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Honorable PLUM Chairman Huizar and
Members Harris-Dawson, Cedillo, Englander, and Fuentes
Los Angeles City Council
Planning and Land Use Mgt. Committee
c/o of City Clerk, Room 395
City Hall, 200 North Spring Street
Los Angeles, California 90012-4801

Re: **LOF Partners, LLC (the "Applicant") Response to Appeal of East Los Angeles Area Planning Commission Approval of AA-2015-777-PMLA-SL-1A and Adoption of ENV-2015-0778-MND in Relation to 1324 Quintero Street/CF-16-0180**

Dear Members of the PLUM:

LOF Partners, LLC (the "Applicant") urges you to uphold the decision of the East Los Angeles Area Planning Commission (the "EAPC") and reject the appeal filed by Patrick Sherman (the "Appellant") challenging the approvals of the proposed four unit small lot subdivision (the "Project") located at 1324 Quintero Street (the "Project Site")/AA-2015-777-PMLA-SL-1A/ENV-2015-0778-MND.

The City of Los Angeles (the "City") should reject the appeal of the Appellant, an investor living in the Hollywood Hills, who owns the four-unit apartment building adjacent to the Project Site to the north. The Applicant vigorously disagrees with the Appellant's contention that the MND is legally inadequate. Below is background information on the Project, as well as responses to the Appellant's assertions.

I. Introduction

A. Project History

Applicant LOF Partners is the developer of the Project, a four home small lot subdivision at 1324 Quintero Street located in the RD1.5-1VL zone. The Project contemplates construction of four, small, architecturally designed, single family homes which when constructed would receive the highest possible environmental rating from the National Green Builders Association. The buildings are modular and would be

constructed off-site minimizing the impact of the Project on the neighborhood and the community.

No variances or modifications of the Los Angeles Municipal Code ("LAMC") were requested or received for this Project. Once the Preliminary Parcel Map approval was given by the Advisory Agency on November 24, 2015, the Preliminary Parcel Map approval was subsequently appealed by Appellant to the EAPC.

The EAPC held an appeal hearing on January 11, 2016 in which the Appellant exhaustively presented all of his various objections to the Project. The EAPC thoroughly considered all issues raised by the Appellant and unanimously rejected the appeal 3-0, and again approved the Project.

Thereafter, an appeal to the CEQA determination was filed on February 1, 2016 totaling 17 pages. However, this notice of appeal appears to have been lost or ignored by the City for four months. The Appellant subsequently filed supplemental and supporting materials to this appeal, which were submitted on May 16, 2016 totaling 484 pages. Additionally, Appellant through his lawyer, filed a civil complaint in this matter in the Superior Court naming the City and the Applicant on May 20, 2016. In aggregate, Appellant has filed 529 pages of appeals to approvals of the four unit small lot subdivision contained in AA-2015-0777-PMLA-SL and ENV-2015-778-MND. Time and reason do not permit an exhaustive response to all of the various claims, since the PLUM hearing was only scheduled last week. Nevertheless, below are responses to the salient legal issues raised on appeal.

B. Scope Of PLUM Hearing

1. *Preliminary Parcel Map*

The Preliminary Parcel Map is no longer appealable. While Government Code Section 65452.5(d)(1) allows an appeal to the legislative body, the City has delegated its authority to review Preliminary Parcel Map appeals to Area Planning Commissions. LA Charter §552, LAMC §17.54. Therefore, as the Appellant has already filed an appeal to the Preliminary Parcel Map, which was unanimously rejected by the EAPC, matters which pertain to the Preliminary Parcel Map Approval are no longer available for appeal. Additionally, the Statue of Limitations on appealing a Preliminary Parcel Map approval has lapsed, and therefore it is no longer possible for this any appeal of this approval. Govt. Code § 66499.37[1]. Appellant's appeals are littered with references to the

[1] Government Code section 66499.37 provides: "Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any

Preliminary Parcel approval that are outside the scope of this appeal and may not be considered by the PLUM Committee at this hearing. Nevertheless, as identified in Section II.C below, there is no legal or factual support for the Appellant's claims of error and abuse of discretion relating to the City's approval of the Preliminary Parcel Map.

II. Appellants Arguments

A. Appellant Contends That There Has Been a Violation of his Right to Due Process

Appellant contends that the City has violated his right to due process by not timely holding a PLUM hearing in response to his appeal to the CEQA analysis of this case. This argument is rendered moot by virtue of this hearing taking place.

In support of Appellant's, claim, he cites the recent unpublished Superior Court decision *Saunders* et al., v. *City of Los Angeles*, et al., (L.A.S.C., Case No. BS154147). In this case Judge James Chalfant found "that sections 17.06(A)(4) and (A)(5) of the Los Angeles Municipal Code irreconcilably conflict with the Subdivision Map Act, codified in California Government Code section 66452.5(d). California Government Code section 66452.5(d) provides an aggrieved party, who is not the subdivider or the tenant, the right to appeal a tentative map decision to the City Council and have that appeal heard and decided.

