Los Angeles Tenants Union
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June 29, 2017

City Council
c/o City Clerk City of Los Angeles
200 N. Spring St., Los Angeles, CA 90012

Re: Council File: 15-1170-S1 (118-126 N. Flores St.) (Hearing Date: June 30, 2017)
Case Numbers VTT-74328-CC-1A / ENV 2016-2050-CE
Appellants: Los Angeles Tenants Union and Sylvie Shain

Dear Honorable Councilmembers:

On behalf of the Appellants, Los Angeles Tenants Union (LATU) and its member Sylvie Shain, this letter serves to justify the granting of the appeal of the decision of the Central Area Planning Commission (CAPC) to approve the conversion of the historic Mendel and Mabel Meyer Courtyard Apartments, a 9-unit rent-stabilized (RSO) building, into a 8 unit condominium complex.

In addition to this letter substantiating the appeal, Appellants adopt all the arguments raised in the attached letter from John Henning, dated June 21, 2017 and incorporates all of the enclosed Alternative Findings.

Additionally, I am submitting the first amended complaint brief in the case of Hero et al. v. City of Los Angeles et al. to the record to support our objection that this project is not exempt from CEQA because among other things the city has failed to address the individual and **cumulative** population and housing displacement Impacts under CEQA and the city's own CEQA guidelines, which is important because the units are restricted by the Rent Stabilization Ordinance. Appellants adopt all arguments therein.

Ellis Act:
The property at 118-126 N Flores St is subject to the restrictions of the Ellis Act, whereby rents are restricted to the amount of rent in effect at the time the building was withdrawn from the rental market and for a continuous period of 5 years. By granting this subdivision, the city in effect waives the rights of return to displaced tenants as well as waives a public right, afforded to it under the Ellis Act, with half the units restricted to rent levels qualified as affordable. (see rent break-down submitted to the record). This, at a time with escalating rents, epidemic homelessness, and ever-increasing rental cost burden, this type of conversion continues to incentivize the displacement and loss of below-market rental housing.

Subdivision for Condominium Conversion
The code states that condominium conversions are to be denied when the rental vacancy rate is below 5% in the plan area and there is a significant cumulative impact. Both of those findings have been met and this subdivision should not be granted. Department of City Planning (DCP) relied on inaccurate vacancy rate calculated from DWP idle-meter data that the representatives of DCP and DWP testified was inaccurate at the Housing Committee hearing on June 21, 2017.

Finding: Vacancy Rate is below %5:
Attached are vacancy data reports prepared by someone knowledgeable in census data queries at UCLA based on the standards of the California Department of Housing and Community Development based on 2015 ACS-Census data.

The data was compiled using only the census tracts in the Wilshire Plan Area and according to the standards prescribed in the code. A map with associated tracts is provided. According to the report the multi-family rental vacancy rate in that area was **4.39%** while the overall vacancy rate was 7.1%.

This data supports a finding to be made that the vacancy rate was in fact below 5% as would be expected based on numerous media reports detailing the crisis of affordability and record low vacancy rates throughout the city.

It is only fair and reasonable for this finding to be made using this data in light of the admissions made by the City Planning Department and the DWP about the absence of an adequate and accurate data source due to deficiencies in DWP data during testimony at a recent Housing Committee meeting, on 6/21/17 whereby representatives from the Department of City Planning as well as DWP (Department of Water and Power) admitted that they had relied on unreliable data.

Finding: There is a significant cumulative effect
As to the second finding regarding cumulative effect, in light of the fact that the vacancy data not only shows that rental vacancy was at 4.39%, but that the overall vacancy for the Wilshire Plan area was 7.10%- nearly 60% higher, indicates an imbalance. The following reasons support a finding that there is in fact a significant cumulative effect on the environment:

The intent of the ordinance to "**protect the existing rental housing stock by reducing conversions**" and the relevant criterium for review of the cumulative effects enumerated in the code have language aimed at identifying whether the project will reduce/increase the supply of available housing and/or increase/reduce demand, by turning tenants into owners.

"(a) in the case of residential conversion projects only, the number of tenants who are willing and able to purchase a unit in the building.
(b) the number of units in the existing residential building prior to conversion."

In this case, no units are being offered despite the former tenants' existing right of return under the Ellis Act and one unit of available affordable housing is being removed. Conclusion: significant cumulative impact

(e) any other factors pertinent to the determination

1. I have attached a map of a 10-block area that includes the site. Within that area, of the 565 units of RSO housing that existed in 2005, only 467 units remain today, a loss of 17.3% in 12 years, 5x the rate of loss than that of the 22,000 RSO units lost city-wide during the same time (which represents a 3.5% loss of city-wide RSO stock). Conclusion: significant cumulative impact

2. In 2017, homelessness in CD5 swelled by 27% and citywide by 23%. These devastating numbers are spurred by the ever-dwindling supply of affordable housing options and the increase in

displacement. Additionally, Los Angeles remains one of the most cost-burdened cities with 57.1% of renters being cost-burdened and 31% being severely cost-burdened. Statistics indicate that we are continuously losing low-rent units for high-rent ones (exhibits submitted). Additionally, the city is struggling to come with additional funding for affordable housing construction (through linkage and other proposed fees). At a recent PLUM committee hearing, the members were disappointed to learn that the proposed linkage fee would only add an additional 400 affordable units/year. The need to preserve existing affordable housing options was emphasized. At this point the loss of every unit of under-market housing Conclusion: significant cumulative impact

The Council has discretion over the definition of a cumulative impact, as it was also indicated in the Housing Committee hearing that the DCP has no clear guidelines (criteria/protocol) to guide decision-making for cumulative impacts. This is a major failure of the city with respect to land-use decisions under this and other code-provisions, as well as compliance with CEQA which requires identification and mitigation of cumulative impacts.

In the analysis of cumulative impacts, it is critical to analyze it within a context. Within the context of escalating homelessness, rents, and rent burden, there is no other possible conclusion than to recognize every loss of a unit as a quantifiable cumulative impact that is not being mitigated and that is only exacerbating the crisis. If the context were a healthy market, then the loss of a unit might not have an impact because it would be absorbed into the market without resulting in a cumulative impact. I have attached studies from the Joint Center for Housing Studies of Harvard University that support all of these contentions.

There is substantial evidence provided to support the finding that the project will have significant cumulative impacts. I ask the honorable members of the council recognize this and deny this subdivision tract map, on the basis that the city erred in its findings to approve it. Please stand with community-members, tenant activists, and preservationists and preserve this building for the use that it has had and that we need for it to continue to have…as affordable rent-stabilized housing.

California Environmental Quality Act (CEQA)

As stated before, I object to the categorical exemption (CE) by which this project is being approved on the basis that:

1. The building is a Historical Cultural Monument and as such, warrants further review as there is a fair argument that there will be a significant impact. The full CEQA guide is available here: http://www.environmentla.org/programs/Thresholds/Complete%20Threshold%20Guide%202006.pdf

I have had significant preservation experience advocating for a Sensitive Rehabilitation Plan for the Villa Carlotta, a designated Cultural Monument which was at risk of significant alteration to the interiors in a remodel.

Under a CE, the screening criteria in this guide is not considered and no mitigation of potentially destructive alterations and renovations are offered. The point of the guide is to ask a series of questions aimed at determining whether or not there are adverse impacts that warrant mitigation. So I'd like to go through a couple of examples from the guide.

Question 1: Initial Study Checklist Question

Would the project cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?

C. Screening Criteria

Are there historical resources on the project site or in the vicinity, which would be adversely impacted by the project through, for example, demolition, construction, conversion, rehabilitation, relocation, or alteration?

D. Evaluation of Screening Criteria

Has the resource been designated by the City of Los Angeles as an Historic-Cultural Monument or as a contributor to an HPOZ?

Review the description of the proposed project and determine the type of activities proposed during site preparation, construction, and operation. Projects that affect historical resources, such as demolition, relocation, rehabilitation, conversion, alteration, or construction, may have a significant impact if the project results in a substantial adverse change which would impair historical significance. Insensitive rehabilitation, conversion, alteration or construction may also result in a significant impact. Compare this information to the Screening Criteria.

Evaluate conversion, rehabilitation, or alteration to a significant historical resource in terms of the extent of the work and the impact on the listing or eligibility of the resource. Also, determine whether the work meets the standards for rehabilitation established by the Secretary of the Interior and the OHP (see Exhibits D.3-1 and D.3-4). Consider whether the conversion, rehabilitation, or alteration work would be compatible with the massing, size, scale, and architectural features of the resource. Projects more sensitive to historic integrity include minor repairs or temporary work that does not permanently affect significant elements and character.

Potential mitigation measures include the following:

- ***Prepare a preservation plan or element which provides guidelines to ensure that the project conforms to the standards for rehabilitation established by the Secretary of the Interior and the OHP;***

All of these questions are designed to identify what the impacts may be and allow for an opportunity to mitigate them. The Historical Resources Report is one possible mitigation protocol. But you cannot pre-mitigate a project to make it exempt from CEQA. And that would just create an inventory. The mere fact that there is interest in having it as mitigation, supports the contention that the CE does not apply to this project. It should at least be proposed at the very least as an ND/MND, which would ensure a public right to comment if we felt that the mitigation protocols were insufficient. That is the best way to protect the interiors.

Destruction happens when the work is performed, so absent more specific plans/drawings, there are still significant concerns over impacts that have not even been identified, let alone mitigated. The only way to preserve the public interest in this historic resource is to prepare a preservation plan or element which provides guidelines to ensure that the project conforms to the standards for rehabilitation established by the Secretary of the Interior. This can only be assured by requiring the developer go through further review which includes answering the questions in the CEQA guide, and be subject to a higher standard of review with the full list of mitigation measures that are being taken to ensure that the integrity of the interiors are protected. Absent that, and by only attaching the Historical Resource Report as a condition of approval, it still leaves the building at risk because the mere existence of the report does not mean that they won't destructively go about their renovation plan.

2. Cumulative loss of RSO housing and failure to identify/mitigate impacts

The case I currently have pending with the city is:
HERO et al. v. City of Los Angeles et al.

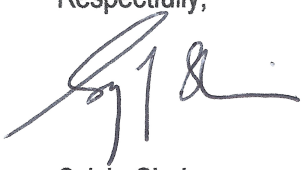
This is a challenge on the city's failure to review, identify, and/or mitigate the individual and cumulative impacts to Population and Housing with respect to the loss of rent-stabilized-units, a requirement under CEQA and for the direct and indirect physical, human health, and environmental impacts this has on the population. I have submitted various studies to the record to support my argument about the consequences of lack of affordable housing options as well as data about the city's growing homeless population and escalating imbalance of loss of supply of low-rent units vs the increase of higher-cost units.

Based on this objection, this project cannot be exempt from CEQA because by issuing a CE, the city is, among other things failing to address these individual and cumulative population and housing displacement impacts under CEQA and the city's own CEQA guidelines.

The evidence of fair argument of significant impacts warrants the Council's action to reject the categorical exemption and require further CEQA review.

Based on all of the arguments provided, I ask that you stand with the LA Tenants Union and allies and uphold this appeal.

Respectfully,



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June 21, 2017

VIA ELECTRONIC MAIL

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200 N. Spring St.
Los Angeles, CA 90012

Re: Council File: 15-1170-S1 (118-126 N. Flores St.) (Hearing Date: June 30, 2017)

Honorable Councilmembers:

This letter provides further grounds for my appeal of the decision of the Central Area Planning Commission (CAPC) to approve the conversion of the historic Mendel and Mabel Meyer Courtyard Apartments into condominiums, which would permanently destroy 9 rent-stabilized apartments, four of which are affordable to low- and moderate-income tenants. The Council should reverse the CAPC's decision and allow these buildings to remain rental apartments, just as they have been for over 75 years.

Here is why:

1. Apartment Vacancy Rate is Less Than 5% in the Wilshire Community Plan Area.

An important purpose of the condominium conversion ordinance is "to protect the existing rental housing stock by reducing conversions." (LAMC section 12.95.2.A.) In accordance with this intent, the ordinance states that a conversion may be approved unless there is a finding that the vacancy rate of the relevant planning area (here the Wilshire Community Plan Area) is five percent or less. (LAMC sec. 12.95.2.F.6.) For purposes of this section, "'Vacancy rate' shall refer to the most current vacancy rate for multiple–family dwelling units as published by the DCP in its Semi–Annual Population Estimate and Housing Inventory, or other estimate or survey satisfactory to the Advisory Agency."

The City Council unanimously passed a motion in 2006 demanding that Planning Department staff enforce section 12.95.2.F.6, which until that point apparently was not routinely enforced. See http://clkrep.lacity.org/onlinedocs/2006/06-1772-S1_ca_11-14-06.pdf.

Yet even today, DCP is not applying this provision diligently to limit condominium conversions. This is a case in point.

DCP no longer publishes a "Semi-Annual Population Estimate and Housing Inventory," which is described in the ordinance as a source for the vacancy rate. Instead, for purposes of this condominium conversion project and other similar projects, the Advisory Agency is relying upon data from the Los Angeles Department of Water and Power (LADWP), which uses inactive water meters as an indicator of vacancy. This data indicates a 6% vacancy rate in the Wilshire Plan area, which exceeds the 5% threshold for denying a conversion.

However, as the Advisory Agency conceded in its determination letter, the calculation of the 6% rate was made in November 2015, more than 18 months ago, presumably based on data that is even older than that. (Letter of Determination at pg. F9, finding (e).) Meanwhile, the U.S. Census, which tracks vacancy rates each quarter for cities nationwide, has determined that the vacancy rate for the Los Angeles metropolitan area in the 3rd quarter of 2016 was just 3.0%. See https://www.census.gov/housing/hvs/data/rates/tab4_msa_15_16_rvr.xlsx.

Given the acknowledged housing crisis in Los Angeles, and especially the lack of rental housing and the recent increased losses of housing covered by the Rent Stabilization ordinance (RSO) in particular, the vacancy rate used by the Advisory Agency cries out to be updated to the present day. Very possibly, in the last 18 months the LADWP data may have changed to indicate a vacancy rate in the Wilshire Plan area of below 5 percent.

At the close of the public hearing before the Deputy Advisory Agency, staff acknowledged this issue and expressed the need for recent data on the vacancy rate. However, staff apparently did not make efforts to ensure that the rate was, in fact, recalculated before the determination was made, or if it did, those efforts were not successful. On March 10, 2017, the Deputy Advisory Agency then approved the project based upon the November 2015 data.

In its initial decision and subsequent Appeal Staff Report to the Advisory Agency, staff has attempted to justify its reliance on old data by noting that the application for the condominium conversion was filed in June 2016, and that at the time of filing the data was "less than one year old." (Determination at pg. F9, finding (e).) However, there is no rational basis for using the filing date of a case, rather than the date the determination is made on the case, as the yardstick for measuring the age of the relevant data. The ordinance requires the Advisory Agency to make its finding about the vacancy rate based upon the "most current" data from a semi-annual calculation, i.e., a calculation that is less than 6 months old at the time the Deputy Advisory Agency makes its finding about the vacancy rate. Since findings are made concurrent with the determination on the underlying case, the data should be current as of the date of the initial determination, which in this case was March 10, 2017.

Section 12.95.2-F,6 of the LAMC reads in pertinent part: "After considering the following criteria, the Advisory Agency may approve a tentative map or preliminary parcel map for a residential conversion project, unless it makes both of the following findings: (1) the vacancy rate of the planning area in which the property is located is five percent or less, and (2) the cumulative effect on the rental market in the planning area of successive residential…conversion projects (past, present and future) is significant."

In addition to the age of the vacancy rate data, the calculations appear to be unreliable because they are based upon data about "idle" water meters from the Department of Water and Power that resulted in the calculation of a citywide vacancy rate of 5.5% for November 2015. In the meantime, the U.S. Census Bureau reported that in the last quarter of 2015 (the same quarter that was the source of the November 2015 DWP data) the vacancy rate for the Los Angeles metropolitan area was 2.7%, or less than half of the citywide rate derived from the DWP data. (See http://www.scpr.org/news/2016/01/28/57103/la-apartments-rental-vacancy-rate-fall-to-27/)

The most recent U.S. Census data for the Los Angeles metropolitan area finds a 3.0% vacancy rate. In the absence of recent and reliable data for the Wilshire Community Plan Area, the U.S. Census data is sufficient to conclude that the vacancy rate of the planning area in which the property is located is less than 5 percent. The City Council should make this finding.

2. <u>Cumulative Effect of Successive Conversion Projects on Rental Housing Market is Significant</u>.

Upon finding that the vacancy rate in the Wilshire Community Plan Area is less than 5 percent, as required by LAMC section 12.95.2-F,6 the City Council should further find that the cumulative effect on the rental market in the planning area of the project and successive residential conversion projects (past, present and future) is significant.

In determining whether there is a significant cumulative effect, the section requires the Advisory Agency to consider the following criteria:

(a) the number of tenants who are willing and able to purchase a unit in the building;

(b) the number of units in the existing residential building prior to conversion;

(c) the number of units which will be eliminated in case conversion occurred in order to satisfy Municipal Code parking requirements;

(d) the adequacy of the relocation assistance plan proposed by the subdivider; and

(e) any other factors pertinent to the determination.

Condominium conversions in recent years have resulted in the permanent loss of hundreds of rent-stabilized housing units in the City generally, many of which are in the Wilshire plan area. The converted units are sold to owners and are thus generally not available as rental apartments. The lost units cannot be replaced because only pre-1978 buildings are subject to the rent stabilization ordinance. This building contains 9 units that are still subject to RSO. Without the proposed condominium conversion these units are likely to be returned to rental use, and pursuant to the Ellis Act such units will be available for the original tenants to return at their original rental rates plus annual allowable adjustments.

The project would not just eliminate RSO units generally. It would eliminate at least four residential rental apartments which are affordable to moderate, low-income and very-low-income persons. According to the state Department of Housing and Community Development, as of June 2017 in Los Angeles County the moderate income level for a 3-person household (corresponding with the 2-bedroom units in the subject property) is $70,000, the low-income income level is $64,900 and the very low-income level is $40,550. An affordable rent is 30% of annual income, so the affordability thresholds for rent plus utilities are as follows:

$1,013 for very low income
$1,622 for low income
$1,750 for moderate income

At the time of the Notice of Intent to Withdraw, even assuming that the cost of utilities is negligible, the rents for four of the subject apartment units were affordable, as follows:

$927.00 (very low income affordable);
$1283.95 (low income affordable);
$1598.66 (low or moderate income affordable);
$1691.61 (moderate income affordable).

Although the applicant evicted tenants under the Ellis Act prior to applying for a condominium conversion, these same tenants would have the right to return to their units if the buildings are returned to use as rental apartments pursuant to the Ellis Act. Unless and until they do, these same tenants continue to compete with other tenants in the City for limited rental housing. Thus, these tenants are properly considered for purposes of evaluating the cumulative impact of this project and successive residential conversions on the rental housing market.

The specific factors (a) through (e) set forth for a cumulative impacts analysis on the rental housing market as prescribed by LAMC sec. 12.95.2.F.6 need not all argue for a significant impact; rather, the factors are considered together to determine whether there is a significant impact. In the case of this project, all five factors either argue for a finding of significant cumulative effect from successive conversion projects, or are simply not applicable to this project. Together, the five factors support the conclusion that successive residential conversions will have a significant cumulative impact on the rental housing market in the Wilshire Community Plan Area.

As to factor (a), "the number of tenants who are willing and able to purchase a unit in the building," this factor recognizes that any tenant who is not willing and able to purchase a unit is very likely to continue renting, and therefore will compete with other prospective tenants for scarce rental housing. Here, there is no evidence in the record that any of the former tenants is willing and/or able to purchase a unit in the building. Thus, for purposes of this factor the number of tenants who are willing and able to purchase a unit in the building is zero. Accordingly, factor (a) argues strongly that the project and successive conversions will have a cumulative impact on the rental market.

As to factor (b), "the number of units in the existing residential building prior to conversion," this factor recognizes that any loss of residential units will have an impact on the rental housing market. The number of units in the existing building prior to conversion was 9, as established in the Notice of Intent to Withdraw Units From Rental Housing Use filed with the application. That is one less unit than the 8 units in the condominium project, for a net loss of one unit. One of the previously occupied units was "illegal," i.e., unregistered and not included in the certificate of occupancy. However, the Advisory Agency acknowledged this "unpermitted" unit and the total of 9 units. The California Court of Appeal has emphasized the importance of unpermitted units to the City's housing stock, in finding that the Los Angeles RSO applies equally to permitted and unpermitted units. Carter v. Cohen (2010) 188 Cal. App. 4th 1038, 1051 (rental unit lacking a certificate of occupancy and not registered under RSO still falls within the scope of the RSO). Thus, for purposes of the evaluation of cumulative impact of successive conversions on RSO units, the number of units in the building prior to conversion is nine. Since the project consists of eight units, factor (b) supports a finding that the project and successive conversions will have a cumulative impact on the rental market.

As to factor (c), "the number of units which would be eliminated in case conversion occurred in order to satisfy Municipal Code parking requirements," no units appear to have been eliminated for this purpose. Thus, factor (c) is inapplicable to the finding of cumulative impact.

As to factor (d), "the adequacy of the relocation assistance plan proposed by the subdivider," there is no "relocation assistance plan" for this project as contemplated in the condominium conversion ordinance, because the landlord evicted the tenants before applying for the condominium conversion. Relocation assistance required by the Ellis Act and paid by the applicant is irrelevant to the question whether the condo conversion has a significant impact on the rental market. Even tenants given relocation assistance under the Ellis Act are forced to seek housing elsewhere, thus burdening the rental housing market. Thus, factor (d) is inapplicable to the finding of cumulative impact.

