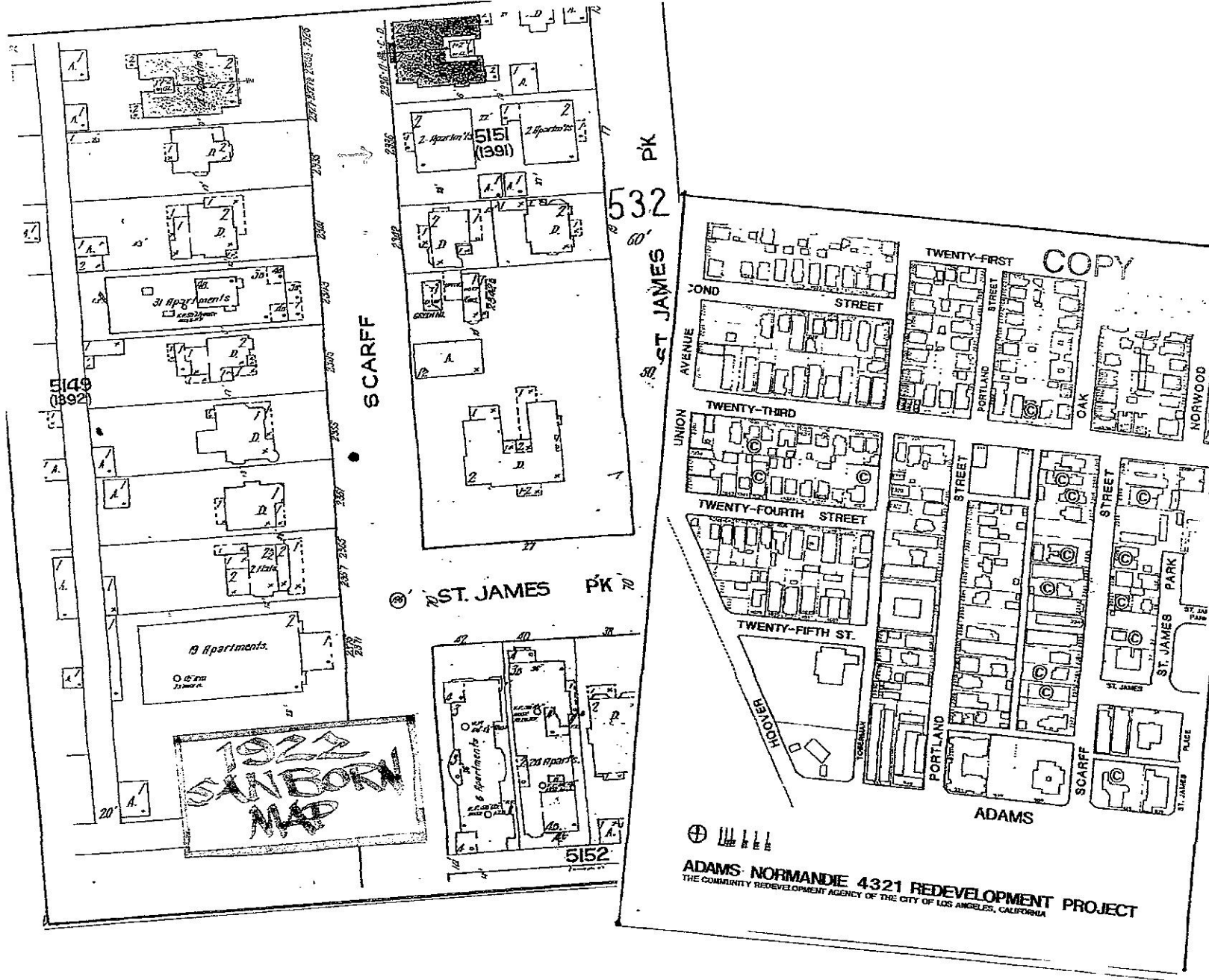
At a recent training seminar for HPOZ Board members, the Department of Planning assured the participants that although the HPOZ Boards are denied, by policy, any input regarding the approvals for new infill ADUs, that their Planning Staff could and would carefully review the applications for compliance with the Plans, S.I.S.G. and CEQA. They reported that, even under the new State rules the City Attorney had advised that they still had some limited authority over design issues, especially in historic zone overlays. They explained that Planning Staff would now determine which of the Preservation Plan’s requirements were “subjective”, a lesser passive requirement, or “objective”, an assertive and directive requirement to make the project compliant. I find this determination of what are subjective-vs-objective criteria itself to be subjective and little more than a ruse to justify simplified in-house decisions and to exclude any out-side questions of impropriety

That is the case in the Riddell Apts. project. The negative-impacts to the historic fabric by Staff’s inappropriate approval of these ADU conversion-additions’ is a direct result of a myopic “staff only” review. The City has created a de-facto demolition of the historic double-garages with their own subjective approval of the “conversion-alteration”. This improper approval has created significant negative impacts to not only the double-garage structures themselves and to the historic setting and context of the historic J.J. Riddell Apts. but also to the character-defining features of the historic Scarff & St. James Park streetscapes.

The UP-HPOZ historic patterns of development, as identified in the University Park Preservation Plan has three locations in which the through-lot development can be created: the 2300 block of Toberman-Portland, the 1900 & 2100 blocks of Norwood-Parkgrove and 2300 block of Scarff-St. James Park. The lot-to-lot development on these parcels created a majority of divided sub-standard lots each facing a historic street. A few lots however retained their full footprint which resulted in primary structures facing one street and its’ rear yard facing the other street.

