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STATEMENT OF REASONS FOR APPEAL;
Case No. #DIR-2020-3912-TOC-CCMP-VHCA
ENV-2020-3913-EAF

On behalf of Historic Garvanza Coalition and its members, and on behalf of adjacent property owners and tenants Brad Chambers, Isidro Aguilar, Kesley Davis, Vincent McKelvie and Amanda Schulz (collectively “Appellants”), we respectfully appeal the Director’s Determinations in both Case No. DIR-2020-3912-TOC-CCMP-VHCA and ENV-2020-3913-CE (the “Appeal”). The project at issue in these appeals is a mixed-use development of 59,029 square feet including 33 units, 151 bedrooms, and one commercial unit consisting of 1910 square feet of commercial floor area (“Project”) located at 141 North Avenue 64, 6312, 6314-6328 E Garvanza Avenue (“Site”). The approvals being appealed in this Appeal are: the approval with conditions of a transit oriented communities (“TOC”) affordable housing incentive program compliance review; the issuance of a Certificate of Compatibility in the Highland Park-Garvanza Historic Preservation Overlay Zone (“HPOZ”) and reliance on a Class 32 categorical exemption from review under the California Environmental Quality Act (“CEQA”).

The City of Los Angeles (“City”) Director of Planning Vincent Bertoni, through his designees, approved the Project. The approvals set forth above were made effective by the Director of Planning’s Letter of Determination emailed on September 16, 2021 (“LOD”). This Appeal is timely submitted prior to the October 1, 2021 deadline. (See LOD, p.1)

I. OVERVIEW OF THE REASONS FOR THE APPEAL.

The City erroneously approved this project for TOC incentives. In order to obtain the significant reduction in regulation allowed for TOC projects, a project must show that it clearly meets the TOC requirements. This Project cannot do so.

The Director of Planning also approved the Project’s Entitlements in violation of the Los Angeles Municipal Code (“LAMC” or “Code”) and approved a Certificate of Compatibility contrary to the Highland Park - Garvanza HPOZ Preservation Plan Guidelines. Moreover, based on conversations Appellants have had with the City’s

Office of Historic Resources, the LOD inaccurately indicates the City received approval of the proposed Project from a designee of the Cultural Heritage Commission. The local highly-qualified experts on the Highland Park - Garvanza HPOZ Board provide substantial evidence demonstrating the Project does not qualify for a Certificate of Compatibility. The LOD lacks evidentiary support that overcomes this expert determination.

The City's approval of the Project based upon a Class 32 categorical exemption also violates the requirements of CEQA. This Project fails to meet the requirements necessary to rely upon a Class 32 exemption. Additionally, several exceptions to exemptions apply. The Project may adversely impact historic resources, particularly the Highland Park - Garvanza HPOZ.¹ The Project may have adverse impacts due to unusual circumstances and may result in cumulatively considerable impacts, both of which prevent reliance on a categorical exemption.

II. EVIDENCE RELIED UPON IN THIS APPEAL.

In addition to arguments raised in this appeal statement, Appellants also rely on the following evidence in support of this appeal: the transcript of the Highland Park - Garvanza HPOZ decision denying the Certificate of Compatibility; the Historic Highland Park Neighborhood Council's letters dated August 17th, 2020, September 10, 2020 and exhibits, and Community Impact Statement dated March 4, 2021; the Highland Park Heritage Trust's (HPHT) comment letters dated August 24, 2020 and February 7, 2021; the Garvanza Improvement Association's comment letter dated January 31, 2021; Clara Solis' comment letter dated August 24, 2020; the TOC Binder dated August 21, 2020; San Pascual Arroyo Seco Wildlife Preservation letters submitted February 9, 2021 and May 6, 2021 and exhibits, Amy Ludwig comment letter dated February 5, 2020; John David McIntyre's letter; Van Webster's letter and additional community comment letters all of which are attached hereto as Exhibits D through S and incorporated by reference, and other statements of experts which will be provided prior to the hearing(s) on this Appeal.

Additionally, testimony given at the Highland Park-Garvanza HPOZ Board hearing by local residents, experts including local resident and historian Charlie Fisher spoke of the incompatibility of this project with the Highland Park - Garvanza HPOZ. Charlie Fisher, preservationist Brad Chambers and numerous residents spoke of this site being the Gateway to the Garvanza portion of the HPOZ and that the design of the building must be respectful of the HPOZ. Charlie Fisher and others spoke of how this

¹ The HPOZ designation was in place well before the time the project application was deemed complete as provided by SB330.

property was specifically included in the HPOZ so that as the Gateway to Garvanza the design of any development at this location would be appropriate. These comments also provided substantial evidence regarding the significant impacts this Project would have on the Garvanza HPOZ.

III. THE PROJECT'S PROPOSED DESIGN AND FEATURES LEADS TO ITS ADVERSE IMPACTS AND INCOMPATIBILITY.

The Project will consist of co-living residential units, a use not currently defined by the City. The Applicant in an interview discussed this new Co-Living Project in Highland Park, disclosing that most of the units are 5 bedrooms with a bathroom for almost every bedroom. The Project application confirms this, describing the Project as 33 new multi-family dwelling units. The Department of Planning was directed to prepare an ordinance which defines this use and restricts the areas where these can be located. See City Council Action Council File CF-21-0665 (Exhibit T) and Planning and Land Use Committee Report CF 21-0665 (Exhibit U).

Van Webster's letter aptly describes the Co-Living Project's deficiencies, problems and why an ordinance should be in place before such a project is approved: the predominance of 5 and 4 bedroom units with near microscopic living quarters implies that the developers intend to operate this building as a co-tenant occupancy. While co-tenancy is an innovative and progressive approach to housing this building has so many operational deficiencies that make it an unworkable social experiment.

Each bedroom is illustrated with two beds and no additional furnishings, implying that two people will occupy each room. With 151 individual bedrooms, the building's residential occupancy will be between 250 to over 300 individuals. The ultra-compacted design of the multi-bedroom units is an attempt to cram as many people as possible into the available space, skirting viable living standards.

The living area portion of each apartment shows space for the seating of 3 to 5 people. There's not enough space for all of the residents of each apartment to eat a meal together. The bedrooms are also far too small. The developers are proposing that each bedroom will be leased separately which makes this a 151-unit apartment project and not the 33 units as presented.

The Project's use as a co-living building is likely to adversely impact residents who live in Garvanza and Arroyo View Estates. The community will be adversely impacted because a co-living building will generate more traffic than apartments and will create hazards by directing traffic from patrons, rideshare, deliveries, and other vehicles through the alley that comfortably fits one car at a time. This was not addressed. (See

Exhibit E, HHPNC Letter dated August 17, 2020, Exhibit 2 for photos showing existing congestion on Avenue 64 and Garvanza and Exhibit F HHPNC Letter dated September 10, 2020.) This traffic will be significantly worsened by traffic entering and exiting Avenue 64 from the alley.

Further, the Co-Living Project will increase upward pressure on rents in the area. With units that will list for over \$5,000 - even though each bedroom in a unit will later be individually sublet - it creates a falsely inflated value of the rental market and effectively locks out local residents. Many neighboring rental units will also be affected by the rise in land values and rents, as a recent study on a rent burden buffer in relation to the project shows. As a result of new development or upscale businesses, rent increases of 15-30% were observed in the 1320-foot buffer area, where rent control did not apply. (See NELA vulnerability study, 2018, Exhibit V.) This is a violation of the Northeast Los Angeles Community Plan which states new development “must not create an imbalance in housing.”

The Class 32 exemption may also be inappropriate because the project fails to comply with applicable land use plans and will likely, have traffic impacts. CEQA also prevents the use of a categorical exemption when a project may have a significant adverse impact due to unusual circumstances. The co-living arrangement is an unusual circumstance.

Additionally, Fire Department response times have not been analyzed. Fire Station 12 is on the other side of the Metro Gold line tracks on Figueroa; thus, when a train is passing, response times decrease significantly. The increased traffic on Avenue 64 could jeopardize the Fire Department’s ability to respond to emergencies.

