


TRANSMITTAL TO CITY COUNCIL

Case No. ENV-2011-818-CE	CD No. 11-Rosendahl
Planning Staff Name(s) and Contact No. Maya Zaitzevsky (213) 978-1416	Last Day to Appeal: Not Applicable
Name(s), Applicant/Representative, Address, and Phone Number	
Applicant: J. Anthony Kouba Bundy & Santa Monica LTD 1445 5 th Street Santa Monica, CA 90401	Representative: The McCarty Co. Attention: Tom McCarty 700 S. Flower Street, 11 th Floor Los Angeles, CA 90017
Name(s), Appellant/Representative, Address, and Phone Number	
Appellant: Marilyn Noyes 1539 South Saltair Avenue, Unit A Los Angeles, CA 90025 (310) 826-8747 marnoyes@msn.com	Representative:
<u>Project Description</u> An appeal of the West Los Angeles Area Planning Commission's decision dated, June 4, 2012, on the approval of the Categorical Exemption (ENV-2011-818-CE) for Case No. ZA-2011-817-CUB-CU-1A for the property located at 12112 West Santa Monica Boulevard in the West Los Angeles Community Plan Area.	
Prepared by: 	Date 6-20-2012

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

APPEAL TO THE: LOS ANGELES CITY COUNCIL

(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: ENV - 2011-818-CE; ZA-2011-0817- (CUB)(CU)

PROJECT ADDRESS: 12112 WEST SANTA MONICA BOULEVARD, LOS ANGELES, CA 90025

FINAL DATE TO APPEAL: JUNE 14, 2012

TYPE OF APPEAL:

1. ☐ Appeal by Applicant
2. ☒ Appeal by a person, other than the applicant, claiming to be aggrieved
3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: MARILYN NOYES

- Are you filing for yourself or on behalf of another party, organization or company?

☐ Self

☒ Other: WESTSIDE OF LOS ANGELES NEIGHBORHOOD AND COMMUNITY COALITION

Address: 1539 SOUTH SALT AIR AVENUE UNIT A

LOS ANGELES

Zip: 90025

Telephone: (310) 826-8747

E-mail: MARNOYES@MSN.COM

- Are you filing to support the original applicant's position?

☐ Yes

☒ No

REPRESENTATIVE INFORMATION

Name: MARILYN NOYES

Address: 1539 SOUTH SALT AIR AVENUE UNIT A

LOS ANGELES

Zip: 90025

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☒ Entire

☐ Part

Your justification/reason must state:

- The reasons 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

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."

--CA Public Resources Code § 21151 (c)

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

Appellant Signature: _____

Marilyn Noyes

Date: _____

June 14, 2012

Planning Staff Use Only

Amount

89

Reviewed and Accepted by

Ronny Giron

Date

6/14/12

Receipt No.

280456

Deemed Complete by

Shirley J. Smith

Date

☒

Determination Authority Notified

☐

Original Receipt and BTC Receipt (if original applicant)

**CEQA APPEAL TO THE LOS ANGELES CITY COUNCIL
FROM DETERMINATION OF
WEST LOS ANGELES AREA PLANNING COMMISSION**

CASE NO. ENV-2011-818-CE, ZA-2011-0817-(CUB)(CU)

**DETERMINATION DATE: JUNE 4, 2012
FINAL DATE TO APPEAL: JUNE 14, 2012**

**PROJECT ADDRESS:
12112 WEST SANTA MONICA BOULEVARD
LOS ANGELES, CA 90025**

APPLICANT: THE GREY DOG

**APPELLANT: MARILYN NOYES on behalf of WESTSIDE OF LOS ANGELES
NEIGHBORHOOD & COMMUNITY COALITION**

The Reason for the Appeal.

- (1) The Project should not have been granted approval and issuance of the requested CUB, because it has never been subjected to adequate environmental review as required by CEQA.
- (2) The Zoning Administrator erroneously determined that this project is categorically exempt from CEQA, despite the fact that the West Los Angeles Area Planning Commissioners acknowledged the uniqueness of the common alley which abuts the applicant's property and which is compromised by the loading and unloading of trucks which service the mini-shopping center.
- (3) The Applicant's Project Description is not accurate. It fails to describe aspects of the Project which are likely to have significant adverse impacts on the environment. The proposed reconfiguration of the Applicant's parking lot and subsequent displacement of vehicles and pedestrians to a high-traffic, saturated alley has not been analyzed by the Department of Transportation or the Bureau of Engineering, nor have proper mitigation measures been offered to offset the environmental impacts. This is clearly in violation of CEQA.
- (4) Furthermore, in a lengthy discussion, the Commissioners at the West LA APC expressed concern over the safety hazards and dangerous conditions of the roadway created by loading and unloading delivery and service vehicles in the alley that runs between the Mini-Shopping Center and the Applicant's parking lot.

- (5) Instead of delaying approval pending study and recommendation of mitigations by DOT and the Bureau of Engineering, the APC proposed its own mitigations by requiring that loading and unloading be done either on Ohio Avenue or in the Applicant's parking lot, deferring the determination of the specific mitigation of conflicts and safety hazards to some future date. Their making such a stipulation highlights the express need for CEQA-mandated mitigation analysis by qualified experts, which should have happened in advance of the granting of the CUB.

For these reasons, this project was erroneously granted a Categorical Exemption from CEQA.

How you are aggrieved.

The Westside of Los Angeles Neighborhood and Community Coalition represents individuals who reside near, work near, own businesses near or utilize businesses in close proximity to the Project Site; they will suffer as a result of the Project's adverse impacts on the environment. The configuration of the alley, the Applicant's parking area, and the businesses within the Mini-Shopping Center are unusual and create uncommon dangers. The unique configuration is so unusual that those members of the Area Planning Commission who have over the years frequented businesses within the Mini-Shopping Center didn't even realize that this adjacent, public alleyway was actually an alley. The extensive pedestrian cross-traffic and high degree of conflicting vehicular usage create ongoing conflicts which will be greatly exacerbated with the opening of the Grey Dog tavern and the mandated parking lot reconfiguration.

Specifically the points at issue.

The ZA deferred mitigation that would address the safety hazards and dangerous conditions posed by the removal of the existing driveway into the Applicant's parking area, which displaces all restaurant traffic into the heavily congested 2-way public alley. This is improper. The existing pedestrian cross-traffic, which is in conflict with vehicular use of the alley, creates a dangerous condition of the roadway that will be significantly exacerbated.

[See attached: WLNCC's APC Appeal; BRC Letter in support of APC Appeal.]

LADOT must study and weigh in on the current and future safety hazards and dangerous conditions and determine what if any mitigation measures are necessary to offset the dangerous condition that would otherwise be created by the project. The Commission improperly deferred examination of the needed mitigation measures until after project approval.

Why you believe the decision-maker erred or abused their discretion.

The Zoning Administrator and the WLA Area Planning Commission improperly granted a categorical exemption despite the reconfiguration of the parking area and alley, which will have a potentially significant impact on the environment, including the creation of a dangerous condition of the roadway. Moreover, after granting a categorical exemption, which necessitates a finding based on substantial evidence that the project will not create a potentially significant environmental impact, the Commission contradicted itself by requiring the applicant to relocate the service and delivery vehicles to one of two other locations, to be determined at a future date by City Agencies that have not yet studied the impacts that would result from making those changes. The ZA's decision to sign off on this project without environmental review and the Commission's approval of that determination should not have been made without a prior determination of appropriate mitigation measures by LADOT and the Bureau of Engineering.

Conclusion

This project is not properly subject to Categorical Exemption because a fair argument can be made that potential project impacts due to the parking lot reconfiguration are significant. Therefore the CUB should have been denied pending an Environmental Review and Mitigation measures implemented by the appropriate City Agencies.

JUSTIFICATION/REASON FOR APPEAL

1. The reason for the appeal.

(1) The Project has not been subjected to adequate environmental review, which must occur *before* the requested CUB can be approved and issued. The Applicant's Project Description is not accurate because it fails to describe aspects of the Project that are reasonably likely to have significant adverse impacts on the environment. As a result, the Project's potentially significant environmental impacts have not been disclosed or analyzed, nor have mitigation measures been offered to address these environmental impacts, in violation of CEQA.

(2) The Project's potential environmental impacts must be measured from a "baseline" of the currently existing environmental conditions. When measured against existing conditions, this Project will likely have a significant impact on the environment, which has not been described or mitigated.

(3) The Zoning Administrator erroneously concluded that the Project was subject to Categorical Exemption from CEQA, despite unusual circumstances that create a reasonable possibility that the Project will have a significant effect on the environment.

2. How are you aggrieved?

The membership of the Westside of Los Angeles Neighborhood and Community Coalition includes individuals who reside, work and own businesses in close proximity to the Project Site; those individuals will suffer as a result of the Project's adverse impacts on the environment.

3. Specifically the points at issue.

The environmental review is inadequate under CEQA because (1) the Project Description fails to include aspects of the Project that are reasonably likely to have significant adverse environmental impacts; (2) the significance of these impacts should have been (but were not) measured according to the CEQA-mandated formula of comparing existing physical conditions to the conditions that will obtain if the Project is approved, which demonstrates that the Project will have a significant impact on the environment; and (3) the Project is not subject to Categorical Exemption because unusual circumstances render the Project's likely environmental impacts significant.

Appeal to West Los Angeles Area Planning Commission
Appellant Westside of Los Angeles Neighborhood and Community Coalition
Case No. ZA-2011-0817-(CUB)(CU), ENV-2011-818-CE
Grey Dog Tavern, 12112 West Santa Monica Boulevard
Filing Date: March 9, 2012

4. Why you believe the decision-maker erred or abused their discretion.

(1) The Project was not adequately described in any environmental document. Under CEQA, the “Project Description” must include the entire “activity which is being approved and which may be subject to several discretionary approvals by government agencies.” *CEQA Guidelines* § 15378, *subd. (c)*. The term “project” under CEQA encompasses “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” *CEQA Guidelines*, § 15378, *subd. (a)*. For that reason, “the entirety of the project must be described, and not some smaller portion of it.” *San Joaquin Raptor Rescue Center v. Co. of Stanislaus*, 149 Cal.App.4th 645, 654 (2007) (citing *Santiago County Water District v. County of Orange*, 118 Cal.App.3d 818, 829-831 (1981)). This includes *all aspects* of the Project—“the whole of the project”—not just portions of the project that are subject to discretionary approval. In this case, the Applicant seeks a discretionary permit, a CUB, for a project that requires increased parking capacity from that which currently exists. Because that increased parking capacity requires that direct changes be made to the physical environment (as well as reasonably foreseeable indirect physical changes), the resulting environmental impacts must be considered in assessing the significance of the Project’s likely impacts. *CEQA Guidelines*, Section 21151, *subd. (a)*; *Center for Sierra Nevada v. County of El Dorado*, 202 Cal.App.4th 1156(2012).

The Project Description in this case fails to disclose the environmental impacts likely to arise from the Applicant's plan to reconfigure its parking lot to accommodate patrons of the future Grey Dog Tavern and the adjoining and existing IHOP Restaurant, which are located in the same structure and owned by the Applicant. The structure constitutes a Mini-Shopping Center under the Municipal Code. The existing parking was used by Blockbuster Video, the prior retail tenant of the structure now housing the IHOP Restaurant and the planned Grey Dog Tavern. The existing parking lot accommodates approximately 40 vehicles. The change in property use from retail to restaurant, however, has increased the parking requirement by an additional 21 parking spaces and the Applicant’s parking plan call for two more parking spaces—which increases the existing parking lot capacity by 23 spaces, for a total of 63 parking spaces.

To accommodate 63 vehicles, however, the parking lot must be reconfigured in a manner that will likely have significant environmental impacts. The parking lot is separated from the Mini-Shopping Center and 11 other businesses to the north of the parking lot by a two-way public alley. The parking lot, previously utilized and controlled by retailer Blockbuster and now used and controlled by IHOP, is and has historically been accessible directly from Ohio Ave.—keeping the flow of traffic to and from the parking lot off the public alley that services the 11 other businesses. To accommodate the additional 23 parking spaces, however, the Project calls for the parking lot access from Ohio Ave. to be closed. The reconfigured parking lot will be accessible *only* from the public alley that winds behind and adjacent to the Mini-Shopping Center and the 11 other businesses. This reconfiguration will push all 63 vehicles accessing the parking lot onto the public alley—in contrast to *directly* accessing the parking lot from Ohio Ave. (as opposed to the alley) as under the existing parking configuration.

The parking reconfiguration required for the Project will have the following potentially significant impacts—none of which were described in the environmental documents or subjected to CEQA-mandated mitigation analysis:

- The public alley is already at the saturation point in terms of traffic safety.
- By eliminating the existing direct access into the parking lot from Ohio Ave., the Project will force an additional 63 patron vehicles into a narrow, two-way public alley that is already at the tipping point.
- Most vehicles entering the alley to access the Mini-Shopping Center's parking lot will enter at Ohio and be forced to make quick left turns into the parking lot across opposing traffic.
- Those vehicles that utilize the proposed row of spaces at the north end of the parking area will have to turn left at the bend in the alley, and then turn left again, crossing an opposing lane of traffic, which is an additional source of conflict.
- There are no marked crosswalks for safe pedestrian crossing.
- Pedestrians accessing the restaurant and other businesses from the south (including those who have parked in the Mini-Shopping Center's parking lot) will have to cross the two-way alley, thereby creating pedestrian-vehicle conflicts with the vehicles traveling through the alley.
- The reconfigured northern row of parking will require vehicles to back-out directly into the public alley behind the 11 businesses, six of which have entrances in the back, creating a traffic and pedestrian hazard.
- All deliveries and service, including grease extraction, for IHOP Restaurant occur in the public alley, blocking one or both lanes, causing vehicles to back up or back out onto Ohio Ave.—a problem that will be made worse by the 63 additional vehicles.
- This increased use of the public alley resulting from the parking lot reconfiguration will eliminate existing parking for the 11 businesses, thereby forcing patron, employee, service, and delivery vehicles into the surrounding residential neighborhood searching for parking.
- This is significant because the neighborhood is already under-parked due to the "grandfathering" of businesses and multi-family residential dwellings built and permitted at a time when Code-mandated parking requirements were minimal to non-existent.
- Dangerous conditions will be created as vehicles enter and exit the already-compromised public alley from Ohio Ave. because Bundy & Ohio and Bundy & Santa Monica are unusually close to each other, which will be exacerbated by the Applicant's reconfigured parking lot plan.
- Further conflict and danger is created due to the close proximity of the Starbucks' driveway to the public alley.
- Increased traffic impacts on already over-burdened local streets.
- Late-night noise related to overflow parking on neighborhood streets.

- Deleterious effects this Project will have on the adjacent local businesses, some of which cater to local customers and others that cater to specialty interests from throughout the region.

In violation of CEQA, the parking lot reconfiguration has not been disclosed in an environmental document and none of the potentially significant environmental impacts have been disclosed, nor have any mitigation measures been considered.

(2) The Project's likely environmental impacts must be measured against current conditions. The CEQA "baseline" against which a project's potential impacts are measured is "the existing physical conditions in the affected area, that is, the real conditions on the ground, rather than the level of development that could or should have been present according to a plan or regulation." *Community for a Better Env. v. So. Coast Air Quality Mngt. Dist.*, 48 Cal.4th 310, 320 (2010)(applying *Guidelines*, §15125(a)). Thus, a project's potential impacts must be "compared to the *actual environmental conditions* existing at the time of CEQA analysis, rather than to *allowable conditions* defined by a plan or regulatory framework." *Id.* at 321. The Project's impacts are therefore measured against the conditions existing at the time of environmental review—with the *existing* parking lot, not the reconfigured parking lot that will push 63 *additional vehicles* into the public alley. The Project will therefore result in a net increase of 63 vehicles being pushed into the public alley. As shown above, reconfiguring the parking lot will cause potentially significant environmental impacts, which have not been disclosed or analyzed in the environmental documents.

(3) The Project is not subject to Categorical Exemption. The Zoning Administrator improperly concluded that the Project is Categorically Exempt from environmental review without considering the above-described potentially-significant environmental impacts.

"A categorical exemption shall not be used for an activity where there is a reasonable possibility that that the activity will have a significant effect on the environment due to unusual circumstances." *CEQA Guidelines, Section 15300.2, subd. (c)*. The Court of Appeal in *Berkeley Hillside Pres. v. City of Berkeley*, __ Cal.App.4th __, 137 Cal. Rptr. 3d 500 (2012) *opinion modified on denial of reb'g*, 2012 WL 725616 (March 7, 2012), recently interpreted this "unusual circumstances" standard as precluding application of a Categorical Exemption whenever a fair argument can be made that the project might have a significant impact on the environment:

"Where there is substantial evidence that proposed activity may have an effect on the environment, an agency is *precluded* from applying a categorical exemption. The trial court concluded that the relevant exception did not apply because it found no 'unusual circumstances' present; however, the fact that proposed activity may have an effect on the environment is *itself* an unusual circumstance, because such action would not fall 'within a class of activities that does not normally threaten the environment,' and thus should be subject to further environmental review." *Id.* (citations omitted) (quoting *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster*, 52 Cal.Ap.4th 1165, 1206 (1997)).

In sum, “where there is *any reasonable possibility* that a project or activity may have a significant effect on the environment, an exemption would be improper.” *Id.* (quoting *Banker’s Hill v. City of San Diego*, 139 Cal.App4th 249, 266 (2006)).

Here, there is no question that a “fair argument” can be made that the parking lot reconfiguration may have a significant impact on the environment, as described above. Consequently, this Project is not eligible for a Categorical Exemption. Moreover, although this potential impact alone is sufficient to satisfy the “unusual circumstances” requirement, the actual conditions in the area of the Project Site, including the public alley and adjacent businesses, the surrounding streets and residential neighborhood, are unusual and give rise to the potentially significant impacts that mandate environmental review.

Conclusion

The CUB must be denied due to the failure to conduct CEQA-mandated environmental review. Specifically, the environmental documents prepared for this Project do not provide an adequate project description because Project impacts resulting from the parking lot reconfiguration are not described and potential mitigation measures are not analyzed. The potential environmental impacts resulting from the reconfiguration, in comparison to the “baseline” condition at the time of environmental review, are potentially significant as evidenced by the impacts listed above. Finally, the Project is not subject to Categorical Exemption because a fair argument can be made that potential impacts of the parking lot reconfiguration are significant.

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ZONING | LAND USE | PLANNING | ENVIRONMENTAL

May 8, 2012

West Los Angeles Area Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

**Re: BRC Letter in Support of WLANCC Appeal
Grey Dog Tavern, 12112 West Santa Monica Boulevard
Case No: ZA-2011-0817-CUB-CU-1A, ENV-2011-818-CE**

Dear Commissioners:

The Brentwood Residents Coalition (BRC)¹ supports the appeal filed by the Westside of Los Angeles Neighborhood and Community Coalition. We write to emphasize three points concerning the necessity of environmental review in this case.

First, environmental review is required because the project would create a dangerous condition along the public alley adjacent to the project site, which constitutes a significant environmental impact that exposes drivers, cyclists and pedestrians to the risk of bodily injury. *Second*, the Planning Department's determination that the project is categorically exempt from CEQA review is incorrect because categorical exemptions cannot be applied where, as here, unusual circumstances create the risk of potentially significant environmental impacts. *Third*, the project would expose the City to substantial liability due to the dangerous condition of public property.

1. The Parking Lot Reconfiguration is Part of the Grey Dog Project

Two critical aspects of the Grey Dog project are (1) a change of property use from retail to restaurant and (2) a conditional use permit for the sale of alcoholic beverages (CUB). This requires the applicant to provide 21 additional parking spaces (23 will be provided) in the adjacent parking lot by covenant. To accommodate these additional parking spaces, the applicant has been required to reconfigure the parking lot behind

¹ The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

BRENTWOOD RESIDENTS COALITION

the project site. This reconfiguration of the parking lot, which is adjacent to an already over-used public alley, will create foreseeable safety hazards, putting the public at risk and exposing the City of Los Angeles to liability for this dangerous condition.

The parking lot reconfiguration is part of this project because CEQA defines a "project" as "the whole of an action" that may potentially result in either a "direct" or reasonably foreseeable "indirect" change in the environment. *CEQA Guidelines*, Section 15378(a). A change in the parking lot configuration is a physical change to the environment and the safety hazards resulting from that reconfiguration are a foreseeable consequence of the project. CEQA's anti-piecemealing policy therefore requires that the parking reconfiguration must be considered part of the "project." *See Bozung v. Local Agency*, 13 Cal.3d 263, 283-84 (1975) (holding that CEQA mandates "that environmental considerations do not become submerged by chopping a large project into little ones – each with minimal impact on the environment – which may have disastrous consequences"). Consequently, any foreseeable impacts of the reconfiguration must be disclosed, analyzed and mitigated through the environmental review process.