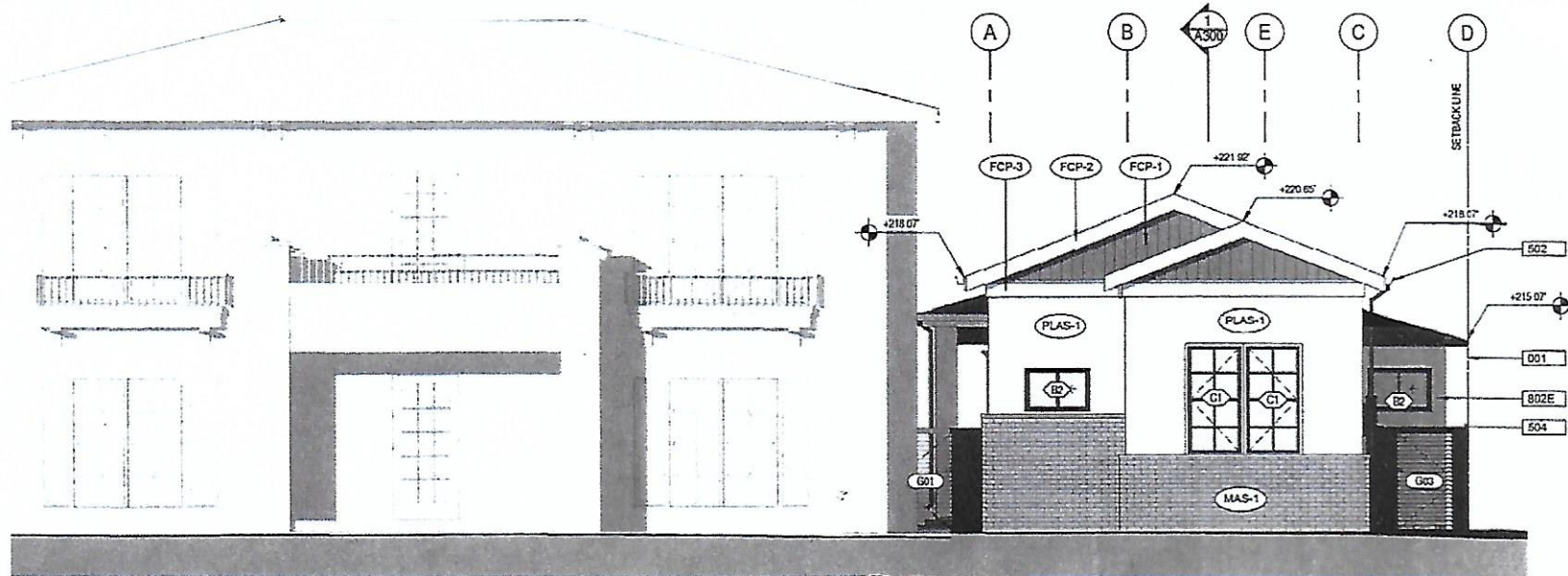
The historic J.J. Riddell Apts. at 2336 Scarff Street and 17 St. James Park are the only apartment complex to have twin primary structures, along with their identical accompanying garages each facing a different historic streetscape and contributing a unique visual and historic context to the National Register District.

The following copies of the 1922 Sanborn Insurance Map and the CRA/LA Adams Normandie 4321 Project Area’s existing land use map (1979) clearly illustrates the uniqueness of the streetscape setting.



The formal symmetry of the Riddell Apt. complex through the use of a “mirrored” architectural design concept relied on the harmonic relationships between each duplex and its double-garage as well as their duplicative right-and-left elevations for each blockface to create a distinctive character-defining element to the National Register District. The original owner-developer’s exceptional decision to take advantage of the unusual opportunity of having a property with two historic streetscape frontages by placing a duplex on each side of the lot allowed for more prominent entrances for all of the units.

Another clever choice by the developer was the co-joining of what normally would have been two standard separate garages to the design of the unique double-garage. From the street view of either Scarff or St. James Park the corresponding garages appear atypical belying the unseen construction as a back-to-back with a shared common-wall structure.