Finally, The Director of Planning must also adhere to the Labor Standard Ordinance, which requires any project approved under Measure JJJ pay prevailing wage. This project has failed to comply with the Labor Standard mandated by the voters for all Measure JJJ projects.

IV. HISTORIC GARVANZA COALITION AND ITS MEMBERS ARE AGGRIEVED BY THIS DECISION:

Mr. Chambers owns property adjacent to the Project Site, has tenants who live at the adjacent property and, thus, has standing to challenge the Project’s TOC approval. (See LAMC § 12.22.A subds. 31(e) & 25(g)(2)(i)(f).) Mr. Aguilar lives across the street from the Project and, thus, has standing to challenge the Project’s TOC approval. (See LAMC § 12.22.A subds. 31(e) & 25(g)(2)(i)(f).) Ms. Davis and Mr. McKelvie live across the street from the Project and, thus, have standing to challenge the Project’s TOC

approval. (See LAMC § 12.22.A subds. 31(e) & 25(g)(2)(i)(f).). Ms. Schulz is a tenant residing at the adjacent property owned by Mr. Chambers.

Mr. Chambers has spent a substantial amount of time, energy and money meticulously restoring the homes on his property including the Stewart Farmhouse. The Dr. Smith house, a Queen Anne style home built in 1886 is a contributor to the HPOZ and is also located on his property. Dr. Smith was a founder of the Garvanza Improvement Association. Mr. Chamber's renters value the beautiful historic setting of the property.

Mr. Aguilar is a longtime Garvanza resident of 30 years. His Craftsman home was built in 1900 and is a contributor to the HPOZ. It is the site of the first bar in Garvanza.

Ms. Davis and Mr. McKelvie's Craftsman home is a contributor to the HPOZ. They will also be harmed by the proposed Project.

Ms. Schulz is a tenant residing in the historic Dr. Smith estate, which abuts the Project site.

Each of the above will be harmed by the environmental impacts and the harm to the Highland Park - Garvanza HPOZ.

The Historic Garvanza Coalition's members live, work and shop in Historic Garvanza, Arroyo View Estates and Highland Park; all will suffer from the Project's environmental impacts. Appellants have a beneficial interest in the Project's Code/CEQA compliance and, thus, have standing.

Residents of the Garvanza portion of the HPOZ also have a beneficial interest in seeing that projects comply with the HPOZ guidelines. If one project skirts the guidelines, then additional projects will rely on that design to further erode HPOZ guidelines. At the February 23, 2021 Highland Park - Garvanza HPOZ Board Meeting, Board Member Gary Scherquist stated. "I think that what we do here will set a precedent for the whole area along Marmion Way." Residents in the Garvanza community have long protected this community's historic resources. An inappropriate design for this property at the Gateway to the Garvanza HPOZ will harm the Garvanza portion of the HPOZ. Neighborhood residents had anticipated this property being something special. It was one of a few parcels that were zoned Q- C4 -1XL – HPOZ in the 2010 HPOZ ordinance. This property was specifically included in the HPOZ so that this property and the others so designated would have buildings appropriate to the HPOZ. A poorly designed building will impact the rest of Garvanza for a life time.

Residents take pride in their historic neighborhood and it is a part of their cultural heritage and sense of self. This is reflected in the organizations that are committed to the preservation of these historic resources. From the early 1900's residents in Garvanza banded together to improve the neighborhood by planting trees, advocating for improved schools and streets and working on civic projects. These residents formed the Garvanza Improvement Association. The association planted trees, advocated for schools, parks and infrastructure improvement. The Garvanza Improvement Association along with the Highland Park Heritage Trust (HPHT) advocated together to see that Garvanza was added to the Highland Park HPOZ. The HPHT, a non-profit community organization in Northeast Los Angeles founded in 1983 is dedicated to the preservation and promotion of the cultural and architectural heritage of the historic Highland Park, Garvanza, and Arroyo Seco communities. The San Pascual Arroyo Seco Wildlife Preservation organization has also advocated for the preservation of historic resources in Garvanza for more open and green space, discouraged practices that generate heat island impacts to residents in the majority Latino community of Highland Park and has advocated for renters who have been impacted by City practices which are causing gentrification in Highland Park. So important to the identity of Highland Park are its historic resources that the Historic Highland Park Neighborhood Council included "Historic" in its name.

After many years of hard work, the HPOZ was finalized in 2010. Charlie Fisher, local historian and the author of Garvanza and Highland Park (along with the HPHT) in his testimony spoke of specifically including this property in the HPOZ to ensure that this property which is the Gateway to Garvanza would adhere to design standards that fit in with the rest of Garvanza. Dozens of residents have written to Planning and the HPOZ and have spoken at numerous meetings before the Historic Highland Park Neighborhood Council (HHPNC) Land Use Committee meetings, HHPNC Board Meetings, and HPOZ hearings. Over a hundred community members attended the HPOZ hearing. Other than one speaker and the applicant and her representative, the residents of Garvanza spoke with one voice asking that a better project be developed and expressing consternation over the design of submitted by Project applicant, SKYA.

Further, housing and environmental sustainability is a chief concern of members of the Historic Garvanza Coalition and, thus, it has associational standing. The members of our coalition are primarily concerned with historic preservation and environmental justice. We have standing to comment on and litigate land use and environmental claims, particularly since our members have long-standing involvement in said matters. Furthermore, all Appellants have public interest standing to ensure state/local land-use and environmental laws are complied with by the City. Because Appellants have a beneficial interest in the Project's Code/CEQA compliance, they are aggrieved by the Director of Planning's Determination.

The Project is located in Census Tract 6037183101, an environmental justice community that will be harmed by an insensitively designed project. Cal Enviro Screen 3.0 provided the following information for this Census Tract. The Census Tract containing this project is 67 percent Latino, 61 percent of the residents in this census tract are linguistically isolated who may not hear or understand important information when there is an emergency like an accidental chemical release or spill. This census tract is in the 69 percentile for Traffic density which is a measure of the number of vehicles on the roads in an area and for PM 2.5 pollution. According to the website, Non-whites, Latinos, low income people, and people who speak a language other than English often live in or near areas with high traffic. While California has strict vehicle-emissions standards, exhaust from cars and trucks is the main source of air pollution in much of the state. Major roads and highways can bring air pollutants and noise into nearby neighborhoods. Exhaust fumes contain toxic chemicals that can damage DNA, cause cancer, make breathing difficult, and cause low weight and premature births. This census tract is in the 83 percentile for low birth weights (babies who weigh less than 5.5 lbs are considered to have low birth weights.) The data are from 2011-2015. The impacts from traffic, pollution and construction including possible impacts from soil contamination harm this environmental justice community. (Exhibit N)

According to the LA Times Neighborhood Community Profile, Highland Park is the 31st most dense community in terms population per square mile. (Exhibit W) Avenue 64 is a major corridor from Garvanza leading to the Arroyo Parkway which leads to daily traffic back-ups as residents go to and from the freeway. The Cal Enviro numbers shown above already demonstrate that this residential neighborhood is impacted by traffic and the PM 2.5 numbers show that this traffic is causing pollution. As indicated by the website, the exhaust from vehicles contains toxic chemicals that can cause health problems. The HPOZ area around the Project site is mostly residential. Across and adjacent on Garvanza are residences, across Avenue 64 are apartments. The area north of the Project site is residential.

The photos in Exhibit 1 of the HHPNC Letter dated August 20, 2020 shows traffic already backs up on Garvanza and Avenue 64. This already impacted community will be severely harmed by the additional traffic and pollution from this project. This Project will have its main exit through a 20 foot alleyway at the rear of the existing Rite Aid building, which appears less than 20 feet. Garvanza resident and commercial property owner Van Webster stated in his comment letter: "The traffic flow into and out of the project depends on using the 20' wide alleyway for access, turning the alley into a traffic thoroughfare. The alley is not intended for regular traffic. The alley is narrow, has no pedestrian walkways and is in exceptionally bad repair."

