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Re: AC Marriott Hotel, 3420-3482 Mission Inn Avenue
Planning Case P19-0563 (COA); Agenda Item 5, April 21, 2021
Objection to CEQA Exemption

Honorable Members of the Riverside Cultural Heritage Board and Mr. Watson:

I am writing on behalf of the Supporters Alliance for Environmental Responsibility ("SAFER") to request environmental review under the California Environmental Quality Act ("CEQA") for the proposed AC Marriott and Residence Inn ("Marriott") hotel proposed to be constructed at 3420-3482 Mission Inn Avenue (APNs 213281006; 213281007; 213281009) ("Project"). As discussed below, the City's proposed CEQA Infill Exemption is legally improper and CEQA review is required. As such, SAFER requests that the Board refrain from approving the Certificate of Appropriateness until full CEQA review has been conducted.

I. PROJECT DESCRIPTION

The developer proposes to construct a 226-room, 93-foot tall dual branded Marriott Hotel in the City's Mission Inn Historic District. The Project requires a conditional use permit and two variances. The Project's height of 93 feet vastly exceeds the 60-foot height limit. The Project's floor area ratio of 3.73 exceeds the applicable 3.0 FAR. The Project requires a variance to encroach 14 feet into the required 15-foot front setback along Mission Inn Avenue. A second variance is required to allow 144 parking spaces, which is far less than the 226 parking spaces required by the Code.

The City is proposing to exempt the Project entirely from all CEQA review pursuant to the CEQA Infill Exemption, CEQA Guidelines section 15332.

II. CEQA

A. Legal Standards.

1. CEQA Structure.

CEQA mandates that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions" throughout California. PRC § 21001(d). A "project" is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). For this reason, CEQA is concerned with an action's ultimate "impact on the environment." *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the "earliest possible stage . . . before [the project] gains irreversible momentum," Id. 13 Cal.3d at 277, "at a point in the planning process where genuine flexibility remains." *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. 14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 *("Hollywoodland")*. First, if a project falls into an exempt category, or it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further agency evaluation is required. *Id*. Second, if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study. *Id*.; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment the agency may issue a negative declaration. *Id*., 14 CCR §§ 15063(b)(2), 15070. Finally, if the project will have a significant effect on the environment, an environmental impact report ("EIR") is required. *Id*. Here, since the City exempted the Project from CEQA entirely, we are at the first step of the CEQA process.

2. CEQA Exemptions.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. "Exemptions to CEQA are narrowly construed and "'[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.'" *Mountain Lion Foundation v. Fish & Game Com*. (1997) 16 Cal.4th 105, 125.

The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*., (2006) 139 Cal. App. 4th 1356, 1375 ("[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. (Citations.) Thus, for example, interpreting the scope of a CEQA exemption presents 'a question of law, subject to de novo review by this court.' (Citations)."

The City asserts the Project is categorically exempt from the requirements of CEQA as an "in-fill" project (Class 32).

3. Exceptions to CEQA Exemptions.

a. Exceptions in the Infill Exemption.

The Class 32 In-Fill exemption can only be applied when (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations… and (d) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. 14 Cal. Code Regs. 15332.

b. Projects with Significant Impacts.

No project may be exempted from CEQA review if:

(1) Significant Effects. A project may never be exempted from CEQA if there is a "fair argument" that the project may have significant environmental impacts due to "unusual circumstances." 14 CCR §15300.2(c). The Supreme Court has held that since the agency may only exempt activities that do not have a significant effect on the environment, a fair argument that a project will have significant effects precludes an exemption. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 204. (14 CCR § 15300.2)

CEQA and its regulations provide that certain projects may be exempt. However, *"[a]n activity that may have a significant effect on the environment cannot be categorically exempt*." *Salmon Protectors v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107*; Azusa Land Reclamation v. Main San Gabriel Basin* (1997) 52 Cal.App.4th 1165, 1191, 1202. CEQA's unique "fair argument" standard applies when reviewing a CEQA exemption. Under the "fair argument" standard, an agency is precluded from relying on a categorical exemption when there is a fair argument that a project will have a significant effect on the environment. *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* ("*Bankers Hill*") (2006) 139 Cal. App. 4th 249, 266. In other words, "where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." *Id*.; *Dunn-Edwards Corp*., 9 Cal.App.4th at 654-655.

