Ph: (626) 381-9248
Fx: (626) 389-5414
Em: info@mitchtsailaw.com

Mitchell M. Tsai
Attorney At Law

134 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA ELECTRONIC SUBMISSION

February 9, 2022

CITY OF LOS ANGELES CITY COUNCIL
JOHN FERRARO COUNCIL CHAMBERS
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

RE: JUSTIFICATION LETTER FOR APPEAL OF JANUARY 13, 2022 CITY PLANNING COMMISSION DECISION REGARDING THE GENSLER MODULAR APARTMENTS PROJECT CPC-2021-3038-DB-SPR-HCA

Dear President Martinez and Honorable Councilmembers,

On behalf of the Southwest Regional Council of Carpenters ("**SWRCC**" or "**Southwest Carpenters**"), my Office is submitting these comments regarding our appeal of the City of Los Angeles' ("**City**" or "**Lead Agency**") Planning Commission's ("**Planning Commission**" or "**Commission**") January 13, 2022 decision approving the Gensler Modular Apartments Project (CPC-2021-3038-DB-SPR-HCA) ("**Project**") located at 121 West 3rd Street / 252 South Spring Street, 244-246 South Spring Street, and exempting the Project from environmental review under the California Environmental Quality Act, Cal. Public Resources Code section 21000 et seq ("CEQA").

On January 13, 2022, the Los Angeles City Planning Commission approved the Project by finding that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, Class 32, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies. The Staff Report includes findings supporting a categorical exemption ("**Findings**") dated November 2021.

Subsequently on January 25, 2022, the City issued a Letter of Determination ("**LOD**") finalizing the Commission's January 13, 2022 decision. Carpenters now appeal the Commission's January 13, 2022 decision to exempt the Project from CEQA to the City Council within 15 days of the City's issuance of the LOD.

The Southwest Carpenters is a labor union representing more than 50,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning, addressing the environmental impacts of development projects and equitable economic development. Southwest Carpenters is aggrieved by the Planning Commission's January 13, 2022 decision.

Individual members of the Southwest live, work and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

The Southwest Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

SWRCC incorporates by reference all comments raising issues regarding the environmental impact report ("**EIR**") submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal. App. 4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, SWRCC requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

The City should require the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project.

The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

> . . . labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words,

> well trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

Recently, on May 7, 2021, the South Coast Air Quality Management District found that the "[u]se of a local state-certified apprenticeship program or a skilled and trained workforce with a local hire component" can result in air pollutant reductions.[2]

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward 2040 General Plan requires the City to "promote local hiring . . . to help achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions."[3]

In fact, the City of Hayward has gone as far as to adopt a Skilled Labor Force policy into its Downtown Specific Plan and municipal code, requiring developments in its Downtown area to requiring that the City "[c]ontribute to the stabilization of regional construction markets by spurring applicants of housing and nonresidential developments to require contractors to utilize apprentices from state-approved, joint labor-management training programs, . . ."[4] In addition, the City of Hayward requires all projects 30,000 square feet or larger to "utilize apprentices from state-approved, joint labor-management training programs."[5]

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

---

[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10

[3] City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, *available at* https://www.hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.

[4] City of Hayward (2019) Hayward Downtown Specific Plan at p. 5-24, *available at* https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf.

[5] City of Hayward Municipal Code, Chapter 10, § 28.5.3.020(C).

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[6]

In addition, local hire mandates as well as skill training are critical facets of a strategy to reduce vehicle miles traveled. As planning experts Robert Cervero and Michael Duncan noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions since the skill requirements of available local jobs must be matched to those held by local residents.[7] Some municipalities have tied local hire and skilled and trained workforce policies to local development permits to address transportation issues. As Cervero and Duncan note:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing." The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

The City should consider utilizing skilled and trained workforce policies and requirements to benefit the local area economically and mitigate greenhouse gas, air quality and transportation impacts.