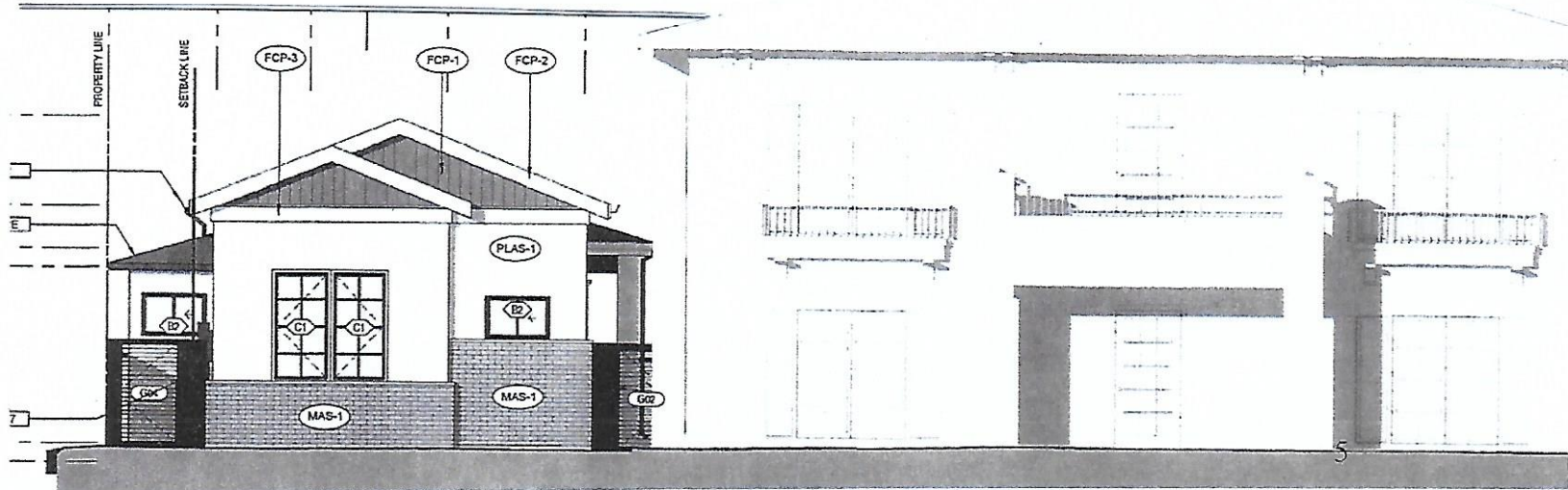
SCARFF ELEVATION 1/4" = 1'-0"



GARAGE, SCARFF ST NTS 4



GARAGE, ST JAMES PL NTS 6



ST. JAMES ELEVATION 1/4" = 1'-0"

The City's Historic Preservation Ordinance (184903) defines a demolition:
"9. **DEMOLITION** is the removal of more than 50% of the perimeter wall framing, the removal of more than 50% of the roof framing, or the substantial removal of the exterior of a façade in the Street-Visible Area."

When we review the applicant's plans as submitted in the illustrations and photographs above it seems obviously clear that the existing historic fabric which constitutes the front facades of the Riddell Apts. double-garage is GONE. The Mediterranean Revival front façades of this special structure are gone. The 1920's classic wooden swing-out double-doors are gone. The character-defining hipped-roof is gone. There is nothing left. There is no argument that Planning Staff can make that their OHR **approved** design does not DEMOLISH the two historic front facades of the Riddell Apts.' double-garages.

That having been said, how this attack on the historic integrity of documented historic resources could be sanctioned by OHR. The Riddell Apts. are a City listed historic resource, a State listed historic resource, and a Federal listed historic resource whose standing under CEQA is unquestionable. Apparently it was non-vetted and myopically reviewed with no evaluation of the properties' historic significance and a consideration of impacts. The outrageous behavior of the Office of Historic Resources to review and approve a project proposal that has so obviously impacted a significant historic resource goes well beyond any specious issue on the parsing of Staff's objective-subjective interpretations.

Besides Staff's negligent decision to de-facto demolish the historic double-garage leaving only a partial remnant along the south property line the OHR approved a design for the new and non-compatible In-Fill additions. The new approved ADUs violate a myriad of University Park Preservation Plan's Goals, Objectives, Recommendations, and requirements. The UP-PP does not allow for aluminum or vinyl sliding windows, existing historic materials are to be preserved, repaired, or replaced in kind, "*New additions should not be built on primary façade or the front half of side facades*", historic roof lines should be preserved, faux finish not characteristic of a particular style period should be avoided, and many more specific violations.

The OHR approved new ADU Duplex's design is void of any recommended compatibility with their corresponding primary twin-duplexes, the demolished historic structure, and is in flagrant violation of the UP-PP Residential Infill Design Guidelines:

*"A compatible design **must** respond to siting with respect to prevailing lot use patterns, orientation of the building to the lot, height, massing, pattern of window and door fenestration, and detail. Most importantly each project should respond to its surrounding context and help create a seamless transition from building type to building type."*

Fundamental, and not subjective, historic preservation concepts were ignored. The "orientation" of a building, by example, is one of the first steps to take in planning any project. This Project's design has chosen to demolish the street orientation of the front

entrances of the double-garage in order to expand the new residential enlarged footprint forward into the driveways.

While new ADU addition expands the footprints 20 ft, forward along the driveways they have also had their entrances rotated 90% from an external street orientation to an internal yard orientation? The change of a buildings entrance, from the street-front to a side yard is itself a significant alteration to the patterns of development in the National Register historic district. Most historic residential buildings that have frontage on a blockface have their entrance in that frontage and not in a side yard.

The double-garage orientation was in design sympathy with the primary structures' front facade. The original double-garage roof was a "hip-roof" echoing the Mediterranean Revival roofs of the paired-duplexes. I will note that the original roofing material, Spanish-tile, was lost by a 1980's re-roof approval under CRA /LA. Now the new proposed ADUs' roof is side-gabled with the gable ends facing the historic streets and the new front-entrance orientation in the side yard.

The new ADUs' street facades fail to provide any architectural styling elements that have a positive relationship with either the primary on site historic structures or the development patterns along the blockface. The ADUs are not compatible with, but are an intrusion of non-contributing elements into a nationally important historic streetscape.

Frankly, I am unable to identify what exactly the ADUs' architectural style is supposed to be called. It does not appear to distinctively reflect any of the 17 Architectural Styles identified in the UP-PP found within the UP-HPOZ's period of significance. I believe that given its' low profile, one-story, horizontal massing, exterior siding split between faux brick cladding below, and stucco above, aluminum sliders, and recessed entrance it could be called Van Nuys Ranch and not be far off. Van Nuys Ranch or not, the new-addition building's design fails to achieve compatibility.