c. Historic Resources

CEQA Section 21084(e) expressly prohibits reliance on a categorical exemption for "a project that may cause a substantial adverse change in the significance of an historical resource." PRC § 21084(e). For historical resources, a "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the

resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." *Hollywoodland*, 161 Cal.App.4th at 1187 (presence of historic wall was unusual circumstance precluding CEQA exemption); *Orinda Association v. Board*, 182 Cal.App.3d 1145 (1986) (demolition of building eligible for listing on historic registry triggers CEQA review and precludes exemption. Cannot piecemeal demolition for rest of project).

B. Analysis.

1. The Project Fails to Comply with Applicable General Plan and Zoning Requirements. Therefore the CEQA Exemption is Improper.

The CEQA Infill exemption is only allowed if "The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations." 14 CCR 15332(a). The Marriott Project does not comply with the applicable zoning designation, and general plan polices. The proposed hotel would vastly exceed the 60-foot height limit. It will obliterate the required 15-foot front setback – extending 14 feet into the required setback area. It fails to provide the required parking. It exceeds the 3.0 floor area ratio allowed in the general plan area. As a result, the Project requires two variances and a conditional use permit.

Since the Project fails to comply with the applicable general plan and zoning designations, the CEQA Infill exemption is improper. A CEQA document is therefore required to analyze the Project and mitigate its impacts.

2. The Project Will Have Significant Air Quality Impacts Therefore the City May not Exempt the Project from CEQA Review.

The City may not rely on the CEQA Infill Exemption because the City cannot show that, "*[a]pproval of the project would not result in any significant effects relating to … air quality.*" 14 CCR § 15332(c), (d). Note that this exception to the exemption does not require "unusual circumstances."

Indoor air quality specialist, Francis "Bud" Offermann, P.E., concludes that the Project will have significant human health impacts due to indoor air contaminants. In particular, Mr. Offermann concludes that composite wood building materials are likely to create a cancer risk from formaldehyde off-gassing of 112 per million. This is eleven times above the South Coast Air Quality Management District's ("SCAQMD") CEQA significance threshold of ten per million. (Exhibit A).

Mr. Offermann explains that many composite wood products used in modern apartment home construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for

flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." Offermann, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 112 per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. *Id*., p. 3-4. This more than 11 times the South Coast Air Quality Management District's ("SCAQMD") CEQA significance threshold for airborne cancer risk of 10 per million. In addition, Mr. Offermann concludes that people working the commercial spaces of the Project will be exposed to an increased cancer risk from formaldehyde of 16.4 per million, which also exceeds the threshold of significance. *Id*. at 5. Mr. Offermann concludes that these significant environmental impacts must be analyzed in the EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id*., p. 4-5.

Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the preferred mitigation measure that would require the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. *Id*. at 12-13. Proposed mitigation also includes the installation of air filters and outdoor air ventilation. *Id*.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. *See Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts"). In addition to assessing the Project's potential health impacts to residents, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the SCAQMD level. *Id*., pp. 5-10. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA"*). At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBIA*, 62 Cal.4th at 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id*. at 801 ("CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present"). In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on ***a***

project's users or residents that arise ***from the project's effects*** on the environment." *Id*. at 800 (emphasis added).

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Residents and workers will be users of the Project. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a "project's users and residents" must be addressed in the CEQA process.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings,* either directly or indirectly.'" *CBIA*, 62 Cal.4th at 800 (emphasis in original). Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." *Id*., citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d). It goes without saying that the hundreds of future residents and employees of the Project are human beings and the health and safety of those individuals is as important to CEQA's safeguards as nearby residents currently living and working near the project site.