As to factor (e), "any other factors pertinent to the determination," there are at least two other factors pertinent to the determination of a significant cumulative effect from successive condominium conversion projects. First, the project leads to the permanent net loss of nine RSO units in the City, which units are crucially needed in light of recent losses through demolition and development. Second, the conversion of this designated Historic-Cultural Monument

(HCM) into condominiums based upon a discretionary exemption from the minimum parking requirements would merely set an example that would invite similar conversions of designated HCMs throughout the City into condominiums. Since many RSO units are in historic buildings, this would lead to far broader impacts citywide.

Therefore, as conditioned, the proposed conversion will have a significant cumulative effect on the rental housing market in the Wilshire Community Plan area. The City Council should make the findings set forth in Section 12.95.2-F,6, and on that basis grant the appeal.

3. <u>Conversion Would Jeopardize the Underlying Historic Resource and Should Have Been Evaluated Under CEQA.</u>

The project is a Vesting Tentative Tract Map for the condominium conversion of 2 apartment buildings with 9 units that are a City of Los Angeles Historic Cultural Monument (HCM) into an 8-unit condominium. Rather than perform full environmental review pursuant to the California Environmental Quality Act (CEQA), the Advisory Agency found that the project was subject to a Class 1 (existing facilities), Category 10 exemption ("Division of existing multiple family rental units into condominiums or stock cooperatives.") and a Class 32 (infill) exemption. (CAPC Letter of Determination at pp. F1-F3, Findings of Fact (CEQA).) On this basis, staff did no environmental review whatsoever.

However, in fact the project <u>does not qualify</u> for the Class 1, Category 10 Categorical Exemption or the Class 32 Categorical Exemption recommended by Planning Department staff. Because no categorical exemption applies, and because there is a fair argument that the project may have a significant impact on the environment, an environmental impact report (EIR) must be prepared under CEQA.

In November 2015, these buildings were designated historic/cultural monuments. They were built by Mendel Meyer, a renowned builder of the 1920s who designed the Egyptian Theater and many other treasured landmarks in the City. Mr. Meyer's career boomed during the roaring 20s and then hit the skids in the 1930s, with the onset of the Great Depression. In 1936, Mr. Meyer built the first of the two Flores buildings, living as an owner/landlord in the most spectacular of the units. Then, he built the second building in 1939, and when his circumstances diminished further, he moved into one of the more modest units in that building. The Meyers rented the remaining units to people much like the people who rent them today – working people, young families, seniors, and new immigrants to Hollywood. They lived in the courtyard apartments until their respective deaths in 1950s.

The buildings – and especially their interiors – have remained remarkably intact since Mendel Meyer's time. They have been rental apartments for more than 80 years. The numerous landlords over the years have not been tempted to alter the units, largely because they are, in the final analysis, relatively modest in scale and in amenities, and because the rents have been relatively affordable and protected from dramatic increases by the RSO.

The applicant has approached the Office of Historic Resources with proposals to make numerous interior and exterior changes to the building. These include removing elements of the structure that were part of the original historic design, and combining two of the original apartment units into a single condominium unit. Detailed plans have not been presented, or approved, by the Office of Historic Resources. Further, the Office of Historic Resources has made no findings concerning the compliance of the project plans with the Secretary of the Interior's standards for the Treatment of Historic Properties or related guidelines promulgated by the Secretary of the Interior.

Staff found that two separate categorical exemptions applied to this project:

The Class 1 categorical exemption pertains to Existing Facilities, which consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing. Category 10 specifically identifies projects that involve the division of existing multiple family rental units into condominiums or stock cooperatives as exempted.

The Class 32 Categorical Exemption pertains to a project that is developed on an infill site and meets certain specified criteria, including consistency with the general plan and zoning regulations, and where certain impacts are shown not to exist.

However, neither of these categorical exemptions applies to this project because section 15300.2(f) of the state CEQA Guidelines prohibits the use of a categorical exemption for a project which "may" cause a substantial adverse change in the significance of a historical resource. It is patently obvious that any changes to these structures "may" substantially alter the historic character of the interiors and/or the exteriors of the buildings.

In addition, the Class 32 Categorical Exemption does not apply on the separate ground that the project is not consistent with the general plan or the zoning regulations, as set forth elsewhere in these findings.

Finally, in addition to the above grounds, neither the Class 1, Category 10 categorical exemption nor the Class 32 Categorical Exemption applies to this project because of the possibility that the project would have a significant effect on the environment. Article III, Section 1 of the City CEQA Guidelines states the following (emphasis added):

> *The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, <u>provided such categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment</u>.*

Applying the above language, because the project involves a designated historic-cultural monument, it can be "readily perceived" that the project "may" have a significant effect on the environment under Article III(1) of the City CEQA Guidelines, and particularly on the underlying historic resource. Thus, no categorical exemption can apply.

Indeed, by using the phrase "readily perceived" in combination with the term "may," the City has effectively set its own threshold for the use of categorical exemptions, which is more stringent and more protective of the environment than the standard applied under the statewide CEQA statute and statewide CEQA Guidelines. Neither state law nor the statewide Guidelines pre-empts the City CEQA Guidelines on this point. State law does not relieve the City from the obligation to comply with the City CEQA Guidelines, which are a separate enactment formalized by a resolution of the City Council adopted in 2002. (See Council File 02-1507, at https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=02-1507.) Instead, the City is bound to follow the City CEQA Guidelines prohibition on the use of categorical exemptions when it can be "readily perceived" that the project "may" have a significant impact.

In addition to the City CEQA Guidelines, the state CEQA Guidelines also prohibit the use of a categorical exemption for this project. Section 15300.2 of the Guidelines ("Exceptions") states, in relevant part, "(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." Here, the subject building is a designated HCM, something that applies to less than 1% of buildings in the City (fewer than 1200 of hundreds of thousands of buildings).

In addition, the neighborhood is a largely intact historic neighborhood consisting of 90% of the original architecture. The alteration of a designated historic building within this unusually intact neighborhood is itself another "unusual circumstance," as it is readily apparent that most neighborhoods in the City of Los Angeles are not 90% historically intact.

These unusual circumstances, combined with the applicant's intention to alter the historic-cultural monument – including by removing elements of the historic building and combining two units into one – is evidence that there is a "reasonable possibility" of a significant impact on the cultural resource.

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1105 is a key case on this issue. It holds that there must be "unusual circumstances" to preclude the application of a categorical exemption, and that "unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class." Here, that feature is the fact that the project involves the alteration of two buildings that are a designated historic/cultural monument.

Berkeley Hillside goes on to hold that "Once an unusual circumstance is proved under this method, then the 'party need only show a reasonable possibility of a significant effect due to

that unusual circumstance.'" Here, the fact that the applicant seeks to substantially alter the historic cultural/monument – including by combining two units into one – is all that is needed to prove a "reasonable possibility" of a significant impact on the cultural resource.

The Advisory Agency found that because the project would eventually be required to comply with the Secretary of Interior's Standards for the Treatment of Historic Properties and with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, the project would not adversely affect the historic resource. (Letter of Determination at pg. F-3.) However, CEQA does not allow an applicant's promises of future mitigation to substitute for full environmental review. See Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 92. (court holding that "reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.")

In addition, in correspondence to the Advisory Agency, the applicant's attorney, Elisa Paster, argued that there would be no significant impact to the historic resource because the subdivision does not itself "impact any physical details." However, the fact that the subdivision does not itself have the potential to alter the historic resource is utterly irrelevant under CEQA, when the subdivision will have the reasonably foreseeable result of altering the resource. See Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners (2001) 91 Cal.App.4th 1344, 1360.

CEQA is clear: An Environmental Impact Report (EIR) is necessary when there is a "fair argument" that there "may" be a significant impact, except when mitigation measures will mitigate that impact, in which case a Mitigated Negative Declaration (MND) is appropriate. The so-called "fair argument" test is designed to be especially protective of the environmental resource in question, which in this case is a designated historic/cultural monument. The applicant's promises to protect this historic resource, for what they are worth, must be evaluated in an EIR or an MND. These promises do not justify the use of a categorical exemption to evade full CEQA review.

Because no categorical exemption applies, and because there is a fair argument that the project may have a significant impact on the environment, the impact of this condominium conversion should have been considered as a potentially significant impact on cultural resources for purposes of the CEQA, and an Environmental Impact Report (EIR) should have been prepared to evaluate that potential impact.

4. The Minimum Advisory Agency Parking Requirements Should Not be Waived For This Historic-Cultural Monument.

Pursuant to Advisory Agency policy the project, a conversion project with 8 units in a building more than five years old requires two spaces per unit, for a total of 16 parking spaces. (See Advisory Agency Policy No. 2006-2 Multi Family Parking Policy.)

In addition to the minimum number of parking spaces, all parking spaces in a condominium conversion project must comply with the specifications for parking spaces in the modern code, concerning matters such as stall length and width, aisle width, allowances for obstructions, minimum backing areas, and driveway access. (See LAMC sec. 12.95.2(H)(1)(g) (referencing specifications in sections 12.21 A.5. and 12.21 A.6.)

Here, the existing garages have just 12 spaces. Moreover, none of the parking spaces meets the minimum specifications for residential parking spaces provided by the zoning code. Two spaces are within narrow individual garages that are only 8'7" and 8'9" wide, respectively. Eight spaces are in double garages that are less than 16 feet wide. All 12 spaces are obstructed by columns or walls at the entry to the garage, further constraining access. None of the spaces have the minimum backing areas required by the zoning code.

Despite all of this, the Advisory Agency expressly waived all Deputy Advisory Agency parking requirements for the conversion project. (Determination at pg. F4, finding (b); pg. F10, finding (f).) Specifically, it found that the project is exempt from providing any new parking because the structures are designated HCMs, referring to LAMC section 12.21.A.5.(x), a provision of the zoning code which applies generally to all development. However, this exemption should not be applied to this project.

LAMC Section 12.21 A.4(x)(2) states that no additional automobile or bicycle parking spaces need be provided in connection with a "change of use" of a designated historic-cultural monument. This section does not apply because the proposed condominium conversion entails no "change of use" under the zoning code. The use authorized under the applicable R-3 zoning classification is presently "apartment house," while the proposed condominiums are also classified as an "apartment house" use. (LAMC sec. 12.10.) See LAMC sec. 12.03 (defining "APARTMENT HOUSE" as "A residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms.")

Moreover, even if a condominium conversion were deemed to be a "change of use" under the zoning code, the waiver of parking requirements for a "change of use" is optional, not mandatory, and is not warranted in this case. LAMC Section 12.21 A.4(x)(2) states that even for projects entailing a "change of use," the Advisory Agency, "as part of a discretionary approval related to a change of use, may impose conditions requiring additional parking requirements in connection with the change of use." The condominium conversion is a discretionary approval, and the Advisory Agency is fully authorized to, and should, impose additional parking requirements in connection with that approval. Indeed, the Advisory Agency already imposes additional parking requirements routinely on tract map projects, based on matters such as parking congestion, size of project, and age of project.

The project should provide at least 16 parking spaces because of the extremely constrained parking conditions in this neighborhood. The residential area is characterized mainly by pre-1950 multi-family residential buildings, the vast majority of which have fewer

parking spaces than would be required for new projects under the modern zoning code. In addition to this, commercial uses along the proximate Beverly Boulevard and Third Street, including restaurants, stores and offices, have parking demands far in excess of the available supply. Residents are not entirely protected from spillover commercial parking because only some streets have residential permit parking, and even these streets allow parking without a permit during a substantial part of the day (typically between 8 a.m. and 6 p.m.).

5. The Advisory Agency Lacked the Authority to Waive the Parking Requirements of the Zoning Code.

In addition to the Advisory Agency parking requirement, the zoning code separately requires at least 2 spaces per unit, or a total of 16 spaces for this condominium conversion project. (See LAMC sec. 12.21.A.4. (requiring provision of off-street parking for buildings "at the time such buildings or structures are altered, enlarged [or] converted" and requiring 2 parking spaces for all dwelling units with "three or more habitable rooms").)

As discussed above, it would be improper for the Deputy Advisory Agency to grant an exception from the two-space requirement contained in the Advisory Agency Multi-Family Parking Policy, because such an exception is unwarranted given the parking conditions in the neighborhood. However, regardless of any authority the Advisory Agency may have to waive its own parking requirements, it simply lacks any authority to grant an exception from the separate two-space requirement contained in section 12.21.A.4 of the zoning code. Such an exception would be a de facto variance from the zoning code, and is expressly prohibited by the subdivision ordinance itself. LAMC section 12.95.2.H.1.d states:

> d. Where the number of parking spaces required by other provisions of this code in existence on the date of map application exceeds the minimum numbers established by this section, the number of parking spaces shall not be diminished.

Moreover, even if the Advisory Agency did have the discretion to relieve the applicant from the minimum number of required parking spaces under the zoning code, it has no discretion to relieve the applicant from the zoning code requirements concerning the width and length of the individual parking spaces, or matters such as access aisles and driveways. Here, all of the parking spaces in the project are substandard and nonconforming with the zoning code.

6. The Council Should Find That the 12 Substandard Parking Spaces Proposed for the Project Are Not Substantially Consistent With the Purposes of the LAMC.

In support of the determination, the Advisory Agency mad the required finding that "(g) The off-street resident parking spaces and guest parking spaces required for the proposed condominium conversion are reasonable and feasible and substantially consistent with the purposes of the LAMC." There was no basis for making this finding, and the Council should

find that, in fact, the proposed parking spaces are not substantially consistent with the purposes of the LAMC.

The Advisory Agency supported its finding of consistency with the LAMC by making two points: (1) that "the number of parking spaces cannot be increased without major physical modification of the project." and (2) that LAMC section 12.21.A.5.(x) provides that a building designated HCM does not require additional parking in connection with a "change of use." (Letter of Determination at pg. F-10, finding (f).) There is not substantial evidence to support either of these two points, and even if there was substantial evidence to support either of them, this Commission is also entitled to make the opposite finding based upon substantial evidence already in the record.

First, there is no substantial evidence to support the contention that "major physical modification" would be necessary to provide the necessary parking. Moreover, even if this contention were supported by substantial evidence, it is not relevant to the required finding that the parking spaces provided are "substantially consistent with the purposes of the LAMC." The Advisory Agency does not have the power to, and should not, waive parking requirements merely because "major physical modification" may be necessary to comply with those requirements. The waiver of minimum parking requirements should be accomplished only through a formal variance or exception, which is accompanied by a legally rigorous series of findings about the need for such relief, including unnecessary hardship, special circumstances and the like.

Second, as discussed above, the code section cited by staff, which grants relief from parking requirements for a designated HCM, does not apply to this project. This project involves no change in use, as the property before and after the project is a residential use – and, more particularly, an "apartment house" use.

The owner may argue that it is impossible for the project to satisfy the modern zoning code provisions concerning parking in light of the historic designation of the property and the need to protect the historic resource. In fact, the owner has several options that do not require a waiver of the usual parking requirements. First, the applicant always has the option to abandon the condominium conversion and return the subject units to use as rental apartments, in which case no discretionary approval is necessary and the existing 12 parking spaces can be maintained on a "legal nonconforming" basis. Second, the owner can reduce the number of units in its project to provide two code-conforming spaces for each unit in the existing garages. Third, the owner can modify the garage buildings, consistent with the protection of the historic resource. Fourth, to the extent that the spaces are smaller than required by modern code, or lack the access or driveway required by modern code, the owner can apply for a variance from the City based upon hardship stemming from the designation as an HCM.

Simply stated, the Deputy Advisory Agency should not have granted a de facto variance by applying an obscure exemption from the parking rules for a change of use – especially since that exemption is purely discretionary. There is no rational basis for it to do so.

7. Conversion is Not Necessary to Provide the Applicant With an Economically Viable Use.

The applicant has contended to various City officials that it needs to convert the existing apartment building to condominiums in order to have an economically viable use of the property. This is untrue.

This building is, and until very recently was, an apartment building. It is typical of this neighborhood. In fact, all of the surrounding buildings and all buildings on the same block of N. Flores Street are uniformly multi-unit rental apartment buildings dating from before 1950. Moreover, the entire Beverly Square area, which spans some 12 blocks between Beverly and Third Streets, consists almost entirely of rental apartments. Most of these are in pre-1950 buildings.

In fact, a condominium conversion would be unique here, and would grant the applicant an economic advantage that no one else in the neighborhood has: There have been zero condominium conversions of the existing pre-1950 housing stock in the 12-block Beverly Square neighborhood. Even new condominiums are rare: Although numerous new apartment buildings have been constructed in recent years, only a handful of new condominium buildings have been built in Beverly Square. Of these, the largest, a 3-lot condominium project on Sweetzer Avenue about 2 blocks away, built in 2008, ultimately failed and is presently operated as rental apartments.

The applicant finds condominium conversion convenient only because, in 2015-16, it evicted all of the tenants and removed the buildings from the rental market, as part of a proposed small-lot subdivision project. While the Ellis Act evictions were underway, one of the tenants and several neighbors, with the vigorous support of the Council Office, applied for designation of the buildings as a Historic-Cultural Monument, and they were designated by the City Council in November 2015. This spared the buildings from demolition and thwarted the small-lot subdivision.

Despite the pending HCM nomination, the applicant persisted with the Ellis Act process. As reflected by the applicant's own allegations in this application, the units were all withdrawn from rental use as of June 6, 2015. After the Ellis process was complete, but while the HCM process was underway, two tenants, Steven Luftman and Karen Smalley, remained in possession of their apartment on the ground that the owner had not followed the Ellis Act in evicting them. Their plight attracted much press attention and became a lightning rod for activists statewide concerned about the abuse of the Ellis Act. (See http://www.latimes.com/local/lanow/la-me-ln-tenants-decry-eviction-by-landlord-the-chair-of-state-housing-finance-agency-20150530-story.html.)

At the time of the Ellis Act evictions, one of the principals of the applicant Bldg Flores LLC was (and presumably still is) Matthew Jacobs. Ironically Mr. Jacobs, at the same time as he was evicting tenants from the Flores buildings and another historic bungalow court on Edinburgh

Ave., about a mile away, also held a position as Chair of the board of the California Housing Finance Agency (CalHFA), a state agency with the mission to "support the needs of renters and homebuyers by providing financing and programs that create safe, decent and affordable housing opportunities for low to moderate income Californians". Soon after this came to light, Mr. Jacobs was forced to resign from that post. (See http://beverlypress.com/2015/07/head-of-affordable-housing-agency-steps-down-amid-protest/.)

After the HCM designation precluded demolition, the owner could easily have returned the buildings to their original apartment use, and allowed the remaining tenants to stay in their homes. Instead, whether out of spite or simply to make more money, the owner finally sued the last two tenants, and they eventually had to move.

Now that the owner has evicted all the tenants, it has argued to various City officials that it is legally precluded from returning the units to apartment rental use. This is untrue. In fact, the Ellis Act, and the City ordinance implementing the Ellis Act, allow the units to be returned to rental use by filing a simple form with the Housing and Community Investment Department (HCIDLA). (See LAMC section 151.24.) Moreover, as long as the units are returned to the market more than two years after withdrawal (which in this case is June 2017, a date that has already passed) the owner will have no legal liability for damages to the evicted tenants. (See LAMC section 151.25 (providing for damages only if rental unit is offered for rent or lease less than 2 years after withdrawal).

Instead, beginning in June 2017, the owner will be in full compliance with the Ellis Act if it simply notifies former tenants who requested notification at the time they were evicted that that premises are available for re-rental, and then allows them 30 days to accept the offer. (See LAMC sec. 151.26, 151.27.) Thereafter, the owner must rent the units either to these tenants or, if they decline to re-rent, to new tenants at the same rents that were in effect at the time the Notice of Intent to Withdraw was filed with HCIDLA, plus annual adjustments under the RSO. (See LAMC sec. 151.26.A.2.) According to the Notice of Intent submitted by the applicant, the total rent for the two buildings at the time the Notice was filed was $15,881.60, or an average of about $2,000 for the eight units. Upon return to rental apartment use, the owner will therefore derive a substantial income from the buildings and will not be harmed in the slightest.

8. Plans Do Not Meet Standards for a Tentative Map.

LAMC section 12.95.2.D.1.b.(1) states that for a Residential Conversion Project "the following information shall be submitted at the time of filing: … (c) Parking plan, including the total number of spaces actually provided and the total number required if different from that actually provided; dimensions of stalls, aisles and driveways; locations of columns, walls and other obstructions; total number of covered and uncovered parking spaces and location and number of guest parking spaces." Here, the Parking Plan, which is crucial to the project, does not come close to meeting these requirements:

- There is no dimensioning of the individual 12 stalls. Moreover, since four of the stalls are within double-space garages, it is impossible to tell where one stall begins and where the other ends. This is not a merely technical defect; the lack of dimensioning makes it impossible to establish with certainty that any particular space is (or is not) in conformance with the minimum specifications for a parking space in the zoning code. (In fact, all of the stalls are so substandard that they do not conform to these specifications; the only question remaining is by how much.)