The Project has asked for an incentive of 0.5 parking spaces per dwelling unit in lieu of the 2 parking spaces normally required. As this apartment building was planned as a Co-Living Project with bathrooms in almost every bedroom and a communal kitchen in each unit, it is not difficult to imagine that there will be more than 76 automobiles associated with the project. It is likely that there could be in excess of 150 to 250 vehicles associated with the project. These automobiles will daily be exiting the building through the alley way between York and Garvanza. These vehicles will most likely be exiting onto the already heavily impacted Avenue 64.

While this Project is contemplated as a TOC project, in reality a DASH bus that runs every 20 minutes along with a bus line is not a major transit stop and will not alleviate the significant traffic output from the Project. Analysis of auto usage has shown that use of vehicles has not decreased with TOC projects. Instead, vehicle ownership statewide has gone up. These vehicles will park in the neighborhood which already suffers from scarce parking. Many of the rent stabilized apartment buildings in Highland Park were built in the 1960's and these buildings only have one parking space per unit, but occupants of these units have more than one vehicle. See statements of residents and the HHPNC Community Impact Statement dated March 4, 2021. (Exhibits G and Exhibit R) and of Van Webster (Exhibit R)

Further, the adjacent residents at 6306-6308 Garvanza Avenue, 120 N Avenue 63 will be impacted by the noise generated by vehicles entering and exiting the parking lot. They will constantly hear the vehicles exiting with braking, acceleration and clunking as vehicles exit the driveway which is located inappropriately close to the residences. Residents in Highland Park and Garvanza will be impacted by the construction of this project.

The Project includes a two-level underground parking lot, which will require 17,000 cubic yards to be removed from the site. This will take 500 dump truck trips through the neighborhood to Scholl Canyon Landfill. These vehicles will pass by local day care centers including one located across the street from this project, an elementary school, two middle schools, and the Optimist Boy's home. It is likely that these vehicles will be diesel, a known cancer-causing agent.

Additionally, the earth from this Project could possibly be contaminated. See the San Pascual Arroyo Seco Wildlife Preservation letter dated May 6, 2021. (Exhibit N) It points out that a dry cleaner and two gas stations were located within 500 feet from the proposed site. It does not appear that the underground storage tanks at the two gas stations were ever removed. The environmental justice residents who live in these communities could be harmed by the unmitigated removal of possibly contaminated soil.

V. THE DIRECTOR ABUSED ITS DISCRETION IN APPROVING THE PROJECT.

The Department of Planning and Department of Housing erred in granting TOC incentives. The intersecting DASH and Metro lines do not meet the criteria as a Major Transit Stop as outlined in the TOC guidelines. Further, the DASH Line at the intersection indicated in the TOC referral form does not qualify as the DASH line at that intersection runs parallel to the Metro line. The TOC guidelines clearly state that the lines cannot run parallel. The DASH bus does not qualify as a major bus route. The project does not qualify for the TOC density bonus under the guidelines and therefore the TOC approval should be rescinded and the incentives denied.

The Director of Planning erred and abused his discretion when approving the Entitlements because, absent full Code/CEQA compliance, the Project threatens public safety, conflicts with state CEQA law, and is inconsistent with the Code-required findings (See LAMC §§ 12.24 subs., E, W.1(a), 16.05-F.) and the project design does not comply with Highland Park Garvanza HPOZ Preservation Plan Guidelines and the Northeast Los Angeles Community Plan. (Exhibit X.)

A. The Director's Determination's Approval of a Transit Oriented Communities Affordable Housing Incentive Program Compliance Fails to Comply with Legal Requirements.

The TOC Program was established by Measure JJJ. The legislative intent of Measure JJJ, passed by Los Angeles voters in November 2016, was to “address our homeless and affordable housing crisis, while also creating good jobs with family-supporting wages.” (Ballot Measure, November 2016, p. 37, emphasis added). The TOC incentives are determined solely by the language of JJJ:

The Director of Planning shall prepare TOC Affordable Housing Incentive Program Guidelines (‘TOC Guidelines’) that provide the eligibility standards, incentives and other necessary components of this TOC Incentive Program described herein.

(LAMC 12.22 A.31(b). The Ballot Measure defined “herein” to include only residential density, FAR and parking reduction within a half-mile of a major transit stop. Nothing more. If it is not included in JJJ as approved by the voters, TOC incentives cannot be granted by the City.

1. The Project Does Not Qualify for Transit Oriented Incentives.

a. The Project Does Not Qualify for a Transit Oriented Communities Density Bonus.

The Project fails to qualify for a density bonus under the City of Los Angeles TOC guidelines on three accounts. First, the TOC Guidelines state that:

[t]o be an eligible TOC Housing Development, the project must be meet the Eligibility criteria in Section IV, including being located within one-half mile of a Major Transit Stop. In the case of bus stops, this always requires an intersection of two bus routes. An intersection of two bus lines is defined as the midpoint of the street intersection where two or more eligible bus routes meet or cross, and passengers have the direct ability to transfer on foot. *This does not include bus routes that travel along the same street.*

(TOC Guidelines, p. 5, emphasis added.)

In its application for a density bonus, the Applicant relied on its proximity to the Metro Line 81 bus route, as well as the DASH Highland Park-Eagle Rock bus route. (LOD, p. 11.) Yet the DASH bus travels along the same street, Figueroa Street, as the Metro Line 81 bus. The prohibition against including bus routes that travel along the same street does not include any qualifiers. Bus routes that travel along the same street do not qualify for a density bonus. (See Exhibit L, Bus Route Maps.)

Second, the DASH Highland Park-Eagle Rock route is not a major bus route and therefore cannot qualify as part of a major transit stop under Public Resources Code section 21064.3, subdivision (c). LAMC section 13.09 defines “major bus route” to specifically exclude DASH bus routes. DASH was designed as a local neighborhood bus that serves downtown Los Angeles and 27 neighborhoods. Each route is designed to serve *travel within that neighborhood* and to connect to other transit services. The Tier 1 Qualification for this Project was approved using the Metro Line 81 and the DASH. Since the DASH does not qualify as a major bus route the qualification for the Tier 1 Density Bonus was issued in error.

Finally, even if the DASH route were considered a major bus route, it does not meet the TOC Guidelines’ requirement of a service interval of 15 minutes or less during the morning and afternoon peak commute periods. (TOC Guidelines, p. 4.) As HHPNC and member of Appellant Clara Solis stated in their comments dated August 17, 2020 and August 24, 2020, respectively, the service interval for the DASH Highland Park-Eagle Rock line is 20 minutes in both directions, exceeding the 15-minute requirement.

(Exhibits E and K.) The TOC Guidelines require that *both* the Metro Bus Line 81 *and* the DASH Highland Park-Eagle Rock lines meet the 15-minute or less service interval requirement in order to qualify for incentives. (TOC Guidelines, p. 4.) Thus, since the DASH Highland Park-Eagle Rock bus route fails to meet the 15-minute or less service interval requirement, the Project does not qualify for a density bonus.

b. TOC Tiers Require Voter Approval

Measure JJJ did not authorize tiers, which are new zones that create different property entitlements within a half-mile. Tiers would require voter approval per JJJ Section 5.A, as well as a General Plan Amendment. Unless and until the voters approve TOC Tiers, all TOC Tier assignments posted on ZIMAS must be removed.

Additionally, the Project is limited to 30 feet under its current zoning (Q-C4-1XL - HPOZ). However, the site abuts eight RD 1.5-1 HPOZ properties and is therefore subject to LAMC 12.21.1 A.10, which provides for transitional height limits for properties located within specified distances of more restrictive zones. Thus, the actual height limit for this site is 25 feet. The Project is ineligible for additional height and limited to the requirements of LAMC 12.21.1 A.10 because Measure JJJ did not authorize additional height for TOC projects or a waiver from transitional height limits. Further, under the TOC Guidelines, an increase in transitional height limits is allowed only if the building height is stepped back at a “45 degree angle as measured from a horizontal plane originating 15 feet above grade at the property line of the adjoining lot...” (TOC Guidelines p. 13.) The Project does not include stepped back height increases.

c. The Director’s Determination Erred In Finding There Was No Impact To Public Health That Could Be Mitigated Without Making The Project Unaffordable.