Mr. Offermann's expert comments constitute substantial evidence of a fair argument of a significant environmental impact to future users of the project, but this potentially significant impact is not analyzed in the EIR. A revised EIR must be prepared to disclose and mitigate those impacts.

3. The Project will have Significant Impacts Due to Inconsistencies with the General Plan and Zoning.

The Project is inconsistent with several provisions of the General Plan and Zoning Code. These inconsistencies are significant impacts pursuant to CEQA. As such the Project may not be exempted from CEQA review.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903; *Kutzke v. City of San Diego* (2017) 11 Cal.5th 1034.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th

859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts); *Californians for Alternatives to Toxics v. Department of Food and Agriculture* (2005) 136 Cal.App.4th 1, 17 ("[c]ompliance with the law is not enough to support a finding of no significant impact under the CEQA."). The recent decision in *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358 echoes *Pocket Protectors*. These both apply the fair argument standard to a potential inconsistency with a plan adopted for environmental protection. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099 says an EIR needs to analyze any topic for which a fair argument of significant impact is raised.

The Project is inconsistent with numerous provisions of the General Plan and Zoning, including provisions limiting height to 60 feet, requiring 15-foot front set-back, requiring adequate parking, limiting floor area ratio to 3.0, and other requirements. These are significant impacts under CEQA that must be analyzed and mitigated in a CEQA document.

4. The Project May Not Be Exempted from CEQA Because It May Adversely Affect Historic Resources.

CEQA Section 21084(e) expressly prohibits reliance on a categorical exemption for "a project that may cause a substantial adverse change in the significance of an historical resource." PRC § 21084(e). For historical resources, a "Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." *Hollywoodland*, 161 Cal.App.4th at 1187 (presence of historic wall was unusual circumstance precluding CEQA exemption); *Orinda Association,* 182 Cal.App.3d 1145 (demolition of building eligible for listing on historic registry triggers CEQA review and precludes exemption. Cannot piecemeal demolition for rest of project).

There is no dispute that the Project is located in the City's Mission Inn Historic District. The Project requires a conditional use permit and two variances. The Project's height of 93 feet exceeds the 60-foot height limit. The Project's floor area ratio of 3.73 exceeds the applicable 3.0 FAR. The Project requires a variance to encroach 14 feet into the required 15-foot front setback along Mission Inn Avenue. A second variance is required to allow 144 parking spaces, which is far less than the 226 parking spaces required by the Code. These height limits, setback requirements, and floor area ratio requirements are critical to maintaining the historic character of the Mission Inn Historic District. By failing to comply with these policies, the Project will adversely affect the Historic District. *Georgetown Pres. Soc'y v. Cty. of El Dorado*, 30 Cal. App. 5th 358, 365 (2018); *Kutzke v. City of San Diego* (2017) 11 Cal.5th 1034 (proposed project was incompatible with conserving the character of the existing neighborhood and therefore inconsistent with local community plan in violation of CEQA).

Since the Project may have an adverse impact on the Mission Inn Historic District, it may not be exempted from CEQA review. CEQA review is required to analyze the Project's significant historic impacts and to propose feasible mitigation measures and alternatives to reduce the Project's impacts to historic resources.

III. VARIANCES SHOULD NOT BE GRANTED.

The Project proponent seeks two variances for the Project to avoid compliance with the 15-foot front setback requirement the parking requirement. It appears that a variance would also be necessary for the project to exceed the floor area ratio and height limits, but it appears the developer is not seeking such variances. As discussed below, the Project fails to meet the criteria for a variance.

1. There are no exceptional or extraordinary circumstances applying to this property that do not apply generally to other properties or uses in the same class of district.

There are no exceptional or extraordinary circumstances that preclude the Project from providing the required amount of parking or the required setback. The parking will be provided underground. It would be feasible to simply dig an additional level of underground parking. The Applicant's variance justification does not even argue that it is infeasible to provide the required parking. It merely argues that the required level of parking is unnecessary. This argument does not even attempt to meet the legal criteria required for a variance.

