JOHN A. HENNING, JR.
ATTORNEY AT LAW
125 N. SWEETZER AVENUE
LOS ANGELES, CALIFORNIA 90048

TELEPHONE: (323) 655-6171
E-MAIL: jhenning@planninglawgroup.com

June 21, 2017

VIA ELECTRONIC MAIL

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)

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.