The University Park Preservation Plan contains the "Preservation Principles" of the "Secretary of the Interior Standards for Rehabilitation" that address new additions:

09. New additions, exterior alterations, or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion and massing that protect the integrity of the property and its environment.

10. New Additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

In addition to the clear directives for a proposed new construction's compliance with the needed methodology that insures the successful integration of the of the new with existing historic fabric, the Preservation Principles also instructs on the responsible management of historic resources:

01. A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

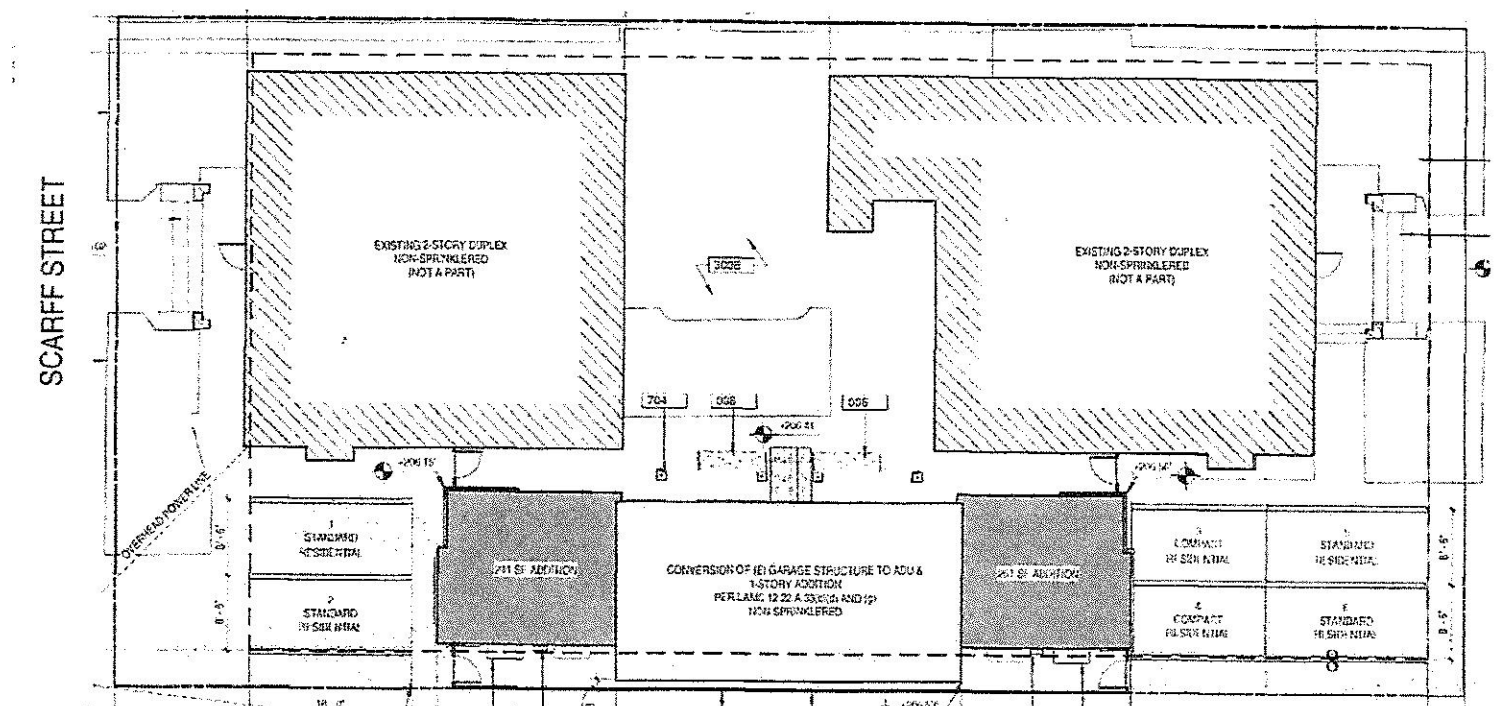
02. The historic character of a property will be retained and preserved. The removal of distinctive materials or alterations of features, spaces and spatial relationships that characterize a property will be avoided.

05. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterizes a property shall be preserved.

The failure of the proposed new ADUs to comply with the Secretary's Standards is obvious and should have caused a re-think and historic-context review of the project proposal when it was first submitted to OHR. The Planning Department, having placed itself as the City's lead agency for purposes of CEQA, has the responsibility to insure that potential negative impacts to historic resources are identified and either eliminated or mitigated to a point of insignificance.

Many alternative design solutions and or project-goals could have been developed if the owner and architect had been advised to consider the potential negative impacts to the historic property they were altering. Beginning with the question of an addition or not, the possible alternative developments could have, as an example, included: retention of the rehabilitated double-garage and façade. Either one large multiple bedroom ADU unit or two separate ADU efficiency units could have been considered. Another option could have been for the adaptive reuse of the garage as one unit and a second unit, if warranted, developed as an attached rear unit within the rear yard open space. These concepts would have preserved the distinctive historic fabric, retained spatial relationships and allowed for reversible alterations.