Similarly, there is no reason that the Project cannot comply with the 15-foot setback requirement. There is ample space on the property and other buildings in the district have complied with the requirement. There are no unusual circumstances that would preclude compliance.

Caselaw supports this point. In the case of *Broadway Laguna Vallejo v. San Fran. Bd. of Permit Appeals*, a project applicant claimed it needed a variance based on extraordinary and exceptional circumstances due to unusual subsoil conditions at the site and "attractive architectural futures" for the structure.[1] The project design incorporated "superior building standards" as a supporting fact.[2] The California Supreme Court was having none of it, and held that neither of the circumstances satisfied the Code for a variance.[3] The architectural limitations incorporated into the proposed structure did not support a finding of extraordinary conditions. Likewise, here there are no exception or unusual circumstances that would preclude compliance with the parking and setback requirements (or height and floor area ratio). To give special treatment here opens the City up to

[1] *Broadway, Laguna, Vallejo Assoc. v. Board of Appeals and City of San Francisco* (1967) 66 Cal.2d 767, 774.
[2] Id. at 777.
[3] Id. at 774

every property owner assuming they are entitled to assert exceptional circumstances justifying the grant of a variance because compliance with the code may be inconvenient.[4]

2. There are no exceptional or extraordinary circumstances, under which the literal enforcement of the Code would result in practical difficulty or unnecessary hardship not created by or attributable to the applicant or the owner of the property.

There are no exception or extraordinary circumstances that would cause under which literal enforcement of the code would create unnecessary hardship. Requiring the Applicant to comply with setback, parking (height and floor area ratio) requirements would create no unnecessary hardship. There is nothing unique about the Project or the property that would preclude compliance with the code requirements. There is no evidence that compliance with parking or setback requirements would be physically impossible or even difficult.

The law on practical difficulty/unnecessary hardship is well settled.[5] First, courts have been clear that unnecessary hardship occurs when the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel.[6] Put differently, the project sponsor must suffer from some "external circumstance, but not self-induced-hardship."[7] **"One who purchases property in anticipation of procuring a variance to enable him to use it for a purpose forbidden at the time of sale cannot complain of hardship ensuing from a denial of the desired variance."** (*Id*.) "If singular and related topographical features are lacking, [the Board] may not find the circumstances which plague the applicant are different from those which affect the land of his neighbors."[8] In addition, courts do not focus on the prejudicial difference between one's property and the neighbor's to justify a finding of hardship; rather the disadvantage must be substantial.[9]

One example of substantial hardship supporting a variance was the need of a landowner to build special fencing absent the required three-foot setback because the subject property was 15 feet below street level.[10] The record showed that enforcement of the code would have created a safety hazard. (*Id*.) Neighboring parcels were not subject to this particular topographical feature. Conversely, a court found no hardship when a landowner wanted to continue using a parcel zoned

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[4] *Cow Hollow v. DiBene* (1966) 245 Cal.App.2d 160, 176 (all property owners suffered the same circumstances alleged by this owner so City erred in finding exceptional circumstances).
[5] Courts combine "practical difficulty or unnecessary hardship" as a single standard. See *Zakessian v. City of Sausalito*, 28 Cal.App.3d 794 (1972) ("Of these two terms, "the essential requirement is "unnecessary hardship."); *Walnut Acres Neighborhood Assoc. v. City of Los Angeles* (2015) Cal.App.4th 1303.
[6] *Hollywoodland*, 61 Cal.App.4th at 1183; *Zakessian* 28 Cal.App.3d at 800.
[7] *City of San Marino v. Roman Catholic Archbishop of Los Angeles* (2008) 180 Cal.App.2d 657, 673.
[8] *Zakessian,* 28 Cal.App.3d at 800.
[9] Id. at 801.
[10] *Committee to Save Hollywoodland*, 161 Cal.App.4th at 1184.