The City should also require the Project to be built to standards exceeding the current 2019 California Green Building Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

I. EXPERTS

[6] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

[7] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

This comment letter includes comments from air quality and greenhouse gas experts Matt Hagemann, P.G., C.Hg. and Paul Rosenfeld, Ph.D concerning the January 2022 Recommendation Report and the November 2021 Findings Supporting a Categorical Exemption ("Exemption") for the Project. Their comments, attachments, and Curriculum Vitae ("CV") are attached hereto and are incorporated herein by reference.

Matt Hagemann, P.G., C.Hg. ("Mr. Hagemann") has over 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Mr. Hagemann also served as Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closer. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring.

For the past 15 years, Mr. Hagemann has worked as a founding partner with SWAPE (Soil/Water/Air Protection Enterprise). At SWAPE, Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality, and greenhouse gas emissions.

Mr. Hagemann has a Bachelor of Arts degree in geology from Humboldt State University in California and a Masters in Science degree from California State University Los Angeles in California.

Paul Rosenfeld, Ph.D. ("Dr. Rosenfeld") is a principal environmental chemist at SWAPE. Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts on human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risks, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. His project experience ranges from monitoring

and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particular matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants, Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at dozens of sites and has testified as an expert witness on more than ten cases involving exposure to air contaminants from industrial sources.

Dr. Rosenfeld has a Ph.D. in soil chemistry from the University of Washington, M.S. in environmental science from U.C. Berkeley, and B.A. in environmental studies from U.C. Santa Barbara.

II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. The Project's Does Not Meet the Class 32, Urban Infill Exemption from Environmental Review Under CEQA

The Class 32 urban infill exemption applies only if "[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality." CEQA Guidelines § 15332. To rely on the exemption the City must make findings as to significant effects. *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 268.

The City has a burden to provide substantial evidence, which must be based upon facts, reasonable assumptions based on facts and expert opinion, rather than the City's mere speculation, to support its findings. CEQA Guidelines § 15384(a); *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal. App. 4th 694, 711 (a lead agency "bears the burden to demonstrate with substantial evidence that the Project constitutes an action

to assure the maintenance, restoration, or enhancement of the environment.") (citing *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal. 4th 372, 386).

Categorical exemptions apply to certain classes of activities that generally do not have a significant effect on the environment. (PRC 1084(a); 14 CCR 15300, 15354.) Public agencies utilizing such exemptions must support their determination with substantial evidence. (PRC § 21168.5). CEQA exemptions are narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." *Mountain Lion Found. v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125. Erroneous reliance by a lead agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa Land Recl. Co. v.Main San Gabriel Basin Watermaster* (1997) 52 Cal. App.4th 1192.

"[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law." *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656).

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," CEQA Guidelines § 15300.2(c). or where there is a reasonable possibility that the activity will have a significant effect on the environment, including (1) when "the cumulative impact of successive projects of the same type in the same place, over time is significant." CEQA Guidelines § 15300.2(b). An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. *Salmon Pro. & Watershed Network v. County of Marin* (2004)125 Cal.App.4th 1098, 1198-1201.

The Planning Commission found that "[t]he Project qualifies for a Class 32 – In-Fill Development Project Categorical Exemption" (Findings, p. II-19) However, the City's reliance on a Class 32 Exemption to approve the Project without preparing an EIR is misplaced for several reasons, as explained below:

First, the Planning Commission lacked substantial evidence to support its decision to approve the Project and its adoption of CEQA findings for the Project.

Second, the Project relies on mitigation measures to reduce the Project's potentially significant environmental impacts

Third, the Findings analysis fail to adequately evaluate and mitigate the Project's cumulative and potential environmental impacts relating to transportation, noise, hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts.

Fourth, the Project has significant environmental impacts that render the Class 32 Infill Exemption facially inapplicable.

Fifth, the Project site cannot be served by all required utilities and public services

Lastly, the project is not consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Therefore, the City Council should vacate the Planning Commission's approvals and remand the Project to Staff to prepare a legally adequate EIR, before the Project can be presented to City decision makers for approval.