The OHR approval of the doubling-up the size of the garages by the intrusion of two front additions, has also reduced the amount of the available parking and forced a site plan that violates City code restrictions of parking in the frontyard setback,



The housing crisis and the political necessity to do something, anything to take action, has resulted in poor legislation that just exacerbates the issues and has caused even more collateral damages. Several new California state laws have placed the Los Angeles City Planning Department's normal procedures for administering their responsibility as Certified Local Government under CEQA in conflict with itself. However Planning Staff has consistently proclaimed their ability to continue their high level of protection for historic resources and approve compatible in-fill and or conversions to an ADU and maintain CEQA compliance.

Approving this de-facto demolition of the historic double-garages and their replacement with non-compliant ADU duplex intrusions that in turn negatively impact the historic context of the federal historic district streetscapes, is a failed decision. There is a significant negative impact to the primary façades of the historic resources and to the context of historic streetscape, therefore an Exception from the Categorical Exemption is required.

OHR has failed in their approval for this Project. I ask therefore that the Department rescind the DeBiase ADM approval and a request a new design that insures that the ADU's are compatible with the historic context and setting. Absent the Departments willingness to engage in that process the Department should find for an Exception to the CE and review possible alternative mitigations to the negative impacts. The laws regarding ADUs allow for protection of our historic resources.



Jim Childs

Chair, Adams Dockweiler Heritage Organizing Committee

Chair, emeritus, University Park H.P.O.Z. Board

2341 Scarff Street, LA CA 90007 / 213-748-1656 / jeanjim2341@att.net



Planning CHC <chc@lacity.org>

Approval of ADUs in Historic Neighborhoods

2 messages

indiejean@att.net <indiejean@att.net>
To: chc@lacity.org

Thu, Mar 11, 2021 at 3:26 PM

Commissioners

On behalf of the Empowerment Congress North Area Neighborhood Development Council (NANDC) we would like to submit our comments on Items 2 and 5 for the March 18 2021 CHC Agenda. We have already submitted a CIS to speak under Item 2.

The NANDC Policy met on February 23, 2021 and recommended that the full NANDC Board support writing to both B&S and City Planning requesting that they join NANDC in reviewing specific case studies to understand what state and local law requires in implementation of ADU approvals. The full Board unanimously adopted this recommendation at its March 4, 2021 Board meeting.

NANDC has historically supported "Granny flats" (as ADUs were often called) as increased opportunities for housing. Recently state law and the City's own Ordinance has made such project approvals ministerial. With that new definition comes added responsibility on the part of those signing off to ensure that the rules for such development are adhered to. There are required standards, among them the requirement to implement standards that prevent adverse impacts to properties listed on the California Register of Historic Places (which includes the National Register) and design standards such as not building an ADU in the front yard and setback requirements.

There appears to be issues in how state law is being administered locally and NANDC. It appears from a few cases that the requirements of both the state and local laws are not being followed and we ask that B&S review several case studies that have given rise to our concerns. This will provide additional guidance for both those that sign off on permits and interested community members and developers in the design and review of ADUs and prevent harm to our historic resources as the state law requires.

Jean Frost

NANDC Area3 Rep

Chair, Policy Committee

2 attachments

@ADU INQUIRY TO LADBS 2.18.2021.pdf
8282K

NANDC ADU LETTER 03 07 21 fin.pdf
147K

Planning CHC <chc@lacity.org>
To: Jean Frost <indiejean@att.net>

Fri, Mar 12, 2021 at 10:33 AM

Thank you for your correspondence. It will be shared with the Commission.

[Quoted text hidden]



Planning CHC <chc@lacity.org>

ADUs in Historic Districts

2 messages

preservation@westadamsheritage.org <preservation@westadamsheritage.org>
To: chc@lacity.org

Thu, Mar 11, 2021 at 2:43 PM

Honorable Members of the CHC

WAHA is concerned how the City appears to be approving ADUs which have serious impacts on historic resources and is not complying with the state law that specifically allows protection of historic resources. Please see the attached letter from Amy Minter of Chatten Brown Carstens & Minter that elaborates further on this very critical issue not only for West Adams but for all of our city.

This relates to Item 5 on the March 18 CHC agenda and we ask that you give consideration to this matter.

Roland Souza

President

West Adams Heritage Association



WAHA Commets to OHR re ADUs in Historic Districts.pdf

5055K

preservation@westadamsheritage.org <preservation@westadamsheritage.org>
To: chc@lacity.org

Thu, Mar 11, 2021 at 2:58 PM

Honorable Commissioners:

In addition to the letter WAHA submitted from Chatten-Brown and Carstens, please also consider the letter from the Los Angeles Conservancy dated February 26, 2021 which also raises concerns on the review and approval of ADUs in historic districts. This is relevant to item 5 on the CHC March 18 agenda.

Thank you for your time and attention.