R-1 as a parking lot for their neighboring rectory.[11] The property had long been used for parking in violation of the zoning code. The court held that continued use for parking would have benefited the owner, but the lot was purchased with "full knowledge of its restrictions, and furthermore, the expansion program undertaken by the defendants was promulgated in the face of those same restrictions."[12] While some hardship would occur, the owner's own expansion program was not enough to entitle them to a variance. Such self-induced hardship could not be a factor in support of a variance.[13]

Finally, there is a clear benefit to the public in maintaining open space in the Mission Inn Historic District, and providing adequate parking, hence the existence of this City-wide mandate in the first place. A City sanctioned policy to allow every property owner to over-build their lots, as is proposed here, is not consistent with the spirit of the General Plan's policy to keep the city livable. It is the City's duty to keep rampant density in check and respect the historic district's unique character – consistent with the Code.

As the foregoing shows, the Applicant cannot support the second prong of the variance test because any alleged hardship or practical difficulty is of the project sponsor's own making, and there is nothing distinct about the parcel.

3. The variance is not necessary for the preservation and enjoyment of a substantial property right, possessed by other property in the same class of district.

The Applicant does not even attempt to show that the variance is required to preserve a right possessed by other property owners in the same district. The Applicant fails to point to a single other property that has been allowed to violate the City's parking requirements or setback requirements. Therefor the Applicant simply cannot make this required showing.

The issue is whether a variance is *necessary* to bring the subject property into substantial parity with property within the zone and not a race to see who can build the largest building with the least amount of open space or parking. "Speculation about neighboring land will not support the award of a variance. The party seeking the variance must shoulder the burden of demonstrating before the zoning agency that the subject property satisfies the requirements." [14] The project sponsor has not shown that they are unable to use their property in the same way as others within the zone.

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[11] *City of San Marino,* 180 Cal.App.2d at 665.
[12] Id. at 672.
[13] Id. at 673.
[14] *Orinda Ass'n v. Bd. of Sup.,* (1986) 182 Cal.App.3d 1145, 1166.

4. The granting of the variance will be materially detrimental to the public welfare or materially injurious to the property or improvements in the vicinity.

The variance will be materially detrimental to the public welfare and materially injurious to property in the vicinity. The Project is proposed to be constructed in the Mission Inn Historic District. Requirements for adequate setback, height limits, parking and floor area ratio are critical to maintaining the historic qualities of the district and protecting nearby historic buildings from effects such as loss of light of air, shadow and excessive massing. By violating those requirements, the Project would be materially detrimental to the historic district and nearby buildings.

5. The granting of the variance will not be in harmony with the general purpose and intent of the Planning Code and will adversely affect the General Plan.

The variances will not be in harmony with the purpose and intent of the planning code and the general plan. The planning code contains requirements for setback, parking, height and floor area ratio for a reason. These requirements protect the historic nature of the Mission Inn Historic District, as well as the quality of life in the city.

In fact, the City is required to conduct a CEQA analysis for the proposed project because it is not eligible for an exemption. If a project may cause a substantial adverse change in the significance of a historical resource, that project **shall not be exempted** from CEQA review.[15] Once the property has been established as an historical resource under CEQA,[16] as is the case here, then the evaluation moves on to whether the proposed project would cause a "substantial adverse change" to the historical resource. CEQA defines a ″substantial adverse change″ as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define ″materially impaired″ as work that materially alters, in an adverse manner, those physical characteristics that convey the resource's historical significance.[17]

The proposed variance would materially impair the features that make the district historically significant. The City is required to fully investigate and then disclose to the public whether there are feasible alternatives or mitigation measures that would not degrade the significance of this historical district.

IV. CONCLUSION

For the above reasons, the Board should refrain from issuing a COA for the Project until an EIR has been prepared and circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

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[15] CEQA § 21084.1.
[16] CEQA Guidelines Section 15064.5(a)(3).
[17] CEQA Guidelines 15064.5(b), Bulletin 16, p. 9.

Sincerely,

Brian B. Flynn
Lozeau Drury LLP