B. The Planning Commission Failed to Consider the Project's Transportation Impacts Prior to its Decision to Approve the Project

Section 15150 of the CEQA Guidelines permits CEQA environmental documents to incorporate documents by reference if such documents are "made available to the public for inspection at a public place or a public building." CEQA requires that the environmental document "state where the incorporated documents will be available for inspection."

"(W)hatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report." *Santiago County Water Dist. v. County of Orange* 118 Cal.App.3d 818, 831 (1981)

The Project's transportation assessment, Appendix A of the CEQA Findings, was not available for public review prior to the Planning Commission approval of the Notice of Exemption. It was also omitted from decision makers' since it is not part of the Planning Commission's staff report.

The Commission failed to resolve these deficiencies and failed to remand the Project to Staff to prepare an EIR, prior to approving the Project.

Omission of Appendix A, transportation assessment, effectively precluded the decisionmakers from considering, and the public from commenting on, the

environmental impact analyses on the Findings referencing the unavailable transportation assessment.

The 203 pages transportation study that was supposed to be included as appendix A to the CEQA Findings, detailed:

(i) a CEQA assessment of whether the Project conflicts or is inconsistent with local transportation-related plans and policies,

(ii) a CEQA assessment of Project-related VMT,

(iii) a CEQA assessment of whether the Project increases hazards due to a geometric design feature or incompatible use,

(iv) a CEQA freeway safety analysis,

(v) a non-CEQA assessment of pedestrian, bicycle and transit access,

(vi) a non-CEQA evaluation of Project access, safety and circulation, and

(vii) a non-CEQA review of Project construction activities.

Therefore, since Planning Commission lacked substantial evidence to support its decision to approve the Project and its adoption of CEQA findings for the Project, the City Council should vacate the Planning Commission's approvals and remand the Project to Staff to prepare a legally adequate EIR, before the Project can be presented to City decision makers for approval.

C. <u>The Findings Improperly Label Mitigation Measures as "Project Design Features"</u>

The Findings improperly label mitigation measures as "Project Design Features" or "PDFs" to reduce the potential for environmental effects. Relying on the PDFs, the DEIR concludes in many instances that the Project's impacts are less than significant and that no mitigation is required.

However, it is established that "'[a]voidance, minimization and / or mitigation measure' . . . are not 'part of the project.' . . . compressing the analysis of impacts and mitigation measures into a single issue . . disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.)

When "an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no

significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance." (*Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).])

By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.])

The Findings' use of "Project Design Features" further violates CEQA because such measures would not be included in the Project's Mitigation Monitoring and Reporting Program. CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project's significant environmental effects to the extent feasible. (PRC § 21081.6; CEQA Guidelines § 15091(d).) Therefore, using Project Design Features, in lieu of mitigation measures, violates CEQA.

The Finding's improperly labeled mitigation measures improperly include:

1) *Improperly Labeled Mitigation Measures Related to the Project's Transportation and Traffic Impacts*

"The Project's residential component, with the inclusion of two TDM [transportation demand management] strategies as Project Design Features outlined in Section 2.9, would not result in a significant VMT impact." (Findings, p. III-52; Appendix A, Transportation Assessment, p. 70)

"The implementation of the TDM strategies results in a Daily Household VMT impact that is less than significant. (Findings, p. III.18; Appendix A, Transportation Assessment, p. 43)

2) *Improperly Labeled Mitigation Measures Related to the Project's Construction Impacts on the Project-Serving Public Services of Police Protection*

"The Project would employ construction safety features including erecting temporary fencing along the periphery of the active construction areas to screen as much of the construction activity from view at the local street level and to deter trespassing,

vandalism, short-cut attractions, potential criminal activity, and other nuisances." Therefore, potential impacts to police protection services during the construction of the Project would be less than significant. (Findings, p. III-53)

3) *Improperly Labeled Mitigation Measures Related to the Project's Operation Impacts on the Project-Serving Public Services of Police Protection*

"These preventative and proactive security measures would decrease the amount of service calls that LAPD would otherwise receive. In light of these features, it is anticipated that any increase in demands upon police protection services would be relatively low, and not necessitate the construction of a new police station, the construction of which could potentially cause environmental impacts. Therefore, potential impacts to police protection services during the operation of the Project would be less than significant." (Findings, p. III-53)

Therefore, these measures should be treated as mitigation, rather than design features, contrary to what the Findings state.