The *Saunders* case does not apply to the current situation for two reasons. First, as an unpublished Superior Court ruling, the decision in *Saunders* is not binding precedent, and quite simply cannot be cited to legal effect by any other court or agency. (2016 Cal. Rules of Ct. Rule 8.1115.) Second, even if *Saunders* were binding upon this Project, the facts in *Saunders* are quite distinguishable from the current Project. In *Saunders,* the Petitioner attempted to appeal a project approval to the Area Planning Commission (the "APC"). The APC did not schedule a hearing, and the Petitioner was never given an opportunity to have its appeal heard and decided. The Petitioner in *Saunders* then attempted to have its appeal heard by City Council. The City Council did not hear the appeal. At no point was the petitioner in *Saunders* given any opportunity to have its appeal heard and decided. This was the specific violation that was contemplated by Judge Chalfant in his decision. Unlike the petitioner in *Saunders,* the Appellant in this matter was given an extensive opportunity to have his appeal heard at

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person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations. The proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings." Section 66499.37 is part of the Subdivision Map Act (Gov. Code, § 66410 et seq.).

the APC. The Appellant presented his objections to the Project approvals, all of which were heard and then unanimously rejected by the members of the APC. Furthermore, PLUM is convening to consider the CEQA appeal as well.

There have been no violations of due process whatsoever in this matter. The *Saunders* case may not be cited as binding precedent, and even if it could be, it is inapplicable to the facts in this case.

B. Appellant Claims That the Project Approvals Have Been Improperly Bifurcated

Appellant states that the City has improperly bifurcated the approvals between the Preliminary Parcel Map case, AA-2015-777-PMLA and the environmental case, ENV-2015-0778-MND. This claim is outside the scope of review of the MND and PLUM appeal process. Further, considering that the EAPC considered and adopted the MND at the same hearing in which it approved the Preliminary Parcel Map, the Appellant's contention of bifurcation is without support. To the extent that the Appellant claims that there is a bifurcation of the CEQA review process and the Preliminary Parcel Map approval process at the City Council level, as the Appellant correctly points out, LAMC Section 17.53.I grants the Advisory Agency the authority to make the Preliminary Parcel Map consistent with the City Council action.

C. Appellant Contends That Project Submittals Are Incomplete, Making A Project Approval Improper At This Time.

The Appellant contends that the MND is incomplete because there are two issues with the Project submittals. These issues as presented by the Appellant are listed below, with comments:

1) *The Map does not comply with 15 ft. Front yard setback for Parcel 1 as required for the RD1.5-1 VL zone.*

2) *The Applicant needs to resubmit the map to provide and maintain a minimum 20 ft. Common access strip open to the sky all the way to the public street for frontage.*

Neither of these arguments is relevant to the CEQA analysis. Both issues raised are appeals to the Preliminary Parcel Map approval and these issues have already been heard and have been rejected by Planning and by the EAPC.

Even if these objections were not irrelevant for CEQA analysis, they would still fail as they have no basis whatsoever in law or fact. The Appellant claims that a variance is required because the Project does not comply with the required 15-foot front yard setback for the RD1.5 zone which is contained in LAMC §12.09(B)(1). The Project

provides a 10-foot front yard setback; **no variance is required because the Project is a small lot subdivision, governed by the Small Lot Ordinance** (the "SLO"), Ordinance No. 176354.

The first sentence of this Ordinance specifically calls out §12.09 of LAMC as one of the many LAMC sections modified by the SLO. The specific modification to §12.09 is contained in (6)(e) of the SLO which reads in full, "No front, side or rear yard shall be required between lots within an approved small lot subdivision. However, a five-foot setback shall be provided where a lot abuts a lot that is not created pursuant to this subdivision."

There is no required front yard for this Project pursuant to the SLO. The yard which abuts Quintero Street is required by the LAMC to have a five-foot setback. The Project has been designed with a 10-foot front yard setback, much greater than the setback required by the LAMC for small lot subdivisions. As such, no variance is required for the approval of this Project.

The argument regarding the 20-foot common access driveway is flawed in the same ways as Appellant's arguments regarding an alleged improper variance for a setback. This argument does not fall within the purview of the CEQA analysis or this hearing, and additionally is not based on the LAMC or fact. All necessary minor modifications to the Preliminary Parcel Map have been reviewed by the Planning Department and are consistent with relevant and applicable LAMC sections. LAMC Section 17.53.D grants the Advisory Authority the power to modify Preliminary Parcel Map requirements. Such modification was granted with regard to the common driveway, and no variance is necessary. All necessary approvals from the City for the Preliminary Parcel Map were obtained.