- Columns located at the entrances to the various parking spaces are not clearly shown or labeled, much less dimensioned. This omission is a significant one, as under the zoning code the minimum width of a parking space is dictated in part by the presence of obstructions (such as columns) alongside the parking stalls. (See LADBS Information Bulletin "Parking Design, P/ZC 2002-001, at pg. 1, section A.6. ("Stall widths must be increased 10 inches for obstructions, except for stalls serving single family dwellings and duplexes.") https://www.ladbs.org/docs/default-source/publications/information-bulletins/zoning-code/parking-lot-design-ib-p-zc2002-001.pdf?sfvrsn=17

- Aisles are not dimensioned. Instead, a distance of 10 feet is shown to the property line, which obviously is not sufficient for a car to back. In fact, the shortest minimum access aisle width for a 90-degee compact parking stall is 20 feet, because it must be sufficient for a car to back entirely from the parking space and maneuver away from it. (See LADBS Information Bulletin "Parking Design, P/ZC 2002-001, at pg. 11, Table 6. https://www.ladbs.org/docs/default-source/publications/information-bulletins/zoning-code/parking-lot-design-ib-p-zc2002-001.pdf?sfvrsn=17)

- No driveway whatsoever is depicted. Every parking space in the City must have a driveway leading to it. LAMC section 12.21.A.4.(h) provides that "An access driveway shall be provided and maintained between each automobile parking space or area and a street, or alley, or a private street or easement …" Further, a driveway has minimum specifications; in the R-3 zone, a driveway must be at least 10 feet wide. (See LADBS Information Bulletin "Parking Design, P/ZC 2002-001, at pg. 2, Section G.3. https://www.ladbs.org/docs/default-source/publications/information-bulletins/zoning-code/parking-lot-design-ib-p-zc2002-001.pdf?sfvrsn=17) Given these requirements, a driveway should have been depicted on the parking plan for every parking space, even if that driveway is not located entirely on the lot which it serves. Again, this is not a mere technicality: Presently, the parking spaces on the parking plan lead to nowhere. If the applicant complied with the requirement to identify a driveway on the parking plan, the lack of an adequate driveway would have become that much more apparent.

- In fact, the stalls are accessed from a shared alley, across an easement shared with other property owners on Flores Street and Sweetzer Avenue. None of this is depicted, much less is it dimensioned. Here, in essence, the applicant seeks to use the shared alley easement as either his access aisle and/or as his driveway. If that is his intent, he must depict and dimension them, as they must meet minimum requirements in the zoning code.

These omissions are especially important because the project does not meet code parking requirements, but rather relies on an exemption for HCMs undergoing a "change of use".

Under Government Code section 66473, a local agency must disapprove a tentative map for failure to meet or perform any of the requirements or conditions imposed by "this division or local ordinance enacted pursuant thereto." Thus, the Deputy Advisory Agency should have disapproved the map based upon these shortcomings alone.

9. Applicant Has Failed to Disclose Three Sets of Tenants Apparently Requiring Notice of Their Right to Purchase a Unit and of the Public Hearing.

At the public hearing before the Deputy Advisory Agency, there was testimony from neighbors that the applicant had apparently had tenants – perhaps resident managers of the building, but nonetheless very possibly "tenants" – from the time this application was filed until the present. The names of these persons do not appear in the application.

LAMC section 12.95.2.D.1.(b) states that for a Residential Conversion Project "the following information shall be submitted at the time of filing: … (2) **Tenant Information.** Name and address of each tenant; total number of project occupants; length of tenancy; rent schedule for 18 months preceding the application; relocation assistance plan." The zoning code defines "Tenant" as "A person who rents, leases or sub-leases, through either a written or oral agreement, residential real property from another." (See LAMC sec. 12.03.)

The application was filed in June 2016. For over a year, since approximately March of 2016, I have been aware of two persons – apparently a married couple – who live in one of the units of the existing apartment buildings.

Presumably these residents have occupied the building over many months as part of the applicant's business, and not merely as a gift or favor. Perhaps they pay rent to the owner. Or, they may be "resident managers," who provide some sort of service to the applicant such as maintenance and security. In either case, they are likely to be deemed "tenants" by the City. According to one of my neighbors, who has spoken to these tenants, he is in fact acting as a manager of the property.

More recently, in about March of 2017, just about the time that the Deputy Advisory Agency made its decision, two new groups of occupants moved into two other vacant units.

The Rent Adjustment Commission, which promulgates rules pursuant to the RSO, distinguishes between two types of "resident managers": (1) "resident-managers" who receive free rent but no wages, or partial free rent; and (2) and "employee-managers," who are required to live on the premises as a condition of employment, and who are provided both free rent and income at the minimum wage. (See RAC rule 920.01, 920.02.) "Employee-managers" are not treated as "tenants" for purposes of the protections of the RSO, but "resident-managers" do qualify as tenants. (See RAC rule 920.01, 920.02.)

Thus, unless the three sets of occupants of the Flores building meet all the criteria of "employee-managers," or are living in the building as a gift or as a favor, their names should have been disclosed with the application.

Moreover, even if the occupants are "employee-managers," the unit must be registered with HCIDLA. (RAC rule 922.01.) Here, based upon the filings by the applicant, there has been no such registration. To the contrary, the applicant has continuously represented that the building is unoccupied and "vacant".

If the occupants of the building are properly classified as "tenants," then the applicant also has failed to satisfy LAMC section 12.95.2.D.1.(c), which requires at the time of filing evidence of "written notice to the tenants of an exclusive right to purchase the dwelling unit occupied by the tenant; and the number of tenants that have expressed interest in purchasing their dwelling unit". (Elsewhere section 12.95.2.E.2. provides that "Each tenant of a conversion project subject to this section shall be given 180 days written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion.")

In addition to being disclosed in the application, the Department of City Planning is required to notify any "tenants" of the public hearing, at least 10 days in advance. (See LAMC section 12.95.2.E.1. If the applicant has failed to identify tenants in the application, then these tenants have not received this required notice.

Before the hearing of the Central Area Planning Commission, the applicant's lawyer, Ms. Paster, wrote a letter to the Deputy Advisory Agency in which she defended the owner's use of the building for these occupants. She admitted that the first group of occupants – a family consisting of a man, his common-law wife, and their son – were occupying the property. However, she insisted that "the occupants are living in the building as a gift or favor" and that "These persons are simply allowed to live on the property free of rent and are not required to provide any services, bonuses, benefits or gratuity to the Applicant in connection with their occupancy." As such, Ms. Paster insisted that the family does not qualify as "tenants" and that they are not qualified to receive various notices and rights pursuant to LAMC section 12.95.

Of course, there is little reason for a limited liability company organized solely for the purpose of developing this property to be offering a "gift or favor" consisting of free rent valued at thousands of dollars per month, to persons with which it has no business or employment relationship.

Ms. Paster's statements after the Deputy Advisory Agency hearing also contradicted what the principal of the applicant, Guy Penini, had said about the family during the public hearing before the Deputy Advisory Agency. At that hearing Mr. Penini said that the occupants were "part owners of the project". Yet Ms. Paster's letter was suspiciously silent about this "part owner" relationship.

Then, just before the decision by the Central Area Planning Commission in May 2017, the owners changed their story again. They submitted affidavits from three of the occupants, in which they each claimed that they were "part owners" of the project and therefore not properly deemed as tenants. Presumably the ownership entity, an LLC, merely granted a nominal share of the company to each of the occupants (such as one dollar's worth of ownership) in order to facilitate their technical argument that the occupants were all "part owners."

All things considered, it is fair to wonder whether Ms. Paster and her client are seeking to conceal the actual status of these occupants and to characterize them in a way that will avoid the application of the condominium conversion ordinance, the Ellis Act, and/or the Rent Stabilization Ordinance.

10. <u>The Council Should Deny the Project Because it Fails to Comply With the General Plan</u>.

LAMC section 12.95.2.A states that a purpose of the condominium conversion ordinance is "to generally regulate projects in accordance with applicable general and specific plans and with the public health, safety and welfare." State law provides that the local agency must make an affirmative finding of general and specific plan consistency in order to approve a tentative map, and that the local agency must disapprove a tentative map if it finds that the proposed map or the design and improvement of the proposed subdivision are not consistent with applicable general and specific plans. (Government Code section 66474 (a)–(b); see <u>Woodland Hills Residents Ass'n v City Council</u> (1975) 44 Cal.App.3d 825.)

The Advisory Agency found that the project was consistent with the General Plan. However, the Council is entitled to find, and should find, that it is not. The courts defer to a local agency's determination of consistency with the general plan. "When we review an agency's decision for consistency with its own general plan, we accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." <u>Save Our Peninsula Comm. v Monterey County Bd. of Supervisors</u> (2001) 87 Cal.App.4th 99, 142.

As discussed in detail above, the project would eliminate at least four residential rental apartments affordable to moderate, low-income and very-low-income persons and would result in zero additional residential units affordable to such persons. The nine apartment units in the existing structures, while presently vacant, are all subject to the Rent Stabilization Ordinance (RSO) and thus their conversion to condominiums would result in a net loss of nine RSO units.

The Ellis Act provides that if the units are returned to the rental market, they must be rented to either the evicted tenants or new tenants at the same rental rates allowed by RSO at the time the Notice of Intent to Withdraw was filed with the City, plus annual adjustments allowed under the RSO. (LAMC sec. 151.26(A)(2).)

Because it removes affordable rental housing from the Wilshire community, the project is incompatible with the adopted Wilshire Community Plan, which provides:

> GOAL 1: PROVIDE A SAFE, SECURE, AND HIGH QUALITY RESIDENTIAL ENVIRONMENT FOR ALL ECONOMIC, AGE, AND ETHNIC SEGMENTS OF THE WILSHIRE COMMUNITY.
>
> > Objective 1-4: Provide affordable housing and increased accessibility to more population segments, especially students, the handicapped and senior citizens.
> >
> > > Policy 1-4.1: Promote greater individual choice in type, quality, price and location of housing.
> > >
> > > Policy 1.4-2: Ensure that new housing opportunities minimize displacement of residents.

The project is also incompatible with the following primary residential issue contained in the Wilshire Community Plan:

> Need to preserve the existing character of residential neighborhoods while accommodating more affordable housing and child care facilities. (Wilshire Plan at I-5.)

Finally, the project is incompatible with the City's General Plan Framework Element, Housing Element, which provides:

> GOAL 1: A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs.
>
> > Objective 1.2: Preserve quality rental and ownership housing for households of all income levels and special needs.
> >
> > > Policy 1.2.2: Encourage and incentivize the preservation of affordable housing, including non-subsidized affordable units, to ensure that demolitions and conversions do not result in the net loss of the City's stock of decent, safe, healthy or affordable housing.

In addition to the general inconsistency based upon the loss of affordable rental housing, the design and improvement of the project is incompatible with provisions of the Wilshire Community Plan concerning parking, which provide:

GOAL 15: PROVIDE A SUFFICIENT SUPPLY OF WELL-DESIGNED AND CONVENIENT OFF-STREET PARKING LOTS AND FACILITIES THROUGHOUT THE PLAN AREA.

Objective 15-1: Provide off-street parking in appropriate locations in accordance with Citywide standards and community needs.

As discussed above, the project provides 12 resident parking spaces. For a condominium conversion project, section 12.21.A.4 of the zoning code requires at least 2 parking spaces for each unit with three or more habitable rooms, for a total of 16 required spaces for 8 units. In addition to the minimum number of parking spaces, all parking spaces in a conversion project must comply with the specifications for parking spaces in the modern code, concerning matters such as stall length and width, aisle width, allowances for obstructions, minimum backing areas, and driveway access. (See LAMC sec. 12.95.2(H)(1)(g) (referencing specifications in sections 12.21 A.5. and 12.21 A.6.) Because of the extremely constrained parking conditions in the neighborhood, there is no ground for waiving these requirements.

11. The Council Should Adopt One or More of the Attached Alternative Findings.

In the attachment to this letter, five alternative findings are presented for the Council's consideration. Each of the alternative findings follows the language of the corresponding original finding made by the Advisory Agency (in italics).

In order to deny the appeals and approve the project, the Council would have to make affirmative findings on each of these five issues. Conversely, if the Council makes any one of the five alternative findings, this is sufficient grounds for it to grant the appeal and deny the project.

Thank you for your kind consideration of my comments. I respectfully request that you grant my appeal and deny this project.

Very truly yours,

John A. Henning, Jr.

Enclosure (Alternative Findings)

ALTERNATIVE FINDINGS

Council File: 15-1170-S1 (118-126 N. Flores St.)

FINDINGS PURSUANT TO California Government Code (Subdivision Map Act) Sections 66473.1, 66474.60, 66474.61 and 66474.63:

CAPC FINDING:

(a) THE PROPOSED MAP IS CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The adopted Wilshire Plan designates the subject property for Medium Residential land use with the corresponding zone of R3. The property contains approximately 0.35 net acres (15,086 net square feet) and is presently zoned [Q]R3-1-O.

In accordance with LAMC 12.95.2 F, there are no applicable general or specific plans that contain a definite statement of policies and objectives applicable to condominium conversion projects in the Wilshire Community Plan.

The project is compatible with the Wilshire Community Plan which encourages projects that:

> *Objective 1-1: Provide for the preservation of existing quality housing, and for the development of new housing to meet the diverse economic and physical needs of the existing residents and expected new residents in the Wilshire Community Plan Area to the year 2010.*
>
> > *Policy 1-1.2: Promote neighborhood preservation in all stable residential neighborhoods.*
> >
> > > *Program: With the implementation of the Wilshire Community Plan, all discretionary actions, Specific Plans, and any community and neighborhood residential projects must be consistent with Wilshire Community Plan recommendations.*

The project will provide much needed new home ownership opportunities in the Wilshire Community Plan area in the form of existing quality housing. Therefore, as conditioned, the proposed subdivision map is substantially consistent with the applicable general and specific plans.

ALTERNATIVE FINDING:

(a) THE PROPOSED MAP IS INCONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The project would eliminate at least four residential rental apartments affordable to moderate, low-income and very-low-income persons and would result in zero additional residential units affordable to such persons. The nine apartment units in the existing structures, while presently vacant, are all subject to the Rent Stabilization Ordinance (RSO) and thus their conversion to condominiums would result in a net loss of nine RSO units. The Ellis Act provides that if the units are returned to the rental market, they must be rented to either the evicted tenants or new tenants at the same rental rates allowed by RSO at the time the Notice of Intent to Withdraw was filed with the City, plus annual adjustments allowed under the RSO. (LAMC sec. 151.26(A)(2).) Of the nine units, the allowable rental rates for four units are

affordable to moderate, low-income and very-low-income persons. According to the state Department of Housing and Community Development, as of June 2017 in Los Angeles County the moderate income level for a 3-person household (corresponding with a 2-bedroom unit) is $70,000, the low-income income level is $64,900 and the very low-income level is $40,550. An affordable rent is 30% of annual income, so the affordability thresholds are $1,750 per month for moderate income, $1,622 for low income, and $1,013 for very low income. At the time of the Notice of Intent to Withdraw, the rents for the four affordable units were as follows: $927.00 (very low income affordable); 1283.95 (low income affordable); 1598.66 (low or moderate income affordable); 1691.61 (moderate income affordable).

Because it removes affordable rental housing from the Wilshire community, the project is incompatible with the adopted Wilshire Community Plan, which provides:

> GOAL 1: PROVIDE A SAFE, SECURE, AND HIGH QUALITY RESIDENTIAL ENVIRONMENT FOR ALL ECONOMIC, AGE, AND ETHNIC SEGMENTS OF THE WILSHIRE COMMUNITY.
>
> > Objective 1-4: Provide affordable housing and increased accessibility to more population segments, especially students, the handicapped and senior citizens.
> >
> > > Policy 1-4.1: Promote greater individual choice in type, quality, price and location of housing.
> > >
> > > Policy 1.4-2: Ensure that new housing opportunities minimize displacement of residents.

Because it removes affordable rental housing from the Wilshire community, the project is also incompatible with the following primary residential issue contained in the Wilshire Community Plan:

> Need to preserve the existing character of residential neighborhoods while accommodating more affordable housing and child care facilities. (Wilshire Plan at I-5.)

Because it removes affordable rental housing from the Wilshire community, the project is also incompatible with the City's General Plan Framework Element, Housing Element, which provides:

> GOAL 1: A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs.
>
> > Objective 1.2: Preserve quality rental and ownership housing for households of all income levels and special needs.
> >
> > > Policy 1.2.2: Encourage and incentivize the preservation of affordable housing, including non-subsidized affordable units, to ensure that demolitions and conversions do not result in the net loss of the City's stock of decent, safe, healthy or affordable housing.

CAPC FINDING:

(b) THE DESIGN AND IMPROVEMENT OF THE PROPOSED SUBDIVISION ARE CONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The project site was designated as a historic-cultural monument (HCM) on November 25, 2015 by the Los Angeles City Council. The existing complex has eight (8) legal units and one (1) unpermitted unit found ineligible in area requirements for conversion into a legal unit. The proposed tentative tract map, an 8-unit condominium conversion, is allowable under the current zone and the land use designation.

The existing buildings, built in 1937 and 1940 and designated as a historic-cultural monument (HCM), encroach into a 10-foot building line established by Ordinance No. 76753. However, per LAMC Section 12.22 C.26, the HCM is exempt from the building line requirements and the yards required shall be the same as the yards observed by the existing structures on the site.

The project provides 12 resident parking spaces. In accordance with LAMC Section 12.21 A.4(x)(2) for historic-cultural monuments (HCM), the project does not require additional parking beyond existing parking, as shown on the certified parking plan dated June 6, 2016. In order to maintain the integrity of the HCM, the Deputy Advisory Agency therefore waives all applicable Advisory Agency Parking Policies pertaining to condominium conversions. Vehicular access will be provided from the adjacent alley.

The Bureau of Engineering has reviewed the proposed subdivision and found the subdivision layout generally satisfactory.

Therefore, as conditioned, the design and improvement of the proposed subdivision are consistent with applicable general and specific plans.

ALTERNATIVE FINDING:

(b) THE DESIGN AND IMPROVEMENT OF THE PROPOSED SUBDIVISION ARE INCONSISTENT WITH APPLICABLE GENERAL AND SPECIFIC PLANS.

The project would eliminate at least four residential rental apartments affordable to moderate, low-income and very-low-income persons and would result in zero additional residential units affordable to such persons. Thus, the design and improvement of the project is incompatible with both the Wilshire Community Plan and the General Plan Framework Element Housing Element (see finding (a), above.)

In addition to this inconsistency, the design and improvement of the project is incompatible with the Wilshire Community Plan, which provides:

> GOAL 15: PROVIDE A SUFFICIENT SUPPLY OF WELL-DESIGNED AND CONVENIENT OFF-STREET PARKING LOTS AND FACILITIES THROUGHOUT THE PLAN AREA.

Objective 15-1: Provide off-street parking in appropriate locations in accordance with Citywide standards and community needs.

The project provides 12 resident parking spaces. Section 12.21.A.4 of the zoning code requires at least 2 parking spaces for each unit with three or more habitable rooms, for a total of 16 required spaces for 8 units. This requirement applies to residential condominium conversion projects.

Due to the physical limitation of the lot and the existing building, the number of parking spaces cannot be increased without major physical modification of the project. However, the applicant has the option to return the structures to their original use as rental apartments and as such may maintain the existing 12 parking spaces, without compromising the integrity of the HCM.

LAMC Section 12.21 A.4(x)(2), which states that no additional automobile or bicycle parking spaces need be provided in connection with a "change of use" of a designated historic-cultural monument, does not apply because the proposed condominium conversion entails no "change of use" under the zoning code. The use authorized under the applicable R-3 zoning classification is presently "apartment house," while the proposed condominiums are also classified as an "apartment house" use. (LAMC sec. 12.10.) See LAMC sec. 12.03 (defining "APARTMENT HOUSE" as "A residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms.")

Even if a condominium conversion were deemed to be a "change of use" under the zoning code, the waiver of parking requirements for a "change of use" is optional, not mandatory, and is not warranted in this case. LAMC Section 12.21 A.4(x)(2) states that even for projects entailing a "change of use," the Advisory Agency, "as part of a discretionary approval related to a change of use, may impose conditions requiring additional parking requirements in connection with the change of use." The condominium conversion project should provide at least 16 parking spaces because of the extremely constrained parking conditions in this neighborhood. The residential area is characterized mainly by pre-1950 multi-family residential buildings, the vast majority of which have fewer parking spaces than would be required for new projects under the modern zoning code. In addition to this, commercial uses along the proximate Beverly Boulevard and Third Street, including restaurants, stores and offices, have parking demands far in excess of the available supply. Residents are not entirely protected from spillover commercial parking because only some streets have residential permit parking, and even these streets allow parking without a permit during a substantial part of the day (typically between 8 a.m. and 6 p.m.

None of the parking spaces for the project meets the minimum size, backing areas and access for residential parking spaces provided by Citywide standards. For a residential condominium conversion project the design and improvement of parking facilities and areas is required to substantially conform to the provisions of Section 12.21 A.5. and 6, which specify minimum sizes, allowances for obstructions, minimum backing areas and minimum access. (LAMC sec. 12.95.2(H)(1)(g).

In addition to the zoning code parking requirements there is a separate Advisory Agency parking requirement. (See Advisory Agency Policy No. 2006-2 Multi Family Parking Policy (minimum 2 spaces per unit if building is more than 5 years old). This parking requirement is not subject to LAMC Section

12.21 A.4(x)(2), concerning historic-cultural monuments. There is no ground for waiving this requirement because of the extremely constrained parking conditions in the neighborhood.

FINDINGS PURSUANT TO Section 12.95.2 of the Los Angeles Municipal Code:

CAPC FINDING:

(e) THE VACANCY RATE OF THE PLANNING AREA IN WHICH THE PROPERTY IS LOCATED IS GREATER THAN 5 PERCENT. AS CONDITIONED, THE PROPOSED CONVERSION PROJECT WILL NOT HAVE A SIGNIFICANT CUMULATIVE EFFECT ON THE RENTAL HOUSING MARKET IN THE PLANNING AREA IN WHICH THE PROPOSED PROJECT IS LOCATED.

Section 12.95.2-F,6 of the LAMC reads in pertinent part: "After considering the following criteria, the Advisory Agency may approve a tentative map or preliminary parcel map for a residential conversion project, unless it makes both of the following findings: (1) the vacancy rate of the planning area in which the property is located is five percent or less, and (2) the cumulative effect on the rental market in the planning area of successive residential…conversion projects (past, present and future) is significant." In determining whether there is a significant cumulative effect, the section requires the Advisory Agency to consider the following criteria: (a) the number of tenants who are willing and able to purchase a unit in the building; (b) the number of units in the existing building prior to conversion; (c) the number of units which will be eliminated in case conversion occurred in order to satisfy Municipal Code parking requirements; (d) the adequacy of the relocation assistance plan proposed by the subdivider; and (e) any other factors pertinent to the determination.