2. The Project Would Have a Potentially Significant Impact on the Environment by Creating a Dangerous Condition in the Public Alley

Environmental review is required if the project would have a significant impact on the environment. The phrase "significant impact on the environment" means "a substantial or potentially substantial, adverse change in any of the physical conditions within the area affected by the project." *CEQA Guidelines*, Section 15382. The Grey Dog project, which necessitates a reconfiguration of the parking lot, would have a substantially adverse impact on the physical environment. Specifically, reconfiguration of the parking lot in relation to the public alley situated between the parking lot and the project site and the adjacent businesses would create a dangerous condition along the public alley – which qualifies as a significant adverse impact on the physical environment.

The reconfigured parking lot would substantially increase the volume of traffic in the alley because the reconfigured lot would *no longer* be accessible directly from Ohio Ave. – all vehicles would have to enter and exit the parking lot through the public alley. Not only would the new configuration burden the alley by re-routing ingress and egress from Ohio Ave. to the public alley, it would also increase the parking lot's capacity from 40 to 63 parking spaces. These 63 spaces would service IHOP and Grey Dog patrons exclusively. The project would thereby increase alley traffic by forcing patron vehicles entering *or* exiting the **63-space parking lot** into the public alley

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instead of allowing access directly from the public street. This increase in alley traffic is significant because the public alley is already heavily travelled.

The increased traffic volume would create hazards due to the existing use of the alley for loading/unloading for the many businesses along the alley. This creates the foreseeable risk that the 2-way alley will be obstructed by vehicles parked in lanes behind these businesses. When vehicles entering or exiting the *63-space* parking lot are diverted into the alley to access the parking lot, the already dangerous condition will become even more hazardous. This is evidenced by the attached photographs, which depict the type of vehicle/pedestrian, vehicle/bicycle and vehicle/vehicle conflicts that have not been subjected to any environmental review. If the applicant's permit is granted, the impact will be even more significant due to the increase in traffic through the alley. In short, it would just be a matter of time before a tragic and preventable accident occurs along this dangerous public alley.

A fundamental purpose of CEQA is to protect against this type of potentially significant environmental impact through a careful, public consideration of a project's foreseeable risks and feasible mitigation measures designed to eliminate or reduce those risks. A proper environmental review of this project would consider mitigation options such as designated loading and unloading zones to avoid blocking the alley and thereby forcing vehicles into oncoming traffic or to back-out of the alley onto busy Ohio Ave. These hazards along the public alley and adjacent Ohio Ave. are also illustrated in the attached photographs.

Another mitigation measure that would have been considered *if* the project had been subject to environmental review is marked cross-walks to facilitate safe pedestrian passage across the alley. As it is, pedestrians are forced to cross the alley to access the many adjacent businesses without any marked crosswalks. The absence of marked crosswalks along the alley is a remarkably risky oversight given the volume of traffic that will be forced into the alley once the new alcohol-serving restaurant opens, and the persistent obstructions along the alley, especially for servicing IHOP and Grey Dog. This is the type of oversight that would not have occurred if the project had been subjected to proper environmental review.

Finally, the West Los Angeles Neighborhood Council PLUM Committee (West LA PLUM) recommended that the City study whether making the alley one-way would mitigate the safety risks. (See attached letter.) If the project had been subjected to CEQA-compliant environmental review, this proposed mitigation measure would have been considered. Instead, without environmental review, it was simply ignored.

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Indeed, the City has failed to consider any of the many mitigation measures suggested by the West LA PLUM. See *Flanders Foundation v. City of Carmel By-The-Sea*, 202 Cal.App.4th 603 (2012) (“When a comment raises a significant environmental issue, the lead agency must address the comment ‘in detail giving reasons why’ the comment was ‘not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.”).

3. The Project Is Not Categorically Exempt

The City Attorney has erroneously advised Planning Staff that the Grey Dog project is not subject to CEQA due to a Categorical Exemption. But as recently made clear by the Court of Appeal in *Berkeley Hillside Pres. v. City of Berkeley*, 203 Cal.App.4th 656 (2012), “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.” As explained by the Court of Appeal, this “unusual circumstance” exception to the Categorical Exemption applies whenever “there is *any reasonable possibility* that a project or activity may have a significant effect on the environment” and, in any such circumstance, “an exemption would be improper.” See *Berkeley Hillside*, attached.

Applying the *Berkeley Hillside* standard, the Grey Dog project is *not* subject to Categorical Exemption because it will create a dangerous condition on public property, subjecting patrons and employees of the adjacent businesses to an unreasonable risk of bodily injury due to the reconfiguration of the parking lot.

4. The Project Also Exposes the City to Liability for Creating a Dangerous Condition in the Public Alley

The City is liable for injury caused by a dangerous condition of a public street or alley when the dangerous condition creates a foreseeable risk of the type of injury suffered. *Lane v. City of Sacramento*, 183 Cal.App.4th 1337, 1344 (2010) (applying Gov’t Code Section 835). The Grey Dog project exposes the City to liability for accidents that are easily foreseeable – a risk that can be avoided by subjecting the project to proper environmental review, which would require mitigation measures necessary to eliminate the unreasonable safety hazards.

The City of Los Angeles recently paid \$450,000 in settlement of a tort claim for damages resulting from dangerous roadway conditions in *Christopher v. City of Los*

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Angeles, Court of Appeal, Second Appellate District, Case No. B223999. The plaintiff in *Christopher* sought damages for an accident resulting from the dangerous condition of a steep and narrow public street that required sharp turns to navigate and lacked sufficiently protective signage. In February 2012, the City paid \$1.4 million in settlement to the plaintiff in *Acupanda v. City of Los Angeles* (Los Angeles Superior Court Case No. BC433757) for injuries caused by the dangerous condition of public property at the intersection of Third Street and Hoover Street. The City would face similar liability if this project is approved without environmental review and the mitigation measures such review would require.

* * * * *

In conclusion, the application must be denied for lack of CEQA mandated environmental review. This application must be sent back to the Zoning Administrator for preparation of an environmental review document that (1) describes the entire project, including the parking lot reconfiguration; (2) discloses the project's potentially significant environmental impacts; and (3) analyzes and recommends mitigation measures designed to eliminate potentially significant environmental impacts.

Respectfully submitted,



Tom Freeman



Wendy-Sue Rosen

Donald G. Keller

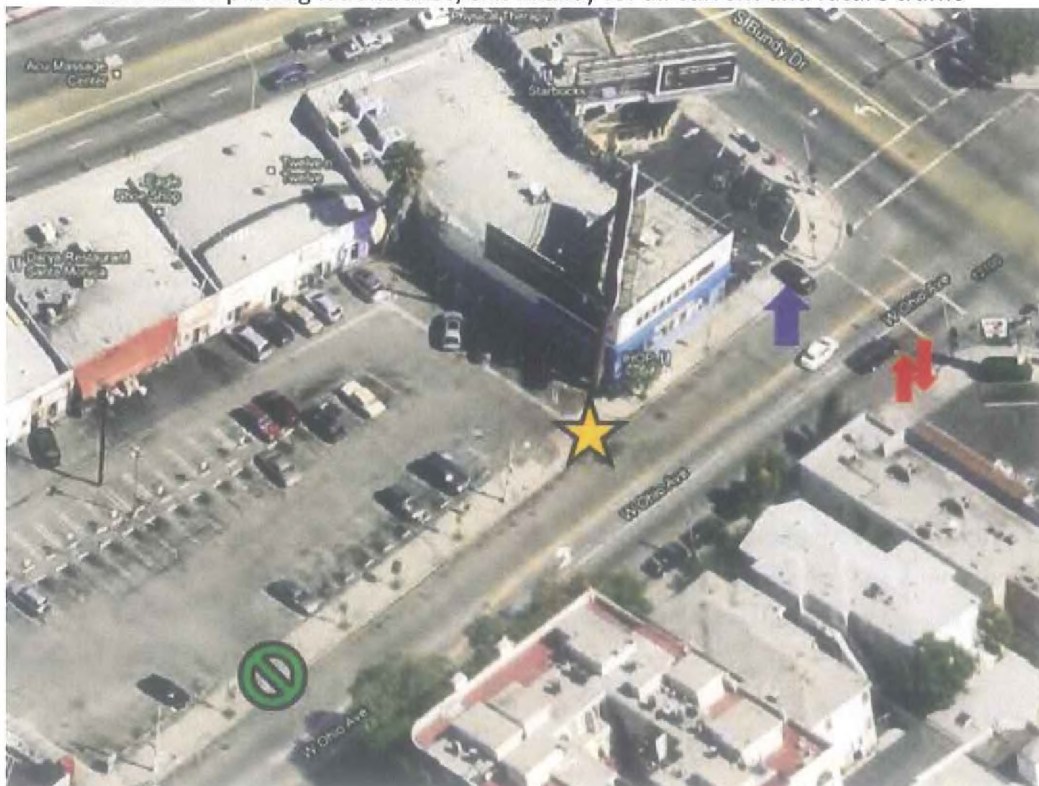
Donald G. Keller

cc: Councilmember Rosendahl, Council District 11
West Los Angeles Neighborhood Council, PLUM Committee
Westside of Los Angeles Neighborhood & Community Coalition

Overview of public alley and parking lot behind businesses off of Ohio Avenue



Green icon is existing parking lot entrance/exit off Ohio Avenue, which will be closed
 Gold star is parking lot entrance/exit in alley for all current and future traffic



Current IHOP parking lot entrance with three cars entering and one exiting at the same time
Parking lot access will all be relocated into the public alley



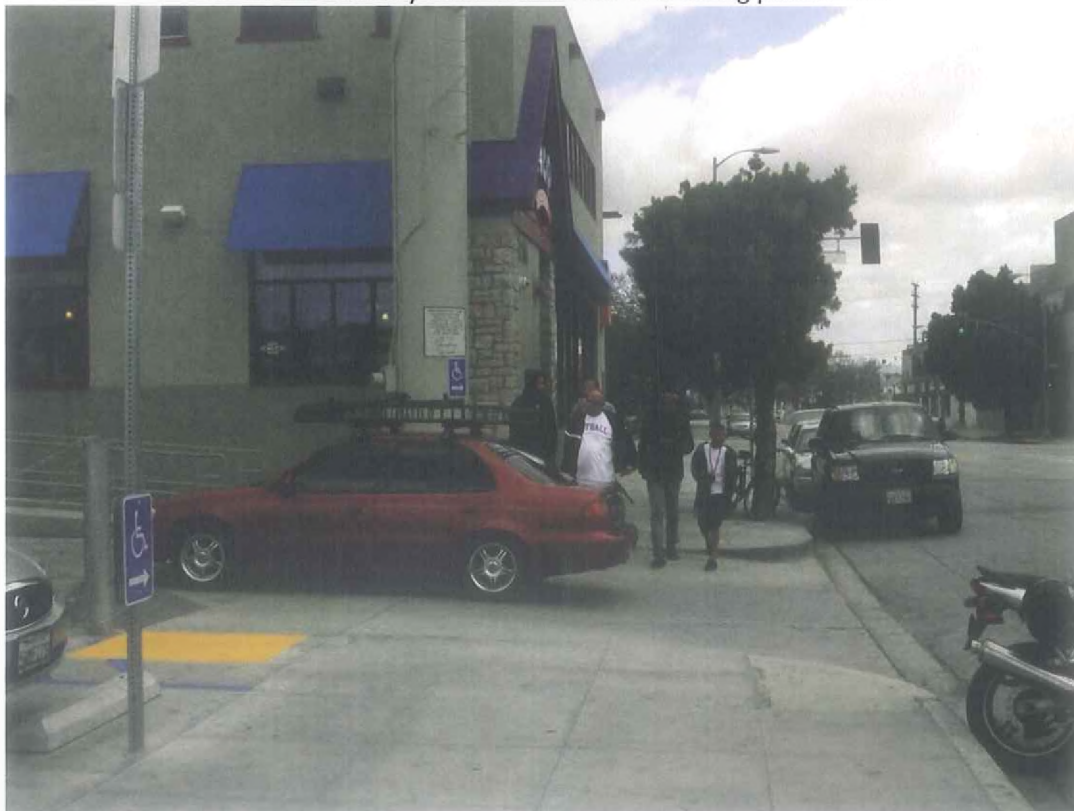
Two cars exiting current parking lot entry/exit while one waits to turn in



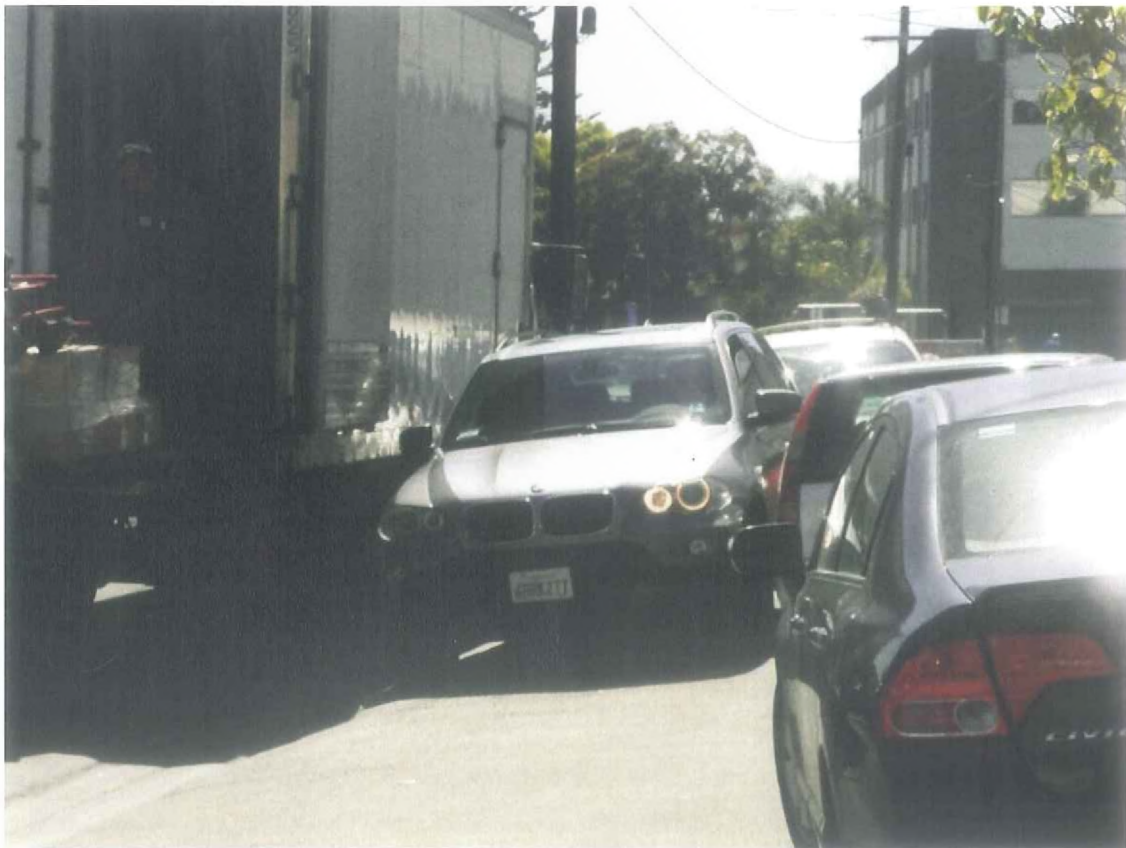
White car enters the alley from Ohio (next to IHOP)
It must pass the truck into the opposing traffic lane



Car enters the alley from Ohio ahead of crossing pedestrians



Two-way traffic and delivery truck in public alley



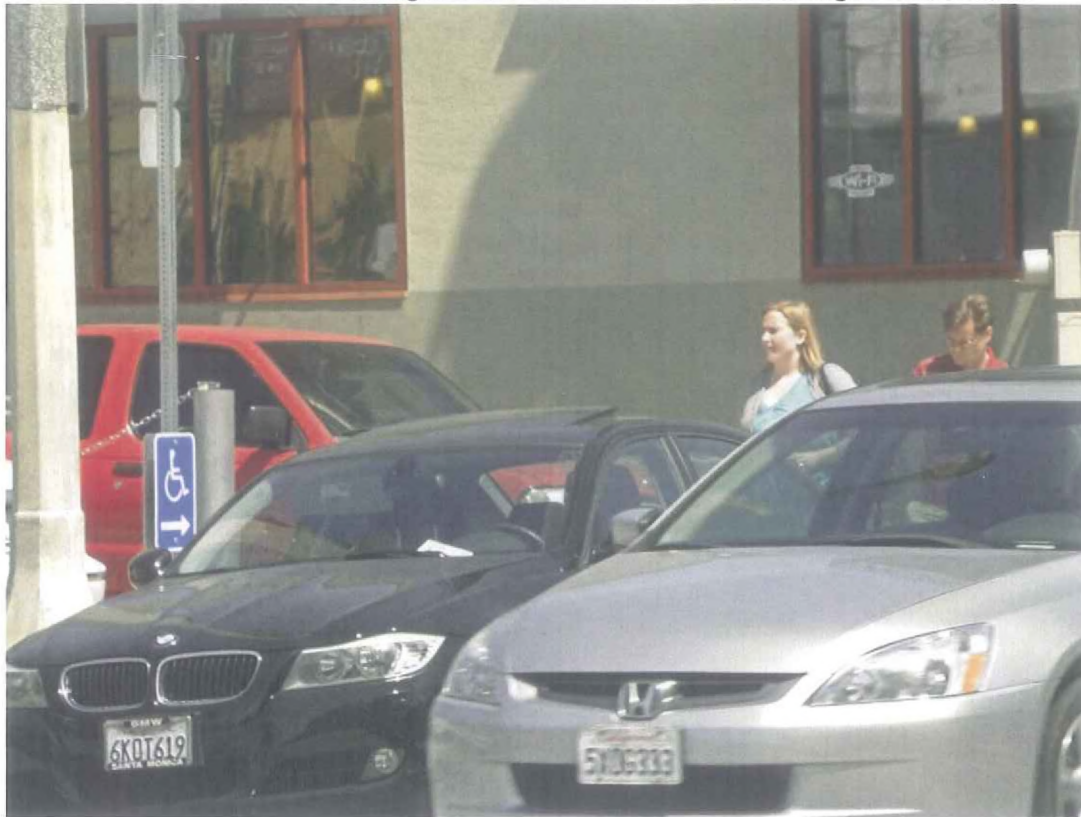
No crosswalk, delivery trucks, and pedestrian in alley



No crosswalk, 2-way traffic, pedestrian, and delivery truck in alley



Pedestrians from IHOP crossing in front of red truck which is heading to Ohio Avenue



Senior with cane and others walking from IHOP across the alley entrance



Truck backing all the way out from behind Darya to Ohio Avenue



Backing onto Ohio Avenue from the alley



Vehicle backing out onto Ohio Avenue due to delivery vehicles obstructing alley access



Vehicle backing out of obstructed alley onto Ohio Avenue



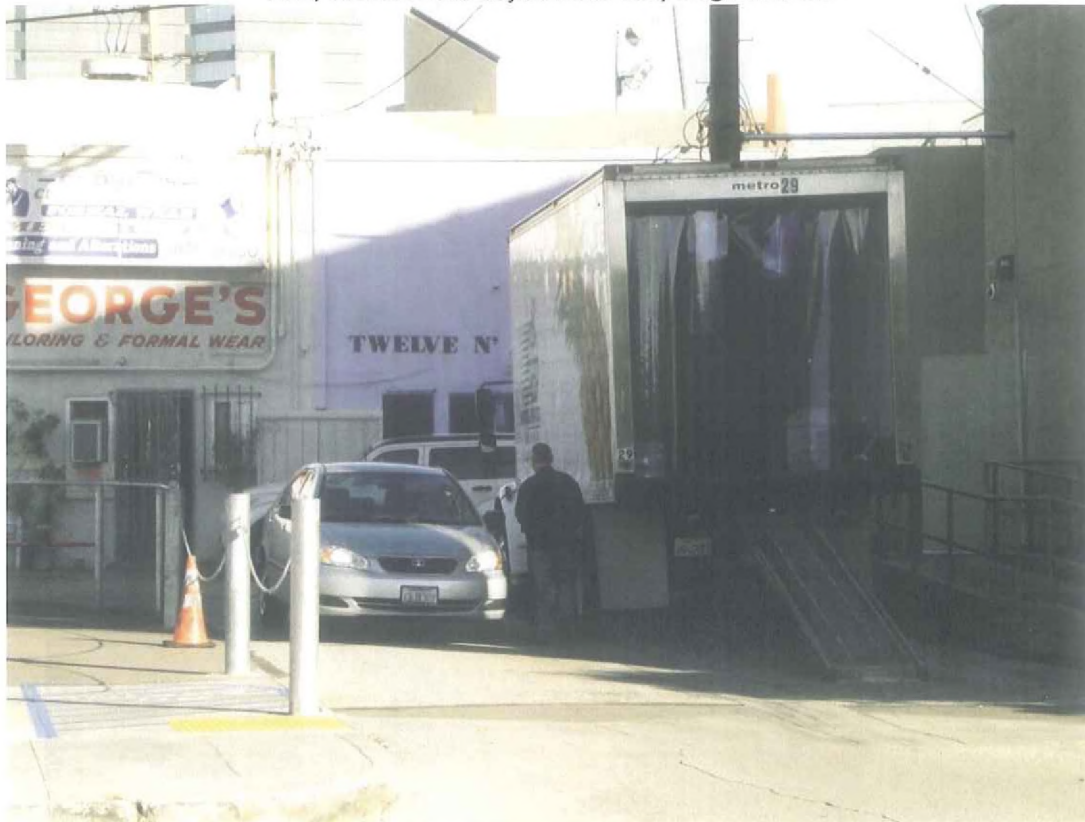
Grease extracting truck at future Grey Dog entrance, emptying IHOP grease extractor