[Quoted text hidden]



LA Conservancy Comments, ADUs, 2.26.2021.pdf

120K



Thryeris Mason
President

Julianne Burg
Vice President

Samantha Burg
Secretary

Julie Burg
Treasurer

Marco Flores
Area 1
Representative

Joel Vaca
Area 1
Representative

David Greenman
Area 2
Representative

Kevin McPherson
Area 2
Representative

Jean Frost
Area 3
Representative

Nicholas Creighton
Area 3
Representative

Jon Tieuel
At Large
Representative

Nina Womack
At Large
Representative

Cindy Gaete
At Large
Representative

Christopher Perez
USC Interest
Representative

Jim Childs
Business
Representative

March 7, 2021

Osama Younan, Charmie Huynh, Frank Lara. Vladimir Arutyunyan
Los Angeles Department of Building and Safety

Ken Bernstein, Department of City Planning, OHR
201 and 221 N. Figueroa Street / Los Angeles Calif. 90012

Via e mail

Dear Sir/Madam:

Building and Safety staff is aware of the very recent policy review in response to the community's concerns about the Neighborhood Stabilization Ordinance's (NSO) application in historic neighborhoods. The heart of the NSO problems revolved around parking issues in the historic University District surrounding the University of Southern California's campus (USC). Issues were raised about inappropriate past sign-off policies that approved plans and exempted some developments from compliance with the NSO. Fortunately, City Building and Safety (B&S) and Planning staff corrected this non-conformance, and we are very appreciative.

It is this successful prior collaboration that leads NANDC to seek your additional assistance with the latest issue that has arisen: the sign-off procedures for the approvals of Accessory Dwelling Units (ADUs.) Community wide concerns are growing as many past Planning Department ADU approvals are finally made public. To date, most of the critical concern has been about Planning Department's design compatibility approvals for the new ADUs in our historic neighborhoods.

The NANDC Policy met on February 23, 2021 and recommended that the full NANDC Board support writing to both B&S and City Planning requesting that they join NANDC in reviewing specific case studies to understand what state and local law requires in implementation of ADU approvals. The full Board unanimously adopted this recommendation at its March 4, 2021 Board meeting.

NANDC has historically supported "Granny flats" (as ADUs were often called) as increased opportunities for housing. Recently state law and the City's own Ordinance has made such project approvals ministerial. With that new definition comes added responsibility on the part of those signing off to ensure that the rules for such development are adhered to. There are required standards, among them the requirement to implement standards that prevent adverse impacts to properties listed on the California Register of Historic Places (which includes the National Register) and design standards such as not building an ADU in the front yard and setback requirements.



It appears from a few cases that the requirements of both the state and local laws are not being followed and we ask that B&S review several case studies that have given rise to our concerns. This will provide additional guidance for both those that sign off on permits and interested community members and developers in the design and review of ADUs and prevent harm as the state law requires.

While we are supportive of ADUs in their creation of housing, the details are particularly important. We understand that state law intended to make the ADU development process easier, but it also called for objective, quantifiable and clear standards including design guidelines. Thank you for listening to our questions about ADUs and assisting with our understanding.

Please join us in reviewing specific case studies as we understand what state and local law requires and what B&S can implement.

Sincerely,

Thryeris Mason, President

Cc: Councilmember Marqueece Harris-Dawson CD8
Councilmember Curren Price CD9
Councilmember Gil Cedillo CD1
Albizael Delvalle, Kristen Gordon CD8
Sherilyn Correa, Nora Gutierrez CD9
Gerald Gubatan, Ghandy Diaz CD1
Cultural Heritage Commission



Planning CHC <chc@lacity.org>

Item 5, March 18 CHC Agenda

2 messages

Jim Childs <jeanjim2341@att.net>
To: "chc@lacity.org" <chc@lacity.org>

Thu, Mar 11, 2021 at 3:17 PM

Commissioners

Thank you scheduling this item 5 on your March 18, 2021 agenda. Many stakeholders have been concerned about impacts to our historic resources. I've raised these issues and am pleased that you are interested in how ADUs (which I recognize are ministerial but the law allows for protection of our historic resources.)

The St. James Park National Register District is being severely impact by recent approvals of ADUs. At first, at 2142 Portland Street (both National Register and a contributor within the University Park HPOZ) where an ADU was approved in what is the front yard of a NR District, I thought it was a mistake.

When approvals for 2336 Scarff Street/17 St. James Park, and 2301 Scarff followed, there appeared a pattern that needs review and attention. Attached is material on 2142 Portland (it is in the form of a CEQA appeal which could not be filed because of the ministerial nature of an ADU ADM approval) but the content shows that an ADU which could have been sited elsewhere was approved in what is the front yard setback of Portland Street,

2336 Scarff Street/17 St. James Park raises other issues which the ADHOC letter speaks to, ignoring the historic siting which has two historic frontages and changes to the historic garages that are more demolition than adaptive reuse.

Best regards

Jim Childs
ADHOC
213 747 2526

2 attachments **@CEQA Appeal 2142 Portland ADU.pdf**
11714K **ADM-2020-4817-ADU 2336 Scarff 17 St. James Pk.pdf**
5070K

Planning CHC <chc@lacity.org>
To: Jim Childs <jeanjim2341@att.net>

Fri, Mar 12, 2021 at 10:37 AM

Thank you for your correspondence, it will be shared with the Commission.

[Quoted text hidden]

March 16, 2021

Cultural Heritage Commission
City of Los Angeles
Los Angeles, CA

To Members of the Commission:

I am pleased to register my strong support for the historic designation of the original Crenshaw Women's Center at 1027 South Crenshaw Boulevard. When it opened its doors in January 1970, it put Los Angeles on the map as the West Coast center of feminist activism. In *Constructive Feminism: Women's Spaces and Women's Rights in the American City* (Cornell University Press, 2016), I identify women's centers as the heart of the Second Wave feminist movement. They trained leaders who launched their own programs to serve women and children whose needs were being neglected by mainstream institutions.