Consistent with the requirements of Los Angeles Municipal Code (LAMC) Section 12.95.2-F,6, the Advisory Agency considered the criteria enumerated in this subsection.

The Department of City Planning reports that the multi-family vacancy rate of the Wilshire Community Plan is 6.0%, greater than 5%. The vacancy rate was calculated using November 2015 data, less than one year old for the application filed on June 9, 2016.

The project does not have a significant cumulative effect on the rental housing market. No other recent condominium conversions have occurred within a 500- foot radius of the project site. The existing apartments were designated as a historic-cultural monument (HCM) on November 25, 2015, after the applicant legally complied with the Ellis Act demolition requirements for tenant eviction and relocation. A tenant information chart and tenant list were submitted for 9 units at the time of filling, all of which are vacant. Consequently, the project does not contain qualified tenants who are willing and able to purchase a unit.

The apartment complex has eight (8) legal units and one (1) unpermitted unit found ineligible in area requirements for conversion into a legal unit, thus the number of units in the existing building has not been reduced by Municipal Code parking requirements in the condominium conversion process. In accordance with LAMC Section 12.21 A.4(x)(2), the project does not require additional parking beyond

existing parking, as shown on the certified parking plan dated June 6, 2016. The unpermitted unit – originally built as a guest room and later illegally converted into a separate unit – will be merged with the existing adjacent apartment as originally intended in the 1949 Certificate of Occupancy.

The Housing and Community Investment Department (HCIDLA) issued two letters on June 13, 2016 stating that all units are exempt from the Rent Stabilization Ordinance effective for 2016. The exemption is based upon the Notice of Intent to Withdraw Units from Rental Housing Use filed with HCIDLA on February 5, 2015. The application for Vesting Tentative Tract No. 74328 was filed on June 9, 2016. Thus, the 60-Day Notice of Condominium Conversion mailing was not performed by the applicant due to all units being vacant 60 days before filing. Therefore, the project is in conformance with the written notice requirements stipulated in Section 66452.18 of the Subdivision Map Act and Los Angeles Municipal Code Section 12.95.5 D.3.

Therefore, as conditioned, the proposed conversion will not have a significant cumulative effect on the rental housing market in the Wilshire Community Plan area. The Advisory Agency has determined that it cannot make the findings set forth in Section 12.95.2-F,6, and therefore, the condominium conversion may be approved.

ALTERNATIVE FINDING:

(e) THE VACANCY RATE OF THE PLANNING AREA IN WHICH THE PROPERTY IS LOCATED IS LESS THAN 5 PERCENT. THE PROPOSED CONVERSION PROJECT AND SUCCESSIVE RESIDENTIAL CONVERSION PROJECTS WILL HAVE A SIGNIFICANT CUMULATIVE EFFECT ON THE RENTAL HOUSING MARKET IN THE PLANNING AREA IN WHICH THE PROPOSED PROJECT IS LOCATED.

Section 12.95.2-F,6 of the LAMC reads in pertinent part: "After considering the following criteria, the Advisory Agency may approve a tentative map or preliminary parcel map for a residential conversion project, unless it makes both of the following findings: (1) the vacancy rate of the planning area in which the property is located is five percent or less, and (2) the cumulative effect on the rental market in the planning area of successive residential…conversion projects (past, present and future) is significant." In determining whether there is a significant cumulative effect, the section requires the Advisory Agency to consider the following criteria: (a) the number of tenants who are willing and able to purchase a unit in the building; (b) the number of units in the existing building prior to conversion; (c) the number of units which will be eliminated in case conversion occurred in order to satisfy Municipal Code parking requirements; (d) the adequacy of the relocation assistance plan proposed by the subdivider; and (e) any other factors pertinent to the determination.

Consistent with the requirements of Los Angeles Municipal Code (LAMC) Section 12.95.2-F,6, the City Council considered the criteria enumerated in this subsection.

The Department of City Planning reports that the multi-family vacancy rate of the Wilshire Community Plan is 6.0%, greater than 5%. This vacancy rate was calculated using November 2015 data, which is

more than 18 months old. In addition to the age of the data, the calculations appear to be unreliable because they are based upon data about "idle" water meters from the Department of Water and Power that resulted in the calculation of a citywide vacancy rate of 5.5% for November 2015. In the meantime, the U.S. Census Bureau reported that in the last quarter of 2015 (the same quarter that was the source of the November 2015 DWP data) the vacancy rate for the Los Angeles metropolitan area was 2.7%, or less than half of the citywide rate derived from the DWP data.

The most recent U.S. Census data for the Los Angeles metropolitan area finds a 3.0% vacancy rate. In the absence of recent and reliable data for the Wilshire Community Plan Area, the U.S. Census data is sufficient to conclude that the vacancy rate of the planning area in which the property is located is less than 5 percent.

Having found that the vacancy rate in the Wilshire Community Plan Area is less than 5 percent, the City Council further finds that the cumulative effect on the rental market in the planning area of the project and successive residential conversion projects (past, present and future) is significant.

Condominium conversions in recent years have resulted in the permanent loss of hundreds of rent-stabilized housing units in the City generally, many of which are in the Wilshire plan area. The converted units are sold to owners and are thus generally not available as rental apartments. The lost units cannot be replaced because only pre-1978 buildings are subject to the rent stabilization ordinance. This building contains 9 units that are still subject to RSO. Without the proposed condominium conversion these units are likely to be returned to rental use, and pursuant to the Ellis Act such units will be available for the original tenants to return at their original rental rates plus annual allowable adjustments.

The project would not just eliminate RSO units generally. It would eliminate at least four residential rental apartments which are affordable to moderate, low-income and very-low-income persons. According to the state Department of Housing and Community Development, as of June 2017 in Los Angeles County the moderate income level for a 3-person household (corresponding with the 2-bedroom units in the subject property) is $70,000, the low-income income level is $64,900 and the very low-income level is $40,550. An affordable rent is 30% of annual income, so the affordability thresholds for rent plus utilities are $1,750 per month for moderate income, $1,622 for low income, and $1,013 for very low income. At the time of the Notice of Intent to Withdraw, even assuming that the cost of utilities is negligible, the following rents are affordable, as follows: $927.00 (very low income affordable); 1283.95 (low income affordable); 1598.66 (low or moderate income affordable); 1691.61 (moderate income affordable).

Although the applicant evicted tenants under the Ellis Act prior to applying for a condominium conversion, these same tenants would have the right to return to their units if the buildings are returned to use as rental apartments pursuant to the Ellis Act. Unless and until they do, these same tenants continue to compete with other tenants in the City for limited rental housing. Thus, these tenants are properly considered for purposes of evaluating the cumulative impact of this project and successive residential conversions on the rental housing market.

The specific factors (a) through (e) set forth for a cumulative impacts analysis on the rental housing market as prescribed by LAMC sec. 12.95.2.F.6 need not all argue for a significant impact; rather, the factors are considered together to determine whether there is a significant impact. In the case of this project, all five factors either argue for a finding of significant cumulative effect from successive conversion projects, or are simply not applicable to this project. Together, the five factors support the conclusion that successive residential conversions will have a significant cumulative impact on the rental housing market in the Wilshire Community Plan Area.

As to factor (a), "in the case of residential conversion projects only, the number of tenants who are willing and able to purchase a unit in the building," this factor recognizes that any tenant who is not willing and able to purchase a unit is very likely to continue renting, and therefore will compete with other prospective tenants for scarce rental housing. Here, there is no evidence in the record that any of the former tenants is willing and/or able to purchase a unit in the building. Thus, for purposes of this factor the number of tenants who are willing and able to purchase a unit in the building is zero. Accordingly, factor (a) argues strongly that the project and successive conversions will have a cumulative impact on the rental market.

As to factor (b), "the number of units in the existing residential building prior to conversion," this factor recognizes that any loss of residential units will have an impact on the rental housing market. The number of units in the existing building prior to conversion was 9, as established in the Notice of Intent to Withdraw Units From Rental Housing Use filed with the application. That is one less unit than the 8 units in the condominium project, for a net loss of one unit. One of the previously occupied units was "illegal," i.e., unregistered and not included in the certificate of occupancy. However, the Advisory Agency acknowledged this "unpermitted" unit and the total of 9 units. The California Court of Appeal has emphasized the importance of unpermitted units to the City's housing stock, in finding that the Los Angeles RSO applies equally to permitted and unpermitted units. Carter v. Cohen (2010) 188 Cal. App. 4th 1038, 1051 (rental unit lacking a certificate of occupancy and not registered under RSO still falls within the scope of the RSO). Thus, for purposes of the evaluation of cumulative impact of successive conversions on RSO units, the number of units in the building prior to conversion is nine. Since the project consists of eight units, factor (b) supports a finding that the project and successive conversions will have a cumulative impact on the rental market.

As to factor (c), "the number of units which would be eliminated in case conversion occurred in order to satisfy Municipal Code parking requirements," no units appear to have been eliminated for this purpose. Thus, factor (c) is inapplicable to the finding of cumulative impact.

As to factor (d), "the adequacy of the relocation assistance plan proposed by the subdivider," there is no "relocation assistance plan" for this project as contemplated in the condominium conversion ordinance, because the landlord evicted the tenants before applying for the condominium conversion. Relocation assistance required by the Ellis Act and paid by the applicant is irrelevant to the question whether the condo conversion has a significant impact on the rental market. Even tenants given relocation assistance under the Ellis Act are forced to seek housing elsewhere, thus burdening the rental housing market. Thus, factor (d) is inapplicable to the finding of cumulative impact.

As to factor (e), "any other factors pertinent to the determination," there are at least other factors pertinent to the determination of a significant cumulative effect from successive condominium conversion projects. First, the project leads to the permanent net loss of nine RSO units in the City, which units are crucially needed in light of recent losses through demolition and development. Second, the conversion of this designated Historic-Cultural Monument (HCM) into condominiums based upon a discretionary exemption from the minimum parking requirements would merely set an example that would invite similar conversions of designated HCMs throughout the City into condominiums. Since many RSO units are in historic buildings, this would lead to far broader impacts citywide.

Therefore, as conditioned, the proposed conversion will have a significant cumulative effect on the rental housing market in the Wilshire Community Plan area. The City Council therefore makes the findings set forth in Section 12.95.2-F,6, and therefore, the condominium conversion cannot be approved.

CAPC FINDING:

(f) THE OFF-STREET RESIDENT PARKING SPACES AND GUEST PARKING SPACES REQUIRED FOR THE PROPOSED CONDOMINIUM CONVERSION ARE REASONABLE AND FEASIBLE AND SUBSTANTIALLY CONSISTENT WITH THE PURPOSES OF THE LAMC.

The two existing apartment buildings, cumulatively containing 8 units and 1 unpermitted dwelling unit, were designated as a historic-cultural monument (HCM) on November 25, 2015. Due to the physical limitation of the lot and the existing building, the number of parking spaces cannot be increased without major physical modification of the project, thus compromising the integrity of the HCM. In consideration of the HCM on the project site, the Advisory Agency policy requiring 2 parking spaces per unit was waived by the Deputy Advisory Agency. Pursuant to LAMC 12.21 A.4(x)(2), the 12 existing parking spaces – which have standard dimensions – for the structure shall be maintained as shown on certified parking plan dated June 6, 2016. The project does not require additional automobile or bicycle parking spaces. Therefore, as conditioned, the proposed condominium conversion is consistent with the intent and purposes of the LAMC.

ALTERNATIVE FINDING:

(f) THE OFF-STREET RESIDENT PARKING SPACES AND GUEST PARKING SPACES REQUIRED FOR THE PROPOSED CONDOMINIUM CONVERSION ARE NOT SUBSTANTIALLY CONSISTENT WITH THE PURPOSES OF THE LAMC.

The two existing apartment buildings, cumulatively containing 8 units and 1 unpermitted dwelling unit, were designated as a historic-cultural monument (HCM) on November 25, 2015.

The project provides 12 resident parking spaces. Section 12.21.A.4 of the zoning code requires at least 2 parking spaces for each unit with three or more habitable rooms, for a total of 16 required spaces for 8 units. This requirement applies to residential condominium conversion projects.

Due to the physical limitation of the lot and the existing building, the number of parking spaces cannot be increased without major physical modification of the project. However, the applicant has the option to return the structures to their original use as rental apartments and as such may maintain the existing 12 parking spaces, without compromising the integrity of the HCM.

LAMC Section 12.21 A.4(x)(2), which states that no additional automobile or bicycle parking spaces need be provided in connection with a "change of use" of a designated historic-cultural monument, does not apply because the proposed condominium conversion entails no "change of use" under the zoning code. The use authorized under the applicable R-3 zoning classification is presently "apartment house," while the proposed condominiums are also classified as an "apartment house" use. (LAMC sec. 12.10.) See LAMC sec. 12.03 (defining "APARTMENT HOUSE" as "A residential building designed or used for three or more dwelling units or a combination of three or more dwelling units and not more than five guest rooms or suites of rooms.")

Even if a condominium conversion were deemed to be a "change of use" under the zoning code, the waiver of parking requirements for a "change of use" is optional, not mandatory, and is not warranted in this case. LAMC Section 12.21 A.4(x)(2) states that even for projects entailing a "change of use," the Advisory Agency, "as part of a discretionary approval related to a change of use, may impose conditions requiring additional parking requirements in connection with the change of use." The condominium conversion project should provide at least 16 parking spaces because of the extremely constrained parking conditions in this neighborhood. The residential area is characterized mainly by pre-1950 multi-family residential buildings, the vast majority of which have fewer parking spaces than would be required for new projects under the modern zoning code. In addition to this, commercial uses along the proximate Beverly Boulevard and Third Street, including restaurants, stores and offices, have parking demands far in excess of the available supply. Residents are not entirely protected from spillover commercial parking because only some streets have residential permit parking, and even these streets allow parking without a permit during a substantial part of the day (typically between 8 a.m. and 6 p.m.

None of the parking spaces for the project meets the minimum size, backing areas and access for residential parking spaces provided by Citywide standards. For a residential condominium conversion project the design and improvement of parking facilities and areas is required to substantially conform to the provisions of Section 12.21 A.5. and 6, which specify minimum sizes, allowances for obstructions, minimum backing areas and minimum access. (LAMC sec. 12.95.2(H)(1)(g).

In addition to the zoning code parking requirements there is a separate Advisory Agency parking requirement. (See Advisory Agency Policy No. 2006-2 Multi Family Parking Policy (minimum 2 spaces per unit if building is more than 5 years old). This parking requirement is not subject to LAMC Section 12.21 A.4(x)(2), concerning historic-cultural monuments. There is no ground for waiving this requirement because of the extremely constrained parking conditions in the neighborhood.

Therefore, the off-street resident parking spaces and guest parking spaces required for the proposed condominium conversion are not substantially consistent with the purposes of the Los Angeles Municipal Code.

FINDINGS OF FACT (CEQA):

CAPC FINDING:

On April 27, 2017, the Planning Department determined that the City of Los Angeles Guidelines for the Implementation of the California Environmental Quality Act of 1970 and the State CEQA Guidelines designate the subject project as Categorically Exempt under Article III, Section 1, Class 1, Category 16, and Class 32, Log No. ENV-2016-2050-CE. The project is a Vesting Tentative Tract Map for the condominium conversion of 2 apartment buildings with 9 units that is a City of Los Angeles Historic Cultural Monument into an 8-unit condominium. As a residential condominium conversion, and a project which is characterized as in-fill development, the project qualifies for the Class 1, Category 10 and Class 32 Categorical Exemptions.

Article III, Section 1 of the City CEQA Guidelines states the following (emphasis added):

> *The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, provided such categorical exemptions are not used for projects where it can be readilv perceived that such projects may have a significant effect on the environment.*

The proposed project, a Vesting Tentative Tract Map for the conversion of 2 apartment buildings with 9 units into an 8-unit condominium, does not have any readily perceived significant effects on the environment as stated below.

Class 1 pertains to Existing Facilities, which consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing. Category 10 specifically identifies projects that involve the division of existing multiple family rental units into condominiums or stock cooperatives as exempted.

A project qualifies for a Class 32 Categorical Exemption if it is developed on an infill site and meets the following criteria, which the instant project does:

(a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

As shown in the case file, the project is consistent with the applicable Wilshire Community Plan designation and policies and all applicable zoning designations and regulations. The site is zoned [Q]R3-1-0 and has a General Plan Land Use DeSignation of Medium Residential.

(b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. The development consists of 8 units on a lot that is 18,565 gross square feet in size. The subject site is wholly within the City of Los Angeles, on a site that is approximately 0.43 acres. Lots adjacent to the subject site are developed with the following urban uses: three to four unit residential structures abutting the subject property to the north, south, and east, and 8 unit residential structures abutting the site to the west, as well as one to two story commercial uses to the north along Beverly Boulevard.

(c) The project site has no value as habitat for endangered, rare or threatened species.

The site is not, and has no value as, a habitat for endangered, rare or threatened species. The site is previously disturbed and surrounded by development, and no new construction is proposed as the project is a condominium conversion. No protected trees will be removed. Eight non-protected trees are currently on the site and will remain. As mentioned, the project will be subject to Regulatory Compliance Measures (RCMs), which require compliance with the City of Los Angeles Noise Ordinance; pollutant discharge, dewatering, stormwater mitigations; and Best Management Practices for stormwater runoff. These RCMs will ensure the project will not have significant impacts on noise and water.

(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The project is beneath the threshold criteria established by LADOT for preparing a traffic study, as no new units are being constructed. Therefore, the project will not have any significant impacts to traffic. The project will not result in significant impacts related to air quality because the project is a vesting tract map for the condominium conversion of 2 apartment buildings with 9 units that is a City of Los Angeles Historic Cultural Monument into an 8-unit condominium. No new construction is involved. As mentioned, the project will be subject to Regulatory Compliance Measures (RCMs), which require compliance with the City of Los Angeles Noise Ordinance; pollutant discharge, dewatering, stormwater mitigations; and Best Management Practices for stormwater runoff. These RCMs will ensure the project will not have significant impacts on noise and water.

(e) The site can be adequately served by all required utilities and public services.

The project site is and will be adequately served by all public utilities and services given that the conversion from apartment to residential condominium will be on a site with an existing building and is consistent with the general plan. Therefore, based on the facts herein, it can be found that the project meets the qualifications of the Class 32 Exemption.

Exceptions Narrative for Categorical Exemption

There are five (5) Exceptions which must be considered in order to find a project exempt under CEQA Guidelines Section 15301 (Class 1) and CEQA Guidelines Section 15332 (Class 32): (a) Cumulative Impacts; (b) Significant Effect; (c) Scenic Highways; (d) Hazardous Waste Sites; and (e) Historical Resources.

There is not a succession of known projects of the same type and in the same place as the subject project. As mentioned, the project proposed is a vesting tract map for the condominium conversion of 2 apartment buildings with 9 units that is a City of Los Angeles Historic Cultural Monument into an 8-unit condominium, in an area zoned and designated for such development. All adjacent lots are developed with the following urban uses: three to four unit residential structures abutting the subject property to the north, south, and east, and 8 unit residential structures abutting the site to the west, as well as one to two story commercial uses to the north along Beverly Boulevard, and the subject site is of a similar size and slope to nearby properties. The project proposes no changes to the Floor Area Ratio (FAR) and the existing improvements are consistent in size, bulk, and massing to other developments in the vicinity. Thus, there are no unusual circumstances which may lead to a significant effect on the environment.

The subject site is not designated as a state scenic highway, nor are there any designated state scenic highways located near the project site. Furthermore, according to Envirostor, the State of California's database of Hazardous Waste Sites, neither the subject site, nor any site in the vicinity, is identified as a hazardous waste site. The site is City of Los Angeles Historic Cultural Monument No. LA-1096 (Mendel and Mable Meyer Courtyard Apartment), as established by the Los Angeles Cultural Heritage Commission in November 2015. However, the LA Office of Historic Resources has found that the project, a Vesting Tentative Tract Map for the conversion of 2 apartment buildings with 9 units into an 8-unit condominium, will comply with the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. Based on this, the project will not result in a substantial adverse change to the significance of a historic resource and this exception does not apply.

ALTERNATIVE FINDING:

The project is a Vesting Tentative Tract Map for the condominium conversion of 2 apartment buildings with 9 units that are a City of Los Angeles Historic Cultural Monument (HCM) into an 8-unit condominium. Although it is a residential condominium conversion, and a project which may be characterized as in-fill development, the project does not qualify for the Class 1, Category 10 Categorical Exemption or the Class 32 Categorical Exemption recommended by Planning Department staff. Because no categorical exemption applies, and because there is a fair argument that the project may have a significant impact on the environment, an environmental impact report (EIR) must be prepared under CEQA.

In November 2015, these buildings were designated historic/cultural monuments. They were built by Mendel Meyer, a renowned builder of the 1920s who designed the Egyptian Theater and many other treasured landmarks in the City. Mr. Meyer's career boomed during the roaring 20s and then hit the skids in the 1930s, with the onset of the Great Depression. In 1936, Mr. Meyer built the first of the two Flores buildings, living as an owner/landlord in the most spectacular of the units. Then, he built the second building in 1939, and when his circumstances diminished further, he moved into one of the more modest units in that building. The Meyers rented the remaining units to people much like the people who rent them today – working people, young families, seniors, and new immigrants to Hollywood. They lived in the courtyard apartments until their respective deaths in 1950s.

The buildings – and especially their interiors – have remained remarkably intact since Mendel Meyer's time. They have been rental apartments for more than 80 years. The numerous landlords over the years have not been tempted to alter the units, largely because they are, in the final analysis, relatively modest in scale and in amenities, and because the rents have been relatively affordable and protected from dramatic increases by the RSO.