The Director’s Determination improperly found that the TOC incentives “will not have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there are no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to Very Low, Low and Moderate Income Households.” (LOD p. 13.)

To the contrary, the Project will have an impact on public health. As discussed above, the Project is designed to include densely packed co-living units. These units during the time of Covid-19 pose a health risk to residents. These practices put future residents at risk. The City of Los Angeles Planning and Land Use Committee recently

passed a motion asking the Planning Department to prepare an ordinance regarding co-living units and where they can and cannot be placed. These units are currently unregulated and could pose a health risk. The Director of Planning could have mitigated these health concerns by reducing the number of bedrooms allowed to three in each unit. What we will have with this project is people packed into crowded spaces with little common living areas or space to prepare meals. The Covid-19 pandemic has shown how residents living these types of spaces are particularly vulnerable to infection. It also appears the Project applicant may use predatory lending practices (See HHPNC Letter dated 9/10/2020) and has been unwilling commit to having one lease per unit, it is very likely that the bedrooms will be rented out separately. This assumption is bolstered by the fact that the Project applicant recently evicted 57 Latinx residents at the Highland Park Marmion Royale, putting vulnerable residents at risk.

Additionally, this Project will endanger residents leaving the property through the alleyway. No mitigation measures were required to ensure traffic safety. There are no prohibitions on left turns out of the alley. Further, idling cars in the alley and on Garvanza waiting to turn onto Avenue 64 and idling cars backed up on Avenue 64 will put the residents who live on Garvanza and Avenue 64 at risk from air pollution and noise pollution. Mitigation measures could have been adopted to protect public health such as a traffic light on Garvanza and Avenue 64.

There was also no study was done to ensure that the Fire Department response times would not be impacted by this project. Finally, the Director of Planning did not investigate whether it was economically possible to build a smaller more environmentally sound project that would comply with HPOZ guidelines. It is ridiculous to determine that any and all blatantly unsafe conditions and health hazards will be tolerated based solely on some undefined and unstudied determination that building a project that is safe and does not harm residents would make providing 3 units of housing to extremely low-income residents unaffordable. The City lacks substantial evidence to support this finding.

2. The Director's Determination Grants Excessive Incentives In Violation of Measure JJJ, Los Angeles Municipal Code, General Plan Framework, Northeast Los Angeles Community Plan, City Charter Sections 555 And 558.

This Project was granted more incentives than permitted by Section 6. Section 6 limits the number of incentives or concessions to "either two or three incentives or concessions based upon the requirements set forth in California Government Code Section 65915(d)(2)." (LAMC 12.22 A.31(b)(2)(iii)). Government Code section 65915(d)(2) provides for one incentive if a project includes 10 percent or less affordable

units, which is all the affordable units provided by this Project. Thus, the Project applicant sought and was unlawfully granted three ministerial incentives plus an additional discretionary incentive:

- A 50-percent increase to density to allow a total of 33 units in lieu of 22 base units;
- A 40-percent increase in floor area or a 2.75:1 FAR (whichever is greater) in lieu of a 1.5:1 FAR;
- A parking reduction to allow 0.5 spaces per bedroom in lieu of 2 spaces per bedroom; and
- An increase in height of one (1)-story or 11 feet to allow a maximum height of three (3) stories or 41 feet in lieu of the two (2)-stories or 30 feet as otherwise allowed per Height District 1XL.

(LOD, p. 9.)

No additional or discretionary incentives are permitted for TOC projects and thus, the Project has been granted incentives in excess of those allowed by Measure JJJ and the LAMC. Further, the Project's side yard is less than what is prevailing on Garvanza Avenue, providing an additional undisclosed and improper incentive for the Project.

The granting of TOC incentives in the absence of a General Plan Amendment or Transit Neighborhood Plan violates LAMC section 11.5.8, which clearly states that "No amendment to a plan for any of the 37 planning areas, including reduction in the number of such areas...land uses permitted within or at any particular location ...or any other material change, may be made until the completion of a comprehensive assessment of such proposed changes by the Planning Department to ensure that such changes do not...." Any non-material change to a land use must also include "a program to create and monitor an inventory of units within the Community Plan Area...." (*Ibid.*). There is no evidence in the record that a comprehensive assessment has been done for this Community Plan and specifically this unique Transit Oriented Communities Affordable Housing Incentive Area that would permit a material change (intensification and densification) resulting in a project that is out-of-scale with the community and out of compliance with the Highland Park - Garvanza HPOZ Preservation Plan.

Measure JJJ Section 4.B states that "The current plans for the 37 planning areas shall remain in full force and effect until or unless the City Council votes to amend them in accordance with this section." No such amendment has been approved for the Northeast Los Angeles Community Plan. Furthermore, such an amendment must be consistent with all the other elements of the General Plan and comply with Mandatory

Policies under the General Plan Framework (e.g., Policy 3.3.2) as well as with the published appellate decision that generated this mandatory policy requiring balancing adequate infrastructure and public services for an increase over allowable density and intensity.

3. The Project Applicant Already Has Violated the LAMC.

In addition to the LAMC violations resulting from the approval of the Director's Determination, the Project applicant has also violated the LAMC by removing an existing billboard on the Project without obtaining a certificate of compatibility as required by LAMC section 12.20.3(L). Any removal of existing structures on a non-contributor site within an HPOZ requires approval of a certificate of compatibility. (See Section B.)

B. The Director's Determination Erred in Issuing a Certificate of Compatibility.

LAMC section 12.20.3.L requires approval of a certificate of compatibility for development on non-contributor sites within an HPOZ. The intent of this requirement is to ensure development within an HPOZ is compatible with the character of the HPOZ. In doing so, it must be determined whether a proposed project is consistent with the Preservation Plan adopted for the HPOZ. Without a certificate of compatibility, a project on a non-contributor parcel in an HPOZ cannot be approved.

Here, the Project is ineligible for a certificate of compatibility because the Project is not consistent with the adopted Highland Park-Garvanza HPOZ Preservation Plan. Thus, the Director's Determination erred in issuing a certificate of compatibility and violates LAMC Section 12.20.3.L.4.

1. History of the Highland Park-Garvanza HPOZ.

Garvanza is a community of preservationists who have become activists to preserve Historic Garvanza. They were drawn to the community because of its history, homes, trees and the community that values and works to preserve it. This community has architects, artists, historians and longtime residents who were involved in forming the Garvanza portion of the HPOZ. Some of these longtime residents have served on the HPOZ including Charles Fisher and John David McIntyre. Others were involved with walking the streets of Garvanza before the Survey was completed to establish whether the proposed HPOZ had enough residences that qualified as contributors. This included members of the Garvanza Improvement Association, an organization that was founded in approximately 1905, members of the Highland Park Heritage Trust which was

established in 1981. These members included Rosa Rivas, a longtime resident of Garvanza and Tina Gullota-Miller. Each has been involved with preservation of the Garvanza community. Charlie Fisher, a local historian has been involved with the designation of more Cultural Historic Monuments in the City of Los Angeles than anyone else in the City. Additionally, since the beginning, Garvanza has housed artists and continues to do so today. These residents helped to write the Highland Park Garvanza HPOZ Preservation Plan Guidelines and are experts on the historic resources in their community.

On October 9, 2007, Ordinance 179,277 was passed to protect the historic features of Garvanza. Rosa Rivas, Tina Gullota-Miller, Charlie Fisher, the HPHT and the Garvanza Improvement Association were moving forces behind this Interim Control Ordinance (ICM) which was passed to give the community time to establish a Garvanza HPOZ. The ICM revealed circumstances similar to today. The ICM specifically mentioned “large-scale construction, which is historically, culturally and architecturally incompatible with the adjacent properties.” (Exhibit Y.)