D. Appellant Claims That Approval Of The Project Is Premature, Because There Is A Fair Argument Of Potentially Significant Environmental Impacts That Makes The Use Of A Mitigated Declaration Inappropriate.

There is no fair argument of any significant environmental impact associated with the Project for the reasons discussed below:

1. *The Project Is Consistent With Goals, Policies & Objectives Of The Community Plan*

The Appellant claims that the Project conflicts with the underlying policies behind Objective 1.1, but does not provide any fair argument of any actual conflict with the sub-objectives listed. Similar to the Appellant's own property that has four dwelling units, and similar to other abutting and nearby properties, the Project proposes four dwelling

units, resulting in a net increase of three dwelling units that would further the supply of housing opportunities in the neighborhood; would protect the existing residential neighborhood by providing development without seeking any variances or entitlements other than the permissible Preliminary Parcel Map; would provide infill residential development of only a net increase of three dwelling units, thereby complementing the neighborhood; would protect the existing low-density multiple family residential neighborhood from encroachment by higher density residential development by developing the Project Site with density that exactly matches the residential density of the Appellant's own abutting property; and would promote the preservation of this multiple family neighborhood. That the Project, which is located on a hillside where there already is great variation in height due to the slope, may consist of larger square footage or height does not make it inconsistent with the character of the neighborhood.[2]

In addition, Public Resources Code Section 21099 does not allow aesthetic impacts to be considered significant impacts for qualifying residential projects in Transit Priority Areas, such as the Project, which is located approximately 300 feet north of frequent mass transit along Sunset Boulevard. The Appellant's land use consistency argument appears to be a shill for aesthetic impact arguments which the City is prohibited from considering as a significant impact pursuant to Public Resources Code Section 21099. Even if the Appellant's comments can be classified in the land use consistency context, the Appellant has not even made a fair argument that the Project conflicts with any policies or regulations "... adopted for the purpose of avoiding or mitigating an environmental effect" as mandated by CEQA Guidelines Appendix G and the City's Draft CEQA Thresholds Guide.

2. *There is No Fair Argument of a Significant Noise Impact*

Despite the Appellant's claims, there is no fair argument that the noise impacts would exceed the City's applicable 3 dBA CNEL operational noise threshold for a significant impact. CNEL represents an energy average of the A-weighted noise levels over a 24-hour period with 5 dBA and 10 dBA increases added for nighttime noise between the hours of 7:00 p.m. and 10:00 p.m. and 10:00 p.m. to 7:00 a.m., respectively. As stated in the City's Draft CEQA Thresholds Guide, "the increases were selected to account for reduced ambient noise levels during these time periods and increased human sensitivity to noise during the quieter periods of the day." Even if the rooftop decks are used on occasion, it is unreasonable to assume as the Appellant does that they would be "party hubs," such that there would be an ongoing, regular 3

[2] An eight unit apartment building in over 5,600 square feet of floor area is directly located to the west at 1325 Quintero Street, as is the Appellant's four unit apartment building in nearly 4,000 square feet of space directly to the north. Additionally, there is 20,000 square foot,16 unit condominium building, with o two parcels to the south of the Project on Quintero street. With the wide variety of housing units in the neighborhood (height, mass, square footage, density, ownership/rental, etc.), the Project fits in with the variety and range of housing options available.

dBA CNEL increase in noise levels. Especially as there would be a parapet of at least four feet, along with the stairway enclosure and other structures blocking the line of sight to the Appellant's apartment building, this would further attenuate potential sound transmission that could potentially be heard by the Appellant's tenants. In addition, LAMC Section 41.57 prohibits loud and raucous noise. A party hub is simply not allowed by the LAMC. Furthermore, Appellant's four unit building has four second story decks and four third story decks, which is twice as many as contemplated by Applicant's project, so that there is no fair argument of a significant noise impact, given the number of decks in Appellant's building and the noise that emanates from them.

With regard to comments regarding construction noise, Condition no. 25 MM-2 requires state of the art noise shielding features. This is in compliance with the LAMC and would reduce the impact to less than significant.

3. *There is No Fair Argument of a Shade and Shadow Impact*

Pursuant to Public Resources Code Section 21099, aesthetic impacts shall not be considered significant impacts for residential projects in a Transit Priority Area, such as the Project. As such, it is legally impossible for there to be a shade and shadow impact. Moreover, the Project does not achieve the 60-foot high screening threshold that would even trigger analysis of shading impacts. The Appellant's contentions are without any merit. Additionally, Appellant's building is a three-story building uphill and north of the Project which presented a similar impact to his uphill neighbors to the north.