The applicant has approached the Office of Historic Resources with proposals to make numerous interior and exterior changes to the building. These include removing elements of the structure that were part of the original historic design, and combining two of the original apartment units into a single condominium unit. Detailed plans have not been presented, or approved, by the Office of Historic Resources. Further, the Office of Historic Resources has made no findings concerning the compliance of the project plans with the Secretary of the Interior's standards for the Treatment of Historic Properties or related guidelines promulgated by the Secretary of the Interior.

Article III, Section 1 of the City CEQA Guidelines states the following (emphasis added):

> *The Secretary for Resources has provided a list of classes of projects which he has determined do not have a significant effect on the environment and which are therefore exempt from the provisions of CEQA. The following specific categorical exemptions within such classes are set forth for use by Lead City Agencies, <u>provided such categorical exemptions are not used for projects where it can be readily perceived that such projects may have a significant effect on the environment</u>*.

The Class 1 categorical exemption pertains to Existing Facilities, which consists of the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing. Category 10 specifically identifies projects that involve the division of existing multiple family rental units into condominiums or stock cooperatives as exempted.

The Class 32 Categorical Exemption pertains to a project that is developed on an infill site and meets certain specified criteria, including consistency with the general plan and zoning regulations, and where certain impacts are shown not to exist.

However, neither the Class 1, Category 10 categorical exemption nor the Class 32 Categorical Exemption can be used for the project because it can be "readily perceived" that the project "may" have a significant effect on the environment under Article III(1) of the City CEQA Guidelines, and particularly on the underlying historic resource.

In addition to the City CEQA Guidelines, the state CEQA Guidelines also prohibit the use of a categorical exemption for this project. Section 15300.2 of the Guidelines ("Exceptions") states, in relevant part, "(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." Here, the subject building is a designated HCM, something that applies to less than 1% of buildings in the City (fewer than 1200 of hundreds of thousands of buildings).

In addition, the neighborhood is a largely intact historic neighborhood consisting of 90% of the original architecture. The alteration of a designated historic building within this unusually intact neighborhood is itself another "unusual circumstance," as it is readily apparent that most neighborhoods in the City of Los Angeles are not 90% historically intact.

These unusual circumstances, combined with the applicant's intention to alter the historic-cultural monument – including by removing elements of the historic building and combining two units into one – is evidence that there is a "reasonable possibility" of a significant impact on the cultural resource.

In addition, a categorical exemption is improper for this project because section 15300.2(f) of the state CEQA Guidelines prohibit the use of a categorical exemption for a project which "may" cause a substantial adverse change in the significance of a historical resource. Any changes to the structures "may" substantially alter the historic character of the interiors and/or the exteriors of the building.

The Class 32 Categorical Exemption also does not apply on the separate ground that the project is not consistent with the general plan or the zoning regulations, as set forth elsewhere in these findings.

Because no categorical exemption applies, and because there is a fair argument that the project may have a significant impact on the environment, the impact of this condominium conversion should have been considered as a potentially significant impact on cultural resources for purposes of the CEQA, and an Environmental Impact Report (EIR) should have been prepared to evaluate that potential impact.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

UNLIMITED CIVIL CASE

HOLLYWOODIANS ENCOURAGING RENTAL OPPORTUNITIES (HERO), SYLVIE SHAIN, and MAX BLONDE,

Petitioners/Plaintiffs.

v.

CITY OF LOS ANGELES, CITY COUNCIL OF THE CITY OF LOS ANGELES, CENTRAL LOS ANGELES AREA PLANNING COMMISSION, and DOES 1 through 10, Inclusive,

Respondents/Defendants.

MILLENIUM SETTLEMENT CONSULTING / 1850 NORTH CHEROKEE, LLC, MILLENNIUM SETTLEMENT CONSULTING, LESSER INVESTMENT COMPANY, L.P., DAVID LESSER, Individually and as Trustee of the Thomas M. Lesser Irrevocable Trust and the Trustee of the Sharilyn G. Lesser Irrevocable Trust, and DOES 11 through 50, Inclusive,

Real Parties in Interest/Defendants.

Case No. BS163828

FIRST AMENDED PETITION FOR WRITS OF ADMINISTRATIVE MANDAMUS AND ORDINARY MANDATE; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

[CASE INCLUDES CEQA CAUSES OF ACTION]

Action Filed: August 1, 2016

Department 1

I. SUMMARY OF PLEADING

1. Petitioners/Plaintiffs Hollywoodians Encouraging Rental Opportunities (**HERO**) et al. (**Petitioners**) challenge the legal validity under the California Environmental Quality Act (**CEQA**; Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines (**Guidelines**; Cal. Code Regs., tit. 14, § 15000 et seq.) of a decision made on June 29, 2016 by Respondent/Defendant City Council of the City of Los Angeles (**City Council**; Council File No. 09-0967-S1; Case No. ZA-2015-2683-CU-ZV-ZAA-1A; ENV-2015-2684-MND), on behalf of Respondent/Defendant City of Los Angeles (**City**), to adopt the recommendations contained in a report of the City Council's Planning and Land Use Management Committee (**PLUM Committee**). Specifically, the City Council (a) adopted an initial study/mitigated negative declaration (**IS/MND**) issued by the City planning department on June 17, 2015 for a project of Real Parties in Interest/Defendants Millennium Settlement Consulting / 1850 North Cherokee, LLC et al. (collectively sometimes **Real Parties**), proposing to convert 18 rent-stabilized apartment units into a boutique hotel with 24 guest units ranging in size from 195 to 556 square feet (**Project**); (b) adopted Project-related findings purportedly made by Respondent/Defendant Central Los Angeles Area Planning Commission (**Commission**); and (c) received and filed Petitioner/Plaintiff Sylvie Shain's appeal of a zone variance for the Project, purportedly approved by the Commission to permit offsite parking to be located 925 feet (according to the City) from the boutique hotel use. The site of the Project is a 0.42-acre parcel, located at 1850 North Cherokee Avenue, within the City's Hollywood planning area. The site remains improved with the buildings that contained the rental units.

2. Petitioners also challenge the Commission's failure to act on Ms. Shain's original administrative appeal in this case. Ms. Shain took that appeal from a decision made on December 21, 2015 by City Associate Zoning Administrator Jim Tokunaga (**Zoning Administrator**), who approved the Project in the first instance on

December 21, 2015. Specifically, the Zoning Administrator approved (a) a conditional use permit (**CUP**) for a hotel use in the [Q]R4-2 zone; (b) the variance for the offsite parking; (c) a so-called "Zoning Administrator's Adjustment" to permit a less than six-foot rear yard setback instead of the minimum required 15 feet; and (d) the IS/MND.

3. The rent-stabilized apartment units housed working-class, low-income residents. The stabilized rents for the 18 units ranged from $371 (the lowest rent) to $1,100 (the highest), with average rent substantially less than $1,000 per unit. In late September 2013, all tenants were evicted under the Ellis Act (Gov. Code, § 7060 et seq.), based on Real Parties' representation that the units would be demolished and withdrawn from the rental market to make way for new multi-family housing (condominiums). At the time, Real Parties did not disclose any project to convert the buildings into a boutique hotel with remodeled units that may be rented for short- or longer-term stays, which indisputably maintains a form of residential use. Moreover, citing Los Angeles Municipal Code section 151.09(G)(4)(c) of the Los Angeles Municipal Code (**LAMC**), part of the City's Rent Stabilization Ordinance (**RSO**; LAMC, § 151.00 et seq.), Real Parties withheld relocation assistance from approximately half of the displaced tenants. The cited code provision states an exception to a rent-stabilized building owner's duty to help with relocation assistance when before the tenant moves in, the owner gives the tenant written notice that an application to convert the building to a condominium apartment project is on file with the City. Following their displacement, at least two tenants unable to find replacement housing became homeless. Other displaced tenants were forced to move out of the City. They include a Vietnam War veteran, separated from his adult children as a result of his displacement from 1850 North Cherokee Avenue.

4. Real Parties' claims that they would construct new multi-family housing to the contrary notwithstanding, less than two years after they had evicted the tenants, they submitted their boutique hotel plans to the City. Throughout the Project

review proceedings, many members of the public objected to City's avoidance of its public CEQA duties and its granting a CUP to Real Parties without them being held to any mitigation for the harm to the displaced tenants. The Hollywood Hills West Neighborhood Council requested that 13th District City Councilmember Mitch O'Farrell's office "conduct a thorough investigation to determine whether the former tenants of 1850 Cherokee were legally evicted." To no avail.

5. The loss of the affordable, rent-stabilized apartment units at 1850 North Cherokee Avenue is symptomatic of significant, widespread City-backed changes to land uses that escape the housing protections of the RSO, as the City Council as well as subordinate City decision making bodies and officials greenlight, case-after-case, the elimination of rent-stabilized housing stock, only to replace it with high-end and high-cost residential uses, *without* CEQA disclosure of the direct, indirect and cumulative impacts of their actions, or consideration of mitigation measures or alternatives -- if only temporary ones to close the time gap between tenants' displacement and final approval or implementation of any approved new use. In the instant case, the rent-stabilized housing units were sitting empty for close to three years prior to the City Council's action while people are homeless in the surrounding neighborhoods. The instant case also mirrors a sorry tableau of a City culture or realpolitik where conversions and demolitions of rent-stabilized housing are steered toward virtually guaranteed approval by well-connected lobbyists who work behind the scenes for the permit applicants and drive the CEQA shortcuts that benefit their clients, thanks to insider access gained by fundraising for council members' political campaigns, or through direct campaign contributions.

6. From the City Planning Department's own most recent Housing Needs Assessment (adopted on December 3, 2013, submitted as communication from the public on June 28, 2016), Respondents knew that "[m]uch of the approved condominium conversions involve older housing stock that includes rent-stabilized properties[,] and that those conversions add to the shortage of multi-family units that are more affordable

than market rate rentals." (*Id*. at 1-64 [hereinafter, ***Housing Needs Assessment***].) The cumulative effects of the Project and similar conversion projects in Hollywood and other parts of the City are considerable. A recent Los Angeles Times analysis of housing data has revealed that more than 1,000 rent-controlled apartments were taken off the market in 2015 alone, which represents "a nearly threefold increase since 2013." (Poston & Khouri, *More Rent-controlled Buildings Are Being Demolished to Make Way for Pricier Housing*, L.A. Times (Apr. 2, 2016) <http://www.latimes.com/ local/california/la-me-apartments-demolished-20160402-story.html> [as of Aug. 12, 2016].) "Across [the City], more than 20,000 rent-controlled units have been taken off the market since 2001, city records show." (*Ibid*.) This data accords with information citizen commenters provided Respondents/Defendants City et al. (collectively sometimes **Respondents**) in this case, which reminded them that since 2000 the City has been losing 22,000 affordable housing units, with "over 58,000 of our residents put out of their homes." (June 27, 2016 email from Miki Jackson to PLUM Committee [objecting to "this rolling displacement of an entire class of people of modest to low income in Los Angeles"].)

7. By failing in their CEQA disclosure duties, City officials fail to secure for themselves, the human communities disrupted, and other public stakeholders, the full and true picture of the severe adverse effects that the loss of rent-stabilized housing carries on the environment and human beings, including the increasing numbers of low- and moderate-income, ethnically diverse residents who are uprooted from their homes and deprived of basic housing security. City officials' information disclosure failures, in turn, result in a total avoidance of mitigation measures, including environmental public health measures, to alleviate those adverse effects and prevent the beneficiaries of official action permitting the loss of rent-stabilized housing from externalizing its environmental and human health costs in this worsening housing crisis.

8. In adopting the IS/MND, the City Council ignored substantial evidence of the significant direct, indirect, and cumulative impacts caused by the Project

and similar, related projects, which are associated with the loss of housing stock subject to the RSO, the displacement of people from rent-stabilized housing, and the resultant rise in homelessness, habitation in overcrowded, substandard housing with poor sanitation conditions in segregated neighborhoods with high rates of poverty and less access or compounding racial and ethnic disparities in access to educational, nutritional, health care and other basic needs as compared to the urban areas experiencing or targeted for the elimination of rent-stabilized housing stock. The physical impacts of loss of and displacement of people from rent-stabilized housing have substantial adverse effects on the health and welfare of human beings. These effects are cognizable under CEQA. (Pub. Resources Code, § 21083, sub. (b)(2) & (3); Guidelines, § 15065, subd. (a)(3) & (4); *id.*, appen. G, §§ XIII, subds. (b) & (c), XVIII, subds. (b) & (c)), and because substantial evidence shows that they may be (and actually are) significant, Respondents had a public duty to prepare an environmental impact report (**EIR**) for the Project. (*Id.*; see Pub. Resources Code, § 21080, subd. (d); Guidelines, §§ 15063, subd. (b)(1), 15064, subd. (a)(1), (f)(1), (h)(1).) By failing to do so, they prejudicially abused their discretion under CEQA and the Guidelines.

9. The IS/MSD is itself substantially defective as an information disclosure document. Substantial shortcomings include, without limitation: failure to adequately describe baseline conditions and the Project's environmental setting; misdescription of the Project due to Real Parties' eleventh-hour, unexplained withdrawal of the offsite parking variance application which affects 11 of the 21 proposed parking spaces; failure to adequately explain or support checkbox conclusions in areas of relevant environmental inquiry, such as population and housing, noise, traffic, and mandatory findings of significance regarding both the Project's cumulative impacts and its adverse effects on human beings; and failure to prepare and adopt a mitigation monitoring program for those impacts "to ensure compliance during project implementation" as mandated by Public Resources Code section 21081.6. By adopting a substantially

defective IS/MND, Respondents prejudicially abused their discretion under CEQA and the Guidelines.

10. The City further prejudicially abused its discretion in that the Commission failed to act on Ms. Shain's appeal of the Zoning Administrator's decision. Due to its failure to act, the Commission failed to affirmatively approve written findings, whether its own or those of the Zoning Administrator, contrary to the requirements of Code of Civil Procedure section 1094.5, subdivisions (b) and (c), and the rules of *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. The written findings requirements of state law are incompatible with inaction. As a further result of its failure to act, the Commission also denied Ms. Shain her right under the City's own laws to an appellate *decision* on the CUP.

11. Petitioners request relief in the form of a peremptory writ of administrative mandamus ordering the City to set aside and void its approval of the IS/MND and all other decisions made on June 29, 2016 by the City Council; to prepare an EIR for the Project; and to scrupulously carry out its public duties under CEQA, the Guidelines and all other applicable laws, before taking further action on the Project (or an alternative Project design). Petitioners also seek relief in the form of a peremptory writ of ordinary mandate ordering the Commission to take action on Ms. Shain's appeal from the Zoning Administrator's decision and a binding judicial declaration that as an appellate review body, the Commission has a mandatory public duty to take action and affirmatively approve written findings when adjudicating quasi-judicial matters, such as appeals from a Zoning Administrator's approval of a CUP. Finally, Petitioners pray for preliminary and permanent injunctive relief to protect the status quo and avoid prejudice to reasonable, environmentally more advantageous Project alternatives.

II. PARTIES TO THIS PROCEEDING

12. Petitioner/Plaintiff Hollywoodians Encouraging Rental

Opportunities (HERO) is an unincorporated association of City residents, electors, and taxpayers. Its main purposes are to (a) advocate for the preservation of rent-controlled housing in the Hollywood area, for low- and moderate-income residents to be able to continue to have housing and earn a living in this area, to thus reduce vehicle-miles traveled, prevent community disintegration and the human health and other adverse effects caused by the displacement of low- and moderate-income residents from the Hollywood area, and maintain socio-economically, culturally and racially diverse human communities in Hollywood; and (b) hold the City's elected and appointed officials accountable in City administrative forums and in court for their actions permitting or facilitating the destruction or loss of affordable, rent-stabilized housing through CEQA avoidance or through violations of other applicable state and local laws.

13. HERO was formed after the City Council's approval of the IS/MND. A member of HERO, Ms. Shain, objected to the approval of the Project and the IS/MND both orally and in writing prior to the close of the public hearings on the Project and before the filing of the notice of determination for the City Council's June 29, 2016 action. HERO therefore has standing to maintain this action under CEQA. (Pub. Resources Code, § 21177, subdivision (c).) This action has been duly approved by HERO's governing body.

14. Petitioner/Plaintiff Sylvie Shain is a City resident, renter, voter, and taxpayer. Ms. Shain appealed the Zoning Administrator's initial decision to the Commission, and later appealed the Commission's purported action on her appeal to the City Council. Ms. Shain appeared and testified before all City decision makers in this case, and submitted detailed written comments objecting to the Project and the City's inadequate environmental review thereof, including, especially, the City's failure to identify and consider the cumulative effects of the Project and similar related projects, caused by the City's approving, case after case, the loss of rent-stabilized housing units in the Hollywood planning area and other parts of the City. Ms. Shain thoroughly

documented the significant direct, indirect and cumulative effects of the City's action approving the conversion of 18 rent-stabilized apartment units into 24 boutique hotel studio, one-bedroom, and two-bedroom guest rooms, and the substantial adverse effects on human beings attendant on those effects.

15. On July 10, 2016, Ms. Shain was displaced from a nearby 50-unit rent-stabilized apartment building (the "Villa Carlotta Apartments"), located at 5959 Franklin Avenue, also within the Hollywood planning area. As in the case of the Project and similar projects, the Villa Carlotta Apartments' owner, a real estate investment firm by the name of CGI Strategies in Real Estate, has kicked out all of the building's tenants, and Petitioners are informed and believe that it has sought City approval to convert the building into remodeled, high-income housing units. Following its purchase of the Villa Carlotta Apartments in 2014, CGI announced indeed that the building "will be redeveloped into luxury apartments over a two-year construction period" and that it will place on the housing market "fully furnished, extended stay apartments" for "the executive engaged in the entertainment, Internet and technology business, traveling to Hollywood to work on a project."

16. Petitioner/Plaintiff Max Blonde was a tenant in the rent-stabilized apartment building Real Parties propose to convert into a boutique hotel. On or about September 27, 2013, Real Parties withdrew his and all other 17 units then being leased from rental housing use. Mr. Blonde reminded the City that Real Parties never mitigated the impacts of the loss of the rent-stabilized housing by paying relocation assistance under the RSO to all displaced tenants.

17. In written comments presented to the City, Mr. Blonde specifically objected to the inadequacy of the environmental review for the Project, including the City's failure to identify the cumulative effects of the Project and similar related projects. Mr. Blonde's comments sought to draw the City Council's attention to the fact that its and City appointed officials' actions approving case-after-case the destruction or

conversion of critically needed rent-stabilized housing stock, stimulate the rise in homelessness and exacerbate an already crisis-level shortage of affordable local housing options. Mr. Blonde and other commenters noted the plight two of the tenants displaced from their rent-stabilized units at 1850 North Cherokee Avenue are in. Having become homeless they now lack housing security, "relying on friends, former neighbors, and living in cars." (June 27, 2016 email to PLUM Committee.)

18. All three Petitioners bring this action on their own behalf and on behalf of all other similarly situated individuals, including low- and moderate-income City residents, electors, and taxpayers interested in full, fair, correct and independent enforcement of CEQA, the Guidelines and all laws that form the bases of this action. Petitioners and the members of the public benefiting from this action have a substantial, beneficial interest in the relief they seek, and have a present interest, as citizens, in the enforcement of the City's public duties under CEQA, the Guidelines and all laws that form the bases of this action.

19. Respondent/Defendant City of Los Angeles is a California charter city located in the County of Los Angeles, California, with quasi-legislative and adjudicatory powers over land uses in its incorporated territory. The City is the lead agency for the Project, within the meaning of CEQA. (Pub. Resources Code, § 21067; Guidelines, § 15367.) The City has a legally enforceable public duty to strictly comply with CEQA and the Guidelines.

20. Respondent/Defendant City Council of the City of Los Angeles is the elected decision making and legislative body of the City. The City Council has final administrative responsibility to determine the adequacy of environmental documents under CEQA. (Pub. Resources Code, § 21151, subd. (c); Guidelines, § 15074, subd. (f).) The City Council has a legally enforceable public duty to strictly comply with CEQA and the Guidelines.

21. Respondent/Defendant Central Los Angeles Area Planning

Commission is an adjudicatory and advisory decision making body of the City, vested with the power and the public duty to hear, review, and take action and affirmatively adopt written findings on, appeals of Zoning Administrators' decisions approving CUPs and variances for projects located in an area of the City encompassing the Project site. The Commission has a legally enforceable public duty to strictly comply with CEQA and the Guidelines, and to take action and affirmatively adopt written findings on the entitlements for use that have been appealed to it.

22. The notice of determination (**NOD**) that was prepared for the Project, filed with the Los Angeles County Registrar-Recorder on July 1, 2016, identifies "Millenium Settlement Consulting / 1850 North Cherokee, LLC" as the person carrying out the Project. Petitioners therefore name this person as a Real Party in Interest/Defendant in this pleading. (Pub. Resources Code, § 21167.6.5, subd. (a).) However, Petitioners were unable to ascertain any information about an entity with this name and are unaware of its nature or status.

23. Petitioners are informed and believe that Real Party in Interest/Defendant Millennium Settlement Consulting is a foreign corporation registered in the State of Georgia under the name "Millennium Settlements, Inc." The June 28, 2016 PLUM Committee report, the Commission's so-called "Determination Letter" of March 25, 2016 and the December 21, 2015 Zoning Administrator decision appear to identify "Millennium Settlement Consulting" as a Project applicant. The PLUM Committee report and the Commission letter specifically identify "David Lesser, Millenium Settlement Consulting" as Project applicant(s) while the Zoning Administrator's decision refers to the applicant as "David Lesser (O/A) [¶] Millennium Settlement Consulting." Petitioners are informed and believe that Real Party in Interest/Defendant David Lesser is an employee or officer of Millennium Settlement Consulting.

24. Petitioners are informed and believe that Real Party in

Interest/Defendant Lesser Investment Company, L.P. is a California Limited Partnership and part owner of the Project site. In a title report prepared for the 1850 North Cherokee Avenue property on May 16, 2013, Lesser Investment Company, L.P. is identified as the owner of a 1/3 share in the property.