On October 1, 2010, Ordinance 181,326 was passed in the City of Los Angeles designating the addition of Garvanza to the Highland Park HPOZ. (Exhibit AA.) In this ordinance, there were only one block and seven parcels were zoned Q C4 1XL HPOZ. The block included the proposed Project site. (Exhibit Z.) The ordinance stated the “invaluable historic and cultural” of the Garvanza neighborhood, as an example of late 19th, early 20th Century town development, a breeding ground for the influential Southern California Arts and Crafts movement, and retention of structures of styles typical of their respective eras of architectural significance, Period Revival, Craftsman and Victorian. (Ordinance 181,326.) Further, “Garvanza contains 11 City-designated Historic Cultural Monuments along with original natural and design features such as vegetation, topography and street pattern.” (*Ibid.*)

2. Requirements of the Garvanza Preservation Plan.

The Highland Park-Garvanza HPOZ Preservation Plan was adopted by the City on December 9, 2010. (Exhibit C.) The intent of this adopted Preservation Plan include provisions to: “Preserve and enhance the buildings, Natural Features, sites and areas which are reminders of Highland Park and Garvanza’s history and unique and irreplaceable assets to the City [and p]rovide clear guidelines for rehabilitation, new construction, and relocation of structures.”

The Preservation Plan includes provisions to address residential infill on non-contributing sites, which apply to multi-family residential development. New construction is required to “take cues from its context and surroundings. (Exhibit C, p.

85.) There are also provisions specific to the form of courtyard apartments such as the proposed Project:

1. New Courtyard Apartment structures should reflect the scale of surrounding historic residential structures.
2. Structures should be arranged on their lots in an L or U shape around a central courtyard which is open to the street.
3. Lower scale structures may have individual exterior entryways for each unit. These entryways should each be marked by its own porch. Common balconies or porches spanning more than two entryways are discouraged.
4. The central courtyard area should be extensively landscaped. Water features and fountains are encouraged.
5. The architectural style and materials of the new structure should reflect an architectural style appropriate to the surrounding historic area.
6. Parking areas should be located to the rear or beneath the structure.
7. All buildings within the court should be designed in a cohesive architectural style which reflects an architectural style common in the surrounding neighborhood.

(Exhibit C, p. 89.) In addition to these guidelines specific to courtyard apartment form, compliance with provisions addressing setting, location and site design, massing and orientation, roof forms, windows and doors, and materials and details are also required for the Project.

Additionally, because the ground floor of the Project includes commercial infill, the Project must also be consistent with the Preservation Plan guidelines addressing commercial infill. (Exhibit C, pp. 107-110.) The form provisions for commercial infill include:

1. The facades of new structures in commercial areas should maintain the setback of existing historic structures along the street front. Where varying setbacks exist, new construction should attempt to function as a buffer by providing a variable setback.
2. New structures should reflect the traditional widths of historic structures in the area. If a structure is proposed that is wider than most individual historic structures along a street, the new structure should be broken into appropriately-sized modules.

Guidelines pertaining to mass, scale and form include:

1. New structures should maintain the average scale of historic structures within the area.

3. New structures that are taller than existing historic commercial structures in the area should be designed to emphasize the existing cornice heights in the area.

Further guidelines on materials and details:

1. Building materials should be similar to those used historically.

A stucco commercial structure on a street comprised mainly of masonry commercial structures would be inappropriate.

4. The colors and dimensions of permanent finish materials, such as brick, tile, and stucco, should be similar to these used historically.

And, guidelines for building openings require “the ground floor of new commercial structures, a majority of the primary architectural façade should echo traditional retail storefronts. The use of a bulkhead, expansive storefront windows, recessed entries and transoms are encouraged.”

As discussed below, the Project is inconsistent with a number of these provisions.

3. Determination of the Garvanza HPOZ Board.

An HPOZ Board consists of appointed members with expertise in construction, real estate, architecture and historic resources. The majority of the members must be residents of the HPOZ. Each HPOZ Board is tasked with reviewing projects for conformance with the guidelines in the adopted Preservation Plan for their district. The Garvanza HPOZ Board consists of members with the required expertise. The experts found the Project to be incompatible with the Garvanza HPOZ and inconsistent with the requirements of the Garvanza Preservation Plan.

The importance of this site to the Garvanza HPOZ was well documented to the HPOZ Board. Residents at the February 9, 2021 and February 23, 2021 HPOZ Board hearings also emphasized property’s historical significance and the importance of this property as the Gateway to Garvanza, requesting that any development on the site reflect the importance of the site to the Garvanza portion of the HPOZ. Civic groups such as the Highland Park Heritage Trust, Garvanza Improvement Association, Historic Highland Park Neighborhood Council and San Pascual Arroyo Seco Wildlife Preservation also commented on the site. (Exhibits E, F, I, J, M, and N.)

Importantly, the HPOZ Board recommended denial of the project in its February 23, 2021 meeting. (Exhibit D.) During that meeting, Board Members expressed concerns with the Project’s massing, large scale, and apparent lack of relation to the

historical structures in the Highland Park-Garvanza HPOZ. (*Ibid.*) In making a motion to recommend denial of the Certificate of Compatibility, HPOZ Board President Jonathon Silberman recognized the site's historical significance, stating "I think we also can all agree that this is an incredibly significant site within the neighborhood and it's a challenging site to develop, but also there's tremendous opportunity to get it right. (*Ibid.*) The precedent setting nature of this Project for large portions of the HPOZ was also one of the determinative factors in denying a certificate of compatibility for the Project as proposed.

More specifically, the HPOZ Board found that the Project is substantially inconsistent with Preservation Plan provisions because:

- It fails to maintain setbacks of existing historic structures along the street front.
- The massing is drastically out of scale with other sites within the HPOZ, including its width, height and general massing.
- The finish materials are inconsistent with those used historically.
- The ground floor commercial does not echo traditional retail storefronts.
- Incompatible entryways.

(Exhibit D.)

The Highland Park-Garvanza HPOZ Board members are experts in interpreting and advising on the HPOZ Guidelines in Garvanza. Their determination that the project is not compatible with the HPOZ guidelines and denial of the certificate of compatibility was based on that expertise.

4. The Director's Determination Issuing the Certificate of Compatibility Lacks Evidentiary Support.

Despite the recommendation of the expert HPOZ Board and overwhelming evidence to the contrary that has been submitted to the City, the Director's Determination found the Project to be consistent with the Garvanza Preservation Plan and issued a certificate of compatibility. For each of the Director's Findings we have attempted to match HPOZ board member's statements and comments from letters submitted by Historic Preservation groups and community members regarding that particular guideline.

a. The Project is Incompatible with Preservation Plan Provisions Regarding Setbacks and Requiring Infill to Reflect Historic Structure Widths.

11.2.1: The Director's Determination claims that a zero to six foot set back is typical of commercial buildings on commercial blocks in the HPOZ. This claim is not entirely accurate and, more importantly, does not address the applicable Preservation Plan provision that focuses on setbacks on the adjacent street front. Although a number of commercial buildings have zero foot setbacks, the Highland Park-Garvanza HPOZ is large and has a variety of setbacks with some of the commercially zoned buildings having more substantial setbacks. Additionally, the adjacent street front includes substantially larger setbacks. The mostly residential property on Garvanza adjacent to the Project site has a 19-foot setback. This property is zoned similarly to the Project and cannot be 100 percent residential. The 1948 apartment building across the street and its commercial buildings also have varying setbacks. The apartment building has a setback between 8 and 12 feet and the commercial buildings has varied setbacks, one leads to an older home. The 1905 Corner Building that is kitty-corner to the Project site at 200 N. Avenue 64 (6405 E. Garvanza Avenue) sits on two parcels, and one of its buildings has a setback of about 50 feet. Another building at 6415 Garvanza Ave. has a setback of 20 feet. (Exhibit R.)