Grey vehicle forced to pass truck into opposing traffic lane



Alley obstructions adjacent to Grey Dog entrance



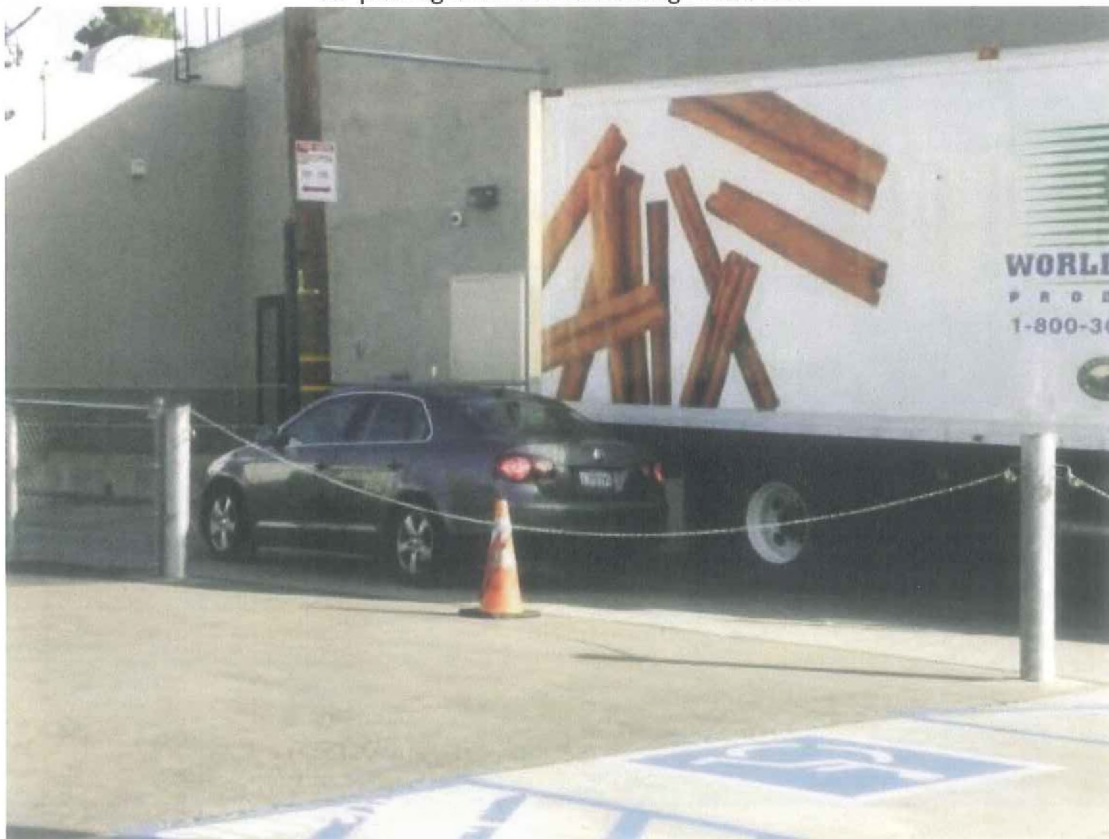
Pedestrian/automobile conflict at the turn in the alley. No crosswalks, no safeguards



IHOP Delivery truck backing into alley



Car passing truck into oncoming traffic lane



Ohio is a major cycling route. Bicyclist must navigate vehicle entering the alley



Facing east from the alley entrance at Ohio. White vehicle is turning into Starbucks parking lot, with red vehicle waiting behind to follow





Planning and Land Use Management Committee

To: Jay Handal, President, Board of Directors
Fr: Jay Ross, Chair
Date: Jan. 3, 2012
Re: Resolution: Recommend approval of clarification/changes for Grey Dog Tavern submittal

Resolution: PLUM voted, 6-0, to recommend that the BOD pass a Resolution that requests that the current permitting process for the proposed Grey Dog restaurant/ bar at Santa Monica and Bundy be delayed and not approved until the following clarifications and changes to the Planning/Building Dept. submittal are done:

Applicant representative is Mr. Paul Scrivano (Paul@Scrivano.com). Applicant is J. Anthony Kouba (JKouba@AOL.com) of Bundy & Santa Monica Ltd.

1. Revised Master Land Use Application and Environmental Assessment Form and recirculated MND applications that include:
 - a. Parking Plan drafted by civil engineer with calculations and stalls striped per code.
 - b. Change of use (from retail to restaurant).
 - c. Listing of all variances/modifications/adjustments requested
 - i. Parking for 7,300 sf of restaurant, 1,500 sf office (or mechanical room).
 - ii. Closing time for each use (if in excess of 11 pm as per Shopping Center Ordinance).
 - iii. Listing of all uses and sf-ages (including 2nd level of building).
2. Proper environmental impact analysis of:
 - a. Traffic:
 - i. One-way option for alley traffic.
 - ii. Queuing in alley and possible gridlock during loading of trucks and operation grease disposal truck.
 - iii. Loading in alley.
 - iv. Parking space access during loading of trucks.
 - v. Pedestrian safety in alley (lack of crosswalks, sidewalks, etc.).
 - b. Patio:
 - i. ADA access.
 - ii. Exiting access during emergencies.
 - iii. Sound mitigation for neighbors.
 - c. Entrance: Front or rear shall be clarified.

Facts and background:

1. Board voted to support 11:00 pm closing time in previous Resolution.
2. Shopping Center Ordinance was enacted specifically to mitigate impacts of businesses on adjacent residents.

Findings and justification:

1. Noise and parking impacts may increase on nearby neighbors, which justifies more extensive environmental review than has yet been conducted.
2. Changes to original project are significant enough, including requested variances/modifications/adjustments, which to justify a revised submittal.

Submitted for your consideration,

Jay Ross

2012 WL 489195

Only the Westlaw citation is currently available.
Court of Appeal, First District, Division 4, California.

BERKELEY HILLSIDE PRESERVATION

et al., Plaintiffs and Appellants,

v.

CITY OF BERKELEY et al.,
Defendants and Respondents;
Donn Logan et al., Real Parties
in Interest and Respondents.

No. A131254. | Feb. 15, 2012.

Alameda County Superior Court, Honorable Frank Roesch.

Attorneys and Law Firms

Susan Brandt-Hawley, for Appellants.

Zach Cowan, City Attorney, Laura McKinney, Deputy City Attorney, for Respondents City of Berkeley and Real Parties in Interest City of Berkeley and City Council of City of Berkeley.

Myers, Nave, Riback, Silver & Wilson, Amrit S. Kulkarni, Julia L. Bond, for Respondents and Real Parties in Interest Mitchell Kapor, Freada Kapor-Klein, and Donn Logan.

Opinion

SEPULVEDA, J.

*1 Appellants Berkeley Hillside Preservation and Susan Nunes Fadley challenge the denial of their petition for a writ of mandate to set aside the approval of use permits to construct a large residence in the Berkeley hills. They claim that the proposed construction was not categorically exempt under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.),¹ and that environmental concerns should be reviewed in an environmental impact report (EIR). We agree and reverse.

¹ All statutory references are to the Public Resources Code unless otherwise specified.

I.

FACTUAL AND PROCEDURAL

BACKGROUND

Real parties in interest and respondents Mitchell Kapor and Freada Kapor-Klein own a 29,714 square-foot lot on Rose Street in Berkeley. The lot is on a steep slope (approximately 50 percent grade) in a heavily wooded area. On May 19, 2009, Donn Logan of Wong-Logan Architects filed an application for a use permit to demolish the existing two-story, single-family dwelling on the lot, and to construct a 6,478 square-foot home with an attached 3,394 square-foot, 10-car garage designed to address lack of street parking in the area (the proposed construction). The residence would be built on two floors, plus an open-air lower level, and would cover about 16 percent of the lot (less than the 40 percent lot coverage permitted by respondent City of Berkeley (City) rules, according to an architect involved with the proposed construction). The application stated that the immediate neighbors of the affected lot supported the proposed construction, and the record reveals that those neighbors, as well as other Berkeley residents (including those who live in the surrounding neighborhood), supported the proposed construction throughout proceedings below. The application stated that the proposed construction would provide a turnaround for vehicles at the end of the dead-end street where the lot was located, an addition that was welcomed by the neighbors. A revised application was submitted on October 13, 2009.

After providing notice, Berkeley's Zoning Adjustment Board (Board) held a public hearing on January 28, 2010, received comment about the proposed construction, and approved the use permit for the proposed construction by a vote of seven to zero, with one Board member absent and one abstaining. The Board found, consistent with a Board staff report, that the proposed construction was categorically exempt from the provisions of CEQA pursuant to Guidelines sections 15332² ("In-Fill Development Projects") and 15303, subdivision (a) ("New Construction or Conversion of Small Structures," single-family residence). The Board also determined that the proposed construction did not trigger any of the exceptions to exemptions, as set forth in Guidelines, section 15300.2. In particular, the Board concluded that the proposed construction would not have any significant effects on the environment due to unusual circumstances.³ (Guidelines, § 15300 .2, subd. (c).) The Board approved (1) a use permit to demolish the existing dwelling on the lot, (2) a use permit to construct the proposed unit, (3) an administrative use permit to allow a 35-foot average

height limit for the main building (with 28 feet being the maximum), and (4) an administrative use permit to reduce the setback of the front yard to 16 feet (with 20 feet usually required). The Board imposed various "standard conditions" on the proposed construction, including requiring the permit applicant to secure a construction traffic management plan, comply with storm water regulations for small construction activities, and take steps to minimize erosion and landslides when construction takes place during the wet season.

² "Guidelines" refers to the Guidelines for Implementation of CEQA, which are found in California Code of Regulations, title 14, section 15000 et sequitur. All subsequent regulatory citations to the Guidelines are to title 14 of the Code of Regulations.

³ The Board also found that the proposed construction would not have any cumulatively significant impacts (Guidelines, § 15300.2, subd. (b)), and that it would not adversely impact any designated historical resources (Guidelines, § 15300.2, subd. (f)), findings that were later affirmed by respondent Berkeley City Council (City Council) and the trial court. Because appellants do not challenge these findings, we do not address them further.

*2 Appellant Susan Nunes Fadley, a Berkeley resident, filed an appeal to the City Council on February 19, 2010. Thirty-three other Berkeley residents also signed the appeal. Appellants stressed that the proposed dwelling and attached 10-car garage would result in a single structure of 9,872 square feet, which would make it "one of the largest houses in Berkeley, four times the average house size in its vicinity, and situated in a canyon where the existing houses are of a much smaller scale." They submitted evidence that, of more than 17,000 single-family residences in Berkeley, only 17 are larger than 6,000 square feet, only 10 exceed 6,400 square feet, and only one other residence exceeds 9,000 square feet. In a response to the appeal, the City's director of planning and development stated that 68 Berkeley "dwellings" are larger than 6,000 square feet, nine are larger than 9,000 square feet, and five are larger than 10,000 square feet, and that 16 parcels within 300 feet of the proposed construction had a greater floor-area-to-lot-area ratio than the proposed dwelling.

An addendum to the appeal dated April 18, 2010, first challenged the Board's declaration that the proposed construction was categorically exempt from CEQA, arguing that "the project's unusual size, location, nature and scope may have significant impact on its surroundings." The addendum stated that the proposed construction exceeded the maximum allowable height under Berkeley's municipal

code, and was inconsistent with the policies of the City's general plan, and that an EIR was appropriate to evaluate the proposed construction's potential impact on noise, air quality, and neighborhood safety.

The City Council received numerous letters and e-mails both supporting and opposing the appeal. Among the submissions in support of the appeal were letters from Lawrence Karp, a geotechnical engineer specializing in foundation engineering and construction, who had more than 50 years of experience with design and construction in Berkeley, and who had previously prepared feasibility studies and provided engineering services during construction of "unusual projects." Karp first submitted a one-page letter to the City Council dated April 16, 2010, stating that he was familiar with the site of the proposed construction, and had been involved with new residences in the area for 50 years. Based on a review of the architectural plans and topographical survey filed with the Board, as well as visits to the proposed construction site, Karp stated that portions of the "major fill for the project are shown to be placed on an existing slope inclined at about 42° (1#.1h:1v) to create a new slope more than 50° (0#.8h:1v)." He opined that "[t]hese slopes cannot be constructed by earthwork and all fill must be benched and keyed into the slope which is not shown in the sections or accounted for in the earthwork quantities. To accomplish elevations shown on the architectural plans, shoring and major retaining walls not shown will have to be constructed resulting in much larger earthwork quantities than now expected." Karp further opined that the "massive grading" necessary would involve "extensive trucking operations," and that such work "has never before been accomplished in the greater area of the project outside of reservoirs or construction on the University of California campus and Tilden Park." He also emphasized that the project site was "located alongside the major trace of the Hayward fault and it is mapped within a state designated earthquake-induced landslide hazard zone." It was Karp's opinion that "the project as proposed is likely to have very significant environmental impacts not only during construction but in service due to the probability of seismic lurching of the oversteepened side-hill fills."

*3 Karp submitted another one-page letter dated April 18, 2010, stating that after he wrote his April 16 letter, he had the opportunity to review a geotechnical investigation done by geotechnical engineer Alan Kropp, dated July 31, 2009. Karp stated that no "fill slopes" were shown in Kropp's plan, and that "the recommendations for retaining walls do not include lateral earth pressures for slopes with inclinations of more than 2h:1v (2#7°) or for wall heights more than 12 feet," Karp

also noted that the architectural plans he reviewed “include cross-sections and elevations that are inconsistent with the Site Plan and limitations in the 7/31/09 report (there have been significant changes).” He stated that “all vegetation will have to be removed for grading, and retaining walls totaling 27 feet in height will be necessary to achieve grades. Vertical cuts for grading and retaining walls will total about 43 feet (17 feet for bench cutting and 26 feet for wall cutting). [¶] A drawing in the report depicts site drainage to be collected and discharged into an energy dissipater dug into the slope, which is inconsistent with the intended very steep fill slopes.” Karp reiterated that it was his opinion that “the project as proposed is likely to have very significant environmental impacts not only during construction, but in service due to the probability of seismic lurching of the oversteepened side-hill fills.”

Geotechnical engineer Kropp, who had conducted the 2009 geotechnical investigation, submitted a response to Karp's environmental concerns. According to Kropp, opponents had misread the project plans, because the proposed construction would not involve “side-hill fill,” and the current ground surface, along with the vegetation, would be maintained on the downhill portion of the lot. According to Kropp, “the only fill placed by the downhill portion of the home will be backfill for backyard retaining walls and there will be no side-hill fill placed for the project. The current ground surface, along with the vegetation, will be maintained on the downhill portion of the lot.” Because there would be no steep, side-hill fill constructed as Karp claimed, none of the concerns Karp raised in his letter applied to the proposed construction, according to Kropp.

As for claims that the project site fell within the boundaries of an area that requires investigation for possible earthquake-induced landslides, Kropp stated that although the site was in an area where an *investigation* was required to evaluate whether there was a potential for a landslide, Kropp's investigation revealed that no such landslide hazard was in fact present at the site. Another engineer (Jim Toby) also submitted a letter in support of the proposed construction, and opined that no fills would be placed directly on steep slopes, as Karp claimed.

The director of the City's planning and development department filed a supplemental report to the City Council, in part to respond to Karp's letters. According to the director, “A geotechnical report was prepared and signed by a licensed Geotechnical Engineer and a Certified Engineering Geologist. This report concluded that the site was suitable for the proposed dwelling from a geotechnical standpoint and that

no landslide risk was present at the site. Should this project proceed, the design of the dwelling will require site-specific engineering to obtain a building permit.”⁴

4 At the hearing on appellants' writ petition in the trial court, counsel for respondent City represented that if inspections during construction revealed the geotechnical concerns that Karp raised, the City would issue a stop-work notice and investigate those issues. Appellants' counsel objected that the assertion was outside the scope of the record, and the trial court apparently agreed that it was impossible to know what the City would do under such circumstances.

*4 The City Council considered the appeal on April 27, 2010, and allowed each side 10 minutes to speak.⁵ Geotechnical engineers Karp and Kropp made statements consistent with their written submissions. The City Council adopted the findings made by the Board, affirmed the decision to approve the use permit, adopted the conditions enumerated by the Board, and dismissed the appeal by a vote of six to two, with one councilmember absent. The City Planning Department thereafter filed a notice of exemption, stating that the proposed construction was categorically exempt from the provisions of CEQA (Guidelines §§ 15332, 15303, subd. (a)), and that the proposed construction did not trigger any of the exceptions to the exemptions (Guidelines, § 15300.2).

5 Appellants repeatedly emphasize that, although certain people were allowed to address the City Council for 10 minutes, the council did not hold a public hearing on the appeal. However, no public hearing is required before an agency decides a project is categorically exempt under CEQA. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1385.)

Appellants Fadley and Berkeley Hillside Preservation⁶ sought judicial review of the decision by filing a petition for a writ of mandate in the trial court on May 27, 2010. Following a hearing, the trial court denied the petition by written order dated December 30, 2010. The trial court first concluded that there was substantial evidence in the administrative record to support the City's determination that the in-fill and new construction categorical exemptions applied to the proposed construction (Guidelines, §§ 15332, 15303, subd. (a)). (*Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251.) As for whether appellants had established any exceptions to the exemptions, the trial court concluded that there was substantial evidence of a fair argument that the

proposed construction would cause significant environmental impacts. The court nonetheless concluded that the proposed construction did not trigger the exception to the exemptions set forth in Guidelines section 15300.2, subdivision (c), because the possible significant impacts were not due to "unusual circumstances."

⁶ According to the petition, "Berkeley Hillside Preservation is an unincorporated association formed in the public interest in May 2010," after the City approved the proposed construction on Rose Street. The association includes "City residents and concerned citizens who enjoy and appreciate the Berkeley hills and their environs and desire to protect the City's historic, cultural, architectural, and natural resources." Association members filed the petition "on behalf of all others similarly situated that are too numerous to be named and brought before" the court. Appellant Fadley is a "founding member" of the association, whose members include Berkeley resident Lesley Emmington Jones (the only other association member to be named in the petition).

Appellants timely appealed from the subsequent judgment. They filed a motion for a temporary stay and a petition for a writ of supersedeas in this court, seeking to prevent the demolition of the existing structure and the commencement of construction of the new home during the pendency of the appeal. This court denied both the request for a temporary stay and petition for writ of supersedeas by orders dated March 28 and April 26, 2011. Appellants represent that the existing cottage on the relevant site has been demolished, and they seek no further relief relating to the demolition.⁷ Respondents Kapor, Kapor-Klein, City, and City Council have filed a single respondents' brief.

⁷ Although the denial of the request for a temporary stay and a petition for a writ of supersedeas enabled respondent owners to demolish the existing structure and to proceed with construction at their own risk, they later voluntarily agreed to suspend any construction activity when they requested a continuance of oral argument from December 6, 2011, to January 10, 2012. By order dated January 5, 2012, this court on its own motion ordered that any and all construction be stayed pending further order of the court, or until the filing of the remittitur in this case.

II.

DISCUSSION

Appellants ask this court to order the trial court to issue a writ of mandate directing City to set aside its determination that the proposed construction is exempt from CEQA. "In considering a petition for a writ of mandate in a CEQA case, '[o]ur task on appeal is "the same as the trial court's.'" [Citation.] Thus, we conduct our review independent of the trial court's findings.' [Citation.] Accordingly, we examine the City's decision, not the trial court's." (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 257 (*Banker's Hill*)).