25. Petitioners are informed and believe that Real Party in Interest/Defendant David Lesser has an ownership interest in the Project, the Project site, or both. A May 16, 2013 title report prepared for the 1850 North Cherokee Avenue property identifies Mr. Lesser as the owner of 1/3 share in the property, as trustee of the Thomas M. Lesser Irrevocable Trust, and as the owner of another 1/3 share in the property, as trustee of the Sharilyn G. Lesser Irrevocable Trust. The June 28, 2016 PLUM Committee report, the March 25, 2016 Commission letter, and the December 21, 2015 Zoning Administrator decision appear to identify Mr. Lesser as a Project applicant. Mr. Lesser personally appeared at the PLUM Committee hearing on Ms. Shain's appeal. He told the PLUM Committee that he was an owner of the 1850 North Cherokee Avenue property.

26. Petitioners are currently unaware of the true names and capacities of Does 1 through 50, inclusive, and therefore sue those parties by fictitious names. Petitioners are informed and believe that Does 1 through 10, inclusive, are agents of the City, the City Council, the Commission, or are directors, officers, or other legal or de facto agents of or lobbyists for Real Parties, and are responsible in some manner for the conduct described in this pleading. Petitioners are informed and believe that Does 11 through 50, inclusive, are directors, officers, or other legal or de facto agents of or lobbyists for Real Parties, or are persons or entities with an ownership or other legally cognizable interest in the Project or the Project site. Petitioners will seek leave to amend this pleading to state the true names and capacities of the fictitiously named parties if necessary and when the same have been ascertained.

III. JURISDICTION AND VENUE

26. This Court has jurisdiction over this action pursuant to California Constitution article VI, section 10, and Public Resources Code sections 21167, 21167.1, 21168, 21168.5 and 21168.7. This Court has personal jurisdiction over Respondents and Real Parties because they are present and transact business within Los Angeles County's jurisdictional limits.

27. Venue properly lies in this Court because an action against a city may be tried in the superior court of the county in which the city is situated (Code Civ. Proc., § 394, subd. (a)), or where some or all defendants reside at the commencement of the action. (*Id.*, § 395, subd. (a).) Furthermore, venue is appropriate in this Court because many of the adverse impacts on the environment alleged in this pleading occur in Los Angeles County. (See *California State Parks Foundation v. Superior Court* (2007) 150 Cal.App.4th 826, 834, fn.2 ["when plaintiffs are challenging an official act, the cause of action arises where the effects of that act are felt"]; *People* v. *Selby Smelting & Lead Co.* (1912) 163 Cal. 84, 88-91 [nuisance action to restrain air pollution originating with processes of smelting ores was properly commenced in the county in which the public health and the environment were adversely affected].)

28. This action is properly filed in the Central District of this Court because it includes causes of action under CEQA, and because it is in the nature of a special proceeding seeking writ of mandate and declaratory relief. (Super. Ct. L.A. County, Local Rules, rule 3.232 (b); *id.*, rules 2.3(a)(1)(A), 2.7(b)(1)(G)(iii).) Special proceedings seeking a writ of mandate and declaratory relief must be filed in this Court's Central District, and are assigned for all purposes to a designated Writs and Receivers Department. (*Id.*)

IV. FACTUAL, PROCEDURAL AND LEGAL BACKGROUND

29. The Project site consists of one 18,485 square-foot lot on the east side of North Cherokee Avenue, between Yucca Street to the south and Franklin Avenue

to the north. The lot is zoned for high density residential use. The surrounding area is characterized by a range of single and multiple-family residential uses. The Project site is improved with a larger 9,920 square foot building and a smaller 1,480 square foot building -- the buildings that housed the 18 rent-stabilized apartment units. They were constructed in approximately 1939.

30. During the course of the proceedings before the Zoning Administrator, the Commission, and the City Council, commenters noted that the Project area is severely impacted by an ongoing rental housing affordability crisis. They produced substantial evidence showing that many related past and presently pending projects, due to their similarity to the Project, have created and continue to drive incremental losses of rent-stabilized housing and displacement of City residents and workers, thus creating significant *cumulative* housing and population displacement impacts.

31. Reasonably foreseeable future related projects are likely to compound those significant cumulative impacts, as well as the public health, safety and welfare effects (effects "on human beings") attendant thereon. While the City's General Plan seems to acknowledge their severity, expressing a few broad nonbinding goals of building "[a] City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs" (City 2013-2021 General Plan, Housing Element, Goal 1), and of "ending and preventing homelessness" (*id.*, Goal 4), buried deep in the Housing Needs Assessment is a bleak forecast that between October 1, 2013 and September 30, 2023, more than 19,888 additional affordable housing units are at risk of losing their affordability restrictions. (*Id*. at 1-70.)

32. As required by the Guidelines, the City's CEQA Thresholds Guide states that an initial study must analyze whether a project would "displace substantial numbers of existing housing, necessitating the construction of replacement housing

elsewhere" and would "displace substantial numbers of people, necessitating the construction of replacement housing elsewhere." (L.A. CEQA Thresholds Guide, at J.2-1; Guidelines, appen. G, § XIII, subds. (b) & (c).) The Thresholds Guide provides a two-part analytical inquiry as the initial screening criteria to make those determinations:

- "Would the project result in a net loss of housing equal to or greater than a one-half block equivalent of habitable housing units through demolition, conversion, or other means? (One-half block is generally equivalent to 15 single-family or 25 multi-family dwelling units.)" (*Id.* at J.2-2, original underscoring.)
- "Would the project result in the net loss of any existing housing units affordable to very low- or low-income households (as defined by federal and/or City standards), through demolition, conversion, or other means?" (*Id.* at J.2-3, original underscoring.)

If the answer to *either* of these questions is "yes," then "further study in an expanded Initial Study, Negative Declaration, Mitigated Negative Declaration or EIR may be required." (*Ibid.*) However, a "no" response to "indicates that there would normally be no significant impact on Population and Housing Displacement from the proposed project." (*Ibid.*)

33. By the City's Thresholds Guide "[t]he determination of significance shall be made on a case-by-case basis, considering the following factors:

- "The total number of residential units to be demolished, converted to market rate, or removed through other means as a result of the proposed project, in terms of net loss of market-rate and affordable units;
- "The current and anticipated housing demand and supply of market rate and affordable housing units in the project area;
- "The land use and demographic characteristics of the project area and the appropriateness of housing in the area; and
- "Whether the project is consistent with adopted City and regional housing policies

such as the Framework and Housing Elements, HUD Consolidated Plan and CHAS policies, redevelopment plan, Rent Stabilization Ordinance, and the Regional Comprehensive Plan and Guide (RCP&G)."

(L.A. CEQA Thresholds Guide, at J.2-3 to J.2-4.)

34. In its methodology to determine significance, the City's Thresholds Guide calls for a description of the environmental setting, to include, inter alia, "[r]ecent (e.g., past 10 years) housing supply and demand trends, as well as housing supply characteristics (e.g., vacancy patterns, tenure, rent and sale price levels) for the project site and surrounding area" and "[h]ousing supply and demand forecasts for the project site and surrounding area." (*Id.* at J.2-4.) With respect to the determination of the level of significance of a project's cumulative impacts, the Thresholds Guide states: "Determine the number and type of housing units to be eliminated and added as a result of the related projects in the same manner as described . . . for Project Impacts[,]" i.e., by identifying "the net change in the number of habitable housing units, as well as units affordable to low- and very-low income households from the Evaluation of Screening Criteria"; then "[c]ompare the combined effect of the displacement from the project and the related projects to the current and anticipated housing demand and supply in the project area and adopted housing policies." (*Id.* at J.2-5.) The Guide suggests the following sample mitigation measures: "Exceed statutory requirements for relocation assistance"; and "Increase the number of housing units affordable to lower income households." (*Ibid.*)

35. The story of the Project began in the late 2000s, when Real Parties applied for a vesting tentative tract map to develop a 39-unit condominium project on the site. They applied to change the site's zone designation (to (T)(Q)R4-2), which was approved by the City Council by Ordinance No. 180802 in July 2009. (Case No. APCC-2008-3600-ZC-ZAA-ZAD.)

36. In approximately late September 2013, Real Party in Interest David

Lesser evicted all residents from 1850 Cherokee Avenue buildings. As noted in paragraph 3, *ante*, Mr. Lesser did not provide relocation assistance to approximately half of the displaced tenants.

37. Less than two years later, then, in July 2015, Mr. Lesser submitted a master land use permit application to the City's planning department, which revealed Real Parties' plans to convert the property to a "boutique hotel" with "a mix of studio, one-bedroom, and two-bedroom" units. No affordable housing units were included for lower income households to mitigate the loss of all rent-stabilized units.

38. On November 4, 2015, the Zoning Administrator held a public hearing on Real Parties' applications for the CUP, the variance for offsite parking, the variance (masquerading as an "adjustment") to reduce the rear yard building setback by over 60%; and on the IS/MND circulated by the planning department in June 2015. Members of the public submitted oral and written objections to the Project, focusing on the issues raised in the case at bench.

39. On December 21, 2015, the Zoning Administrator issued his written decision and findings approving the Project. The Zoning Administrator did not take issue with the IS/MND. He made no findings reviewing the IS/MND's conclusions concerning the rent-stabilized housing loss and human dislocation impacts of the Project, its indirect and cumulative impacts, its adverse effects on human beings, or the absence of any mitigation for those impacts. Confusing Ellis Act requirements with CEQA mitigation duties, the Zoning Administrator declined to consider mitigation in the form of exceeding the requirements for relocation assistance (suggested by the City's own CEQA Thresholds Guide) or any other mitigation measure, instead making the noncommittal , if not cagey, finding that "approval of the [permit] requests do [sic] not in any way validate that all Ellis Act requirements have been met, only that [on May 30, 2013] the applicant did submit documents to the file." (Decision at 11.) The "documents to the file," of course, were the documents in which Real Parties stated, under penalty of perjury, that

they intended to demolish the buildings to construct new multi-family housing.

40. As it turned out, pivotal findings set forth in the Zoning Administrator's decision were spoon-fed to him by Real Parties' agent, City lobbyist Dana Sayles. Significant portions of the December 21, 2015 decision were indeed lifted, word-for-word (with a few cosmetic changes), from "Attachment A" to Real Parties' master land use permit application. This attachment contained otherwise unsupported "findings" made by Ms. Sayles. Compare, for example:

- **Zoning Administrator Finding at 15**: "The change of use from residential to hotel will increase the economic vitality of the Hollywood area by serving the needs of the tourism, entertainment, and corporate sectors by providing creative and historic guest accommodations."
- **Sayles Finding at 7:** "The change of use from a residential to hospitality use will increase the economic vitality of the Hollywood area by serving the needs of the tourism, entertainment, and corporate sectors by providing creative and historic guest accommodations."
- **Zoning Administrator Finding at 16:** "The site is also close to the major vehicular corridors of Franklin Avenue, Highland Avenue, and Hollywood Boulevard, as well as public transportation options on Metro bus lines and the Metro Red Line. The site is approximately 0.3 miles northeast of the Hollywood and Highland Metro Red-line station making it a convenient location for a hotel. This will serve to minimize vehicular traffic on smaller local streets and quieter neighborhoods."
- **Sayles Finding at 8:** "The site is also close to major vehicular circulators such as Franklin Avenue, Highland Avenue, and Hollywood Boulevard, as well as public transportation options on Metro bus lines and the Metro Red Line. The site is approximately 0.3 miles northeast of the Hollywood and Highland Metro Red-line station. This will serve to minimize vehicular traffic on smaller local streets and

quieter neighborhoods."

- **Zoning Administrator Finding at 20:** "Furthermore, as per the Hollywood Community Plan land use designation, a boutique hotel maintains a form of residential use, thus respecting the intentions of the Plan while making the property a valuable part of the Hollywood business community. The provision of off-site parking that is approximately 925 feet away in lieu of 750 feet away is a code standard that is impossible for this property to comply with due to the lack of similar parking lots in the vicinity."
    - **Sayles Letter at 11:** "Furthermore, as per the Hollywood Community Plan land use designation, a boutique hotel maintains a form of residential use, thus respecting the intentions of the Plan while making the property a valuable part of the Hollywood business community. The provision of off-site parking that is approximately 925 feet away in lieu of 750 feet away is a code standard that is impossible for this property to comply with due to the lack of similar parking lots in the vicinity."

41. In early January 2016, Ms. Shain appealed the Zoning Administrator's decision to the Commission. The appeal was originally scheduled to be heard on February 23, 2016. The hearing was reset on March 8, 2016 because only two Commissioners attended the February 8 hearing. Three of the five Commission members are needed for a quorum. At the March 8, 2016 hearing, three Commissioners were present. The Zoning Administrator was not present. He had since retired. After hearing from Ms. Shain and other members of the public, the Commission failed to reach a consensus. The vote against the appeal was 2:1. However, as confirmed in a "Determination Letter" from the Commission, dated March 25, 2016, by the Commission's rules, this was a "deadlock" vote which "resulted in a failure to act by the Commission." The Commission's letter further stated that its failure to act "resulted in the automatic denial of [Ms. Shain's] appeal and reaffirmation of the determination of the

Zoning Administrator . . . ."

42. Advised by the Commission's "Determination [sic] Letter" that its failure to act concerning the parking variance (but not the CUP and the rear yard setback variance) was appealable to the City Council, and had to be appealed no later than April 11, 2016, on that same day, Ms. Shain timely filed an appeal to the City Council. On June 21, 2016, three members of the PLUM Committee (City Councilmembers Huizar, Cedillo, and Harris-Dawson) heard the appeal. While the appeal was pending before the City Council, Real Parties withdrew their application for the offsite parking variance. The hearing on Ms. Shain's appeal thus was limited to the Commission's purported approval of the IS/MND. At a continued hearing on June 28, 2016, the PLUM Committee voted to deny the appeal.

43. The PLUM Committee issued a report, which contained recommendations for City Council action regarding Ms. Shain's appeal. The report recommended that the City Council find that the Project "will not have a significant effect on the environment" and adopt the IS/MND; that the council adopt the (purported) "FINDINGS of the Central Los Angeles Area Planning Commission (CLAAPC) as the Findings of the Council;" that the Council "RESOLVE TO DENY THE APPEAL filed by Sylvie Shain and THEREBY SUSTAIN the decision of the Zoning Administrator in adopting the MND (ENV-2015-2684-MND);" and that the Council "RECEIVE and FILE the Zone Variance appeal, to permit off-site parking to be located 925 feet from the use it serves for the property located at 1850 North Cherokee Avenue, inasmuch as the Applicant has withdrawn the Zone Variance application."

44. On June 29, 2016, the City Council adopted the PLUM Committee report of June 28, 2016. The council vote was 11:0. Four councilmembers were absent. Councilmember O'Farrell in whose council district the Project is located voted "yes." The day before, oddly, Mr. O'Farrell's representatives reportedly told the PLUM Committee that the Project was "not a project that the councilman supports, but it is one

that he inherited." (<http://www.nbclosangeles.com/news/local/developer-historic-hollywood-hotel-project-388607782.html> [as of Aug. 12, 2016].) The circumstances that led Mr. O'Farrell to ultimately support this allegedly "inherited" Project were not disclosed.

45. On July 1, 2016, the City's NOD was filed with the Los Angeles County Recorder's office.

V. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION
FAILURE OF RESPONDENTS TO PREPARE AN ENVIRONMENTAL IMPACT REPORT (Pub. Resources Code, § 21168; Code Civ. Proc., § 1094.5)

By Petitioners Against Respondents and Real Parties

46. Petitioners incorporate by reference paragraphs 1 through 45 of this pleading, as though fully set forth.

47. The Project constitutes a discretionary project within the meaning of Public Resources Code section 21080, subdivision (a), and, therefore, is subject to CEQA and the Guidelines.

48. "An EIR is required whenever ' "substantial evidence in the record supports a 'fair argument' significant impacts or effects may occur . . . ." ' [Citation.]" (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 730; see Pub. Resources Code, § 21080, subd. (d); Guidelines, § 15064, sub. (a)(1).) "If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the project will not have a significant effect." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927; see *City of Livermore v. Local Agency Formation Com* (1986) 184 Cal.App.3d 531, 540; Guidelines, § 15064, subd. (f).)

49. Conversely, a mitigated negative declaration may not be used, unless "(A) revisions in the project plans or proposals made by, or agreed to by, the applicant

before the proposed negative declaration and initial study are released for public review would avoid [any potentially significant effects on the environment identified in the initial study] or mitigate the effects "to a point where *clearly no* significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment." (Pub. Resources Code, § 21080, subd. (c)(2); Guidelines, § 15070, subd. (b).)

50. "In the CEQA context, substantial evidence 'means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Guidelines, § 15384, subd. (a).)" (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 730.) "The determination of whether a project may have a significant effect on the environment calls for careful judgment in the part of the public agency involved. . . ." (Guidelines, § 15064, subd. (b).)

51. "The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR . . . . Review is de novo, *with a preference for resolving doubts in favor of environmental review.* [Citations.]" (*Pocket Protectors, supra*, 124 Cal.App.4th at 928, original emphasis.) "Application of this standard is a question of law and deference to the agency's determination is not appropriate. Rather, [courts] independently 'review the record and determine whether there is substantial evidence in support of a fair argument [the proposed project] may have a significant environmental impact, while giving [the lead agency] the benefit of a doubt on any legitimate, disputed issues of credibility.' [Citations.] An agency's 'decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.' [Citation.]" (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617-618.)

52. "Whether a fair argument can be made that a project may have a

significant effect on the environment is to be determined by examining the whole record before the lead agency." (Guidelines, § 15384, subd. (a).) "Because substantial evidence includes 'reasonable assumptions predicated upon facts' (Guidelines, § 15384, subd. (b)) and 'reasonable inferences' (*id.*, subd. (a)) from the facts, factual testimony about existing environmental conditions can form the basis for substantial evidence." (*Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at 730.) "Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors, supra,* 124 Cal.App.4th at 928.)

53. CEQA analysis must disclose and evaluate the cumulative impacts caused by a project when its incremental effects combine with "the effects of past projects, the effects of other current projects, and the effects of probable future projects." (Pub. Resources Code, § 21083, subd. (b)(2); Guidelines, § 15065, subd. (a)(3).) This conclusion obtains even where the project's incremental effects, when viewed in isolation, are individually limited. (*Id.*) CEQA *requires* a finding of significant impact, and thus preparation of an EIR, when substantial evidence, in light of the whole record, shows that a project has a significant cumulative effect, or has "effects [that] will cause substantial adverse effects on human beings, either directly or indirectly." (Pub. Resources Code, § 21083, subd. (b)(2), (3); Guidelines, § 15065, subd. (a)(3), (4).)

54. In the proceedings before the Zoning Administrator, the Commission, and the PLUM Committee, many members of the public identified past, current, or reasonably foreseeable projects causing the loss of affordable, rent-controlled housing stock in the City, including in the Hollywood planning area. For example, in a letter submitted to the PLUM Committee on June 21, 2016, citizen Hicxell Wester pointed to longstanding challenges for residents in search of affordably-priced housing. He wrote: "I have been a resident of Hollywood 90028 for over ten years and have had to move three times within the same five block area due to increased rent. These multi-million dollar hotel and condo projects are destroying our community . . . . [¶] We have a

housing crisis in Los Angeles. We NEED more affordable housing and this action is actively destroying what is left." (June 21, 2016 letter at 1.) Commenters also cited the Villa Carlotta project (ENV 2016-619-EAF [apparently put on hold on July 27, 2016]) and the Yucca Argyle project (ENV-2014-4706-EIR) as other examples of concurrent projects that will result in the loss of affordable housing. (June 27, 2016 Georgene Smith Goodin letter at 1; Audio Recording of June 28, 2016 PLUM Committee hearing at 00:41:45.) In her April 11, 2016 appeal letter, Ms. Shain cited "417 S Ocean Front Walk and 2 E Breeze Ave in Venice" as additional examples of current projects seeking to convert housing to hotels. (April 11, 2016 Shain appeal letter at 6.)

55. Another commenter, Sean Chandra, submitted a letter to the Commission that identified other similar projects approved by the City in the two months prior to the submission of his letter. For each individual project cited in his letter, the City found that there were no significant environmental impacts caused by the loss of affordable housing stock. (Chandra letter at 2.) The Chandra letter identified the following projects:

- ENV-2013-1596 (4900 Hollywood Blvd.);
- ENV 2013-2332 (2150 S Westwood Blvd.);
- ENV-2014-2399 (6613 W Hollywood Blvd.);
- ENV-2014-2853 (4706 S Centinela Ave.);
- ENV-2014-4499 (5532 N Fulcher Ave.);
- ENV-2015-49 (1235 S Harvard Blvd.);
- ENV-2015-2031 (4410 W 3rd St.);
- ENV-2015-2210 (11916 Pico Blvd.); and
- ENV-2015-2769 (11312-11326 Victory Blvd.).

56. During the March 8, 2016 Commission hearing, Commissioner Chung Kim specifically noted that she did not feel comfortable approving the Project in light of the evidence of the cumulative impacts on the City's affordable housing stock

and the ongoing affordable housing crisis in the City. To this point, it bears emphasis that apartment buildings built before October 1978 (i.e., subject to the RSO) with four or less units represent 75% of all such pre-October 1978 buildings (Housing Needs Assessment, at 1-62) -- most were built between 1940 and 1969 (*ibid*); and that 65% of the City's total rental housing stock is available in buildings with 19 units or less. (Shain appeal letter, dated April 11, 2016, at 6; Housing Needs Assessment, Table 1.9 at 1-37.)