D. The Project Fails to Adopt Mitigation Measures It Proposes to Implement

In addition to improperly labeling mitigation measures as PDFs, the Project describes several mitigation measures that it proposes to implement in order to reduce the Project's environmental effects. However, the Project fails to adopt these measures and improperly omits them from the Project's Mitigation Monitoring and Reporting Program.

As explained above, CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project's significant environmental effects to the extent feasible. (PRC § 21081.6; CEQA Guidelines § 15091(d).)

Further, failure to evaluate the effect of these measures in the impact analysis violates the legal requirement to provide a logical argument, supported by substantial evidence, for each impact conclusion in an environmental document *Lotus v. Department of Transportation,* 223 Cal.App.4th 645 (2014)

Some of the mitigation measure the Project fails to adopt include:

1) *Mitigation Measures that Would be Implemented to Mitigate the Environmental Effects Resulting from the Project's Operational Noise*

"Project Operational Noise Level Projections. All HVAC equipment will be shielded by walls much higher than the equipment height and will not be audible at the surrounding sites." (Appendix B, Noise Report, p. 3)

2) Mitigation Measures that Would be Implemented to Mitigate the Environmental Effects Resulting from the Project's Construction Noise

"Using 10-foot required temporary barriers along the northwest property line during site preparation through paving, the regulatory noise level limit of 75 dBA and CEQA significance threshold of +5 dB above the ambient is never exceeded at the Lofts and STOA Apartments." (Appendix B, Noise Report, p. 4)

"The project will implement the following construction noise measures which will be required as conditions of approval in compliance with the City's Noise Ordinance:

1. Construction and demolition shall be restricted to the hours of 7:00 a.m. to 9:00 p.m. Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday.
2. Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
3. The project contractor shall use power constriction equipment with state-of-the-art noise shielding and muffling devices.
4. During site preparation through paving, a temporary sound barrier at least 10-feet tall on the northwest property boundary shall be installed. The noise control barrier shall be engineered to reduce construction-related noise levels at the adjacent structures by at least 5 dBA. The supporting structure shall be engineered and erected according to applicable codes. The temporary barrier shall remain in place until all windows have been installed and all activities on the project site are complete.
5. Any stationary equipment such as cranes or generators shall be placed in the center of the project site when possible. Efforts shall be made to bring construction noise as far from the residences as possible." (Appendix B, Noise Report, p. 4)

"The Project will be compliant with the City's noise ordinance and noise thresholds

during construction with the implementation of the identified and required noise measures." (Appendix B, Noise Report, p. 5)

3) Mitigation Measures that Would be Implemented to Mitigate the Environmental Effects Resulting from the Project's Increase in the Use of Park and Recreational Facilities

"[T]he Project would result in an increase in the use of parks and recreational facilities that may not have the capacity to serve residents. This impact would be reduced to a less than significant level through the payment of the park fees as required by LAMC Section 12.33. LADRP would collect these park fees based on their current rate and fee schedule. The City requires park fees to reduce the park- and open space-related impacts of new residential development projects, and requires these fees to be paid before a Certificate of Occupancy can be issued. Therefore, through provision of on-site open space and payment of required park fees, impacts to parks would be less than significant." (Findings, p. III-54)

Therefore, failing to adopt mitigation measures, after concluding that its implementation will reduce the Project's environmental impact to less than significant, is not legally adequate.

E. The Project Improperly Relies on Regulatory Compliance and Conservation Measures to Support that an Environmental Effect is Less than Significant

The Project improperly relies on regulatory compliance, which the Findings purports will reduce the potential for hydrology and water quality environmental effects. For example, the Findings states that "[c]ompliance with water conservation measures, including Title 20 and 24 of the California Administrative Code would serve to reduce the projected water demand." (Findings, p. III-52) and "[c]ompliance with LAFD, City Building Code, and Fire Code requirements related to fire safety, access, and fire flow would ensure that cumulative impacts to fire protection would be less than significant." (Findings, p. III-66).