A. Overview of CEQA Process and Consideration of "Unusual Circumstances."

1. Purpose of CEQA

*5 "The Supreme Court has repeatedly observed that the Legislature intended CEQA to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. [Citation.] Central to CEQA is the EIR, which has as its purpose informing the public and government officials of the environmental consequences of decisions before they are made. [Citation.]" (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1315.) "An EIR must be prepared on any 'project' a local agency intends to approve or carry out which 'may have a significant effect on the environment.' (§§ 21100, 21151; Guidelines, § 15002, subd. (f)(1).) The term 'project' is broadly defined and includes any activities which have a potential for resulting in physical changes in the environment, directly or ultimately. (§ 21065; Guidelines, § 15002, subd. (d), 15378, subd. (a); [citation].)" (*Ibid.*, fn.omitted.) A "significant effect on the environment" "is defined as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." (Guidelines, § 15382.)

2. Categorical exemptions

Not all proposed activity is subject to environmental review, however. "CEQA authorizes the resources agency to adopt guidelines that list classes of exempt projects, namely projects 'which have been determined not to have a significant effect on the environment and which shall be

exempt from this division.’ (Pub. Resources Code, § 21084, subd. (a).) These classes of projects are called ‘categorical exemptions’ and are detailed in Guidelines section 15300 et seq. Guidelines section 15300.2 in turn specifies *exceptions and qualifications* to the categorical exemptions.” (*Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1347 (*Wollmer*), original italics.) Where a public agency decides that proposed activity is exempt and that no exceptions apply, a notice of exemption is filed, and no further environmental review is necessary. (Guidelines, § 15062, subd. (a); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74; *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171.)

Here, the Board found, and the City agreed, that the proposed construction was subject to two categorical exemptions. They found that the proposed construction satisfied the elements of the urban in-fill development exemption (Guidelines, § 15332), because (1) it was consistent with the applicable general plan designation and applicable general plan policies, as well as with the applicable zoning designation and regulations, (2) the proposed construction was within City limits on a project site of no more than five acres, surrounded by urban uses, (3) the site had no value as a habitat for endangered, rare, or threatened species, (4) the proposed construction would not result in any significant effects relating to traffic, noise, air quality, or water quality, and (5) the site was already served by required utilities and public services, which also would serve the proposed construction. The Board and City also found that the proposed construction was exempt because it involved the construction of one single-family residence (Guidelines, § 15303, subd. (a)). Acknowledging that the relatively deferential substantial evidence standard of review applies to the City’s conclusion that the proposed construction was categorically exempt (e.g., *Fairbank v. City of Mill Valley*, *supra*, 75 Cal.App.4th at p. 1251), appellants concede, for purposes of this appeal, that the proposed construction is subject to the two CEQA categorical exemptions.

3. Exceptions to exemptions

*6 Appellants claim that the “unusual circumstances” *exception* to the CEQA exemptions applies here. (Guidelines § 15300.2, subd. (c).⁸) “‘In categorical exemption cases, where the agency establishes that the project is within an exempt class, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Guidelines section 15300.2. The most commonly raised exception is

subdivision (c) of section 15300.2, which provides that an activity which would otherwise be categorically exempt is not exempt if there are “unusual circumstances” which create a “reasonable possibility” that the activity will have a significant effect on the environment. A challenger must therefore produce substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the project from the categorically exempt class. [Citations.]’ [Citations.]” (*Fairbank v. City of Mill Valley*, *supra*, 75 Cal.App.4th at p. 1259.)

8 The Guidelines provide in full: “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.”

Where, as here, a proposed activity meets “the comprehensive environmentally protective criteria of [Guidelines] section 15332,” the project “normally would not have other significant environmental effects.” (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 129.) The requirement that unusual circumstances be present in order to satisfy the exception to the exemption “was presumably adopted to enable agencies to determine which specific activities—within a class of activities that does not normally threaten the environment—should be given further environmental evaluation and hence excepted from the exemption.” (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1206 (*Azusa*)). The concept apparently was first mentioned in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, where our Supreme Court observed that “common sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope—e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business—and hence, in the absence of unusual circumstances, have little or no effect on the public environment.” (*Id.* at p. 272, disapproved on other grounds in *Kowis v. Howard* (1992) 3 Cal.4th 888; see also *Azusa*, *supra*, at pp. 1206–1207.)

The Supreme Court expanded on the concept of exceptions to categorical exemptions in *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190 (*Wildlife Alive*), which held that CEQA applies to the Fish and Game Commission’s setting of hunting and fishing seasons. (*Wildlife Alive* at pp. 194–195, 204.) The court rejected the argument that the commission’s activity was included within one of CEQA’s categorical exemptions. (*Wildlife Alive* at p. 204.) Even if a regulation was intended to

exempt the activity at issue in *Wildlife Alive*, however, such a regulation would be invalid, because “[t]he Secretary [of the California Resources Agency] is empowered to exempt *only* those activities which do not have a significant effect on the environment. [Citation.] It follows that where there is *any reasonable possibility* that a project or activity may have a significant effect on the environment, an exemption would be improper.” (*Id.* at pp. 205–206, *italics added.*) In other words, a categorical exemption does not apply where there is any reasonable possibility that proposed activity may have a significant effect on the environment.

*7 Relying on *Wildlife Alive*, *supra*, 18 Cal.3d 190 as authority, the secretary for the Resources Agency adopted the unusual circumstances exception that is now set forth in Guidelines, section 15300.2, subdivision (c).⁹ (See Note and Authority cited, *fol.* Guidelines, § 15300.2.) Courts have interpreted that section of the Guidelines as applying “where the circumstances of a particular project (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects.” (*Azusa*, *supra*, 52 Cal.App.4th at p. 1207; see also *Wollmer*, *supra*, 193 Cal.App.4th at p. 1350.) Effects on aesthetics, cultural resources, water supply, health, and safety are among the effects that fall within the concept of “‘unusual circumstances.’” (*Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th at p. 129.) “[W]hether a circumstance is ‘unusual’ is judged relative to the *typical* circumstances related to an otherwise typically exempt project.” (*Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 801, *original italics.*)

⁹ We hereby grant appellants’ unopposed request for judicial notice of materials surrounding the implementation of Guidelines, section 15300.2, subdivision (c). However, “[e]ven though we will grant motions for judicial notice of legislative history materials without a showing of statutory ambiguity, we do so with the understanding that the panel ultimately adjudicating the case may determine that the subject statute is unambiguous, so that resort to legislative history is inappropriate.” (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30.) Our understanding of the relevant section of the Guidelines is based primarily on the unambiguous language of the Guidelines and judicial interpretation of CEQA. Accordingly, we need not resort to documents underlying its implementation

in reaching our conclusion that it applies to the proposed construction.

In *Banker’s Hill*, the court held that the application of Guidelines, section 15300.2, subdivision (c), involves “two distinct inquiries. First, we inquire whether the Project presents unusual circumstances. Second, we inquire whether there is a reasonable possibility of a significant effect on the environment *due to* the unusual circumstances. [Citation.] ‘A negative answer to either question means the exception does not apply.’ [Citation.]” (*Banker’s Hill*, *supra*, 139 Cal.App.4th at p. 278, *original italics.*) Here, the trial court found that there was substantial evidence of a fair argument that the proposed construction could have a significant environmental impact. Because there was a “‘negative answer’ “ to the question of whether the project presented unusual circumstances (*ibid.*), however, the trial court concluded that the unusual circumstances exception did not apply here. Respondents argue that this conclusion was appropriate under the two-step approach of *Banker’s Hill*.

We disagree with the trial court’s approach. Where there is substantial evidence that proposed activity may have an effect on the environment, an agency is *precluded* from applying a categorical exemption. (*Wildlife Alive*, *supra*, 18 Cal.3d at pp. 205–206.) The trial court concluded that the relevant exception did not apply because it found no “unusual circumstances” present; however, the fact that proposed activity may have an effect on the environment is *itself* an unusual circumstance, because such action would not fall “within a class of activities that does not normally threaten the environment,” and thus should be subject to further environmental review. (*Azusa*, *supra*, 52 Cal.App.4th at p. 1206.)

*8 Although the trial court’s conclusion arguably is consistent with the two-step approach set forth in *Banker’s Hill*, we note that the *Banker’s Hill* court did not actually employ such a two-step procedure. Instead, it “streamlined” its approach by “proceed[ing] directly to the question of whether, applying the fair argument standard, there is a *reasonable possibility of a significant effect on the environment* due to any ... purported unusual circumstances.” (*Banker’s Hill*, *supra*, 139 Cal.App.4th at p. 278, *italics added.*) Indeed, much of the court’s opinion focused on all the reasons an agency must apply the fair argument approach in determining whether there is no reasonable possibility of a significant effect on the environment due to unusual circumstances (Guidelines, § 15300.2, subd. (c)). (*Banker’s Hill*, *supra*, 139 Cal.App.4th

at pp. 264–265.) Relying on *Wildlife Alive*, *supra*, 18 Cal.3d at pages 205–206, the *Banker's Hill* court emphasized that an agency is precluded under the Guidelines from “relying on a categorical exemption when there is a fair argument that a project will have a significant effect on the environment.” (*Banker's Hill*, *supra*, at p. 266.) In other words, the court acknowledged “‘that where there is *any reasonable possibility* that a project or activity may have a significant effect on the environment, an exemption would be improper.’” (*Ibid.*, italics added by *Banker's Hill*.) Our conclusion that the unusual circumstances exception does not apply whenever there is substantial evidence of a fair argument of a significant environmental impact is thus not inconsistent with *Banker's Hill*.

Other courts likewise have addressed the Supreme Court's statement in *Wildlife Alive*, *supra*, 18 Cal.3d at pages 205–206, that projects may not be categorically exempt where there is any reasonable possibility that the project may have a significant environmental effect. For example, in upholding a challenge to the categorical exemption for in-fill development projects (Guidelines, § 15332), the court in *Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th 98, summarized the relevant history of the unusual circumstances exception to the exemption: “This admonition from *Chickering* cannot be read so broadly as to defeat the very idea underlying CEQA section 21084 of *classes or categories* of projects that do not have a significant environmental effect. So subsequent case law has stated that ‘[t]o implement th[is] rule laid out in *Chickering*, Guidelines section 15300.2, subdivision (c), was adopted....’ [¶] Thus, a categorical exemption authorized by CEQA section 21084 is an exemption from CEQA for a *class* of projects that the Resources Agency determines will *generally* not have a significant effect on the environment.” (*Id.* at p. 127, original italics, fns. omitted.)

Respondents apparently would have this court read the forgoing excerpt from *Communities* as cautioning against applying the unusual circumstances exception too “‘broadly.’” “In fact, the quoted passage simply sets forth the relevant history of the unusual circumstances exception. The *Communities* court went on to emphasize that effects on aesthetics, cultural resources, water supply, health, and safety “would constitute ‘unusual circumstances’ under this exception for a project that otherwise meets the Guidelines 15332 [in-fill development] criteria. This is because a project that does meet the comprehensive environmentally protective criteria of section 15332 normally would not have other significant environmental effects; if there was a reasonable

possibility that the project would have such effects, *those effects would be ‘unusual circumstances’ covered by the section 15300.2, subdivision (c) exception.*” (*Communities for a Better Environment v. California Resources Agency*, *supra*, 103 Cal.App.4th at p. 129, italics added.) We recognize that the proposed construction here fell within two categorical exemptions, meaning that it belonged to classes of projects that generally do not have a significant effect on the environment. (*Id.* at p. 127.) However, once it is determined that there is a reasonable possibility that a specific activity may have significant effects on aesthetics, cultural resources, or other areas not covered by the in-fill exemption (such as geotechnical impacts), application of a categorical exemption no longer is appropriate, because such a project is different from activity that generally does not have environmental effects. (*Ibid.*)

*9 In sum, the trial court erred insofar as it concluded that appellants had provided substantial evidence of a fair argument of a significant environmental impact, yet declined to apply the unusual circumstances exception. We acknowledge that it may be helpful to analyze the applicability of the unusual circumstances exception as part of a two-step inquiry (as we do below), separately inquiring as to whether unusual circumstances exist, and whether there is a risk of significant environmental impact due to those unusual circumstances. (*Banker's Hill*, *supra*, 139 Cal.App.4th at p. 278 .) This approach assists with the determination of whether the circumstances surrounding a proposed activity “differ from the general circumstances of the projects covered by a particular categorical exemption.” (*Azusa*, *supra*, 52 Cal.App.4th at p. 1207.) However, once it is determined that a proposed activity may have a significant effect on the environment, a reviewing agency is precluded from applying a categorical exemption to the activity.

4. Standard of review

“[A]ny factual determination relating to the existence of a certain circumstance is reviewed as a question of fact under the substantial evidence standard, but ‘the question whether that circumstance is “unusual” within the meaning of the significant effect exception would normally be an issue of law that this court would review de novo.’ [Citations.]” (*Banker's Hill*, *supra*, 139 Cal.App.4th at p. 261–262, fn. 11; see also *Azusa*, *supra*, 52 Cal.App.4th at p. 1207.) “[A]n agency must apply a fair argument approach in determining whether, under Guidelines section 15300.2(c), there is no reasonable possibility of a significant effect on the environment due to unusual circumstances. Accordingly, as a reviewing court

we independently review the agency's determination under Guidelines section 15300.2(c) to determine whether the record contains evidence of a fair argument of a significant effect on the environment.”¹⁰ (*Banker's Hill* at p. 264; see also *Wollmer, supra*, 193 Cal.App.4th at p. 1350.)

¹⁰ Respondents contend that there is a “split in authority” over whether we apply the fair argument or substantial evidence standard of review to an agency's finding that there was no reasonable possibility of a significant effect on the environment, but that appellants have not shown error under either standard. Our reliance on the fair argument standard is consistent with our recent decision in *Wollmer, supra*, 193 Cal.App.4th at page 1350, citing *Banker's Hill, supra*, 139 Cal.App.4th at page 261.

With these general principles in mind, we analyze whether the unusual circumstances exception applies to the facts of this case.

B. Appellants Established Fair Argument of Significant Effect on Environment Due to Unusual Circumstances.

1. Proposed construction presents “unusual circumstances”

As set forth above, the proposed construction is concededly subject to two categorical exemptions (the single-family residence exemption and the in-fill exemption, Guidelines, §§ 15303, subd. (a), 15332). As for the single-family residence exemption, the Guidelines provide that this categorical exemption applies to the “construction and location of limited numbers of new, small facilities or structures;.... The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include but are not limited to: [¶] (a) One single-family residence, or a second dwelling unit in a residential zone. In urbanized areas, up to three single-family residences may be constructed or converted under this exemption.” (Guidelines, § 15303, subd. (a).)

*10 Appellants presented substantial, and virtually uncontradicted, evidence that the proposed single-family residence to be constructed was unusual, based on its size. (*Banker's Hill, supra*, 139 Cal.App.4th at p. 261, fn. 11 [determination relating to existence of certain circumstance reviewed as question of fact under substantial evidence standard].) Of more than 17,000 single-family residences in Berkeley, only 17—or a tenth of a percent—are larger than 6,000 square feet, whereas the proposed construction

will result in a residence that is more than 9,800 square feet. On appeal, respondents highlight evidence that 68 City “dwellings” are larger than 6,000 square feet. First, it is unclear whether all 68 “dwellings” are single-family residences. Second, even assuming arguendo that they are, that still means that less than a half percent (or 0.4 percent) of all Berkeley residences are more than 6,000 square feet, an indication that the approximately 9,800 square-foot proposed residence “ ‘differ[s] from the general circumstances of the projects covered by a particular categorical exemption.’ ” (*Wollmer, supra*, 193 Cal.App.4th at p. 1350.)

The trial court found that there were no unusual circumstances present here, because the proposed construction was “not so unusual for a single family residence, *particularly in this vicinity*, as to constitute ... unusual circumstances....” (Italics added .) Respondents likewise highlight evidence that 20 houses in the area, including five “immediately surrounding the property,” range in size from 4,000 to 6,000 square feet. Again, however, whether a circumstance is unusual “is judged relative to the *typical* circumstances related to an otherwise *typically exempt project*,” as opposed to the typical circumstances in one particular neighborhood. (*Santa Monica Chamber of Commerce v. City of Santa Monica, supra*, 101 Cal.App.4th at p. 801, second italics added; but see *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 736 (*Ukiah*) [size and height of house not unusual “in the vicinity”].) Reviewing de novo the question of whether the circumstance is “ ‘unusual’ ” “ ‘within the meaning of the significant effect exception (*Banker's Hill, supra*, 139 Cal.App.4th at p. 261, fn. 11), we conclude as a matter of law that the proposed construction, which would result in a 6,478 square-foot home with an attached 3,394 square-foot, 10-car garage, is “unusual” within the meaning of the applicable exception, because the circumstances of the project differ from the general circumstances of projects covered by the single-family residence exemption, and it is thus unusual when judged relative to the typical circumstances related to an otherwise typically exempt single-family residence. (*Wollmer, supra*, 193 Cal.App.4th at p. 1350; *Santa Monica Chamber of Commerce v. City of Santa Monica, supra*, 101 Cal.App.4th at p. 801.)

2. Fair argument of significant effect on the environment

*11 We next inquire whether there is a reasonable possibility that the proposed construction will have a significant effect on the environment due to the unusual

circumstance of its size. (*Banker's Hill*, *supra*, 139 Cal.App.4th at p. 278.) We agree with the trial court that Karp's letters submitted to the City Counsel amounted to substantial evidence of a fair argument that the proposed construction would result in significant environmental impacts.

As set forth above, Karp opined that the proposed construction would (1) require the excavation of all vegetation and extensive trucking of earthwork in order to achieve grading, (2) result in steepening of the already existing steep slope, (3) necessitate 27-foot retaining walls, and (4) impact the environment because of the probability of "seismic lurching of the oversteepened side-hill fills" in a landslide hazard zone. These were certainly potential "direct physical change[s] in the environment," which justified Karp's opinion that the construction would result in a significant impact to the environment. (Guidelines, § 15378, subd. (a) [definition of "project"]; see also *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 277–278, fn. 16.) Stated differently, Karp's opinion provided substantial evidence upon which it could be fairly argued that the proposed construction may have significant environmental impact. (*Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at p. 1316.)

Two engineers opined that Karp's conclusion that geotechnical issues were present at the site was based on a misreading of the relevant plans, and the director of the City's planning and development department likewise concluded that the site was suitable for the proposed dwelling from a geotechnical standpoint, and that no landslide risk was present at the site. However, where there is substantial evidence of a significant environmental impact, "*contrary evidence is not adequate* to support a decision to dispense with an EIR. [Citations.] Section 21151 creates a low threshold requirement for initial preparation and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. [Citations.] For example, *if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR*. [Citations.]" (*Sierra Club v. County of Sonoma*, *supra*, 6 Cal.App.4th at pp. 1316–1317, italics added; see also Guidelines, § 15064, subd. (g) [where there is disagreement in marginal case over significance of environmental effect, lead agency shall treat effect as significant and prepare EIR].)

Ukiah, *supra*, 2 Cal.App.4th 720, upon which respondents rely, is distinguishable. In *Ukiah*, an environmental association challenged the construction of a single residence on the last undeveloped lot in a single subdivision. (*Id.* at p. 724.) The court rejected appellant's argument that the unusual circumstances exception applied, concluding that "[n]either the size of the house (2,700 square feet), nor its height, nor its hillside site is so unusual in the vicinity as to constitute the type of unusual circumstance required to support application of this exception." (*Id.* at pp. 736.) The court emphasized that "[t]he potential environmental impacts which [appellant] posits seems to us to be *normal and common considerations in the construction of a single-family residence* and are in no way due to 'unusual circumstances.'" (*Ibid.*, italics added.) Here, by contrast, we do not consider the potential massive grading and seismic lurching associated with the proposed construction to be "normal and common considerations" associated with the construction of a new home.

*12 Because there was substantial evidence in the record to support a fair argument that the proposed construction will have a significant effect on the environment (Guidelines, § 15300.2, subd. (c)), the application of a categorical exemption was inappropriate here, and the trial court erred in denying appellants' petition for a writ of mandate.¹¹

¹¹ In light of our conclusion, we need not consider appellants' argument that the Board's adoption of a traffic management plan was a "mitigation measure[]" that precluded a finding of a categorical exemption. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1108.)

III.

DISPOSITION

Appellants' request for judicial notice is granted. The judgment is reversed, and the trial court is ordered to issue a writ of mandate directing the City to set aside the approval of use permits and its finding of a categorical exemption, and to order the preparation of an EIR. Appellants shall recover their costs on appeal.

We concur: RUVOLO, P.J., and REARDON, J.

Insurance company ordered to pay homeowner \$8 million

March 18, 2012

By Andrew Blankstein and Richard Winton, Los Angeles Times

March 18, 2012

An elderly Hollywood Hills resident whose home was nearly destroyed when a dump truck crashed into it, rupturing a gas line and causing an explosion, was awarded more than \$8 million after jurors found that his insurance company of more than 50 years failed to honor its contract.