The Crenshaw Center was the incubator for Sisterhood Bookstore, created by and for lesbians, to introduce women to female authors who were absent in traditional bookstores. The first Feminist Women's Health Center taught women to take charge of their bodies by learning about contraception and reproductive rights. Women's Centers, feminist bookstores, and feminist health clinics were radical places where activists created new rights for women. None of these places existed before feminists willed them into existence.

The modesty of the Crenshaw building reflected the necessity to rent cheap space in an era when women could not qualify for credit on their own; the Crenshaw Center occupied one side of a duplex. But it suited what its founders fought to achieve: a welcoming environment for straight and lesbian women to practice feminist politics.

Preserving the Crenshaw Center now would be a recognition of its role in shaping the cultural landscape of 1970s Los Angeles, and in strengthening the national feminist movement.

Sincerely,



Daphne Spain
James M. Page Professor Emeritus
Department of Urban and Environmental Planning
University of Virginia



DAY OF HEARING SUBMISSIONS



Hollywood Art Center, est.1912
1926 N. Kenmore Ave#107
Los Angeles, CA 90027

SENT VIA EMAIL

Los Angeles Planing Commission
200 N. Spring Street
Los Angeles, CA 90012

March 17, 2021

RE: Response to February 18, 2021 City Planning Commission Hollywood Community Plan Update meeting.

Dear Members of the City Planning Commission,

As a stakeholder in Hollywood and Los Feliz, and the the *Director* of the Hollywood Art Center HCM#1202, and a current *Research Archivist* at UCSB's Art, Design and Architecture Museum, as well as a lifetime Hollywood Champion, I'm asking you to:

1. Please correct and adjust the current up-zoning laid out in the proposed Hollywood Plan and afford Hollywood the protections of any HPOZ.
2. Approve and recommend the adoption of the height restrictions on Hillhurst Avenue in Los Feliz, as submitted in the Draft Hollywood Community Plan Update. Los Feliz has been an HPOZ candidate for at least the last ten years. Los Feliz deserves the same protection that an HPOZ affords. And the Hollywood Plan is not a one size, fits all plan, when neighborhoods like Los Feliz should be considered differently, than other parts of the plan.

REGARDING COUNCILMEMBER NITHYA RAMAN FEBRUARY 17, 2021 STATEMENT: Many members of the Hollywood and Los Feliz communities, are extremely dismayed at CD4 Councilmember Nithya Raman's request, as Los Feliz Improvement Association (LFIA) says for the *elimination of the height restrictions in her February 17, 2021, letter to the City Planning Commission. Considerable effort was put into formulating a plan for Hillhurst that was right for the neighborhood, and our newly elected Councilmember took it upon herself to request this change without any input from the community.* The lack of consideration and due process to unilaterally decide this, without ANY community input is a shameful act and has broken the trust of the people she represents. Since all of you work as public servants, you know that community process is key in creating successful outcomes. Literally, it's all about the process. And the current Hollywood Community Plan is flawed with up-zoning problems and lack of protections for our historic resources. And again, instead of working with the community, councilmember Nithya Raman, carelessly decided to promote the destruction of Los Feliz especially, as of one of the most incredible, last walking neighborhoods of important historical, architectural and cultural significance in Los Angeles. Further, councilmember Nithya Raman's statement does not reflect the feelings and views of the community she actually represents.

In addition, LFNC has also not sought any real community input regarding these upzoning issues from the Los Feliz Community, which does not support Nithya's statement either. I mention this in case LFNC decides to submit a statement in favor of councilmember Nithya Raman's Feb. 17, 2021 statement. Or if LFNC remains silent, their

silence should not be considered as showing support for councilmember Raman's plans to irresponsibly up-zone Los Feliz.

However, I do fully endorse Los Feliz Improvement's Association stance, who truly knows and understands our community. Please see link or click on attached document. <https://www.lfia.org/lfia-response-to-planning-commission-re-hollywood-community-plan/>

Please change the current Hollywood Community Plan to help Hollywood and Los Feliz to grow and thrive while preserving and protecting the very culture character and community which makes it a place that is uniquely identified world wide. Please correct up-zoning in designated National and State historic districts and Historic Cultural Monuments. And irresponsibly limits proposed development review. And these areas deserve the same protections granted to HPOZs. Please do the following:

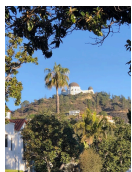
Preserve Historic Buildings and All Significant Cultural Sites. Protect Existing Affordable Housing and promote re-use. Celebrate Hollywood's Diverse Communities. Preserve the cultural landscape of Hollywood and Los Feliz. Protect the place where cultural producers live that is inextricably tied to our creative economy and film industry. Preserve the very culture, character and community which makes it inspiring for all who live here.

Thank you for your time and review of this important matter. Again, please do not approve the current Hollywood Plan as it is right now. Ensuring our cultural resources, residential neighborhoods are protected, is essential to the local, state, national and international cultural community needs to be prioritized. We need to preserve it for its past, for its present and future generations that create iconic works of art, film, architecture within this unique and fascinating urban landscape.

Please let me know, I'm happy to speak more regarding any of these points. And as always, I'm open to engaged discussions that serve the community in a sensitive and productive way.