This Project is mostly residential with only 1910 square feet of commercial. The Director's Determination has erred in stating that the residential setbacks range from less than 1 feet to 21 feet. There are no currently existing residential properties across Garvanza that have a setback less than 1 foot. The properties on Garvanza across from the project are residential and the average setbacks of the residential properties are 12.2 feet. Additionally, the setback on the property adjacent to the Project site on the south side of Garvanza is 19 feet. (Exhibit M.)

11.2.2 and 11.2.3: This Project is mostly residential with only 1910 square feet of commercial uses. It is located across Garvanza Avenue from residential properties which are no taller than 15 feet. The Project is a wide three story 39.5-foot building built with almost no setbacks, clearly out of scale with surrounding development. Such an oversized building, which residents have likened to the appearance of a medical building is inappropriate as the gateway to the Garvanza HPOZ. It does not reflect the traditional widths or setbacks of the surrounding historic properties.

The Sapphos report points to the neighboring property having a 30-foot height, but this building is much narrower, it is not one solid block as is the Project. The building referred to is the elegant 1905 Dr. Smith Queen Anne that the HPHT calls "one of the most iconic properties in Garvanza." The Stewart Farmhouse, Historic Cultural Monument (LA-1028) likewise has a peak at 30 feet again not a massive block of building which is all around 39.5 feet with elevator shafts that will rise even higher. The Sapphos report also, points to the Towner Hall Building at 200 N Avenue 64/6405 E.

Garvanza incorrectly stating its height at 33 feet. However, documents provided in the San Pascual Arroyo Seco Wildlife Preservation letter note that the height in LADBS Building permits indicated its height is 30 feet at its peak, 10 feet shorter than the proposed Project. The HPOZ found that this Project is incompatible with Commercial Infill guideline 2 because it **“is one large structure and the massing is drastically out of scale with other examples within the area.”** (Exhibit D.)

b. The Courtyard Design Is Incompatible with Preservation Plan Provisions.

Additionally, the U-shaped design is unlike any other courtyards in Garvanza. The courtyard buildings in Garvanza have light and are a community place. The inner courtyard in the Project will be a dark place where sunlight will not penetrate. (Exhibit G, HHPNC Community Impact Statement.) Sylva Blackstone, retired arborist stated that the plants listed in the landscape plan will not grow because sunlight will not be able to penetrate to the first floor of the courtyard. Thus, the Project is inconsistent with Courtyard Apartment guidelines 1 and 4.

c. The Project is Incompatible with Preservation Plan Provisions Pertaining to Building Mass and Scale.

11.3.1. Without evidentiary support, the Director’s Determination found the Project is consistent with Preservation Plan provisions requiring compatibility with the scale of historic structures in the area. The Director’s Determination contorts facts in an attempt to support this finding, citing to two contributing commercial structures in the HPOZ that are between 15 and 35 feet in height, claiming this building is similar in height and massing. The reference to a 35-foot-tall building is factually incorrect. The Towner’s Hall building at 200 N Avenue 64 is more likely 30 feet as indicated in the building permit and 2 stories. In the pictures, it is obvious that the estimations used by SAPPHOS are off. Further, there is a big difference between an elegantly shaped building with peaks, a historic brick building also with a peak and a 39.5 foot building that presents as a block.

The Director’s Determination also claims that remaining contributing structures in the surrounding area are 15 to 30 feet tall. This fails to recognize that the Project is 10 to 25 feet taller than the existing buildings, and is of a significantly greater massing.

The HPOZ Board was clear in its recommendation that there was no evidence to support such a finding. “[T]he issue of the massing of this thing is the biggest problem and it[‘s] got to be broken up somehow and I think the buildings ought to be a little bit

smaller... the building has to be a more honest expression of its structure and what exists and it has to be opened up more visually to be more compatible with the neighborhood which is little buildings. The lack of setbacks on the elevations facing Garvanza Avenue and Avenue 64 create a looming presence that would dominate the surrounding neighborhood, incompatible with the surrounding HPOZ.

Additionally, the following commentors addressed the incompatibility of height and scale: HPHT (Exhibit I); Garvanza Resident Amy Ludwig (Exhibit P); San Pascual Arroyo Seco Wildlife Preservation (Exhibit M); John David McIntyre former HPOZ Board Member (Exhibit Q); Van Webster, Commercial Property Owner and Resident, Garvanza (Exhibit R).

d. The Project is Incompatible with Preservation Plan Provisions Pertaining to Building Form.

11.3.2 The Director’s Determination found the Project is consistent with the Preservation Plan provision prohibited formless development of simple box design with no vertical delineation. The HPOZ Board and commentors provide evidence disproving this claim. The HPOZ Board found “This is one large structure and the massing is drastically out of scale with other examples within the area.” HPHT provided comments that the “building design continues to include large flat surface planes across the entire two street frontages and the alley without providing appropriately sized modules to break up the façade as required by the Preservation Plan guidelines. The inefficient plan and box-like form proposed has changed very little despite many comments expressed at the previous HPOZ meeting.”

e. The Project is Incompatible with Preservation Plan Provisions Pertaining to Building Height.

11.3.3. The Preservation Plan requires that new structures that are taller than existing historic commercial structures in the area to be designed to emphasize the existing cornice heights in the area. The Director’s Determination found the Project to be compatible, inaccurately claiming the cornice line echoes the height of similar structures in the area. As discussed above, the reference to a 35-foot tall commercial building is inaccurate. Thus, this Project is 10 to 25 feet taller than existing historic commercial structures, a significant and out-of-scale difference. The HPOZ Board found the Project “is so drastically out of scale with the average scale it’s just it’s not it really feels like a non-starter.” (Exhibit D.)

f. The Project is Incompatible with Preservation Plan Provisions Pertaining to Roof Form.

The Director's Determination relies on the guidelines pertaining to commercial infill to claim the roof form of the Project is compatible with the Preservation Plan. However, the overwhelming majority of the building is residential and thus the guidelines pertaining to residential infill are the applicable standards. Residential infill guideline 9.5.1 states that "New residential structures should echo the roof forms of the surrounding historic structures." The Project includes a flat roof, whereas surrounding historic structures have hips and gables. The flat roof design does not speak to any of the representative architectural styles in Garvanza. (Exhibit P.) San Pascual Arroyo Seco Wildlife Preservation provided comments that: "The massing, scale and roof forms do not fit in this neighborhood and are inappropriate as an anchoring gateway building to the HPOZ.... Similar roof forms repeated on a street help create a sense of visual continuity along a street front. Roof pitch, materials, size, orientation, eave depth and configuration, and roof decoration are all distinct features that contribute to the character of a roof." Yet this Project is introducing a new roof form with screens, and elevators.

g. The Project is Incompatible with Preservation Plan Provisions Pertaining to Materials and Details.

The Preservation Plan requires infill development to have building materials that are similar to those used historically. The Director's Determination lacks evidentiary support for its claim that the Project's brick veneer meets this requirement. The other brick buildings in the area are actually brick buildings, not inferior and incompatible brick veneer. Additionally, stucco is used on this building in the alleyway. Resident's approaching this building from the Arroyo Parkway which is a California Scenic byway and National Resource will see a stucco building.

The HPOZ Board found the Project did not meet this Preservation Plan guideline, finding the design to be too modern and the "materials are really not similar to those used in relevant examples of historic structures in the area." (Exhibit D.) The HPOZ Board was particularly opposed to the use of brick veneer, identifying that there is a big difference between real brick and brick veneer. (See also HPHT Comments, Exhibit I.)

Additionally, the use of stucco is deemed to be inappropriate by the Preservation Plan. The Director's Determination claim there are no inappropriate materials being proposed is belied by the fact that the rear of the building is stucco. The HPOZ Board found there should not be stucco in this project at all. (Exhibit D.)

h. The Project is Incompatible with Preservation Plan Provisions Pertaining to Openings, Storefronts and Entries.

The HPOZ Board found the Project's ground floor commercial does not echo traditional retail storefronts as it should. (Exhibit D.) The Board also found "there's no sort of designated entrance in a design sense." This is despite a Preservation Plan requirement that primary entryways should be clearly marked.