The Los Angeles County Superior Court jury last week found that Residence Mutual Insurance Co. not only acted with malice and fraud in failing to fulfill its \$220,000 policy with Robert Christopher, who was 86 at the time of the 2008 accident, but noted that its conduct was directed at a senior citizen, who is considered under California law more vulnerable than other members of the population.

"The insurance company did everything possible to try and torpedo this World War II veteran's case," said attorney Mark Geragos. "You wouldn't treat your worst enemy the way this insurance company treated this policyholder of more than 50 years. This should be a message to insurance companies that you never put your interests before the interests of the insured."

Attorneys for Residence Mutual Insurance, headquartered in Irvine, could not be reached for comment.

Christopher, a longtime Hollywood character actor, and his partner, Patricia Freiling, were inside their Alcyona Drive home in January 2008 when a dump truck hauling dirt away from a nearby construction site failed to negotiate a sharp turn. The truck was turning right at a nearly 90-degree angle from steep Primrose Avenue.

The 33-foot-long truck, which held 15 tons of dirt, toppled over on its side and slammed into their residence. The impact severed a gas line, setting off an explosion. Flames and smoke quickly enveloped the house.

The pair were trapped inside for nearly 20 minutes until they were able to dislodge a sliding door, according to court records. Christopher, a Marine Corps veteran, hurt his back trying to flee, and Freiling chipped a tooth and reinjured a previously broken wrist.

Despite the trauma of the incident, co-counsel Brian S. Kabateck said Christopher believed he could rebuild his home by getting the trucking company to compensate him through its insurance while also collecting on his homeowner's policy, which he had purchased during the Eisenhower administration.

Residence Mutual not only held back payment, Geragos said, but charged Christopher for work done by an engineering firm as well as another company that charged him \$20,000 to pack up his belongings for storage.

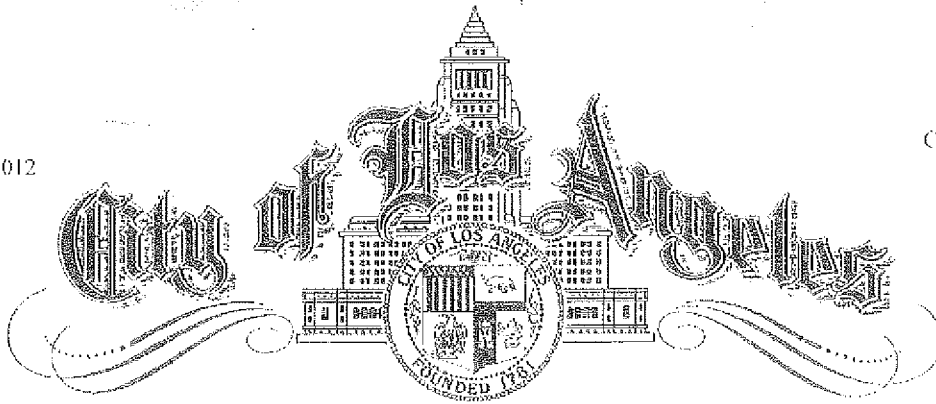
Geragos and Kabateck also successfully argued that the insurance company interfered in Christopher's lawsuit against the construction company and the city.

On Friday, after a day of deliberation and a week of trial arguments, the jury awarded Christopher a combined \$8,062,850 in economic, noneconomic and punitive damages.

In addition, Christopher recovered another \$450,000 from the city, which settled with him in a lawsuit over the condition of the roadway.

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Room 800
Los Angeles, CA 90012

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(213) 978-8312 Fax
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www.lacity.org/atty



CARMEN A. TRUTANICH
City Attorney

REPORT NO. R12-0001

JAN 05 2012

**REQUEST FOR CLOSED SESSION PURSUANT TO
GOVERNMENT CODE SECTION 54956.9(a)**

REPORT RE:

SETTLEMENT DISCUSSIONS

**PETRA ACUPANDA V. CITY OF LOS ANGELES, ET AL.
LOS ANGELES SUPERIOR COURT CASE NO. BC433757**

The Honorable City Council
City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

(Claim No. C10-0488)

Honorable Members:

This office recommends that discussions with, and advice from, legal counsel regarding the recommendation for City Council action in this pending litigation be scheduled and held in closed session pursuant to California Government Code Section 54956.9(a). Government Code Section 54956.9(a) requires you to state publicly prior to the closed session, what subdivision of this section authorizes the closed meeting, and that the closed session is being held to confer or discuss with, or receive advice from, legal counsel regarding pending litigation.

3013 WY-2 01 03 22

The Honorable City Council
City of Los Angeles
Page 2

This matter involves a dangerous condition of public property case arising out of a vehicle versus pedestrian traffic accident which occurred at the intersection of Third Street and Hoover Street, in the City of Los Angeles.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By


GARY G. GEUSS
Chief Assistant City Attorney

DHS:ea

cc: Board of Transportation Commissioners
Amir Sedadi, Interim General Manager
Zernan Abad, Risk Management

12-0044

APR 13 2012

TO CITY CLERK FOR PLACEMENT ON NEXT
REGULAR COUNCIL AGENDA TO BE POSTED

#53

MOTION

For Tuesday 4/17/12

At its meeting held February 22, 2012, the City Council adopted the recommendations of the City Attorney authorizing the expenditure of \$1,400,000 in order to effect settlement in the case entitled Petra Acupanda v. City of Los Angeles, Los Angeles Superior Court Case No. BC 433757. (Council File No. 12-0044). Recommendation No. 1 authorized the Office of the City Attorney to draw the demand from Fund 100, Department 59, Account No. 009770. Recommendation No. 2 made such demand payable to Robinson Calcagnie Robinson Shapiro Davis, Inc. and Petra Acupanda.

The City Attorney has issued the check accordingly but plaintiff's party previously requested that part of it be paid towards two annuities, part of it be paid in satisfaction of a lien for medical services provided, and the remainder to be paid to the plaintiff's attorney's client trust fund. Specifically, plaintiff's party requested that the payment of \$1,400,000 be broken down into four separate demands as follows: 1) \$200,010.08 made payable to "Dept. of Health Care Services -MS 4720"; \$346,601.00 made payable to "Pacific Life & Annuity Services, Inc." (Tax ID 91-2025652); \$153,585.00 made payable to "MetLife Tower Resources Group, Inc." (Tax ID 13-4047186); and \$699,803.92 made payable to Robinson Calcagnie Robinson Client Trust Account (Tax ID 33-0191323)

In addition, it is necessary to amend Recommendation No. 2 of the City Council's action taken on February 22, 2012 to allow the City Attorney's Office to effect the changes. The proposed amendment does not affect the City Council action taken regarding the total amount of the settlement.

I THEREFORE MOVE that Recommendation No. 2 of Council File No. 12-0044 authorizing the City Attorney to pay the \$1,400,000 settlement be amended so that it reads as follows, SUBJECT TO THE APPROVAL OF THE MAYOR:

2. AUTHORIZE the City Attorney to draw demands as follows:

- a) \$200,010.08 payable to Dept. of Health Care Services -MS 4720
- b) \$346,601.00 payable to Pacific Life & Annuity Services, Inc. (Tax ID 91-2025652)
\$153,585.00 payable to MetLife Tower Resources Group, Inc. (Tax ID 13-4047186)
\$699,803.92 made payable to Robinson Calcagnie Robinson Client Trust Account
(Tax ID 33-0191323).

PRESENTED BY:

Paul Krekorian

PAUL KREKORIAN
Councilmember, 2nd District

SECONDED BY:

Paul Spitzer

ADOPTED

APR 17 2012

LOS ANGELES CITY COUNCIL
TO THE MAYOR FORTHWITH

ORIGINAL

[Signature]
APR 13 2012
MAYOR WITH FILE

Office:

Downtown ☐Van Nuys ☒Department of City Planning
Los Angeles

Nº 280456

Date June 14, 12

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant / Appellant: <u>Marilyn Noyes</u>			
Representative _____			
Project Address <u>12112 W. Santa Monica Blvd.</u>			
Telephone Number _____			
Case Number and Description	Task	SubTask	Ordinance Fee
<u>Env-2011-818-CE-1A</u>			\$ <u>89</u> <u>00</u>
			\$
			\$
			\$
	Sub Total Fees Paid		\$
OSS Surcharge - 2%			\$ <u>1</u> <u>78</u>
Development Surcharge - 6%			\$ <u>5</u> <u>34</u>
Operating Surcharge - 7%			\$ <u>10</u> <u>23</u>
Expediting Fee			\$
Bad Check Fee			\$
Miscellaneous/Photocopy			\$
<u>General Plan Maintenance fee 3 1/2 %</u>			\$ <u>2</u> <u>87</u>
TOTAL FEES PAID			\$ <u>105</u> <u>02</u>

() Cash

(X) Check # 3157

() Money Order # _____

Council District 11Plan Area West Los Angeles

In the Department of Building and Safety
VN 09 03 21/2/25 06/14/12 12:32PM

Processed by

Rony Giron
Print & sign

PLAN & EXH. FEE	\$89.00
ONE STOP CITY FEE	\$1.7
DEVELOPMENT SURCHG	\$5.3
OPERATING SURCHG	\$6.2
GEN PLAN MAINT SURCHARGE	\$2.8

Total Due:	\$105.2
Check:	\$105.0
Cash:	\$0.2



WEST LOS ANGELES AREA PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.lacity.org/PLN/index.htm

Determination Mailing Date: JUN 04 2012

CASE NO: ZA 2011-817-CUB-CU-1A
CEQA: ENV-2011-818-CE

Location: 12112 West Santa Monica Boulevard
Council District: 11
Plan Area: West Los Angeles
Zone: C2-1VL

APPLICANT: J. Anthony Kouba
Representative: Tom McCarty

APPELLANTS: 1) Giovanni Mauro
2) Marilyn Noyes on behalf of the Westside of Los Angeles Neighborhood and Community Coalition

At its meeting on **May 16, 2012**, the following action was taken by the West Los Angeles Area Planning Commission:

1. Denied the appeals.
2. Sustained the decision of the Zoning Administrator to dismiss a Conditional Use Permit to allow patron dancing in the restaurant inasmuch as the applicant withdrew the request at the public hearing; to deny without prejudice a Conditional Use to allow hours of operation from 7:00 a.m. to midnight, Thursday through Saturday, in lieu of the Mini-Shopping Center limitation of operation from 7:00 a.m. to 11:00 p.m.; and to approve a Conditional Use Permit to allow the sale of beer and wine for on-site consumption in conjunction with the operation of a 2,816 square-foot restaurant in the C2-1VL Zone, subject to modified Conditions of Approval.
3. Adopted the Findings.
4. Adopted the environmental clearance Categorical Exemption ENV-2011-818-CE.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Commissioner Foster
Seconded: Commissioner Martinez
Ayes: Commissioners Foster, Martinez, Donovan, Halper, and Linnick

Vote: 5 - 0

Effective Date

Effective upon the mailing of this notice

Appeal Status

Not further appealable to City Council


Rhonda Ketay, Commission Executive Assistant
West Los Angeles Area Planning Commission

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachment: Modified Conditions of Approval and Findings

cc: Notification List
Maya Zaitzevsky

CONDITIONS

1. All other use, height and area regulations of the Municipal Code and all other applicable government/regulatory agencies shall be strictly complied with in the development and use of the property, except as such regulations are herein specifically varied or required.
2. The use and development of the property shall be in substantial conformance with the plot plan submitted with the application and marked Exhibit "A", except as may be revised as a result of this action.
3. The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the Zoning Administrator to impose additional corrective Conditions, if, in the Administrator's opinion, such Conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
4. All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
5. A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Zoning Administrator and the Department of Building and Safety for purposes of having a building permit issued.
6. Indemnification. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this approval which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
7. Approved herein is the sale and dispensing of beer and wine for on-site consumption in conjunction with a 2,816 square-foot restaurant with seating for 94 patrons indoors. No patio seating is permitted. Hours of operation are ~~7:00~~ 11:00 a.m. to 11:00 p.m., daily.
8. This grant shall have a life of **five years** after which the applicant shall file for and win an authorization from the Office of Zoning Administration in order to continue the sale of beer and wine for on-site consumption.
9. Parking to be provided to the satisfaction of the Department of Building and Safety.

10. The Conditional Use Permit (CUP) approval shall be subject to a required plan approval within ~~48 to 24~~ 12 months from the issuance of the Certificate of Occupancy. The Applicant shall provide the Zoning Administrator a copy within five business days of any violations issued by any City departments or other public jurisdictions relating to such operation's alcohol service. At the time of the filing of the plan approval, the applicant shall submit an analysis from a licensed traffic engineer evaluating the effectiveness of the parking lot layout and circulation, including any suggested improvements to be considered by the Zoning Administrator. If documented evidence is submitted showing continued violation(s) of any of the following: CUP condition(s) of approval, undue disruption of or interference with the peaceful enjoyment of adjacent neighboring properties and/or alcohol-related enforcement actions from other public jurisdictions, the Zoning Administrator reserves the discretion to hold a public hearing. Such public hearing, held in conjunction with the Plan Approval and payment of associated fees, shall be publicly noticed for the purpose of conducting a public review of the Petitioner's compliance with and the effectiveness of the CUP conditions for approval and related enforcement actions. The Petitioner shall, prior to the public hearing, submit detailed documentation as to how compliance with each condition of the grant and related enforcement action has or will be attained. At the time of the filing of the plan approval, the applicant can reapply for the mini-shopping center deviation of hours of operation.
11. No dancing is permitted.
12. Live entertainment shall be limited to one performance per month with a maximum of three instruments. The applicant shall notify LAPD one week prior to the live entertainment with the ensemble information and hours.
13. The establishment shall not be operated where an admission is charged at the door or other manner similar to a nightclub or after hours establishment.
14. The premises shall not be used exclusively for private parties where the general public is excluded.
15. The subject alcoholic beverage license shall not be exchanged for a public premises type license nor operated as a public premises. (Applicant volunteered)
16. Any alcoholic beverage sold or dispensed for consideration shall only be for consumption on the premises and shall be served at tables or sit-down counters by employees of the restaurant. (Applicant volunteered)
17. The premises shall be maintained as a bona fide restaurant with a kitchen, and shall provide a menu containing an assortment of foods normally offered in such restaurants. Food service shall be available at all times during authorized operating hours. (Applicant volunteered)

18. There shall be no "happy hour" during which time beverages or foods are sold at discounted prices. (Applicant volunteered)
19. The quarterly gross sale of alcoholic beverages shall not exceed the gross sales of food during the same period. The Petitioner(s) shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the police department upon demand. (Applicant volunteered)
20. There shall be no exterior advertising of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages, except that the restaurant may post a menu. (Applicant volunteered)
21. Applicant shall not require an admission charge or a cover charge, nor shall there be a requirement to purchase a minimum number of drinks. (Applicant volunteered)
22. No alcoholic beverage shall be consumed on any property adjacent to the licensed premises under the control of the licensees.
23. Within six months of the effective date of this determination, all personnel acting in the capacity of a manager, bartender, and/or server of the premises shall attend a Standardized Training for Alcohol Retailers (STAR) session sponsored by the Los Angeles Police Department. The applicant shall contact the Vice Unit of the Los Angeles Police Department and make arrangements for such training.
24. Electronic age verification device(s), which can be used to determine the age of any individual attempting to purchase alcoholic beverages, shall be installed on the premise at each point-of-sales location. The device(s) shall be maintained in an operational condition, and all employees shall be instructed in their use prior to the sale of any alcoholic beverages.
25. No employee or agent shall be permitted to accept money or any other thing of value from a customer for the purpose of sitting or otherwise spending time with customers while in the premises, nor shall the licensee(s) provide, permit, or make available either gratuitous or for compensation, male or female patrons who act as escorts, companions, or guests of and for the customers.
26. No pennants, banners, ribbons, streamers, spinners or balloon signs are permitted.
27. No obstructions shall be attached, fastened or connected to the partitions or ceiling to separate the booths/dining areas within the interior space of the licensed premises.

28. The applicant shall not maintain or construct any type of enclosed room intended for use by patrons or customers for any purpose, except for restrooms.
29. Applicant shall comply with 6404.5(b) of the Labor Code, which prohibits smoking within any place of employment.
30. Applicant shall not possess ashtrays or other receptacles used for the purpose of collecting cigarettes/cigar butts.
31. A sign shall be posted at the restaurant entrance asking patrons not to park in the adjacent residential streets shall be placed where it is clearly visible.
32. A 24-hour "hot line" phone number shall, be provided for the receipt of complaints from the community regarding the subject facility and shall be:
 - a. Posted at the entrances.
 - b. Posted at the Customer Service desk.
 - c. Provided to the immediate neighbors, schools, and the Neighborhood Council.
33. The property owner/operator shall keep a log of complaints received, the date and time received, and the disposition of the response. This shall be available for inspection by the Department.
34. The establishment shall make an effort to control any unnecessary noise made by restaurant staff or any employees contracted by the restaurant, or any noise associated with the operation of the establishment, or equipment of the restaurant.
35. The approved conditions shall be retained on the premises at all times and produced immediately upon request of the Police Department and City Planning.
36. There shall be no karaoke, disc jockey, topless entertainment, male or female performers or fashion shows.
37. Amplified recorded-music shall not be audible beyond the area under control of the applicant.
38. There shall be no pool tables, coin-operated games, or video machines permitted on the premises at any time.
39. Loitering is prohibited on or around these premises or the area under control of the applicant.
40. The applicant shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control.
41. Trash/recycling pick-up and deliveries are permitted to occur only between the

hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and 10:00 a.m. to 4:00 p.m. Saturday and Sunday. No deliveries are permitted between the hours of noon and 2:00 p.m., daily.

- a. Trash/recycling containers shall be locked when the restaurant is not in use.
 - b. Trash/recycling containers shall not be placed in or block access to required parking.
 - c. Trash/recycling items shall not be emptied or disposed into outside containers earlier than 9:00 a.m. or later than 9:00 p.m.
42. Prior to the clearance of any conditions, the applicant shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.
 43. Prior to issuance of any permits relative to this matter, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement for CP-6770) shall run with the land and shall be binding on any subsequent owners, heirs or assigns. This agreement with the conditions attached must be submitted to the Department of City Planning for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the subject case file.
 44. All loading and unloading of deliveries for the subject restaurant shall be done in either in the parking lot or on Ohio Avenue whichever, is determined to be appropriate by DOT after review of the parking plan. No restaurant truck parking is permitted in the alley.

MANDATED FINDINGS

Following (highlighted) is a delineation of the findings and the application of the relevant facts to same:

1. **The proposed location will be desirable to the public convenience or welfare.**

The subject property is an approximately 8,137 square-foot through parcel comprised of two lots tied together and developed with an approximately 7,138 square-foot commercial building. The property has frontage on Santa Monica Boulevard and Ohio Avenue and is zoned [Q]C2-1VL. The commercial building contains two tenant spaces. The subject tenant space (12112 Santa Monica Boulevard) is vacant, the second tenant space (12115 Ohio Avenue) is developed with an IHOP restaurant. The building previously contained a Blockbuster video store, before that it contained a theater. The subject property does not have any on-site parking, however, the applicant owns the adjacent surface parking lot and will provide the required parking on that lot via covenant.

The applicant requested a conditional use permit to allow the on-site sale of beer and wine with patron dancing and live entertainment in conjunction with a proposed 2,816 square-foot restaurant with seating for 114 patrons (94 interior seats and 20 patio dining seats). Also requested was a conditional use permit to allow hours of operation from 7:00 a.m. to 2:00 a.m. daily in lieu of the permitted hours of operation of 7:00 a.m. to 11:00 p.m., daily for a mini-shopping center. The proposed hours of alcohol sales, live entertainment, and dancing were from 11:00 a.m. to 2:00 a.m., daily.

A number of people testified in opposition to the request at the public hearing and many letters of opposition were submitted during the advisement period. Stated issues of concern included: hours of operation, the sale of alcohol, live entertainment, the use seems to be a nightclub not a restaurant, noise impacts from the patio, the restaurant's proximity to a store serving recovering alcoholics, proposed patio tables and chairs will impede ADA access, pedestrian/vehicular conflicts in the alley, and inadequate parking for the restaurant and neighboring businesses. A representative for the Smart & Final store said they have problems with people using their parking lot when patronizing other businesses and felt the proposed restaurant would exacerbate the problem.

Entitlement reduction

In response to the concerns raised at the hearing, the applicant withdrew the request for patron dancing. After the hearing he reduced the proposed live entertainment to three musicians performing one evening per month. The requested hours of operation were reduced to 7:00 a.m. to 11:00 p.m., Sunday through Wednesday and 7:00 a.m. to midnight, Thursday through Saturday.