Relying on mere consistency with regulatory standards, the Findings conclude in many instances that the Project's impacts are less than significant, and that no mitigation is required.

However, it is established that, "[c]ompliance with the law is not enough to support a finding of no significant impact under . . . CEQA." (*Californians for Alternatives to Toxics*

v. Department of Food & Agriculture (2005) 136 Cal. App. 4th 1, 15 – 17 [finding that a lead agency "abused its discretion by relying on DPR's regulatory scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides."].). Bare conclusions or opinions of the agency are not sufficient to satisfy an agency's obligation under CEQA to adequately support their environmental determinations. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 403 – 404.) "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. . . . [to] enable[] the decision-makers and the public to make an 'independent, reasoned judgment' about a proposed project." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 [(quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

As the Court noted in East Sacramento Partnerships for a *Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 301, compliance with a regulatory scheme "in and of itself does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects." (Internal quotations omitted.) A project's effects can be significant even if they are not greater than those deemed acceptable in a general plan or other regulatory law. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 [finding that a full environmental impact report is required "if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County's noise ordinance and general plan."].)

A public agency cannot apply a threshold of significance or regulatory standard "in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect." (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.) Where comments from a responsible sister agency, such as the Water District, disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored based on a conclusory statement about compliance with regulatory standards; there must be a good faith, reasoned analysis. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal. App. 4th 1344, 1367.) The District's approach fails to meet its obligation to engage in good faith reasoned analysis to

provide the public, public agencies and decisionmakers with detailed information about the effects that the Project will have on the environment, ways to mitigate those effects, as well as alternatives. (PRC § 21061)

An agency must "explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less that significant, and why the environmental standard is relevant to the analysis of a project that is less than significant. CEQA Guidelines § 15067.7.

The City's reliance on compliance with regulations does not obviate the need for further analysis of environmental impacts, nor does compliance with regulations provide any substantial evidence that the Project will not have significant environmental impacts. The courts have held that compliance with regulations alone is insufficient to conclude that a project will not have significant environmental impacts.

Therefore, the City reliance on the Project's anticipated compliance does not provide any substantial evidence that the Project will not have significant environmental impacts; and, an EIR must be prepared for the Project.

F. The Project Relies on Mitigation Measures Designed to Reduce Its Significant Environmental Effects

According to CEQA Guidelines Section 15332(d) a Class 32 Exemption may only be used for projects that "would not result in any significant effects relating to traffic, noise, air quality, or water quality."

The Project proposes several mitigation measures designed to reduce the Project's potentially significant environmental impacts and impacts on public health that will otherwise result from the Project without mitigation. As detailed above, these are shown on the Findings as:

- Project design features (Findings, pp. III-18, 52-53; Appendix A, Transportation Assessment, pp. 43, 70)
- Regulatory compliance (Findings, pp. III-52, 66)
- Mitigation measures it fails to adopt (Findings, p. III-54; Appendix B, Noise Report, pp. 3-5)

The City may not rely on a categorical exemption to approve the Project. The City's improper attempt to include mitigation measures in a categorical exemption is

contrary to law, and deprives the public of its statutory rights to participate and comment on the sufficiency of the mitigation measures proposed to be applied to the Project.

Therefore, City's reliance on the Class 32 Infill Exemption is unsupported because the Project's noise, transportation, air quality and greenhouse gas impacts require mitigations, effectively rendering the Class 32 Infill Exemption facially inapplicable.

G. The Findings Analysis Fails to Adequately Evaluate and Mitigate the Project's Environmental Impacts

CEQA requires a lead agency to consider a proposed project, evaluate its environmental impacts and, if significant impacts are identified, to describe feasible mitigation measures to reduce the impacts. Failure to evaluate the effect of these measures in the impact analysis violates the legal requirement to provide a logical argument, supported by substantial evidence, for each impact conclusion in an environmental document *Lotus v. Department of Transportation,* (2014) 223 Cal.App.4th 645.