57. In sum, a fair argument, based on substantial evidence of significant direct, indirect and cumulative impacts on the environment caused by the Project, and substantial adverse effects on human beings attendant on those impacts, was presented to the City. Therefore, the City was required to prepare an EIR for the Project. The IS/MND's treatment of these impacts and effects lends additional support to this conclusion. The IS/MND approved by the City Council states (no more than the bare conclusion) that "[w]ith existing regulations and the implementation of mitigation measures," the Project has a less than significant cumulative impact. (IS/MND at 14, 41.) However, neither the "existing regulations" nor the "mitigation measures" alluded to are specified. In fact, no mitigation measures for housing loss and displacement impacts were even contemplated, let alone adopted.

A. Significant Loss of Affordable, Rent-stabilized Housing and Displacement of People Impacts.

58. Substantial evidence in the record of the City's proceedings shows that the direct rent-stabilized housing loss and displacement impacts of the Project are significant, given that Respondents required no Project revisions or conditions mitigating the potentially significant effects associated with the elimination of as many as 18 rent-stabilized housing units and the displacement of low-income people from these units "to a point where clearly no significant effect on the environment would occur" (Pub. Resources Code, § 21080, subd. (c)(2)); the Project area already suffers crisis-level affordable housing shortages; the record is devoid of evidence indicating that the housing

shortage and homelessness conditions in the vicinity of the Project or its area are insignificant; and the record is devoid of evidence bridging the analytical gap or showing a rational connection between the City's thresholds of significance (net loss of 25 multiple-family dwelling units; net loss of any existing housing units affordable to very low- or low-income households) and its determination of no significant Project impact.

59. Substantial evidence in the record of the City's proceedings shows that the cumulative rent-stabilized housing loss and displacement impacts of the Project are significant, and that assuming arguendo the incremental, unmitigated impacts of replacing rent-stabilized housing units for low-income residents with a 24-unit boutique hotel to serve "the needs of the tourism, entertainment, and corporate sectors" (Sayles/Zoning Administrator finding), in some fashion, can be downplayed as individually limited, these impacts and the adverse effects on human beings attendant thereon are cumulatively considerable. They are significant not only given the evidence produced by citizen commenters showing related projects with the exact same type of impacts as the Project (loss of affordable housing and displacement of human beings), and that the Project area and other areas of the City already suffer crisis-level affordable housing shortages, as more than 1,000 rent-controlled apartments have been taken off the market in 2015 alone, more than 20,000 rent-controlled units since 2001 (¶ 6, *ante*), and another 19,888 are at risk of loss between 2013 and 2013 (¶ 31, *ante*). Also, these cumulative impacts with their adverse indirect effects and Respondents' CEQA shortcuts are especially hard-hitting and disparately affect the City's low-income population, including people of color and minorities. As noted, more than 75% of the City's remaining rent-stabilized apartment buildings have less than 25 units, yet, by the City's treatment or disregard of its own thresholds of significance, no demolition, no boutique hotel conversion, no luxury rental apartments conversion, and no condo conversion will ever be considered to have a significant cumulative impact although, under the City's thresholds of significance, when the Project and one or more related projects result in the

net loss of *any* existing housing units affordable to very low- or low-income households, or in a combined net loss of 25 or more multi-family dwelling units, the Project's cumulative impacts may be significant, thus requiring it to undergo EIR review since no revisions in Project plans were made or conditions of approval required that would "mitigate the effects to a point where clearly no significant effect would occur." (Pub. Resources Code, § 21080, subd. (c)(2).) Simply put, substantial evidence shows that the Project and related projects (from 2015 alone) carry very significant cumulative impacts, yet evade EIR review. As Ms. Shain wrote: "I challenge the city of Los Angeles' current threshold which creates a trigger in buildings with 25 units or more . . . . Is it the city's position that it can remove all that housing stock with no need for further cumulative environmental review?" (June 28, 2016 Letter to PLUM Committee at 4.) Respondents' application of their thresholds of significance in such a manner as to dismiss as less than significant and avoid mitigation for the significant impacts of demolishing or converting, over a period of time, tens of thousands of separate apartment buildings, up to more than 75% of the City's entire remaining rent-stabilized housing stock, is grossly skewed and totally indefensible under CEQA.

B. Significant Adverse Effects on Human Beings.

60. The IS/MND's otherwise unsupported conclusion that the Project will not result in environmental effects that will cause substantial adverse effects on human beings conflicts with substantial evidence in the administrative record establishing just such effects.

61. Substantial evidence in the record of the City's proceedings shows that the direct and cumulative environmental effects of the loss of rent-stabilized housing and the displacement of human beings associated with the Project cause substantial adverse effects on human beings, directly or indirectly. Displacement of people from affordable, rent-stabilized housing either forces individuals and families to sacrifice basic necessities other than housing to make up for new, higher rents, or causes demographic

shifts that force individuals and families to find shelter in substandard housing or into homelessness. Each one of these consequences has substantial adverse public health, safety and welfare effects.

62. A 2004 study by the San Francisco Department of Public Health, "*The Case for Housing Impacts Assessment: the Human Health and Social Impacts of Inadequate Housing and their Consideration in CEQA Policy and Practice*" (*Housing Impacts*), provided to Respondents in this case, traces substantial adverse human health, safety and welfare effects to the loss and lack of affordable and adequate housing, including mental and physical health effects due to the stress caused by housing insecurity; mental and physical health effects due to malnutrition, hunger, or sacrificing other material needs (clothing, health care) when displaced residents are forced to offset the higher rental costs of alternative housing; and mental and physical health effects due to environmental factors such as overcrowding, poor indoor air quality, lack of access to safe drinking water or hot water for washing, inadequate access to sanitary restrooms, or ineffective waste disposal when displaced residents can only find substandard alternative housing or are faced with homelessness. These effects adversely impact the public at large and raise substantial environmental public health issues as they contribute to the spread of infectious diseases, the erosion of social cohesion and the loss of youth development opportunities.

63. Various cancers, respiratory, cardiovascular, reproductive, autoimmune, and neurobehavioral illnesses, and cognitive dysfunction have been linked to oxidative stress and inflammation, driven by environmental factors that either trigger genetic mutations or epigenetically modify expression of key regulatory genes. Diet and nutrition biochemically interact with genetic and epigenetic events. Being forced into a diet of cheap junk food to make up for non-stabilized rents, especially high in the areas of the City where the conversions of rent-stabilized housing occur, deprives human beings of the antioxidant properties of dietary cancer-preventive phytochemicals like vitamins

A, D and E, omega-3 and omega-6 fatty acids, flavanoids and polyphenols, allium vegetables and organosulfur compounds, and cruciferous glucosinolates.

64. When rent-stabilized housing is converted into boutique hotels and high-cost residential housing, the resultant displacement of people also "may lead to residential segregation and ghettoization." (*Housing Impacts*, *supra*, at 10.) These changes effect additional changes and inequities in the distribution of neighborhood amenities such as schools, libraries and transportation. (*Ibid*.) The City's own Housing Needs Assessment confirms the disproportionate impacts on communities of color and minority communities of the loss of affordable housing. Still, Respondents' IS/MND ignored those impacts.

C. Significant Traffic Impacts.

65. The IS/MND concludes that the Project would not result in significant environmental impacts associated with traffic or the surrounding circulation system and that a there was no need to prepare a traffic study. However, this finding is contradicted by substantial evidence in the record of significant environmental impacts on traffic and circulation.

66. In her appeal letter, Ms. Shain showed that the roads surrounding the Project site are afflicted with "substantial traffic congestion" and noted the existence of hazardous conditions at the intersection between North Cherokee Avenue and Franklin Avenue. (April 11, 2016 Shain appeal letter, at 5.)

67. Because the administrative record in this case contains substantial evidence of significant direct, indirect and cumulative Project impacts, Respondents' failure to prepare an EIR constitutes a prejudicial abuse of discretion under CEQA and the Guidelines. Accordingly, writ of administrative mandamus relief as requested in the prayer to this pleading is indispensable.

SECOND CAUSE OF ACTION
NONCOMPLIANCE OF INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION WITH CEQA AND THE CEQA GUIDELINES (Pub. Resources Code, § 21168; Code Civ. Proc., § 1094.5)
By Petitioners Against Respondents and Real Parties

68. Petitioners incorporate by reference paragraphs 1 through 66 of this pleading, as though fully set forth.

69. The City had a duty to properly determine in the IS/MND all potential significant direct, indirect and cumulative impacts of the Project, including the substantial adverse effects on human beings attendant on those impacts; to refrain from deferring the formulation of mitigation measures to the future without specifying performance standards; and to adopt legally sufficient findings of approval, supported by substantial evidence in the light of the whole record. (Pub. Resources Code, §§ 21080, subs. (c), (d), (e); *id*., § 21081.6, subd. (a); Guidelines, §§ 15063, 15064, 15065, 15071.)

70. The CEQA Guidelines require the following inquiries when it comes to loss of housing:

- May the Project displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?
- May the Project displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?
- May these displacement impacts be cumulatively considerable even if they are individually limited? (Mandatory finding of significance.)
- May these displacement impacts cause substantial adverse effects on human beings, either directly or indirectly? (Mandatory finding of significance.)

71. In response, except for the cumulative impacts category, the City checked the "No Impact" box, thus categorically denying any impact may even occur, whether significant or insignificant. (IS/MND at 13, 14.) For cumulative impacts, the

City checked the box "Less than significant impact," thus assuming without supporting evidence that the Project's cumulative impacts are insignificant or can be mitigated to a point where clearly no significant effect would occur. Paradoxically, for the effects on human beings, the City also assumes mitigation (IS/MND at 42), but none was identified or discussed and the City posited no adverse effects on human beings in the first place. The conclusion that the physical changes associated with the Project will not cause substantial adverse effects on human beings, directly or indirectly, on the face of the IS, is unsupported by any evidence.

72. The IS/MND is incomplete, evasive, and fails to meet CEQA's and the Guidelines' content requirements and standards of adequacy, completeness and good faith effort at full disclosure. It concludes that the Project would not result in environmental effects that are individually limited but cumulatively considerable, and that no substantial adverse effects on human beings are caused by the Project's effects on the environment. These conclusions misinterpret CEQA and lack evidentiary support. They misinterpret CEQA in that they ignore CEQA's and the Guidelines' provisions mandating a finding of significant cumulative impact on the environment (requiring preparation of an EIR) where there is substantial evidence, in light of the whole record, that the Project has possible environmental effects that, although "individually limited[,]" are "cumulatively considerable," i.e., has "incremental effects" that "are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects" (Guidelines, § 15165, subd. (a)(3); see *id*., appen. G, Evaluation of Environmental Impacts, # 2); and mandating a finding of substantial adverse effects on human beings where there is substantial evidence that those effects are caused by the Project's direct or cumulative effects. (Guidelines, § 15165, subd. (a)(4).) As shown in the first cause of action, these IS/MND conclusions also fail to support the City's decision not to require an EIR in that they are contradicted by substantial evidence in the administrative record of the Project's significant impacts and

substantial adverse effects on human beings.

73. The IS/MND also provides an inadequate, incomplete, and misleading description of the environmental setting. It omits disclosure of the related projects although the rent-stabilized housing and displacement impacts of the Project, when considered together with the losses of rent-stabilized housing and displacement attributable to the related projects, are cumulatively significant.

74. The IS/MND furthermore fails to follow and evaluate the City's own screening criteria for housing loss and displacement of people impacts. It completely ignores the second screening criterion of the City's CEQA Thresholds Guide's Population and Housing Displacement framework. That criterion concerns whether the Project would result in the net loss of any existing housing units affordable to very low- or low-income households. Members of the public advised Respondents that the Project involves a net loss of apartment units that are affordable to low-income households. On June 21, 2016, Ms. Shain submitted a record of rental rates at 1850 Cherokee as of September 27, 2013, when the property was purportedly withdrawn from the rental market. (June 21, 2016 Shain correspondence at 39.) These rental rates, on average, were substantially below $1,000; one was as low as $371.00 per month, which falls two dollars below the $373.00 figure identified by the City as the affordable rent for an "extremely low income" one-person family. (*Housing Needs Assessment*, at 1-48.) Because the Project involves the conversion of existing affordable housing stock into a boutique hotel, without replacing any existing units, the IS/MND should have assessed the net loss of units that are affordable to low-income households.

75. In addition, the IS/MND fails to adequately address the first criterion of its Thresholds Guide which concerns whether the Project would result in the net loss of housing equivalent to or greater than 25 multi-family housing units. The IS/MND concludes without more that "[t]he removal of 18 units from the housing market does not meet the minimum threshold of 25 multi-family units adopted by the City as creating a

potential impact." (IS/MND at 32.) Likewise, without citing any basis in fact, as noted before, it denies *any* adverse effect (significant or insignificant) on human beings, but then contradicts itself by purporting to explain this nonsensical checkbox conclusion with the cursory statement that any such potential effects, "direct or indirect, will be mitigated by existing city, state, and federal regulations and will be further reduced with the adopted of [sic] mitigation measures." (IS/MND at 42.) Again, what those regulations are is a mystery, and Respondents specifically did *not* require mitigations to alleviate the substantial direct or indirect adverse effects on human beings attendant on the displacement of the residents.

76. Throughout the course of the City's proceedings, the scope and nature of the Project has shifted. In July 2015, Real Party David Lesser's agent, Dana Sayles, argued that a zone variance was essential because it was "impossible for this property to comply" with the requirement that offsite parking be placed within 750 feet of the project site "due to the lack of similar parking lots in the vicinity." (Sayles letter at 11.) However, on May 27, 2016, Real Parties withdrew the variance application with no explanation for how the Project would comply with applicable zoning laws regarding parking. The public is now left in the dark about the nature and description of the Project and has no way of knowing how the boutique hotel parking needs will be met.

77. The City failed to comply with the requirement that "[a]ny changes made should be supported by substantial evidence in the record and appropriate findings made." (IS/MND at 1.) The IS/MND extensively relies on the assumption that the Project would include "on- and off-site parking" -- a significant factor in the City's conclusion that a traffic study would not be necessary. The City offered no findings with respect to any impacts or effects caused by the withdrawal of the zone variance and the decision not to require parking spaces at the previously identified offsite location.

78. Respondents' failure to prepare a legally adequate initial study and mitigated negative declaration constitutes a prejudicial abuse of discretion under CEQA

and the Guidelines. Accordingly, peremptory writ of administrative mandamus relief as requested in the prayer to this pleading is indispensable.

THIRD CAUSE OF ACTION
FAILURE OF CENTRAL AREA PLANNING COMMISSION TO ACT ON SYLVIE SHAIN'S APPEAL
By Petitioners Against Respondents (Code Civ. Proc., § 1085)

79. Petitioners incorporate by reference paragraphs 1 through 77 of this pleading, as though fully set forth.

80. A court may issue a writ of mandate "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office . . . ." (Code Civ. Proc., 1085.) To that extent, "a court may order a government entity to exercise its discretion in the first instance when it has refused to act at all." (*Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1555.)

81. "[W]here a body exercising quasi judicial functions must make factual or mixed factual and legal determinations which result in action, the law implies that a hearing must be granted to meet due process requirements." (*Fuchs v. Los Angeles County Civil Service Com.* (1973) 34 Cal.App.3d 709, 714.)

82. California law requires administrative agencies that issue quasi-judicial decisions to "set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) In these findings, agencies must demonstrate "the analytic route the administrative agency traveled from evidence to action." (*Ibid.*) "[T]he function of the planning commission in the granting of conditional use permits 'is a quasi-judicial, administrative one,' subject to the same requirement as to findings which the court found applicable to the granting of a variance in *Topanga*." (*Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 391.)

83. Courts may not presume "that an agency's rulings rest upon the

necessary findings" when such agencies "*must* expressly state their findings and *must* set forth the relevant supportive facts." (*Broadway, Laguna, Vallejo Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767, 773; accord, *Walnut Acres Neighborhood Assn. v. City of Los Angeles* (2015) 235 Cal.App.4th 1303, 1312-1313.)

84. The Los Angeles City Charter provides an affirmative right to appeal to an Area Planning Commission a Zoning Administrator's decision to grant a CUP. (Los Angeles City Charter, § 563(b)(2).) The City Charter specifies that the Area Planning Commissions shall issue *decisions* when adjudicating these appeals. (*Ibid.*) LAMC section 12.24, subdivision (I)(3) states that when adjudicating such appeals, "the appellate body *shall make its decision*, based on the record, as to whether the initial decision-maker erred or abused his or her discretion." (Emphasis added; see *id.*, subd. (I)(4) ["The appellate body *shall act*"].)

85. "For all appellate bodies, any resolution to approve [the decision of the initial decision-maker] must contain the same findings required to be made by the initial decision-maker, supported by facts in the record." (LAMC, § 12.24(I)(5).)

86. Additionally, the City Charter states that the City Council "shall by ordinance establish time limits by which action shall be taken on all requests for quasi-judicial approvals . . . ." (Charter, § 566.) LAMC section 12.24, subdivision (I)(4) states that for appeals of a zoning administrator's decision to grant a CUP, an appellate body "*shall act* within 75 days after the expiration of the appeal period or within any additional period mutually agreed upon by the applicant and the appellate body." (Emphasis added.)

87. The Central Area Planning Commission's rules, which it adopted pursuant to Los Angeles City Charter section 506, state that when the Commission adjudicates appeals from a Zoning Administrator determination, it "*must determine* if the Zoning Administrator or other official erred or abused his/her discretion in taking the action being appealed." (Central Los Angeles Area Planning Commission Rules and

Operating Procedures, Rule 28, at 7, emphasis added.) The Commission's rules further state that "Commission action (the decision of the Commission) shall be by majority vote of *all* the members (three)." (Rule 28, emphasis added.)

88. In the case at bench, the Commission violated City and state law by failing to issue a decision concerning Ms. Shain's appeal of the Zoning Administrator's decision. After hearing public comment on March 8, 2016, the Commission failed to reach a consensus, as the three commissioners present at the hearing were split. Consequently, the Commission failed to act. At the close of the March 8 hearing, Los Angeles Senior Planner Patricia Diefenderfer remarked that "the commission will basically not have a decision" and suggested that "the Commission should, you know, kind of conclude their business on this particular item if, you know, you think that's where you are." (Audio recording of March 8, 2016 Central Area Planning Commission at 1:36:03, 1:44:08, available at <http://planning.lacity.org/StaffRpt/Audios/Central/2016/3-8-2016/4%20ZA-2015-2683-CU.mp3>.) Commissioner Kim then said "we should probably conclude if we are not going to reach a unanimous vote" (*id.* at 1:45:53) and, after the three Commissioners failed to come to an agreement, remarked that "the Commission did not come to a decision." (*Id.* at 1:46:27).

89. The Commission was obligated to issue a decision on Petitioner Shain's appeal prior to the expiration of the 75-day appeal period, i.e., by March 21, 2016. However, rather than re-schedule the hearing to obtain a three-vote consensus, the Commission left it with its failure to act. This course of conduct is in direct violation of the City Charter, the LAMC, and the Commission's own rules.

90. Furthermore, the Commission's denial of the appeal by failure to act is in conflict with state and City law requiring agencies to issue findings when exercising quasi-judicial functions. The Commission was required to affirmatively adopt written findings. Put differently, the Commission here failed to bridge the analytic gap between the evidence and its ultimate action as it took no action. The quorum will not change the

fact that it is functionally and epistemologically impossible for a deadlocked group to reach a decision or identify the facts that support any decision.

91. By failing to act on Ms. Shain's appeal, the Commission moreover violated and denied Ms. Shain her right, under Charter section 563, to have the Commission make a decision on her appeal.

92. Because the Commission failed in its mandatory, public duty under state and local law to affirmatively make a "decision" on the appeal from the Zoning Administrator's decision, ordinary mandate relief as requested in the prayer to this pleading is indispensable.

FOURTH CAUSE OF ACTION
DECLERATORY RELIEF (Code Civ. Proc., § 1060)
By Petitioners Against Respondents

93. Petitioners incorporate by reference paragraphs 1 through 91 of this pleading, as though fully set forth.

94. An actual and present controversy has arisen and now exists between Petitioners, on the one hand, and the City, on the other hand, regarding the powers and duties of the Commission under state law, the Los Angeles City Charter, and the LAMC; and the rights of the citizens of Los Angeles who are adversely affected by the Commission failures to act when adjudicating quasi-judicial matters pertaining to the granting of CUPs.

95. Petitioners contend that the Los Angeles City Charter provides an affirmative right to appeal to an Area Planning Commission a Zoning Administrator's decision to grant a CUP, and that the Charter further specifies that the Area Planning Commissions shall issue *decisions* when adjudicating these appeals. Petitioners further contend that under Los Angeles Municipal Code section 12.24, subdivision (I)(3), the Commission "*shall make its decision*, based on the record, as to whether the initial

decision-maker erred or abused his or her discretion." (Emphasis added; see *id.*, subd. (I)(4).) Finally, Petitioners contend that state law requires the Commission to issue written findings and analytical reasoning when adjudicating quasi-judicial appeals, a public duty the Commission fails to perform when it deadlocks or takes no action.

96. Petitioners are informed and believe, and based thereon allege, that Respondents contend to the contrary, and contend that the Commission need not take action to resolve appeals from Zoning Administrator decisions.

97. A judicial determination and declaration of the public rights and duties of the parties is therefore necessary and appropriate, as sought in the prayer of this pleading. " 'An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law.' [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; *see Squire v. City and County of San Francisco* (1970) 12 Cal.App.3d 974, 976, 979.)

FIFTH CAUSE OF ACTION
INJUNCTIVE RELIEF
By Petitioners Against Respondents and Real Parties

98. Petitioners incorporate by reference paragraphs 1 through 96 of this pleading, as though fully set forth.

99. As a result of Respondents' violations of CEQA and the Guidelines, preliminary and permanent injunctive relief is indispensable to avoid irreversible and unmitigated direct, indirect and cumulative adverse effects on the environment and substantial adverse effects on human beings, directly and indirectly; to avoid prejudice to meaningful consideration of reasonable alternatives to the Project and mitigation measures on remand; to avoid piecemeal environmental review and deferral of mitigation measures; to ensure enforceable mitigation measures; and to avoid further breaches by

Respondents of their public duties, all to the detriment of Petitioners, their supporters and the citizens of the State of California.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES AND INADEQUATE REMEDIES AT LAW.