C. The Project Does Not Qualify for a Categorical Exemption to CEQA.

The Director of Planning improperly found that the Project qualified for a CEQA exemption. Even if a categorical exemption applied, exceptions apply to preclude exemption.

1. The Project Does Not Meet the Requirements of a Class 32 Exemption.

The City improperly relies on a Class 32 exemption to CEQA review. To rely on a Class 32 exemption, it is the City's burden to demonstrate, based on substantial evidence, that 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," that approval of the Project "would not result in any significant effects relating to traffic, noise, air quality, or water quality," and the Project will be adequately served by all required utilities and public services. (CEQA Guidelines § 15332.) The City has not met this burden.

Moreover, the City does not have discretion to interpret the requirements included in CEQA's Class 32 exemption. The interpretation of the language of the guidelines implementing CEQA or the scope of a particular CEQA exemption presents "a question of law, subject to de novo review" by a court. (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1252; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1192.) "[A categorical] exemption can be relied on only if a factual evaluation of the agency's proposed activity reveals that it applies." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.) "[T]he agency invoking the [categorical] exemption has the burden of demonstrating" that substantial evidence supports its factual finding that the project fell within the exemption. (*Ibid.*)

The Director's Determination improperly found that the Project was exempt from CEQA under a Class 32 Categorical Exemption for in-fill projects. (CEQA Guidelines § 15332.) To claim a Class 32 exemption, a project must meet several criteria, including

consistency “with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations,” no significant effects relating to traffic, noise, air quality, or water quality, and adequate service by all required utilities and public services. (*Ibid.*) The Project fails these three requirements because it is inconsistent with the Northeast Los Angeles (“NELA”) Community Plan and Highland Park-Garvanza HPOZ Preservation Plan, because it will have significant noise, traffic, and water quality impacts, and because it will not be adequately served by public utilities. Thus, the Project cannot be approved under a Class 32 Exemption.

Further, the publicly posted Director’s Determination failed to provide reasoning for finding that the Project warranted a Class 32 Exemption. The Director’s Determination directed readers to “[s]ee Justification for Categorical Exemption Case No. ENV-2020-3913-CE in the case file for the narrative demonstrating that the proposed project meets the five (5) criteria under Class 32 and that exceptions do not apply,” but this “Justification for Categorical Exemption” document was not included as an appendix to the Determination, nor, as far as Appellants can tell, posted publicly. The Director’s Determination is required to “bridge the analytic gap between the raw evidence” and its “ultimate decision.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) Without providing its reasoning for application of the Class 32 Exemption in the Director’s Determination, it fails to bridge that gap here.

a. The Project is Inconsistent with the Northeast Los Angeles Community Plan or the Highland Park-Garvanza HPOZ Preservation Plan.

The Project is inconsistent with several objectives of the Northeast Los Angeles Community Plan (“NELA CP”). (NELA CP attached as Exhibit X.) The Project does not preserve and enhance the residential character and scale of existing single- and multi-family neighborhoods as required by NELA CP Objective 1-3, as it will bring an outsized structure that does not contribute to the historical character of the Highland Park-Garvanza HPOZ. The Project is inconsistent with NELA CP Policy 1-3.1, as it does not protect the quality and scale of the residential environment through attention to the appearance of new construction including site planning and compatible building design. (NELA CP p. III-6.) The Project is also inconsistent with NELA CP Policy 1-3.2, as it has failed to consider the neighborhood character and aesthetics, identity, compatibility of land uses, impacts on livability, services, public facilities, and traffic levels, when changes in residential densities are proposed. (NELA CP p. III-6.)

The Project is also inconsistent with NELA CP Objective 1-3 as it fails to preserve and enhance neighborhoods with a distinctive and significant historical or architectural character. The HPOZ Board’s recommendation to deny a Certificate of Compatibility

with the Highland Park-Garvanza HPOZ Preservation Plan on the basis of its incongruity with the historical character of the neighborhood demonstrates the extent of the Project's inconsistency with NELA CP Objective 1-3. (Exhibit D.)

The Project is inconsistent with NELA CP Objective 1-6, which obligates the City “[t]o promote and ensure the provision of fair and equal housing opportunities for all persons regardless of income and age groups or ethnic, religious, or racial background.” Projects such as this one are putting upward pressure on rents, which exacerbates gentrification and displaces the historically Latinx community in the neighborhood. (See, e.g., Exhibits J, V, BB.)

The Project is inconsistent with NELA CP Policy 2-1.2, “Protect commercially planned/zoned areas, from residential-only development.” (NELA CP p. III-11.) Although the Project site is zoned for commercial uses ([Q]C4-1XL-HPOZ), the Project provides minimal space for commercial uses—only 1,910 square feet out of a total 59,029 square feet. (LOD, pp. 8-9.)

The Project is inconsistent with NELA CP Goal 2-2.2, “Require that projects in commercial areas be designed and developed to achieve a high level of quality, distinctive character, and compatibility with appropriate existing uses and development.” (NELA CP p. III-12.) Residents and community experts have provided substantial evidence that the current Project does not meet this requirement.

The Project is inconsistent with NELA CP Policy 9-1.1, “Promote land use policies that enhance accessibility for fire fighting equipment and are compatible with effective levels of service.” (NELA CP p. III-21.) The co-living aspect of the proposed Project, which will bring an influx of residents into an already congested areas, is not compatible with this goal. Garvanza leads to hillside communities whose major exits are one or two streets. Avenue 64 is a major arterial from Garvanza.

The Project is inconsistent with NELA CP Goal 14, “A COMMUNITY WHICH PRESERVES AND RESTORES THE MONUMENTS, CULTURAL RESOURCES, NEIGHBORHOODS AND LANDMARKS WHICH HAVE HISTORICAL AND/OR CULTURAL SIGNIFICANCE.” (NELA CP p. III-31.) The Project is inconsistent with NELA CP Objective 14-1, “To ensure that the Plan Area's significant cultural and historical resources are protected, preserved and/or enhanced.” This project does not support this objective and is endangering historical resources by setting precedent in not following HPOZ guidelines. (See Section B above.)

The proposed Project does not support the Northeast Los Angeles Community Plan Goals to protect existing stable single-family and other lower density residential

neighborhoods from encroachment by higher density residential and other uses that are incompatible as to scale and character or would otherwise diminish the quality of life. The guiding principle for the land use and zoning recommendations contained in the Northeast Los Angeles Community Plan is to constrain future residential development to the densities that have already occurred in the neighborhoods throughout Northeast Los Angeles.” (NELA CP p. III-4.)

The Project is inconsistent with NELA CP Policy 14-2.1, “Encourage the preservation, maintenance, enhancement and adaptive reuse of existing buildings in commercial areas through the restoration of original facades and the design of new construction which complements the old in a harmonious fashion, enhancing the historic pattern.” This Project fails to complement or harmonize with the existing Garvanza historic resources and neighborhood.

Further, for the reasons described in Section B above, the Project is also inconsistent with the Highland Park-Garvanza HPOZ Preservation Plan. (Exhibits H, I, M, P.)

Due to the Project’s inconsistencies with the Northeast Los Angeles Community Plan and the Highland Park-Garvanza HPOZ Preservation Plan, the Project fails to qualify for a Class 32 exemption.

b. The Project May Result in Significant Effects Relating to Traffic, Noise, and Water Quality.

A traffic and parking study is necessary to evaluate the Project’s transportation impacts. (Exhibit E.) While a scant traffic study was prepared, it includes little more than a bare conclusion on the trip generation from the Project. As noted by HPNCC, the co-living design of the Project undermines the limited assessment: the co-living design “could invalidate traffic and parking studies, as well as critical infrastructure planning based on inaccurate density projections for the Project.” (Exhibit F.) The Project’s Trip Generation Study does not adequately assess trip generation and probably heavily discounts trip generation by calculating vehicle trips using only 33 units. (NOE, p. 118.) In calculating trip generation, the study used assumptions for multifamily housing projects; however, these assumptions may not apply as the project is co-living housing. (*Ibid.*) Because the project is co-living and not multifamily housing, each resident of a unit—which could house 5 to 10 residents—may have a car and make trips daily. Thus, the Trip Generation Study should either revise its assumptions about the type of housing represented by the Project or increase the number of units input into the study in order to more accurately reflect the number of daily trips generated by the project.