The court explained, "[s]imply stating there will be no significant impacts because the project incorporates 'special construction techniques' is not adequate or permissible." (Ibid.) and this "short-cutting of CEQA requirements ... precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences." (Ibid.)

According to the January 28, 2022 SWAPE Letter to Mitchell M. Tsai re. Comments on the 121 W. 3rd Street Project, hereby attached and referenced to as Exhibit D, the CEQA Findings supporting the exemption failed to to adequately evaluate the Project's hazards and hazardous materials, air quality, health risk, and greenhouse gas impacts. The letter provides substantial evidence that the Project may result in significant air quality and health risk environmental impacts.

Further, the Findings Compress the Analysis of Impacts and Mitigation Measures into a Single Issue. For example, in the noise report, the Findings state that"[t]he Project will be compliant with the City's noise ordinance and noise thresholds during construction with the implementation of the identified and required noise measures." (Appendix B, Noise Report, p. 5) and that "[u]sing 10-foot required temporary barriers along the northwest property line during site preparation through paving, the regulatory noise level limit of 75 dBA and CEQA significance threshold of +5 dB

above the ambient is never exceeded at the Lofts and STOA Apartments." (Appendix B, Noise Report, p. 4)

By compressing the analysis of impacts and mitigation measures into a single issue, the Findings disregards the requirements of CEQA.

H. The Project Site Cannot Be Adequately Served by all Required Utilities and Public Services.

According to CEQA Guidelines, § 15332(b)(e) CEQA's Class 32 categorical exemption for infill development applies to proposed developments that can be adequately served by all required utilities and public services.
The Project improperly relies on the City of Los Angeles Department of Recreation and Parks' ("**RAP**") park fee to mitigate its impacts related to park and open space, stating that:

> "[t]he Project would result in an increase in the use of parks and recreational facilities that may not have the capacity to serve residents. This impact would be reduced to a less than significant level through the payment of the park fees as required by LAMC Section 12.33. LADRP would collect these park fees based on their current rate and fee schedule. The City requires park fees to reduce the park- and open space-related impacts of new residential development projects, and requires these fees to be paid before a Certificate of Occupancy can be issued. Therefore, through provision of on-site open space and payment of required park fees, impacts to parks would be less than significant." (Findings, p. III-54)

However, the park fees payment is not made pursuant to an actual environmental impact mitigation fee program. According to the Municipal Code, "the park fee is additional and supplemental to, and not in substitution of, on-site open space requirements required by the City's Municipal Code, specific plan(s), or any other planning document, such as those included in Section 12.21." LAMC Section 12.33(F)

Further, the existence of a fee program does not create a conclusive presumption of a Project's environmental impacts mitigation. "Mitigation fee programs may constitute adequate mitigation to address the adverse effects of a project. However, " 'to be considered adequate, a fee program at some point must be reviewed under CEQA,

either as a tiered review eliminating the need to replicate the review for individual projects, or on a project-level, as-applied basis.... Because the fees set by the ordinance have never passed a CEQA evaluation, payment of the fee does not presumptively establish full mitigation for a discretionary project.' " *California Clean Energy Committee v. City of Woodland* 225 Cal.App.4th 173, 199 (2014) quoting *Center for Sierra Nevada Conservation*, 202 Cal.App.4th at pp. 1179–80, 136 (2012) and *California Native Plant Society v. County of El Dorado*, 170 Cal. App. 4th 1026, 1030 (2009)

RAP's park fees are assessed pursuant to municipal ordinance No. 18405[8], which was exempted from CEQA review. City prepared a Site and Facility Development Impact Fee Study[9] prior to adopting the ordinance, which states that "[t]he City would collect the park and recreation impact fees from new residential development and use revenue from the fees to cover the cost of capital facilities and improvements to serve new growth." The study makes no reference to environmental impact mitigation.

Therefore, the Project does not qualify for a Class 32 exemption and an EIR must be prepared.