Sincerely,

Elizabeth A. Lovins
Director, Hollywood Art Center, est. 1912
Research Archivist, UCSB Art, Design, and Architecture Museum
Los Feliz Resident, since 2003
Lovins family Hollywood resident, since 1910



CC:
Councilmember Mitch O'Farrell
Councilmember Nithya Raman
Ken Bernstein, Dept. of Planning
Craig Bullock, CD13
Meg Healy, CD4



**EMPOWERMENT CONGRESS NORTH AREA NEIGHBORHOOD DEVELOPMENT
COUNCIL**

March 18 CHC Meeting, Item 2

By E Mail

Honorable Commissioners and Staff

The NANDC Policy Committee met on February 23, 2021 and recommended both B&S and City Planning to join NANDC in reviewing specific case studies to understand what state and local laws require in implementation of ADU approvals. The full NANDC Board unanimously adopted this recommendation at its March 4, 2021 Board meeting.

That is why I am here today representing the neighborhood council. We are asking how the City can best perform its design review responsibility in a way that insures adequate protection for its historic districts. Based on our understanding of state law and local policies, NANDC believes the City has a greater ability to perform design review for ADU projects in a way that can avoid adverse impacts.

As often happens the NANDC area surrounding USC, it is the testing place for new development rules and regulations, before they migrate to Highland Park or Hancock Park. It is our observation based on several case studies that there is a problem.

NANDC has historically supported “Granny flats” (as ADUs were often called) as increased opportunities for housing. Recently state law and the City’s own Ordinance has made such project approvals ministerial. With that new definition comes added responsibility on the part of those signing off to ensure that the rules for such development are adhered to. There are essential, among them the requirement to implement standards that prevent adverse impacts to properties listed on the California Register of Historic Places (which includes the National Register) and design standards such as not building an ADU in the front yard and setback requirements.

It appears from a few cases that the requirements of both the state and local laws are not being followed and we ask that B&S, Planning and the CHC review several case studies that have given rise to our concerns. This will provide additional guidance for both those that sign off on permits, interested community members and developers in the design and review of ADUs - and prevent harm as the state law requires.

While we are supportive of ADUs in their creation of housing, the details are particularly important. We understand that state law intended to make the ADU development process easier, but it also called for objective, quantifiable and clear standards including design guidelines. Not destroying character defining features such as original doors and windows is not subjective. Do no harm.

Several ADUs recently approved by the City in historic districts, in particular within the National Register Historic Districts located in the University Park area, have been designed in a manner that is incompatible with the historic district and fails to follow the Preservation Plan for this area. The Preservation Plan was written under the guidance of Planner Eileen Schoetzow and (then) Board architect Tom Michali and took great pains to be objective. Members of WAHA, NUPCA, ADHOC and other stakeholders have been informed by City staff that the City believes it is unable to require revisions to ADU projects that adversely impact contributor resources in historic districts due to recent updates to state law.

We disagree with this conclusion.

Some basic issues

- Placing an ADU in the front yard setback.
- Ignoring primary facades and treating a second primary facade as a rear yard.
- Placing parking in the front yard setback.
- Allowing what is a demolition under the HPOZ Ordinance and calling it a conversion. Three of the four sides and roof are completely altered.
- Removing one hundred-year-old facade garage doors and windows in a prominent national register carriage house that faces 23rd Street; allowing vinyl windows and changes in openings.

As UPHPOZ Board chair David Raposa stated: "I am not sure why state preservation groups have not yet legally questioned LA's current interpretation of the ADU restrictions, but purposeful destruction of original fabric and installation of inappropriate materials is neither reasonable nor necessary in order to provide a goal of additional housing."

These are objective NOT subjective standards.

I spoke to senior planner Shannon Ryan in November and she sent me the City's ADU training seminar. The City is not conforming to their own training. The City's preservation architect stated that ADUs are exempt from design review, but this is only partially correct. Objective standards are enforceable yet are being ignored by the City.

It is the City's responsibility to avoid such impacts under both state law and the City's ADU ordinance while still allowing development of ADUs. DO NO HARM.



Jean Frost

For NANDC



Planning CHC <chc@lacity.org>

Regarding 3/18/21 CHC Agenda Item 5 Email for the Record

1 message

John Kaliski <jkaliski@johnkaliski.com>

Thu, Mar 18, 2021 at 9:29 AM

To: chc@lacity.org

Cc: Jean Frost <indiejean@att.net>, Tom Smith <tom@tsaresearch.com>

Dear Commissioners,

I am writing as an individual who is an architect working on preservation projects. I am also a CHC-appointed Board Member of the Country Club Park, Oxford Square - Wilshire Park - Windsor Village Historic Preservation Overlay Zone Board.

I support more ADUs in historic districts as well as creative and adaptive reuse of historic resources so as to increase housing supply in the City of Los Angeles.

I believe the case WAHA, et. al. are bringing to the Commission during today's Agenda Item No. 5 is important because it clarifies that the City has adopted too conservative an interpretation of State law limiting review of ADU projects in relationship to adverse impacts on historic resources including historic districts.

The City and the Office of Historic Resources have more tools in practice and then assumed in terms of shaping the integrity of these projects.

One of their most effective tools is review by the Historic Preservation Overlay Zone Boards.

I would urge the Commission to request that the Planning Department and the City Attorney's Office explore and as appropriate draft new protocols for review of ADUs in historic districts that are in keeping with more recent interpretations of State law as well as Los Angeles' local preservation ordinance.

Thank you for your attention to this matter.

Respectfully,

John Kaliski

--

John Kaliski, FAIA, NCARB
Principal

John Kaliski Architects

3780 Wilshire Boulevard, Suite 300

Los Angeles, California 90010

(V) 213.383.7980, ext.102

(F) 213.383.7981

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