100. Petitioners have exhausted all available administrative remedies which they were required by law to exhaust.

101. Petitioners have no plain, speedy and adequate remedy at law. Without the relief prayed for in this pleading, the rights of Petitioners, of their supporters, and of all other citizens similarly situated to informed self-government, a decent home and a home in proximity to their jobs, a suitable living environment, and participatory, fair and independent land use decision making, will be defeated.

102. In prosecuting this action, Petitioners are acting on behalf of all City residents, electors and taxpayers interested in informed self-government, a decent home and a home in proximity to their jobs, a suitable living environment, and participatory, fair and independent land use decision making, and in meaningful and full enforcement of the laws that form the bases of this action, and seek enforcement of important rights affecting the public interest.

WHEREFORE, Petitioners pray for relief as follows:

ON THE FIRST AND SECOND CAUSES OF ACTION

1. That the Court issue a peremptory writ of administrative mandamus, and, as Petitioners may apply for, an alternative writ of administrative mandamus, commanding Respondents:

1.1. To set aside and void the approval of the IS/MND, the CUP and the "Adjustment" for the Project.

1.2. To prepare, circulate, review and certify an environmental impact report for the Project, before taking any further approval action thereon (or on any

alternative Project design or use).

1.3. To take all further specific action as shall be necessary to bring their environmental review, decisions, determinations, findings, mitigation measures, and mitigation monitoring and reporting into full compliance with CEQA, the Guidelines, and all other federal, state and local laws applicable to Respondents' decisions or to the Project.

1.4. To take such other action as is specifically enjoined upon Respondents by CEQA, the Guidelines, and all other applicable federal, state and local laws, including such action as shall be necessary to ensure preparation of an adequate IS/MND and meaningful public review.

2. That the Court order Respondents and Real Parties to suspend all activities pursuant to Respondents' decisions that could result in an adverse change or alteration to the physical environment, until Respondents have taken all actions as shall be necessary to bring their environmental review, decisions, determinations, findings, mitigation measures and mitigation monitoring into full compliance with CEQA, the Guidelines, and all other federal, state and local laws applicable to Respondents' decisions or to the Project; and staying the operation of Respondents' decisions pending discharge of the writ of administrative mandamus petitioned for by Petitioners.

3. That the Court stay the operation of Respondents' decisions pending entry of judgment.

ON THE THIRD CAUSE OF ACTION

1. That the Court issue a writ of ordinary mandate to command the Commission to act upon Ms. Shain's appeal of the Zoning Administrator's decision to approve the CUP and the "Adjustment," and to adopt written findings and a decision, all as required by state and local law.

2. That the Court order Respondents and Real Parties to suspend all activities pursuant to Respondents' decisions that could result in an adverse change or

alteration to the physical environment, until the Commission takes action on Ms. Shain's appeal and adopts written findings and a decision; and staying the operation of Respondents' decisions pending discharge of the writ of ordinary mandate petitioned for by Petitioners.

3. That the Court stay the operation of Respondents' decisions pending entry of judgment.

ON THE FOURTH CAUSE OF ACTION

For a binding judicial declaration of the rights of Petitioners and the duties of Respondents under state law, Los Angeles City Charter section 563, and LAMC section 12.24, including, specifically, a declaration that the Commission has a public duty to take affirmative action and adopt written findings and an actual decision in appeals from City Zoning Administrators' approvals of CUPs, variances and "adjustments."

ON THE FIFTH CAUSE OF ACTION

1. That the Court preliminarily and permanently enjoin Respondents from granting or issuing any further discretionary or ministerial entitlements purporting to implement the Project, until they have taken all actions as shall be necessary to bring their environmental review, decisions, determinations, findings, mitigation measures and mitigation monitoring into full compliance with CEQA and the Guidelines, and with all other federal, state and local laws applicable to the Project or any City action thereon.

2. That the Court preliminarily and permanently enjoin Real Parties, and each of them, and their employees and agents, from implementing any purported entitlements, or performing any activity that could result in an adverse change or alteration to the physical environment, until Respondents have has taken all actions as shall be necessary to bring their environmental review, decisions, determinations, findings, mitigation measures and mitigation monitoring into full compliance with CEQA, the Guidelines, and all other federal, state and local laws applicable to the Project or to any City action thereon.

ON ALL CAUSES OF ACTION

1. That the Court award Petitioners reasonable attorney fees pursuant to Code of Civil Procedure section 1021.5, and award Petitioners their costs of suit.

2. That the Court grant Petitioners such other and further relief as the Court may deem just or proper.

DATED: August 12, 2016

ANGEL LAW
Frank P. Angel

By: _____
Frank P. Angel
Attorney for Petitioners/Plaintiffs
Hollywoodians Encouraging Rental Opportunities (HERO) et al.

VERIFICATION

I, Sylvie Shain, declare:

I am the vice-chair of the Hollywoodians Encouraging Rental Opportunities (HERO). I have read the foregoing first amended petition for writs of administrative mandamus and ordinary mandate; and complaint for declaratory and injunctive relief. I know the contents of this pleading. The facts alleged therein are true to my personal knowledge, except for facts alleged on information and belief. Those facts I verify upon information and belief. I have authority to execute this verification on behalf of HERO.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this verification on August 12, 2016, in the County of Los Angeles, California.

SYLVIE SHAIN

VERIFICATION

I, Sylvie Shain, declare:

I am a Petitioner/Plaintiff in this action. I am a City resident, voter, and taxpayer. I have read the foregoing first amended petition for writs of administrative mandamus and ordinary mandate; and complaint for declaratory and injunctive relief. I know the contents of this pleading. The facts alleged therein are true to my personal knowledge, except for facts alleged on information and belief. Those facts I verify upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this verification on August 12, 2016, in the County of Los Angeles, California.

SYLVIE SHAIN

VERIFICATION

I, Max Blonde, declare:

I am a Petitioner/Plaintiff in this action. I am a City resident, voter, and taxpayer. I have read the foregoing first amended petition for writs of administrative mandamus and ordinary mandate; and complaint for declaratory and injunctive relief. I know the contents of this pleading. The facts alleged therein are true to my personal knowledge, except for facts alleged on information and belief. Those facts I verify upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have executed this verification on August 12, 2016, in the County of Multnomah, Oregon.

MAX BLONDE

The availability of vacant units are indicators of the real estate market and household mobility, and are relevant for access to job and educational opportunities. The vacancy rate measures overall housing availability and are a good indicator to assess if the rental housing units are meeting the current demand for housing. Vacancy rates fluctuate based on household growth, tenure, and changes in the business cycle.

	Wilshire Plan Area	County
Overall Vacancy Rate	7.1%	6.1%
Renter Vacancy Rate	4.4%	3.7%

Source: Tabulated by S. Gonzalez from 2011-2015 5-year ACS estimates for tracts completely within the Wilshire Plan Area boundaries.

The vacancy rates are derived from the 2011-2015 5-year American Community Survey, the most recent data source available at the census tract level. The overall vacancy rate is the total vacant housing units divided by the total housing units. The overall rate is different from residential vacancy rates. The latter definition is used by the Bureau of the Census in their quarterly analyses of units that are on the market for rent or for sale only. The rental vacancy rate for residential units is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied. It excludes units for occasional or temporary use such as recreational and for migrant workers.

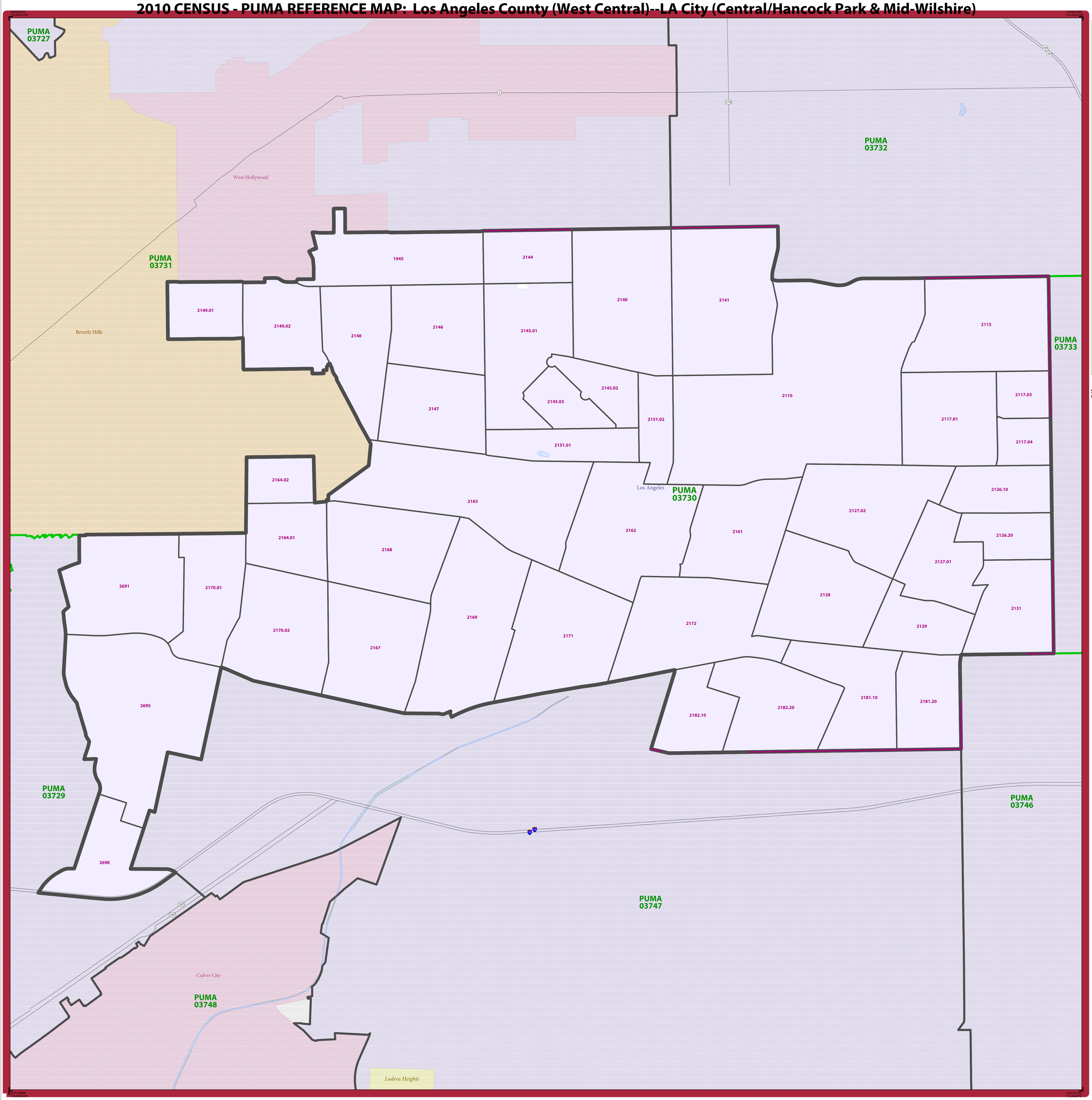
The methodology to calculate the rates follows that presented in the 2012 Analysis of Impediments to Fair Housing produced by faculty and staff at the UCLA Luskin School of Public Affairs for the California Department of Housing and Community Development (HCD) and the U.S. Department of Housing and Community Development (HUD). The report is available online at: http://www.hcd.ca.gov/policy-research/plans-reports/docs/state_of_ca_analysis_of_impediments_full%20report0912.pdf

Silvia Gonzalez is a doctoral student of Urban Planning at the UCLA Luskin School of Public Affairs. She is the current Assistant Director at the UCLA Center for Neighborhood Knowledge and former Assistant Director at the UCLA Center for the Study of Inequality. She holds a Bachelor's in Geography and a Master's in Urban and Regional Planning, with a focus on economic development, from UCLA. She has published on the rental market, foreclosures, and displacement in Los Angeles, among many other economic development topics.

	Wilshire Plan Area	County
Total Vacant Units	9,066	213,649
Total Housing Units	127,740	3,476,718
Overall Vacancy Rate	7.10%	6.15%
Renter Vacancy Rate	4.39%	3.66%

	Wilshire	County
Tot_Housing_Units	127,740	3,476,718
Tot_Vacant_Housing_Units	9,066	213,649
Tot_Vacant_For_Rent	4,601	67,460
Tot_Vacant_Rented_Not_Occp	1,469	14,163
Tot_Vacant_For_Sale	287	19,648
Tot_Vacant_Sold_Not_Occp	94	9,593
Tot_Vacant_Rec_Seasonal	649	29,559
Tot_Vacant_MIgrantWorkers	-	254
Tot_Vacant_Other	1,966	72,972
Total_Occupied_Housing_Units	118,674	3,263,069
Tot_Owner_Occupied_Housing_Units	19,937	1,499,879
Tot_Renter_Occupied_Housing_Units	98,737	1,763,190

2010 CENSUS - PUMA REFERENCE MAP: Los Angeles County (West Central)--LA City (Central/Hancock Park & Mid-Wilshire)



LEGEND

SYMBOL DESCRIPTION	SYMBOL	LABEL STYLE
International		CANADA
Federal American Indian Reservation		L'ANSE RES
Off-Reservation Trust Land		T1880
Alaska Native Regional Corporation		NANA ANRC
Public Use Microdata Area (PUMA)		PUMA 00300
Census Tract		183.01
State (or statistically equivalent entity)		NEW YORK 36
County (or statistically equivalent entity)		ERIE 029
Minor Civil Division (MCD) [1]		Bristol town
Consolidated City		MILFORD
Incorporated Place [2]		Davis
Census Designated Place (CDP) [2]		Incline Village

DESCRIPTION	SYMBOL	DESCRIPTION	SYMBOL
Interstate		Water Body	Pleasant Lake
U.S. Highway		Outside Subject Area	
State Highway			
Nonvisible Boundary or Feature Not Elsewhere Classified			

Where international, state, and/or county boundaries coincide, the map shows the boundary symbol for only the highest-ranking of these boundaries.

Geographic areas outside the subject PUMA are labeled only as space allows.

1 MCD boundaries are shown in the following states in which some or all MCDs function as general-purpose governmental units: Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin. Only governmental MCDs in the subject PUMA are labeled.

2 Place label color corresponds to the place fill color.
Label colors: Davis Davis Davis Davis Davis

SUBJECT AREA COUNTIES ON MAP SHEET
06037 Los Angeles

Public Use Microdata Areas (PUMAs) are delineated based on the results of the 2010 Decennial Census; all other legal boundaries and names are as of January 1, 2010. The boundaries shown on this map are for Census Bureau statistical data collection and tabulation purposes only; their depiction and designation for statistical purposes does not constitute a determination of jurisdictional authority or rights of ownership or entitlement.

Geographic Vintage: 2010 Census (reference date: January 1, 2010)
Data Source: U.S. Census Bureau's MAF/TIGER database (ACS13)
Map Created by Geography Division: December 13, 2013

U.S. DEPARTMENT OF COMMERCE Economics and Statistics Administration U.S. Census Bureau

Projection: Albers Equal Area Conic
Datum: NAD 83
Spheroid: GRS 80
1st Standard Parallel: 34 06 27
2nd Standard Parallel: 40 25 20
Central Meridian: -119 18 20
Latitude of Projection's Origin: 32 31 43
False Easting: 0
False Northing: 0

0 0.2 0.4 0.6 0.8 1 Kilometers
0 0.2 0.4 0.6 0.8 1 Miles
The plotted map scale is 1:12536

N W E S

United States Census Bureau

PARENT SHEET 1

Total Sheets: 1
- Index Sheets: 0
- Parent Sheets: 1
- Inset Sheets: 0

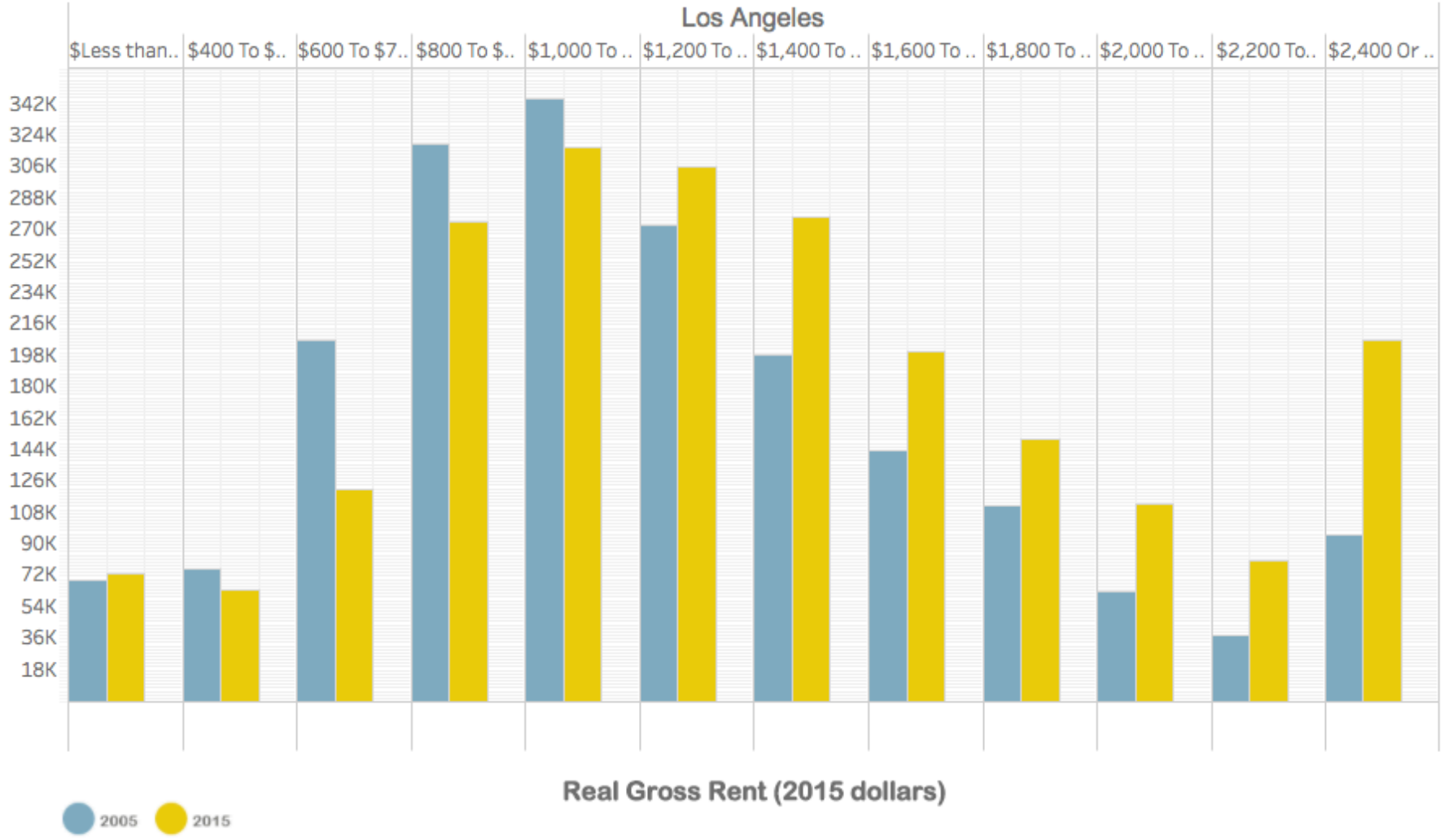
PUMA NAME: Los Angeles County (West Central)--LA City (Central/Hancock Park & Mid-Wilshire)
PUMA CODE: 03730
STATE: California (06)

PUMA REF MAP (PARENT)
236506037330001

THE U.S. IS ADDING HIGH-RENT UNITS & LOSING LOW-RENT UNITS

Click here to see changes by metro

Los Angeles



Notes: Data exclude rental units occupied without payment of rent. Gross rents are adjusted by the CPI-U for All Items less shelter.
Source: JCHS tabulations of US Census Bureau, American Community Survey 1-Year Estimates.

TENANT INFORMATION CHART (AT TIME OF FILING APPLICATION)
FOR DEMOLITIONS, CONDOMINIMUM CONVERSIONS AND COASTAL TRACTS

***Address of Project** 118 - 126 1/2 N. Flores Street, Los Angeles, CA 90048 **Tract No.** 73441

Date _____ **Prepared by** Guy Penini **FOR ALL TRACTS**

Apt. No.	Name of Tentant	Age	Handicapped Yes	Handicapped No	No. of Minor Children (18 or under)	No. of Bedrooms	Rent Schedule 18 Mnths Prior to Filing	Rent Schedule At time of Filing	OFFICE USE ONLY Approval CP-6343	OFFICE USE ONLY Purchase CP-6344
118	[redacted]	62+		X	0	2	$1,889.46	$1,946.14		
118 1/2	[redacted]	Unknown		X	0	2	$1,838.97	$1,890.42		
120	[redacted]	Unknown		X	0	2	$1,552.10	$1,598.66		
122	[redacted]	Unknown		X	0	2	$1,246.56	$1,283.95		
122 1/2	[redacted]	Unknown		X	0	0	$900.00	$927.00		
124	[redacted]	Unknown		X	0	2	$1,642.34	$1,691.61		
124 1/2	[redacted]	Unknown		X	0	2	$2,500.00	$2,575.00		
126	[redacted]	Unknown		X	2	2	$2,163.00	$2,227.89		
126 1/2	[redacted]	Unknown		X	2	2	$1,690.23	$1,740.93		

*** If multiple addresses use separate sheets for each address**