III. THE PROJECT IS NOT CONSISTENT WITH THE APPLICABLE GENERAL PLAN DESIGNATION AND ALL APPLICABLE GENERAL PLAN POLICIES AS WELL AS WITH APPLICABLE ZONING DESIGNATION REGULATIONS

A. The Project Violates the Los Angeles Municipal Code

According to LAMC 12.22(A)(25)(f)(4)(i) incentives for density bonus projects may seek "[a] percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35%"

The Project seeks, "[p]ursuant to LAMC Section 12.22(A)(25)(g)(3), an Off-Menu Incentive to permit a 48% increase in FAR from 6:1 to 8.87:1"[10]

Further, the Project does not meet the exception to exceed the above 35% FAR increase limit pursuant to LAMC 12.22(A)(25)(f)(4)(ii) which states that "[i]n lieu of

[8] *Available at,* https://planning.lacity.org/ordinances/docs/parksdedication/QuimbyFinal.pdf
[9] *Ibid.*
[10] January 13, 2022 City Planning Meeting, Agenda Item No. 9 Staff Report, p. 2 *Available at*, https://planning.lacity.org/plndoc/Staff_Reports/2022/01-13-2022/CPC_2021_3038.pdf

the otherwise applicable Floor Area Ratio, a Floor Area Ratio not to exceed 3:1, provided the parcel is in a commercial zone in Height District 1 (including 1VL, 1L and 1XL), and fronts on a Major Highway as identified in the City's General Plan"

Therefore, the 48% FAR increase exceeds the 35% limit set forth on LAMC.

B. The Project Violates the State Density Bonus Law

According to Cal. Gov. Code § 65917.2(a)(1)(E), in order to be eligible for the floor area ratio bonus, the project must restrict at least 20 percent of the units to very low income tenants.

The Project proposes construction of "331 dwelling units, including 37 dwelling units set aside for Very Low Income Households (or 11% of the total units)."[11] The Project must set aside at least 20% of the total 331 dwelling units, that is over 66 units

Further, to be eligible for the floor area ratio bonus, the project must be in compliance with local height limits, since "[a] development shall not be eligible to use a floor area ratio bonus or other incentives or concessions provided pursuant to this chapter to relieve the development from a maximum height limitation." Cal. Gov. Code § 65917.2(a)(1)(F). As discussed below, the Project is not in compliance with the zoning height limits.

Therefore, the Project violates the California Density Bonus Statute.

C. The Project Violates Zoning Law

On December 20, 1988, the City Council adopted a Zone Change surrounding the subject property via Ordinance No. 164307, in conjunction with the General Plan Consistency Program for the Central City Community Plan. The subject property is zoned [Q]C4-4D. Height District 4 permits unlimited building height; however, the [Q] Condition established under Ordinance No. 164,307, Subarea 555 limits the maximum building height of 150 feet. [12]

[11] *Id.* at 5

[12] Ordinance 164307, p. 13, available at https://planning.lacity.org/eir/WilshireGrandRedevProj/DEIR/DEIR%20Appendices/Appendix%20II.1.pdf

The Project seeks an "[i]ncentive to permit a 45-foot height increase to 195 feet in lieu of a maximum of 150 feet"[13] However, according to LAMC 12.22(A)(25)(f)(5)(i)[14] "In any zone in which the height or number of stories is limited, this height increase shall permit a maximum of eleven additional feet or one additional story, whichever is lower, to provide the Restricted Affordable Units."

Therefore, the maximum height increase the Project qualifies is an 11-foot height increase, that is 161 foot.

If the City has any questions or concerns, feel free to contact my Office.

Sincerely,

Mitchell M. Tsai
Attorneys for Southwest Regional
Council of Carpenters

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B);

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C); and,

January 28, 2022 SWAPE Letter to Mitchell M. Tsai re. Comments on the 121 W. 3rd Street Project (Exhibit D).