Alley/Parking Meters

The subject alley provides vehicular access to the commercial properties. The site plan indicates a there will be a striped ADA path of travel from the parking lot to the subject property located near the alley entrance on Ohio Avenue. A mid-block pedestrian walkway separates the two surface parking lots. People stated that the alley is used by numerous delivery trucks and cars. They were concerned that the proposed restaurant will increase the number of vehicles and pedestrians using the alley. In a June 23, 2011 letter, the West Los Angeles Neighborhood Council requested that the Zoning Administrator impose two conditions of approval relating to the adjacent public alley: 1) request the Department of Transportation (DOT) to change the alley from two-way to one-way, and 2) the City "improve the walkability" of the alley. Vehicular circulation and improvements in public alleys are under the purview of DOT and the Bureau of Engineering not the Office of Zoning Administration. The applicant stated in an email that he is not opposed to converting the alley to one-way only. The Neighborhood Council would need to submit a petition requesting the changes to the alley to DOT's Western District Office. The petition must be signed by 70% of the property owners adjacent to the alley. The petition should include specific suggested measures (e.g., signage, pavement, or lighting).

The Neighborhood Council requested that DOT install parking meters on Santa Monica Boulevard with time limits of 15 or 30 minutes. The Neighborhood Council should submit this request to DOT's Meter Planning Section. The request should include the location of the meters and the proposed time restrictions. There is one-hour parking currently on Santa Monica Boulevard and Ohio Avenue, but with no parking meters it makes enforcement of the restriction difficult. Short-term metered parking would be very useful to the adjacent business owners who lack on-site parking for their customers.

Redesign of the parking layout on the adjacent property

On November 3, 2011, a letter was submitted stating that the Mitigated Negative Declaration (MND) prepared for the project should be revised and re-circulated due to the changes in the property's parking lot layout and access. The letter also stated the MND's project description erroneously described the restaurant's street frontage as Santa Monica Boulevard. These assertions are incorrect. The parking lot is not located on the same lot as the proposed restaurant. The MND project description stated "The property is two tied lots, with frontages on Santa Monica Boulevard and Ohio Avenue." "Frontage" is the portion of the property adjacent to a street. The subject property fronts both streets. There is a door on Santa Monica Boulevard and a door in the rear facing Ohio Avenue. The MND project description was accurate.

After the public hearing, the Council Office and members of the community requested that the Department of Building and Safety (B&S) verify the parking requirement for the IHOP and the proposed restaurant. B&S determined the parking requirement for the two restaurants was 61 parking spaces. In response to that, the applicant reconfigured the parking lot and submitted a revised parking plan that was approved by B&S. The restriped lot will have 63 parking spaces, 14 trees, landscaping, and a 3-foot high wall along Ohio Avenue to shield vehicular headlights. B&S verified the reconfigured parking lot will conform to the turn around and backup aisle requirements of the LAMC. The revised parking plan was submitted to the Zoning Administrator on December 9, 2011, and included in the file for reference. The applicant was able to provide adequate off-site parking for both restaurants via covenant as permitted under LAMC Section 12.26-E,5. If the applicant did not provide this parking, they would have been required to file for a variance, revise the MND, and have a new hearing.

On January 4, 2012, Wendy Sue Rosen submitted an email stating that she reviewed the revised MLUA and compared it to the MND and determined that both are legally inadequate. She stated the MLUA does not disclose the request for the request for deviations to the Mini-Shopping Center hours. Ms. Rosen stated that the MND is inadequate because the project has changed substantially since it was prepared, and additional parking was required. She said the MND did not evaluate the parking requirement, reconfiguration or impacts, and the parking plan was not made available for public review. She requested that the MND be revised and re-circulated, and a new public hearing be held. Letters from four neighboring business owners were forwarded to the Zoning Administrator regarding their opposition to the changes to the parking layout. The letters expressed dismay that their input was not solicited by the City.

The November 29, 2011 permit issued to allow the restriping of the parking lot was a ministerial action taken by B&S which does not require a public hearing. B&S indicated that changes to parking lots only require the approval of the Bureau of Engineering when a new curb cut is proposed. The revised parking plan was available for public review in the Planning Department. The case file was reviewed by Ms. Noyes on January 19, 2012. On January 20, 2012, the Neighborhood Council forwarded a resolution requesting the project's MND be revised to analyze the change in the parking layout and potential impacts to the alley circulation. The Neighborhood Council requested that the MND be re-circulated and a new public hearing be held. The revised parking lot design eliminates the driveway on Ohio Avenue resulting in up to two on-street parking spaces. The removal of the parking lot driveway on Ohio Avenue is consistent with Policy 13-1.1 of the West Los Angeles Community Plan which states "Reduce the number of ingress and egress points onto arterials, where appropriate."

Two appeals of the Zoning Administrator's determination were heard by the West Los Angeles Area Planning Commission ("WLA APC"). Giovanni Mauro, a neighboring business owner, appealed the entire decision. Marilyn Noyes, on behalf of the Westside of Los Angeles Neighborhood and Community Coalition, appealed the decision in part. Mr. Mauro did not attend the appeal hearing. The WLA APC hearing was attended by Ms. Noyes, members of the community, nearby business owners, a Planning Deputy for Council District 11, and members of the West Los Angeles Neighborhood Council. The public hearing lasted approximately two hours. The appellant and the applicant were allotted time to make statements as well as two minutes for rebuttal. A number of speakers testified both in support and in opposition to the appeals. Jay Handel, Chair of the West Los Angeles Neighborhood Council, stated that the January 3, 2012 resolution from the Land Use Committee should not have been submitted to the Zoning Administrator. The Neighborhood Council did not adopt the proposed resolution.

Ms. Noyes testified that her group was opposed to the Categorical Exemption issued for the proposed project. She stated that the Court of Appeal in *Berkeley Hillside Pres. v. City of Berkeley* found that Categorical Exemptions can't be issued if there is a reasonable possibility that a project may have a significant impact on the environment. She stated that the proposed project will increase the number of patrons and delivery trucks to the site which will jeopardize the safety of the pedestrians crossing the alley. She objected to the revised parking layout which eliminates the driveway on Ohio Avenue forcing all vehicles to use the alley to access the parking. She submitted photographs of vehicles and pedestrians in the alley. It was her opinion that the alley is currently overburdened and unsafe. She requested that the City prepare an environmental evaluation of the proposed design of the parking lot and associated loading as well as to mitigate its impact on pedestrian safety.

J. Anthony Kouba, the applicant, stated that he has owned the property since 1989. He opened a Blockbuster video store that was very successful for 15 years. He stated that he spoke to Sergeant Kunz of the LAPD West Los Angeles Traffic Division who found no record of personal injury or traffic accidents in the alley. He stated that for 23 years customers have backed their vehicles into the alley. When he opened the adjacent IHOP restaurant, the City required the removal of illegal parking spaces in the alley right-of-way, and made the property owner fence in the parking lot. He surveyed the lot from 7:00 a.m. to 11:00 a.m. and found that the alley was used by one car approximately every 4.5 minutes. He disagreed with the appellant's contention that the alley is "overburdened". He said the grease extracting truck only comes once every six months to empty the tank. The applicant provided the WLA APC with a table comparing the substantial evidence of environmental impacts, of the house referenced in the Berkeley Hillside Preservation case, with the impacts of the subject restaurant. He said there was no evidence supporting the contention that an "unusual circumstance" existed at the site or would be triggered by the operation of the

restaurant. Additionally, he stated that the restaurant and the IHOP are complimentary uses. The majority of the vehicular trips generated by the IHOP occur in the morning hours while the proposed restaurant would generate trips in the lunch time and evening hours. He felt the parking lot would easily accommodate the demand from both restaurants.

After consideration of the testimony and the evidence presented for the record, the WLA APC found that there was no conclusive evidence that the alley was currently unsafe, or that the restaurant's operation would result in an unusual circumstance. The proposed neighborhood-serving restaurant would result in fewer trips than generated by the prior use of a video store and as such would not create an unusual circumstance or result in a more dangerous condition in the alley. The WLA APC support having DOT add a red zone across from the proposed parking lot entrance to reduce the potential for vehicular conflict. The WLA APC supported the idea of DOT installing short-term meters on Santa Monica Boulevard and on Ohio Avenue to serve the small business that lack parking. In response to the testimony about delivery trucks blocking the alley, the WLA APC added a condition that the restaurant delivery trucks load and unload in either the parking lot or on Ohio Avenue only.

The WLA APC noted that the subject restaurant will provide more patron parking than other restaurants reviewed by the Commission. In looking at the circumstances of other restaurants in the area, as well as the City in general, the WLA APC found nothing unusual about the proposed request. The traffic flow and parking patterns may change at the site, but not in a way that can be significantly distinguished from any other restaurant that opens in a commercial building in the City. The restaurant can open as soon as the lot is restriped. The WLA APC determined there was no evidence submitted for the record that proves that the sale of beer and wine at the restaurant will result in unusual circumstances above and beyond the operation of the restaurant without the sale of beer and wine. A Commissioner quoted the following CEQA decision "CEQA is not a weapon to be deployed against all possible development ills" *South Orange County Wastewater Authority v. City of Dana Point* (CA Dist. 4 Ct. App., Div. 3, June 3, 2011.) He noted that some people in the community may not like the idea of living near a tavern or restaurant, but that doesn't mean an EIR needs to be prepared. The City removed the illegal alley parking previously used by the adjacent businesses. The property owner/applicant is not obligated to provide free parking for these businesses. The WLA APC took into consideration that the projected was thoroughly reviewed by the Neighborhood Council and the Council Office, and was supported by both.

CEQA Clearance

The applicant initially proposed a restaurant with on-site alcohol service, mini-shopping center deviations for hours of operation, and patron dancing. Due to the patron dancing element of the proposal, it was determined that the project did not qualify for a CEQA exemption. Thus, this application required the

preparation of an Initial Study to analyze and mitigate any potential environmental impacts. At the public hearing, the applicant eliminated the request for patron dancing. This change to the project means that the MND is no longer the appropriate CEQA clearance. It has been determined that the project now qualifies for an exemption.

The City CEQA Guidelines contain all Categorical Exemptions enumerated in the State CEQA Guidelines, as well as additional Exemptions that the City Council has determined are consistent with the State CEQA Guidelines and would not have a significant effect on the environment. Pursuant to Article III, Class 5, Category 34 of the City's CEQA Guidelines, a project can be considered Categorically Exempt from CEQA if it involves:

Granting of a conditional use for the on-site consumption of alcoholic beverages pursuant to L.A.M.C. Sections 12.21 and 12.24, as amended by Ordinance No. 148,994 (effective March 1, 1977), beverages will be dispensed and consumed do not exceed an occupant load of 200 persons, and provided that the premises will not also require an original dancehall, skating rink or bowling alley permit from the Los Angeles Police Commission.

The proposed restaurant with on-site consumption of beer and wine has seating for a maximum of 94 patrons and does not require a dancehall, skating rink or bowling alley permit from the Los Angeles Police Commission. The requested deviation from the hours of operation is exempt pursuant to Class 5, Category 23, "granting or renewal of a variance or conditional use for a non-significant change of use of land". Because of the reductions to the proposed project by the applicant, and because the request for a deviation in the otherwise applicable hours of operation is minor, the Zoning Administrator has determined that the restaurant is Categorically Exempt from CEQA and issued a Notice of Exemption on February 13, 2012 (Case No. ENV-2011-818-CE). The project is also considered Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15303(c), New Construction or Conversion of Small Structures. This exemption allows for restaurants of up to 10,000 square feet in size, which are located in urbanized areas on sites zoned for such use, do not involve the use of significant amounts of hazardous substances, where all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive.

Section 15300.2 of the State CEQA Guidelines contains the following list of Exceptions to the Categorical Exemptions—none of which are triggered here:

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply all instances, except where the project may impact on an environmental resource of hazardous or critical

concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The project site is located in an urbanized area that does not contain any mapped resources of hazardous or critical concern. The approval of the conditional use permit to allow the on-site consumption of beer and wine at a bona fide restaurant with deviations to hours of operation three nights per week will not result in a cumulative impact. The 2,816 square-foot restaurant is located in the C2-1VL Zone which permits commercial uses including restaurants. The property has been contained commercial uses for the past sixty years, first a theater and then a successful Blockbuster video store. For many years, cars have backed out into the alley to exit. After the appeal hearing, the Zoning Administrator spoke to Sergeant Kunz of the Los Angeles Police Department who confirmed the applicant's account that there were no recorded vehicular accidents or pedestrian injuries in the alley in the past ten years. There were three reported vehicular hit and run incidents in the subject parking lot in the same period. Two of the reports involved vehicular damage caused by one vehicle backing into another while exiting a parking space, and one occurred when a driver clipped another vehicle while turning into a parking space. There were no injuries associated with the reports. A former DOT West Los Angeles District Manager told the Zoning Administrator that in the 12 years he worked in that office he was unaware of any safety issues/complaints associated with the alley.

The requested conditional use permit will not result in reasonable possibility of a significant impact to the environment due to unusual circumstances. The property has street frontage on both Ohio Avenue and Santa Monica Boulevard. Ohio Avenue is a Local Street and is not designated as a state scenic highway. The property is located adjacent to an alley. The site's proximity to an alley is not an unusual circumstance as many restaurants and commercial uses in the City of Los Angeles are located adjacent to alleys which separate such uses from their parking. The revised configuration of the parking lot will result in some patrons backing cars into the alley to exit the lot. This backing out of cars into an alley is also not an unusual circumstance unique to the project. The Department of Building and Safety confirmed that the proposed parking lot design conforms to all of the relevant LAMC requirements. The applicant submitted a written response to the appeals (dated May 15, 2012) which included a map and photographs of 15 commercial areas located within a two-mile radius of the project site which have a similar arrangement of parking adjacent to an alley. In eight of the 15 locations some cars back out into the alley to exit. The photographs indicate that these alleys are used not only by cars and pedestrians, but also serve as a truck loading area for the commercial uses, similar to the subject property.

The proposed restaurant is located in an area of West Los Angeles that contains residential and commercial buildings with legal non-conforming parking, this is also not an unusual circumstance. Hollywood, Downtown Los Angeles, Koreatown are among several areas in the City that have similar circumstances. Portions of Downtown and Koreatown are designated as Enterprise Zones and restaurants are required to provide fewer parking spaces as an incentive for businesses to locate there.

Santa Monica Boulevard is a Scenic Highway, however, the approval of the conditional use permit will not result in damages to scenic resources such as trees, historic buildings, rock outcroppings or other similar resources. The project site is not located on a Hazardous Waste Site pursuant to Section 65962.5 of the Government Code. The subject building is not designated as a historic resource and is not located in a Historic Preservation Overlay Zone.

Patio

The applicant proposed 20 patio seats located at the top of the handicap access ramp that serves both IHOP and the new restaurant. The patio was a point of contention with the community who thought it would be noisy. They felt it was too small for the proposed number of seats, and could hinder access the restaurants. The Council Office recommended limiting the patio to a maximum of 12 seats. Photographic evidence was presented indicating that the ramp is too small to accommodate outdoor dining, deliveries from the both restaurants, grease extraction, and allow for proper ADA ingress and egress. The requested patio seating is denied.

Hours of operation

The requested hours of operation were reduced by the applicant to 7:00 a.m. to 11:00 p.m., Sunday through Wednesday and 7:00 a.m. to midnight, Thursday through Saturday. The Council Office supported the applicant's reduction in hours, and requested that the applicant file for a plan approval in two years. The request to allow a midnight closing three nights a week is being denied without prejudice at this time due to the concerns raised by the community and the Neighborhood Council. Condition No. 10 requires the applicant to file a plan approval within 18 to 24 months of issuance of the Certificate of Occupancy to review compliance with the conditions required herein. At the time of the filing of plan approval the applicant can reapply for the mini-shopping center deviation for hours of operation. If the applicant is found to be in substantial compliance with the conditions of approval, the Zoning Administrator can consider the request. At the appeal hearing, the WLA APC was initially inclined to grant the three additional hours of operation requested by the applicant. They found the requested hours to be reasonable and were supported by LAPD, however, they decided to allow the applicant to establish a one-year record of compliance with conditions before extending them. The WLA APC reduced the time to file of a plan approval from 18 months to 12 months (Condition No. 10.). If the applicant is found to be in substantial compliance with their conditions, then the increase in hours should be granted. The opening hour of the subject restaurant was modified by the WLA APC from 8:00 a.m. to 11:00 a.m. to ensure that the peak hours for the two restaurants do not overlap. The applicant concurred with the modification of hours.

The applicant made considerable reductions to the scope of the project by reducing the requested hours of operation, limiting the live entertainment to one night per month, as well as eliminating the request for patron dancing. These changes to the proposed restaurant, along with the limitations imposed herein, will make it a more compatible use than as originally proposed. A new hearing was not required because the changes made by the applicant were in response to complaints by the community and the changes reduced the intensity of the request. The public record was kept open and the file was available for public review. The proposed sale of beer and wine for on-site consumption at a bona fide restaurant will provide a public convenience. The restaurant's location on Santa Monica Boulevard, a Major Highway Class II, can be conveniently accessed by patrons and employees by vehicle, public transit, or walking. As conditioned herein, the operational and alcohol-related issues have been comprehensively addressed to ensure the public welfare and to provide for their convenience.

2. The location is proper in relation to adjacent uses or the development of the community.

The property to the north of the site is zoned C2-1VL and developed with a two-story shopping plaza containing commercial uses. The property to the south is zoned R3-1 and developed with a one-story nonconforming mini-shopping center. There are two- and three-story residential buildings further to the west. The adjoining property to the east is zoned C2-1VL and improved with a one-story Starbucks coffee shop. Properties to the east of Bundy Drive include a mini-park that's zoned OS-1XL, and a three-story office building in the C2-1 Zone located on the southeast corner of Bundy Drive and Ohio Avenue. Properties to the west of the site are zoned C2-1VL and developed with one-story commercial uses. The property to the west of the subject parking lot is zoned R3-1 and developed with a surface parking lot that serves the Smart and Final store. The subject property is zoned for commercial use. The restaurant's parking and vehicular access has been approved on the adjacent lot by the Department of Building and Safety. The patio seating has been eliminated. The applicant worked in good faith with the Neighborhood Council, the Council Office, and LAPD to resolve as many of their concerns as possible. Numerous conditions of approval have been incorporated herein that will ensure the restaurant's location is proper in relation to adjacent uses.

3. **The use will not be materially detrimental to the character of the development in the immediate neighborhood.**

The subject tenant space was vacant for several years after Blockbuster closed. The vacant space was a source of blight in the neighborhood. There were residents who were concerned about some operational aspects of the restaurant and these concerns were addressed by reducing the hours of operation, eliminating the dancing, eliminating the patio seating, as well as by other conditions of approval contained herein. No evidence was presented that the grant to permit the sale of beer and wine for on-site consumption at the restaurant would be materially detrimental to the character of the neighborhood.

4. **The proposed location will be in harmony with the various elements and objectives of the General Plan.**

There are eleven elements of the General Plan. Each of the elements establishes policies that provide for the regulatory environment in managing the City and for addressing environmental concerns and problems. The majority of the policies derived from these elements are in the form of Code Requirements of the Los Angeles Municipal Code. The project does not propose to deviate from any of the requirements of the Code. The West Los Angeles Community Plan Map designates the property for Neighborhood Commercial land use with the corresponding zones of C1, C1.5, C2, C4, RAS3, RAS4 and P, and Height District 1. The subject property is located within the area of the West Los Angeles Transportation Improvement and Mitigation Specific Plan.

The West Los Angeles Community Plan text is silent with regards to alcohol

sales. In such cases, the Zoning Administrator must interpret the intent of the Plan. The proposed sale of beer and wine within restaurant located in a commercially designated area is consistent with provisions of the Community Plan to provide adequate commercial development to serve the projected population into the future. The conditional use permit is consistent with Policy 7.3.2 of the Framework Element which states "retain existing neighborhood commercial activities within walking distance of residential areas." The granting of the conditional use permit will enhance the operation of a viable restaurant located in a commercially zoned property on a commercial corridor within walking distance of residential uses. Therefore, the proposed sale of beer and wine at the proposed location is deemed to be in harmony with the various elements and objectives of the General Plan.

5. The proposed use will not adversely affect the welfare of the pertinent community

The proposed restaurant will occupy a previously vacant tenant space. The proposed sale of beer and wine at a bona fide restaurant will not adversely affect the economic welfare of the community because the restaurant will positively impact the financial health of the property and improve the economic vitality of the area via increases in taxable revenue and local employment. The applicant has begun renovating the space and is making a considerable investment into the property.

6. The granting of the application will not result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, including beer and wine, in the area of the City involved, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control's guidelines for undue concentration; and also giving consideration to the number and proximity of these establishments within a one thousand foot radius of the site, the crime rate in the area (especially those crimes involving public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct), and whether revocation or nuisance proceedings have been initiated for any use in the area.