The City has recognized the potential impacts associated with co-living projects and has recently passed a motion asking the Planning Department to prepare an ordinance regarding co-living units and where they can and cannot be placed. These units are currently unregulated, with unknown and unanalyzed increases in impacts, including traffic levels, above standard multi-family housing. Based on the design of the Project as a co-living project, and the traffic study's failure to assess traffic impacts of co-living units, the City lacks evidence to support the necessary finding that the Project would not result in any significant impacts related to traffic. The addition of 33 units likely housing 250 to 300 residents (Exhibit P, Ludwig Letter) to an already densely populated neighborhood will increase both traffic and noise. NELA CP Policy 1-3.2 also requires that changes to "traffic levels" be considered when changes in residential densities are proposed. Given the influx of residents and visitors that the Project will bring to the area, this significant increase in traffic generation disqualifies the Project from reliance on a categorical exemption.

The traffic study also failed to address the Project's traffic safety impacts. In addition to the significant underestimation of Project traffic levels, the Project also includes design features that could result in traffic safety impacts. The Project could result in significant traffic safety impacts to residents leaving the property through the alleyway. Vehicles making left hand turns from this alley could endanger themselves, pedestrians, cyclists and motorists on the adjacent streets.

The Project must also be evaluated for noise impacts. Construction noise necessary to excavate for the two levels of subterranean parking will adversely impact the surrounding residents and other sensitive receptors. Traffic entering and exiting through the alleyway will cause significant noise to the tenants living at the adjacent property. The Project site is in close proximity to multiple sensitive receptors, including the adjacent residential neighborhood, Luther Burbank Middle School, Garvanza Elementary School, Highland Park Senior Citizen Center, C3 Los Angeles Church, Good Shepard Lutheran School, California New Canaan Presbyterian Church, and Antioch City Church.

The Project may also have significant impacts to water quality. The census tract in which the Project is located shows elevated levels of drinking water contaminants in CalEnviroScreen 3.0 due to past contamination from dry cleaners. (Exhibit N.) Given this pollution, the potential impacts of excavation, grading, other construction-related activities, and operation of the Project on water quality must be evaluated in an EIR.

c. The Project Site is Not Adequately Served by All Required Utilities and Public Services.

To qualify for the exemption the City must prove that “[t]he site can be adequately served by all required utilities and public services.” (CEQA Guidelines §15332.) Currently, there is no connection to the sewer line. It is questionable if the aging sewer infrastructure along Avenue 64 and Garvanza will be able to handle 33 units with 151 bedrooms, 126 bathrooms and a 1,910 square foot commercial space. (Exhibit F.) Indeed, residents in the area have experienced problems with the water lines and sewers. One weekend all of the water had to be turned off because a main line broke. (Exhibit N.)

2. Even If A Categorical Exemption Were Applicable, Exceptions Apply to Preclude Reliance on an Exemption.

a. The Project May Adversely Impact 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.” (CEQA Guidelines § 15300.2(f), emphasis added.) Under this exception, a categorical exemption cannot be relied upon if there is a fair argument supported by substantial evidence that the project may have a significant adverse impact on an historic resource.

As described above in Section B, the Project may adversely impact the historic character of the Highland Park-Garvanza HPOZ, especially at the Gateway to the Garvanza. The Project’s massing, large size, and design does not comport with the historic neighborhood. The experts on the HPOZ Board recognized these issues with the Project’s design and recommended denial of the Project. (Exhibit D.) Members of the public, as noted in the Historic Highland Park Neighborhood Council’s Community Impact Statement, expressed these concerns as well. (Exhibits F, G.) Such comments constitute a fair argument supported by substantial evidence that the project may have a significant adverse impact on historic resources. (*Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129, 1145; *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 375-76.)

b. The Project Has Unusual Circumstances That May Result in a Significant Impact.

CEQA prohibits use of a categorical exemption when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” (CEQA Guidelines § 15300.2, subd. (c).) “[A]n unusual

circumstance refers to ‘some feature of the project that distinguishes it’ from others in the exempt class. In other words, ‘whether a circumstance is “unusual” is judged relative to the typical circumstances related to an otherwise typically exempt project.’” (*Voices for Rural Living v. El Dorado Irrigation Dist.* (2012) 209 Cal.App.4th 1096, 1109.)

Here, the Project’s co-living aspect is an unusual circumstance that distinguishes it from the typical projects for which a Class 32 project is applied. Other infill projects that have been upheld applying the Class 32 exception include a 98-unit mixed-use development with substantial amounts of affordable housing or senior affordable housing to address a need for senior housing in that community (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1337), construction of seven condominium units (*Holden v. City of San Diego* (2019) 43 Cal.App.5th 404, 407); and an eight-unit multifamily residential building. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 85.) Co-living projects are unregulated by the City, despite an acknowledgment that rules pertaining to this unique type of development are required.

The Project is nothing like other projects allowed to rely on Class 32 exemptions. It will bring in 33 units with 151 bedrooms, each of which could be occupied by two to three people, thus having a total occupancy anywhere from 151 to 453 residents. (Exhibit F.) Such an influx of residents would likely have significant impacts on the traffic, noise, and public utility infrastructure in the local neighborhood.

Further, as discussed above, the unusual circumstances of the co-living design are where the Project’s impacts are derived. (Section III.) The attached detailed comments provide substantial evidence to support a fair argument that the unusual co-living design of the Project may result in significant adverse impacts. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1114.) Thus, the Project cannot rely on a categorical exemption.

Conclusion

For the aforementioned reasons, the appeal of the Director’s Determination for the Project should be granted. Appellants reserve the right to supplement this Appeal at future hearings and proceedings for this Project. (See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120.) Finally, on behalf of Appellants, we request notification for all future hearings, decisions, determinations, and other similar actions related to the Project Approvals per state/local law requiring local agencies to mail such notices to any person who has filed a written request for them. (See e.g., Pub. Res. Code §§ 21092.2, 21167(f); Gov. Code § 65092;

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LAMC § 197.01.F.) Please send notice by electronic and regular mail to: Amy Minter, Chatten-Brown, Carstens & Minter at the addresses included above.

Sincerely,



Amy Minter

Attachment to Appeal Form

Attachment 1: Additional Appellants and Appellants Ownership/Tenancy Information

Exhibits to Statement of Appeal

Exhibit No.	Description
A	Letter of Determination
B	Declaration of Clara Solis & Tani Kaye
C	Highland Park - Garvanza HPOZ Preservation Plan Guidelines
D	Transcript of HP Garvanza HPOZ Board Findings & Decision
E	HHPNC Letter dated 8/17/2020
F	HHPNC Letter dated 9/10/2020
G	HHPNC Community Impact Statement date 3/4/2021
H	HPHT Letter dated 8/24/2020
I	HPHT Letter dated 2/7/2021
J	Garvanza Improvement Association Letter dated 1/31/2021
K	Solis, Clara Letter dated 8/24/2020
L	TOC Binder dated 8/21/2020 San Pascual Arroyo Seco Wildlife Preservation letter submitted
M	2/9/2021
N	San Pascual Arroyo Seco Wildlife Preservation dated 5/6/2021
O	SPAS Exhibits 1 and 2

P	Ludwig, Amy letter dated 2/5/2021
Q	McIntyre, John David Letter
R	Webster, Van Letter
S	Letters from Community Members
T	Council File Action re Co-Living 21-0665
U	Planning and Land Use Committee Report 8/31/21 Co-Living
V	NELA Vulnerability Study 2018
W	Los Angeles Times Community Profile
X	Northeast Los Angeles Community Plan
Y	Ordinance Number 179277
Z	Ordinance Number 173541
AA	Ordinance Number 181326
BB	LA Times article re Marmion Royale Evictions