[13] January 13, 2022 City Planning Meeting, Agenda Item No. 9 Staff Report, p. 2 Available at: https://planning.lacity.org/plndoc/Staff_Reports/2022/01-13-2022/CPC_2021_3038.pdf
[14] *See* Ordinance No. 179,681, amending LAMC 12.22(A)(25) Effective April 15, 2008. Available at https://planning.lacity.org/odocument/e811b5a6-294b-474e-accb-064cb8a4eb4f/DB_Ord.pdf

APPLICATIONS:

APPEAL APPLICATION

Instructions and Checklist

Related Code Section: Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

Purpose: This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

A. APPELLATE BODY/CASE INFORMATION

1. APPELLATE BODY

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning
☐ Zoning Administrator

Regarding Case Number: CPC-2021-3038-DB-SPR-HCA

Project Address: 121 West 3rd Street; 252 South Spring Street; 244 - 246 South Spring Street

Final Date to Appeal: February 9, 2022

2. APPELLANT

Appellant Identity: (check all that apply)
☑ Representative ❒ Property Owner
❒ Applicant ❒ Operator of the Use/Site

☑ Person, other than the Applicant, Owner or Operator claiming to be aggrieved
SOUTHWEST REGIONAL COUNCIL OF CARPENTERS

☐ Person affected by the determination made by the **Department of Building and Safety**

❒ Representative ❒ Owner ❒ Aggrieved Party
❒ Applicant ❒ Operator

3. APPELLANT INFORMATION

Appellant's Name: Mitchell M. Tsai; Mary Linares

Company/Organization: MITCHELL M. TSAI, ATTORNEY AT LAW

Mailing Address: 139 South Hudson Avenue, Suite 200

City: Pasadena State: CA Zip: 91101

Telephone: 626-314-3821 E-mail: info@mitchtsailaw.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☐ Self ☑ Other: SWRCC

b. Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Mitchell M. Tsai; Mary Linares

Company: MITCHELL M. TSAI, ATTORNEY AT LAW

Mailing Address: 139 South Hudson Avenue, Suite 200

City: Pasadena State: CA Zip: 91101

Telephone: 626-314-3821 E-mail: info@mitchtsailaw.com

5. JUSTIFICATION/REASON FOR APPEAL

a. Is the entire decision, or only parts of it being appealed? ☐ Entire ☑ Part

b. Are specific conditions of approval being appealed? ☐ Yes ☑ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- ☑ The reason for the appeal
- ☑ How you are aggrieved by the decision
- ☑ Specifically the points at issue
- ☑ Why you believe the decision-maker erred or abused their discretion

6. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 02/09/2022

GENERAL APPEAL FILING REQUIREMENTS

B. ***ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES***

1. Appeal Documents

a. 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.

- ☐ Appeal Application (form CP-7769)
- ☐ Justification/Reason for Appeal
- ☐ Copies of Original Determination Letter

b. 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. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

c. Appeal Fee

- ☐ Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- ☐ Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

d. Notice Requirement

- ☐ Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- ☐ Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.

SPECIFIC CASE TYPES - APPEAL FILING INFORMATION

C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)

1. **Density Bonus/TOC**
   Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

NOTE:
- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.

- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

  ☐ Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

D. WAIVER OF DEDICATION AND OR IMPROVEMENT

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

NOTE:
- Waivers for By-Right Projects, can only be appealed by the owner.

- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

E. TENTATIVE TRACT/VESTING

1. **Tentative Tract/Vesting** - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

   NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

   ☐ Provide a copy of the written determination letter from Commission.

F. BUILDING AND SAFETY DETERMINATION

☐ 1. Appeal of the *Department of Building and Safety* determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

a. Appeal Fee
- ☐ Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

b. Notice Requirement
- ☐ Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

☐ 2. Appeal of the *Director of City Planning* determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.

a. Appeal Fee
- ☐ Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

b. Notice Requirement
- ☐ Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- ☐ Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

G. NUISANCE ABATEMENT

1. **Nuisance Abatement -** Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4

NOTE:
- Nuisance Abatement is only appealable to the City Council.

a. Appeal Fee

☐ Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

2. **Plan Approval/Compliance Review**
Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

a. Appeal Fee

☐ Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.
☐ Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

NOTES

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.

***Please note** that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

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)	