According to the State Department of Alcoholic Beverage Control (ABC), there are three on-site licenses and three off-site licenses allocated to the subject Census Tract No. 2675.02. There are three existing on-site licenses and two off-site licenses in the tract. The applicant is proposing to add one new on-site license. There are 11 establishments within 1,000 feet of the subject site with alcohol licenses:

- All India Cafe 12113 West Santa Monica Boulevard #205
- California Vegan 12113 West Santa Monica Boulevard #207
- K-2 Food Store 12225 West Santa Monica Boulevard

- Guido's Restaurant 11980 West Santa Monica Boulevard
- 7-Eleven 1519 Bundy Drive
- Mom's Cocktails 12238 West Santa Monica Boulevard
- Smart & Final 12210 West Santa Monica Boulevard
- Hop Li Restaurant 11901 West Santa Monica Boulevard
- Monte Alban Restaurant 11929 West Santa Monica Boulevard
- Carniceria La Zandunga Market 11933 West Santa Monica Boulevard
- Brockton Liquor 11932 West Santa Monica Boulevard

The restaurant will result in the addition of one on-site license to the census tract which would result in a numerical over concentration. However, this will not result in an undue concentration of on-site licenses. Over-concentration can be undue when the addition of a license will negatively impact a neighborhood. Over-concentration is not undue when the approval of a license does not negatively impact an area, but rather such license benefits the public welfare and convenience. The applicant has a responsible record of alcohol service. According to ABC's website the applicant has two existing alcohol licenses (Blue Dog Café and Literati Café) with no record of violations.

Statistics from the Los Angeles Police Department's West Los Angeles Division Vice Unit reveal that in Crime Reporting District No. 851, which has jurisdiction over the subject property, a total of 104 crimes were reported in 2010, compared to the Citywide average of 169 crimes and the High Crime Reporting District average of 203 crimes for the same period. The subject site is not located in an area of high crime, and the request is for beer and wine incidental to food at a restaurant. LAPD submitted a letter of non-opposition to the requested conditional use permit subject to 36 requested conditions of approval, the majority of which have been incorporated.

7. **The proposed use will not detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds and other similar uses, and other establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine.**

The following sensitive uses are located within a 1,000-foot radius of the site:

- Single- and multi-family residences
- Convalescent hospital 12121 West Santa Monica Boulevard
- Mini-park 1500 South Bundy Drive

The restaurant is located on a commercial corridor in proximity to residential uses, a park, and a convalescent home. This is a typical land use pattern found throughout the City of Los Angeles and the proximity to these uses does not

merit the denial of the conditional use. The adjacent business sells goods that are purchased by recovering alcoholics. The owner of that business was concerned that the sale of beer and wine at the restaurant located next door to her would be detrimental to her business. There was no evidence presented to validate this claim. There are four business that sell alcohol located within 250 feet of her business, including Smart and Final and Mom's, which are on the same block. This grant has placed numerous conditions on the restaurant, as well as the imposition of a plan approval within two years that will make the use a more compatible and accountable neighbor to the surrounding uses than would otherwise be the case. As conditioned, the sale of beer and wine incidental to the sale of food at the restaurant will not detrimentally affect the nearby sensitive uses.

ADDITIONAL REQUIRED FINDINGS

8. **The Commercial Corner Development use is inconsistent with the public welfare and safety.**

The subject property meets the definition of a Mini-Shopping Center. Deviations from the Mini-Shopping Center development standards require four additional findings of approval in order to approve the request. The applicant is requesting to deviate from the permitted hours of operation enumerated in LAMC Section 12.22-A,23. The applicant is proposing to operate the restaurant from 11:00 a.m. to midnight, Thursday through Saturday in lieu of the permitted hours of 7:00 a.m. to 11:00 p.m. There was considerable public concern about the requested extension of hours of the restaurant due to its proximity to residential uses. The LAMC limits hours of operation for these developments located adjacent to residential uses in order to ensure compatibility between the uses. At this time it has not been established that the requested deviation from the hours of operation will be consistent with the public welfare and safety. However, the applicant may reapply for the deviation of hours at the time of the filing of required plan approval. If the applicant establishes a record of compliance and proves to be a compatible neighbor, Zoning Administrator at that time can consider increasing the hours.

9. **Access, ingress and egress to the Commercial Corner Development will not constitute a traffic hazard or cause significant traffic congestion or disruption of vehicular circulation on adjacent streets, based on data provided by the City Department of Transportation or by a licensed traffic engineer.**

The additional hour of operation, of the restaurant from 11:00 p.m. to midnight would be unlikely to constitute a traffic hazard, to cause significant traffic congestion or disruption of vehicular circulation on adjacent streets because of the low traffic volumes at that time. However, the applicant did not provide verification of this from a licensed traffic engineer or DOT.

10. There is not a detrimental concentration of Commercial Corner Developments in the vicinity of the proposed Commercial Corner Development.

No evidence was submitted that there is a detrimental concentration of these developments in the vicinity of the subject Mini-Shopping Center.

11. The Commercial Corner Development is not located in an identified pedestrian oriented, commercial and artercraft, community design overlay, historic preservation overlay, or transit-oriented district, area or zone, or, if the lot or lots are located in the identified district, area, or zone, that the Commercial Corner Development would be consistent with the district, area, or zone.

The subject property is not subject to any of these zones or districts.

ADDITIONAL MANDATORY FINDINGS

12. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C, areas of minimal flooding.
13. On February 13, 2012, the project was issued a Notice of Exemption (Article III, Section 3, City CEQA Guidelines), log reference ENV-2011-818-CE, for a Categorical Exemption, Class 5, Category 23 and Category 34. ~~Hereby adopt that action.~~ On May 16, 2012, the West Los Angeles Area Planning Commission adopted an amended Notice of Exemption finding that, in addition to the grounds stated in the original exemption determination, the project is also Categorically Exempt from CEQA pursuant to State CEQA Guidelines Section 15303(c), New Construction or Conversion of Small Structures.

COUNTY CLERK'S USE

CITY OF LOS ANGELES

CITY CLERK'S USE

OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 360
LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

(California Environmental Quality Act Section 15062)

Filing of this form is optional. If filed, the form shall be filed with the County Clerk, 12400 E. Imperial Highway, Norwalk, CA 90650, pursuant to Public Resources Code Section 21152 (b). Pursuant to Public Resources Code Section 21167 (d), the filing of this notice starts a 35-day statute of limitations on court challenges to the approval of the project. Failure to file this notice with the County Clerk results in the statute of limitations being extended to 180 days.

LEAD CITY AGENCY City of Los Angeles Department of City Planning	COUNCIL DISTRICT 11
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PROJECT TITLE ZA-2011-817-CUB-CU	LOG REFERENCE ENV-2011-818-CE
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PROJECT LOCATION
12112 W. Santa Monica Boulevard

DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:
A conditional use permit to allow the sale of beer and wine for on-site consumption at a 2,816 s.f. restaurant with 94 seats, and hours of operation of 7:00 a.m. to 11:00 p.m., Sunday-Wednesday, 7:00 a.m. – midnight, Thursday-Saturday.

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT, IF OTHER THAN LEAD CITY AGENCY:
Bundy & Santa Monica, Ltd.

CONTACT PERSON J. Anthony Kouba	AREA CODE 310-576-6644	TELEPHONE NUMBER	EXT.
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EXEMPT STATUS: (Check One)

STATE CEQA GUIDELINES

CITY CEQA GUIDELINES

- | | | |
|---|----------------------|----------------------------|
| <input type="checkbox"/> MINISTERIAL | Sec. 15268 | Art. II, Sec. 2b |
| <input type="checkbox"/> DECLARED EMERGENCY | Sec. 15269 | Art. II, Sec. 2a (1) |
| <input type="checkbox"/> EMERGENCY PROJECT | Sec. 15269 (b) & (c) | Art. II, Sec. 2a (2) & (3) |
| <input checked="" type="checkbox"/> CATEGORICAL EXEMPTION | Section 15303(c) | Art. III, Sec. 1 |

Class 5 Category 23 & 34 (City CEQA Guidelines)

- ☐ OTHER (See Public Resources Code Sec. 21080 (b) and set forth state and City guideline provision.

JUSTIFICATION FOR PROJECT EXEMPTION: Granting of a conditional use for the on-site consumption of alcoholic beverages pursuant to L.A.M.C. sections 12.24 W 1 and 12.24 X 2; beverages will be dispensed and consumed do not exceed an occupant load of 200 persons, and provided that the premises will not also require an original dancehall, skating rink or bowling alley permit from the Los Angeles Police Commission, and granting or renewal of a variance or conditional use for a non-significant change of use of land. Also, pursuant to Section 15303(c), which exempts restaurants of up to 10,000 sf in urbanized areas on sites zoned for such use, if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.

SIGNATURE <i>Maya E. Zaitzevsky</i>	TITLE Associate Zoning Administrator	DATE 5/15/2012
FEE:	RECEIPT NO.	REC'D. BY
		DATE

DISTRIBUTION: (1) County Clerk, (2) City Clerk, (3) Agency Record
Rev. 11-1-03 Rev. 1-31-06 Word

IF FILED BY THE APPLICANT:

*
NAME (PRINTED)

*
SIGNATURE

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
ROOM 395, CITY HALL
LOS ANGELES, CALIFORNIA 90012
CALIFORNIA ENVIRONMENTAL QUALITY ACT
PROPOSED MITIGATED NEGATIVE DECLARATION

LEAD CITY AGENCY City of Los Angeles	COUNCIL DISTRICT 11	
PROJECT TITLE ENV-2011-818-MND	CASE NO. ZA-2011-817-CUB-CUX-CU	
PROJECT LOCATION 12112 W SANTA MONICA BLVD		
PROJECT DESCRIPTION A Conditional Use to permit the sale of beer and wine for on-site consumption between the hours of 11:00 AM to 2:00 AM, seven days a week; A Conditional Use to permit dancing and live entertainment in the proposed restaurant; and A Conditional Use permit for a Mini-Shopping Center which operates between the hours of 7:00 AM to 2:00 AM, in conjunction with the operation, maintenance, and use of a proposed restaurant establishment on a level-lot totaling approximately 4,158 square feet in the C2-1VL Zone, stretching between Santa Monica Boulevard and Ohio Avenue. The property is two tied lots, with frontages on Santa Monica Boulevard and Ohio Avenue. Only the northern-most lot totaling 2,731 square feet, is the subject of this request.		
NAME AND ADDRESS OF APPLICANT IF OTHER THAN CITY AGENCY J. Anthony Kouba (A) Bundy & Santa Monica, Ltd. 1445 Fifth Street Santa Monica, CA 90401		
FINDING: The City Planning Department of the City of Los Angeles has Proposed that a mitigated negative declaration be adopted for this project because the mitigation measure(s) outlined on the attached page(s) will reduce any potential significant adverse effects to a level of insignificance <div style="text-align: center;">(CONTINUED ON PAGE 2)</div>		
SEE ATTACHED SHEET(S) FOR ANY MITIGATION MEASURES IMPOSED.		
Any written comments received during the public review period are attached together with the response of the Lead City Agency. The project decision-maker may adopt the mitigated negative declaration, amend it, or require preparation of an EIR. Any changes made should be supported by substantial evidence in the record and appropriate findings made.		
THE INITIAL STUDY PREPARED FOR THIS PROJECT IS ATTACHED.		
NAME OF PERSON PREPARING THIS FORM	TITLE	TELEPHONE NUMBER
SEVANA MAILIAN	Planning Assistant	(213) 978-1382
ADDRESS	SIGNATURE (Official)	DATE
200 N. SPRING STREET, 7th FLOOR LOS ANGELES, CA. 90012		06/08/2011

III-60. Objectionable Odors (Commercial Trash Receptacles)

- Environmental impacts may result from project implementation due to the location of trash receptacles near adjacent residences. However, these impacts will be mitigated to a less than significant level by the following measure:
- Open trash receptacles shall be located a minimum of 50 feet from the property line of any residential zone or use.
- Trash receptacles located within an enclosed building or structure shall not be required to observe this minimum buffer.

VII-10. Green House Gas Emissions

- The project will result in impacts resulting in increased green house gas emissions. However, the impact can be reduced to a less than significant level through compliance with the following measure(s):
- Only low- and non-VOC-containing paints, sealants, adhesives, and solvents shall be utilized in the construction of the project.

XIV-30. Public Services (Police)

- Environmental impacts may result from project implementation due to the location of the project in an area having marginal police services. However, this potential impact will be mitigated to a less than significant level by the following measure:
- The plans shall incorporate the design guidelines relative to security, semi-public and private spaces, which may include but not be limited to access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to "Design Out Crime Guidelines: Crime Prevention Through Environmental Design", published by the Los Angeles Police Department. Contact the Community Relations Division, located at 100 W. 1st Street, #250, Los Angeles, CA 90012; (213) 486-6000. These measures shall be approved by the Police Department prior to the issuance of building permits.

XVII-60. Utilities (Local Water Supplies - Restaurant, Bar, or Nightclub)

- Environmental impacts may result from project implementation due to the cumulative increase in demand on the City's water supplies. However, this potential impact will be mitigated to a less than significant level by the following measures:
- Install/retrofit high-efficiency toilets (maximum 1.28 gpf), including dual-flush water closets, and high-efficiency urinals (maximum 0.5 gpf), including no-flush or waterless urinals, in all restrooms as appropriate.
- Install/retrofit restroom faucets with a maximum flow rate of 1.5 gallons per minute.
- Install/retrofit and utilize only restroom faucets of a self-closing design.
- Install and utilize only high-efficiency Energy Star-rated dishwashers in the project, if proposed to be provided. If such appliance is to be furnished by a tenant, this requirement shall be incorporated into the lease agreement, and the applicant shall be responsible for ensuring compliance.
- Single-pass cooling equipment shall be strictly prohibited from use. Prohibition of such equipment shall be indicated on the building plans and incorporated into tenant lease agreements. (Single-pass cooling refers to the use of potable water to extract heat from process equipment, e.g. vacuum pump, ice machines, by passing the water through equipment and discharging the heated water to the sanitary wastewater system.)

XVII-90. Utilities (Solid Waste Recycling)

- Environmental impacts may result from project implementation due to the creation of additional solid waste. However, this potential impact will be mitigated to a less than significant level by the following measure:
- **(Operational)** Recycling bins shall be provided at appropriate locations to promote recycling of paper, metal, glass, and other recyclable material. These bins shall be emptied and recycled accordingly as a part of the project's regular solid waste disposal program.
- **(Construction/Demolition)** Prior to the issuance of any demolition or construction permit, the applicant shall provide a copy of the receipt or contract from a waste disposal company providing services to the project, specifying recycled waste service(s), to the satisfaction of the Department of Building and Safety. The demolition and construction contractor(s) shall only contract for waste disposal services with a company that recycles demolition and/or construction-related wastes.
- **(Construction/Demolition)** To facilitate on-site separation and recycling of demolition- and construction-related wastes, the contractor(s) shall provide temporary waste separation bins on-site during demolition and construction. These bins shall be emptied and the contents recycled accordingly as a part of the project's regular solid waste disposal program.

XVIII-10. Cumulative Impacts

- There may be environmental impacts which are individually limited, but significant when viewed in connection with the effects of past projects, other current projects, and probable future projects. However, these cumulative impacts will be mitigated to a less than significant level through compliance with the above mitigation measures.

XVIII-30. End

- The conditions outlined in this proposed mitigated negative declaration which are not already required by law shall be required as condition(s) of approval by the decision-making body except as noted on the face page of this document. Therefore, it is concluded that no significant impacts are apparent which might result from this project's implementation.

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
ROOM 395, CITY HALL
LOS ANGELES, CALIFORNIA 90012
CALIFORNIA ENVIRONMENTAL QUALITY ACT
INITIAL STUDY
and CHECKLIST
(CEQA Guidelines Section 15063)

LEAD CITY AGENCY: City of Los Angeles		COUNCIL DISTRICT: CD 11 - BILL ROSENDAHL	DATE: 05/03/2011
RESPONSIBLE AGENCIES: Department of City Planning			
ENVIRONMENTAL CASE: ENV-2011-818-MND		RELATED CASES: ZA-2011-817-CUB-CUX-CU	
PREVIOUS ACTIONS CASE NO.:		<input type="checkbox"/> Does have significant changes from previous actions. <input type="checkbox"/> Does NOT have significant changes from previous actions	
PROJECT DESCRIPTION: NEW RESTAURANT WITH THE ON-SITE SALE AND DISPENSING OF BEER AND WINE, LIVE ENTERTAINMENT & DANCING, W/HOURS OF OPERATION 7AM-2AM DAILY.			
ENV PROJECT DESCRIPTION: A Conditional Use to permit the sale of beer and wine for on-site consumption between the hours of 11:00 AM to 2:00 AM, seven days a week; A Conditional Use to permit dancing and live entertainment in the proposed restaurant; and A Conditional Use permit for a Mini-Shopping Center which operates between the hours of 7:00 AM to 2:00 AM, in conjunction with the operation, maintenance, and use of a proposed restaurant establishment on a level-lot totaling approximately 4,158 square feet in the C2-1VL Zone, stretching between Santa Monica Boulevard and Ohio Avenue. The property is two tied lots, with frontages on Santa Monica Boulevard and Ohio Avenue. Only the northern-most lot totaling 2,731 square feet, is the subject of this request.			
ENVIRONMENTAL SETTINGS: Properties fronting Santa Monica Boulevard are zoned C2-1VL and are improved with retail, office space, markets, residential, and a beauty supply store. Properties facing Ohio Avenue are zoned R3-1, R2-1 and C2-1VL and are improved with uses such as parking lots, markets, multi-family dwellings (condos), auto repairs and restaurants.			
PROJECT LOCATION: 12112 W SANTA MONICA BLVD			
COMMUNITY PLAN AREA: WEST LOS ANGELES STATUS: <input checked="" type="checkbox"/> Does Conform to Plan <input type="checkbox"/> Does NOT Conform to Plan		AREA PLANNING COMMISSION: WEST LOS ANGELES	CERTIFIED NEIGHBORHOOD COUNCIL: WEST LOS ANGELES
EXISTING ZONING: C2-1VL		MAX. DENSITY/INTENSITY ALLOWED BY ZONING:	LA River Adjacent: NO
GENERAL PLAN LAND USE: NEIGHBORHOOD COMMERCIAL		MAX. DENSITY/INTENSITY ALLOWED BY PLAN DESIGNATION:	
		PROPOSED PROJECT DENSITY:	

Determination (To Be Completed By Lead Agency)

On the basis of this initial evaluation:

- ☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions on the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Planning Assistant

(213) 978-1382

Signature

Title

Phone

Evaluation Of Environmental Impacts:

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants based on a project-specific screening analysis).
2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
4. "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of a mitigation measure has reduced an effect from "Potentially Significant Impact" to "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from "Earlier Analyses," as described in (5) below, may be cross-referenced).
5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR, or negative declaration. Section 15063 (c)(3)(D). In this case, a brief discussion should identify the following:
 - a. Earlier Analysis Used. Identify and state where they are available for review.
 - b. Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c. Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
7. Supporting Information Sources: A sources list should be attached, and other sources used or individuals contacted should be cited in the discussion.
8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
9. The explanation of each issue should identify:
 - a. The significance criteria or threshold, if any, used to evaluate each question; and
 - b. The mitigation measure identified, if any, to reduce the impact to less than significance.

Environmental Factors Potentially Affected:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/> AESTHETICS	<input checked="" type="checkbox"/> GREEN HOUSE GAS EMISSIONS	<input type="checkbox"/> POPULATION AND HOUSING
<input type="checkbox"/> AGRICULTURE AND FOREST RESOURCES	<input type="checkbox"/> HAZARDS AND HAZARDOUS MATERIALS	<input checked="" type="checkbox"/> PUBLIC SERVICES
<input checked="" type="checkbox"/> AIR QUALITY	<input type="checkbox"/> HYDROLOGY AND WATER QUALITY	<input type="checkbox"/> RECREATION
<input type="checkbox"/> BIOLOGICAL RESOURCES	<input type="checkbox"/> LAND USE AND PLANNING	<input type="checkbox"/> TRANSPORTATION/TRAFFIC
<input type="checkbox"/> CULTURAL RESOURCES	<input type="checkbox"/> MINERAL RESOURCES	<input checked="" type="checkbox"/> UTILITIES AND SERVICE SYSTEMS
<input type="checkbox"/> GEOLOGY AND SOILS	<input type="checkbox"/> NOISE	<input checked="" type="checkbox"/> MANDATORY FINDINGS OF SIGNIFICANCE

INITIAL STUDY CHECKLIST

(To be completed by the Lead City Agency)

Background

PROPONENT NAME:

J. Anthony Kouba (A)
Bundy & Santa Monica, Ltd.

PHONE NUMBER:

(310) 576-6644

APPLICANT ADDRESS:

1445 Fifth Street
Santa Monica, CA 90401

AGENCY REQUIRING CHECKLIST:

Department of City Planning

DATE SUBMITTED:

03/31/2011

PROPOSAL NAME (if Applicable):

Potentially significant impact	Potentially significant unless mitigation incorporated	Less than significant impact	No impact
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I. AESTHETICS				
a.	Have a substantial adverse effect on a scenic vista?			✓
b.	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?			✓
c.	Substantially degrade the existing visual character or quality of the site and its surroundings?		✓	
d.	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?		✓	
II. AGRICULTURE AND FOREST RESOURCES				
a.	Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to nonagricultural use?			✓
b.	Conflict with existing zoning for agricultural use, or a Williamson Act contract?			✓
c.	Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?			✓
d.	Result in the loss of forest land or conversion of forest land to non-forest use?			✓
e.	Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?			✓
III. AIR QUALITY				
a.	Conflict with or obstruct implementation of the applicable air quality plan?			✓
b.	Violate any air quality standard or contribute substantially to an existing or projected air quality violation?			✓
c.	Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?			✓
d.	Expose sensitive receptors to substantial pollutant concentrations?			✓
e.	Create objectionable odors affecting a substantial number of people?		✓	
IV. BIOLOGICAL RESOURCES				
a.	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?			✓
b.	Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?			✓
c.	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?			✓
d.	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?			✓
e.	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			✓
f.	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?			✓
V. CULTURAL RESOURCES				

Potentially significant impact	Potentially significant unless mitigation incorporated	Less than significant impact	No impact
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a.	Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?				✓
b.	Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?				✓
c.	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				✓
d.	Disturb any human remains, including those interred outside of formal cemeteries?				✓

VI. GEOLOGY AND SOILS

a.	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				✓
b.	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Strong seismic ground shaking?			✓	
c.	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Seismic-related ground failure, including liquefaction?				✓
d.	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving: Landslides?				✓
e.	Result in substantial soil erosion or the loss of topsoil?				✓
f.	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?				✓
g.	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?				✓
h.	Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?				✓

VII. GREEN HOUSE GAS EMISSIONS

a.	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?		✓		
b.	Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			✓	

VIII. HAZARDS AND HAZARDOUS MATERIALS

a.	Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				✓
b.	Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				✓
c.	Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				✓
d.	Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?				✓
e.	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?				✓
f.	For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?				✓
g.	Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				✓

Potentially significant impact	Potentially significant unless mitigation incorporated	Less than significant impact	No impact
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h.	Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?				✓
IX. HYDROLOGY AND WATER QUALITY					
a.	Violate any water quality standards or waste discharge requirements?			✓	
b.	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?				✓
c.	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?				✓
d.	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?				✓
e.	Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			✓	
f.	Otherwise substantially degrade water quality?			✓	
g.	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				✓
h.	Place within a 100-year flood hazard area structures which would impede or redirect flood flows?				✓
i.	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?				✓
j.	Inundation by seiche, tsunami, or mudflow?				✓
X. LAND USE AND PLANNING					
a.	Physically divide an established community?			✓	
b.	Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?			✓	
c.	Conflict with any applicable habitat conservation plan or natural community conservation plan?				✓
XI. MINERAL RESOURCES					
a.	Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?				✓
b.	Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				✓
XII. NOISE					
a.	Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			✓	
b.	Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?			✓	
c.	A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?			✓	
d.	A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			✓	

Potentially significant impact	Potentially significant unless mitigation incorporated	Less than significant impact	No impact
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e.	For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				✓
f.	For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?			✓	
XIII. POPULATION AND HOUSING					
a.	Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?				✓
b.	Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?				✓
c.	Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?				✓
XIV. PUBLIC SERVICES					
a.	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Fire protection?			✓	
b.	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Police protection?		✓		
c.	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Schools?			✓	
d.	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Parks?			✓	
e.	Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services: Other public facilities?				✓
XV. RECREATION					
a.	Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			✓	
b.	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?				✓
XVI. TRANSPORTATION/TRAFFIC					
a.	Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?				✓

Potentially significant impact	Potentially significant unless mitigation incorporated	Less than significant impact	No impact
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b.	Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?				✓
c.	Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?				✓
d.	Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?				✓
e.	Result in inadequate emergency access?				✓
f.	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities supporting alternative transportation (e.g., bus turnouts, bicycle racks)?				✓
XVII. UTILITIES AND SERVICE SYSTEMS					
a.	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?				✓
b.	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
c.	Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?				✓
d.	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?		✓		
e.	Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				✓
f.	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?			✓	
g.	Comply with federal, state, and local statutes and regulations related to solid waste?		✓		
XVIII. MANDATORY FINDINGS OF SIGNIFICANCE					
a.	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			✓	
b.	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?		✓		
c.	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			✓	

Note: Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Section 65088.4, Gov. Code; Sections 21080, 21083.05, 21095, Pub. Resources Code; *Eureka Citizens for Responsible Govt. v. City of Eureka* (2007) 147 Cal.App.4th 357; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th at 1109; *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656.

DISCUSSION OF THE ENVIRONMENTAL EVALUATION (Attach additional sheets if necessary)

The Environmental Impact Assessment includes the use of official City of Los Angeles and other government source reference materials related to various environmental impact categories (e.g., Hydrology, Air Quality, Biology, Cultural Resources, etc.). The State of California, Department of Conservation, Division of Mines and Geology - Seismic Hazard Maps and reports, are used to identify potential future significant seismic events; including probable magnitudes, liquefaction, and landslide hazards. Based on applicant information provided in the Master Land Use Application and Environmental Assessment Form, impact evaluations were based on stated facts contained therein, including but not limited to, reference materials indicated above, field investigation of the project site, and any other reliable reference materials known at the time.

Project specific impacts were evaluated based on all relevant facts indicated in the Environmental Assessment Form and expressed through the applicant's project description and supportive materials. Both the Initial Study Checklist and Checklist Explanations, in conjunction with the City of Los Angeles's Adopted Thresholds Guide and CEQA Guidelines, were used to reach reasonable conclusions on environmental impacts as mandated under the California Environmental Quality Act (CEQA).

The project as identified in the project description may cause potentially significant impacts on the environment without mitigation. Therefore, this environmental analysis concludes that a Mitigated Negative Declaration shall be issued to avoid and mitigate all potential adverse impacts on the environment by the imposition of mitigation measures and/or conditions contained and expressed in this document; the environmental case file known as ENV-2011-818-MND and the associated case(s), ZA-2011-817-CUB-CUX-CU. Finally, based on the fact that these impacts can be feasibly mitigated to less than significant, and based on the findings and thresholds for Mandatory Findings of Significance as described in the California Environmental Quality Act, section 15065, the overall project impact(s) on the environment (after mitigation) will not:

- Substantially degrade environmental quality.
- Substantially reduce fish or wildlife habitat.
- Cause a fish or wildlife habitat to drop below self sustaining levels.
- Threaten to eliminate a plant or animal community.
- Reduce number, or restrict range of a rare, threatened, or endangered species.
- Eliminate important examples of major periods of California history or prehistory.
- Achieve short-term goals to the disadvantage of long-term goals.
- Result in environmental effects that are individually limited but cumulatively considerable.
- Result in environmental effects that will cause substantial adverse effects on human beings.

ADDITIONAL INFORMATION:

All supporting documents and references are contained in the Environmental Case File referenced above and may be viewed in the EIR Unit, Room 763, City Hall.

For City information, addresses and phone numbers: visit the City's website at <http://www.lacity.org> ; City Planning - and Zoning Information Mapping Automated System (ZIMAS) cityplanning.lacity.org/ or EIR Unit, City Hall, 200 N Spring Street, Room 763. Seismic Hazard Maps - <http://gmw.consrv.ca.gov/shmp/> Engineering/Infrastructure/Topographic Maps/Parcel Information - <http://boemaps.eng.ci.la.ca.us/index01.htm> or City's main website under the heading "Navigate LA".

PREPARED BY:	TITLE:	TELEPHONE NO.:	DATE:
SEVANA MAILIAN	Planning Assistant	(213) 978-1382	05/09/2011

Impact?	Explanation	Mitigation Measures
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APPENDIX A: ENVIRONMENTAL IMPACTS EXPLANATION TABLE

I. AESTHETICS		
a.	NO IMPACT	No scenic vista has been officially designated for the area. No impact would result.
b.	NO IMPACT	The project is not located along a City-Designated Scenic Highway and will not substantially damage any scenic resources. No impact would result.
c.	LESS THAN SIGNIFICANT IMPACT	The proposed request involves no new construction. No impacts to the visual character to the site are anticipated, however any new signs proposed for the restaurant must comply with the LAMC Code. Also, the applicant will be required to remove graffiti promptly to mitigate blight impacts to a less than significant level.
d.	LESS THAN SIGNIFICANT IMPACT	With the request to permit the sale of alcohol on-site there is not anticipation of light and glare impact, however any new signage for the restaurant must comply with the LAMC Code to ensure there is no light or glare impact.
II. AGRICULTURE AND FOREST RESOURCES		
a.	NO IMPACT	The site and the area are not zoned for agriculture uses and do not contain farmland of any type. No impact will result.
b.	NO IMPACT	The site has not been used for agricultural purposes. No impact will result.
c.	NO IMPACT	The site is not zoned forest land so no impact will result.
d.	NO IMPACT	There will be no loss of forest land or conversion of forest land. No impact will result.
e.	NO IMPACT	No farmland impact would result with this application being that it is located in an urban area and is presently developed. No impact will result.
III. AIR QUALITY		
a.	NO IMPACT	The proposed sale of alcohol at the restaurant would not conflict with or obstruct the implementation of the SCAQMD or congestion management plan. The project will not involve emissions of particulate matter, volatile organic compounds, carbon monoxide or other substantial air emissions at a significant level.

Impact?	Explanation	Mitigation Measures
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b.	NO IMPACT	The applicant intends to occupy an existing vacant building where the request is for the sale of alcohol for on-site consumption. As such, the request is not likely to create new sources of emissions or any air pollutants and therefore, would not contribute to an existing or projected air quality violation.	
c.	NO IMPACT	The overall project may result in direct emissions of greenhouse gases due to fuel combustion from motor vehicles, and building and heating systems associated with the use and could potentially contribute to the global greenhouse gases inventory. However, the daily emissions associated with the project would not exceed SCAQMD's recommended thresholds. Therefore, the project would not be cumulatively considerable and this impact would be less than significant.	
d.	NO IMPACT	The sale of alcohol for on-site consumption will not expose sensitive receptors to pollutant concentrations.	
e.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	With the operation of the restaurant, the applicant will be required to enclose all trash receptacles to minimize odor impact to the adjacent uses.	III-60

IV. BIOLOGICAL RESOURCES

a.	NO IMPACT	The site is an infill project so no species of concern are likely to live on-site. No impact will result.	
b.	NO IMPACT	The site does not contain riparian habitat or sensitive natural communities. No impact will result.	
c.	NO IMPACT	The site does not contain wetlands. No impact will result.	
d.	NO IMPACT	The site is not located within a wildlife corridor, nor is it used as a nursery. No impact will result.	
e.	NO IMPACT	There are no protected trees on site. No impact will result.	
f.	NO IMPACT	The project will not conflict with any habitat conversion plan. No impact will result.	

V. CULTURAL RESOURCES

a.	NO IMPACT	The building on-site has not been identified for historical significance. No impact will result.	
b.	NO IMPACT	The project is not located in an area of known archaeological resources. No impact would result.	

Impact?	Explanation	Mitigation Measures
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c.	NO IMPACT	The project is not located in an area known paleontological resources. No impact will result.	
d.	NO IMPACT	No human remains are anticipated to be located at the project site. No impact would result.	

VI. GEOLOGY AND SOILS

a.	NO IMPACT	The site is not located in an Alquist-Priolo Zone or within a Fault Rupture Study Area.	
b.	LESS THAN SIGNIFICANT IMPACT	The property is subject to strong seismic shaking during earthquakes. However, this impact will be reduced to a less than significant level by the following the International Building Code standards during construction.	
c.	NO IMPACT	The project proposes no grading or other impacts to the soil. Therefore, there is no impact to geology and soil.	
d.	NO IMPACT	The project proposes no grading or other impact on geology and soils. Therefore, there is no impact to geology and soils.	
e.	NO IMPACT	The project proposes no grading or other impact on geology and soils. Therefore, there is no impact to geology and soils.	
f.	NO IMPACT	The project proposes no grading or other impact on geology and soils. Therefore, there is no impact to geology and soils.	
g.	NO IMPACT	The project proposes no grading or other impact on geology and soils. Therefore, there is no impact to geology and soils.	
h.	NO IMPACT	No septic tanks are proposed for this project. No impact would result.	

VII. GREEN HOUSE GAS EMISSIONS

a.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	The project is not anticipated to significantly increase the emission of green house gases (GHG) during any interior renovation or operation phases of the project. However, mitigation measures have been incorporated to reduce the pollution impacts to a less than significant level. In addition to these measures, other measures have been incorporated throughout the document to enhance building efficiencies, improve waste recycling, and improve water conservation among others. The State of California has required that GHG emissions must be reduced to 1990 levels by 2020.	VII-10
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Impact?	Explanation	Mitigation Measures
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b.	LESS THAN SIGNIFICANT IMPACT	Presently the City of Los Angeles is developing methodologies and inventories for quantifying GHG emissions and evaluating various strategies and mitigation measures to determine the most effective course of action to meet the State goals as set forth under AB32. As a note, the California Building Code was recently updated to specifically address green house gas emissions and if followed will reduce potential impacts to less than significant levels.	
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VIII. HAZARDS AND HAZARDOUS MATERIALS

a.	NO IMPACT	No hazardous materials are proposed for routine transport, use, or disposal as part of this project.	
b.	NO IMPACT	No hazardous materials will be released into the environment, therefore, no impact is anticipated.	
c.	NO IMPACT	The project is not located near a school; further, the project is not anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials.	
d.	NO IMPACT	The site is not located within a methane zone or hazardous waste/border zone property and no impacts are anticipated.	
e.	NO IMPACT	The site is not located in an existing or planned airport land use plan; no impacts are anticipated.	
f.	NO IMPACT	The site is not located near a private airstrip.	
g.	NO IMPACT	The proposed project does not seem to impair implementation of or interfere with an emergency response or evacuation plan.	
h.	NO IMPACT	The subject site is not within a high hazard severity zone.	

IX. HYDROLOGY AND WATER QUALITY

a.	LESS THAN SIGNIFICANT IMPACT	The proposed request to sell beer and wine is in conjunction with the operation of a restaurant will not violate any water quality or waste discharge requirements. The impact will be less than significant.	
b.	NO IMPACT	The request to sell beer and wine for the on-site consumption is not anticipated to deplete groundwater supplies or interfere with groundwater recharge. The project will continue to be supplied with water by LADWP. No impact is anticipated.	
c.	NO IMPACT	The project site does not contain a stream or river. However, the site currently drains into the sewer. No impact will result.	

Impact?	Explanation	Mitigation Measures
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d.	NO IMPACT	The site is currently developed with a building and is predominately surrounded by commercial structures. The sale of beer and wine at the site will not alter existing drainage of the site. There will be no impact.	
e.	LESS THAN SIGNIFICANT IMPACT	The request involves the sale of beer and wine for on-site consumption and is not anticipated to substantially degrade water quality. A less than significant impact would result.	
f.	LESS THAN SIGNIFICANT IMPACT	The project will utilize existing improvements. The sale of beer and wine and interior work to the existing building will not substantially degrade water quality.	
g.	NO IMPACT	The property is not located in a flood plain.	
h.	NO IMPACT	The property is not located in a flood plain.	
i.	NO IMPACT	The property is not located in a dam inundation zone.	
j.	NO IMPACT	The property is not located within an inundation zone for seiches, tsunamis, or mudflow.	

X. LAND USE AND PLANNING

a.	LESS THAN SIGNIFICANT IMPACT	The request to sell beer and wine will not divide an established community.	
b.	LESS THAN SIGNIFICANT IMPACT	The project is requesting a conditional use permit and will not have a significant impact upon applicable plan or environmental regulations with inclusion of the mitigation measures.	
c.	NO IMPACT	No conflicts with referenced plans are anticipated.	

XI. MINERAL RESOURCES

a.	NO IMPACT	The site is not located in a known area or mineral resources.	
b.	NO IMPACT	The site is not located in a known area or mineral resources.	

XII. NOISE

a.	LESS THAN SIGNIFICANT IMPACT	The applicant is seeking to sell alcohol for on-site consumption in conjunction to operating a restaurant. No noise level in excess of standard is anticipated.	
b.	LESS THAN SIGNIFICANT IMPACT	The project is not anticipated to result in excessive groundborne vibration for noise levels.	
c.	LESS THAN SIGNIFICANT IMPACT	The applicant proposes to sell alcohol on-site. No significant increased impacts to noise levels is anticipated.	

Impact?	Explanation	Mitigation Measures
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d.	LESS THAN SIGNIFICANT IMPACT	The property is surrounded by commercial uses. Noise generated by the sale of alcohol at the site would be less than significant.	
e.	NO IMPACT	The subject site is not within an airport plan. No impact will result.	
f.	LESS THAN SIGNIFICANT IMPACT	The project is not located within a flight plan, as such it is not anticipated to have a noise impact.	

XIII. POPULATION AND HOUSING

a.	NO IMPACT	The proposed request will not induce population growth to the area.	
b.	NO IMPACT	The project site is improved with commercial uses. There will be no impact.	
c.	NO IMPACT	No residents will be displaced as the site is improved with commercial uses.	

XIV. PUBLIC SERVICES

a.	LESS THAN SIGNIFICANT IMPACT	Potential impact from the sale of alcohol seem to be less than significant in regards to Fire.	
b.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	The project will be reviewed by the LA Police Dept. and will be incorporated with the necessary mitigation measures to ensure adequate police protection and reduce environmental impacts to a less than significant level.	XIV-30
c.	LESS THAN SIGNIFICANT IMPACT	Potential impacts to local schools are considered less than significant.	
d.	LESS THAN SIGNIFICANT IMPACT	Potential impacts to local parks are considered less than significant.	
e.	NO IMPACT	The proposed request will not require new construction or expansion of infrastructure or other government facilities.	

XV. RECREATION

a.	LESS THAN SIGNIFICANT IMPACT	Potential impacts to local parks are considered less than significant.	
b.	NO IMPACT	The project will not result in the construction or expansion of recreational facilities.	

XVI. TRANSPORTATION/TRAFFIC

a.	NO IMPACT	The applicant proposes to sell alcohol on-site and will not conflict with an applicable plan, ordinance or policy associated with the performance of the circulation or transportation systems. No impact would result.	
b.	NO IMPACT	The applicant proposes to utilize the existing commercial improvements. No impacts to a traffic congestion management plan area anticipated.	

Impact?	Explanation	Mitigation Measures
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c.	NO IMPACT	No change in air traffic patterns will result from the proposed project.	
d.	NO IMPACT	The project does not include any hazardous design features. No impact would result.	
e.	NO IMPACT	The applicant will be occupying an existing improvement. No impact to emergency access would result.	
f.	NO IMPACT	The proposed project will add alcohol sale to the site. The project is not anticipated to conflict with any alternative transportation policy.	

XVII. UTILITIES AND SERVICE SYSTEMS

a.	NO IMPACT	Less than significant impact based upon the estimated output of gallons of wastewater per day in conjunction with the City of LA's current capacity.	
b.	NO IMPACT	Less than significant impact based upon the estimated output of gallons of wastewater per day in conjunction with the City of LA's current capacity.	
c.	NO IMPACT	The project will not require the construction or expansion of existing stormwater drainage facilities.	
d.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	Water supply issues have been of growing concern for the Department of Water and Power; therefore, to maintain a sustainable water supply for the City all new construction subject to discretionary review shall include water conserving measures.	XVII-60
e.	NO IMPACT	The estimated output of the project will not be substantial to impact the City of LA's current capacity.	
f.	LESS THAN SIGNIFICANT IMPACT	The local landfills have sufficient capacity to serve the project. The net increase in trash is expected to be less than significant.	
g.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	The restaurant will be required to continue providing on-site recycling to reduce the amount of trash going to landfills. The will reduce the solid waste impact to a less than significant level.	XVII-90

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE

a.	LESS THAN SIGNIFICANT IMPACT	The proposed project does not result in any impacts that would cause the above.	
b.	POTENTIALLY SIGNIFICANT UNLESS MITIGATION INCORPORATED	The project will result in environmental effects that are individually limited but cumulatively considered through the implementation of mitigation measures provided. The impact will be less than significant upon the application of	XVIII-10, XVIII-30

Impact?	Explanation	Mitigation Measures
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		mitigation measures.	
c.	LESS THAN SIGNIFICANT IMPACT	The project will not result in environmental effects that will cause substantial adverse effects on human beings through the implementation of the mitigation measures provided.	

DETERMINATION LETTER
ZA-2011-0817-CUB-CU-1A
MAILING DATE: 06/04/12

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Los Angeles, CA 90025

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Santa Monica, CA 90401

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