4. *Common Access Driveway*

The driveway provides access to the four homes on the property and meets all LAMC requirements, including for fire department and utility truck access. The driveway is not a private street. The Appellant cites a General Variance 2001-2 relating to private streets, which would not be applicable. Even if it were applicable, it specifies driveway widths that would be acceptable without the Planning Department's approval. Here, this General Variance is not applicable because the Project received approval for the 16-foot wide driveway which satisfies City requirements. Additionally, the Appellant's arguments are quite hypocritical, as he decries potential loss of parking on Quintero that would likely result in an even wider driveway, but nevertheless advocates for a wider driveway. Please note that the width of Appellant's common access driveway is 12 feet. The Appellant appears to want it both ways.

With regard to the reservoir space in the driveway, the Project is required to have a 20-foot reservoir space between the property line and the security gate or to the satisfaction of the Department of Transportation. See Condition of approval 11a. The Project would have a 20-foot reservoir space or would need to receive Department of Transportation approval for a different reservoir space length.

5. *Traffic Impacts*

The Appellant claims that even though there is no Project related traffic impact that there is somehow potentially a cumulative traffic impact. For a significant cumulative traffic impact to occur, CEQA requires a project to have a cumulatively considerable contribution to a significant cumulative impact. The traffic report from the Appellant's consultant does not indicate in the slightest how the Project could even have a cumulatively considerable impact on cumulative traffic impacts in the area, especially considering the negligible net increase of three dwelling units to the neighborhood. With regard to the traffic consultant's list of "potential impacts," the Project would not cause any City CEQA thresholds to be exceeded. In specific, sight distances would be improved by the Project since it would widen the Project Site's existing driveway by several feet, thereby improving existing conditions; with regard to the existing 13-degree slope claimed by the Appellant's consultant, the Project's wider driveway compared to existing conditions would improve sight lines; with regard to the width of Quintero, condition 8 requires a 18-foot half width roadway and 12-foot sidewalk and parkway for a total 60-foot wide roadway. Quintero would have a 36-foot wide roadway, i.e., 20 percent wider than asserted by the Appellant's "expert." None of the claims of the Appellant or his "expert" create any fair argument of a significant traffic impact.

6. *Dodger Traffic Complications*

The Project is one street west of the dedicated Dodger Shuttle Bus lane, which is closed to regular traffic many evenings. However, traffic officers and police monitor these lanes under agreement with the Dodgers and it is entirely legal for any resident of Quintero to cross the DODGER BUS-ONLY lane, as residents presently do during 81 game days to access their homes. The tenants in Appellant's neighboring four unit building currently navigate this exact circumstance. With regard to parking impacts, Public Resources Code Section 21099 prohibits parking from being considered a significant impact for residential projects in Transit Priority Areas, such as for the Project.

7. *Infrastructure Monitoring*

The Appellant claims that the Project puts additional stress on public infrastructure. Even though the Project would increase the number of dwelling units by a net of three dwelling units, the Appellant argues that somehow this translates to an eight fold increase in infrastructure demands. The Appellant's hyperbole does not transmute itself into a fair argument that the Project would cause an eight-fold increase in energy and infrastructure demand. In fact, all of the infrastructure determinations have already been made to the contrary by all reviewing departments and agencies and there is no indication from any of the reviewing departments and agencies there is a

lack of ability to serve the Project with adequate infrastructure. AA-2015-777-PMLA-SL-1A/ENV-2015-0778-MND.

E. OTHER MISC. CLAIMS

1. Small Lot Guidelines Not Followed

The small lot guidelines are not a component of the CEQA analysis for the Project and are outside the scope of this hearing. Even if the guidelines were somehow a CEQA issue, which it is not, the guidelines are not mandatory, as cited in the Advisory Agency staff report to the EAPC.

2. *SLO Under Review*

The proposed revisions to the SLO are not a component of the CEQA analysis for this Project and are outside the scope of this hearing. The Project was begun and approved under current SLO guidelines and must be evaluated according to this standard. It would be a denial of due process and the application of an unfair standard to require approved projects to now be re-designed to conform to standards that were not in place at the time they were approved. The proposed revisions to the SLO have not been adopted and it is legally impossible to impose compliance with an ordinance that has neither been completed nor adopted.

3. *A Solar Report Has Been Done*

First, a solar report was prepared and submitted to the City. Second, because this is a Preliminary Parcel Map and not a tentative tract map, the Subdivision Map Act does not require a solar report. The Department of City Planning document entitled "Instructions for Filing Preliminary Parcel Maps" specifically does not require a solar report.[3] The Applicant's claims are erroneous on both levels.

4. *There Are No Issues With the Per Lot Density of the Project*

In Appellant's complaint filed in Superior Court, an objection was raised regarding the density of the Project. Appellant claims that the Project is too dense because a rule exists which limits the "total number of dwelling units on any one subdivided 'small lot' to 3 dwelling units." This rule is drawn from the SLO which states that "parcels of land may be subdivided into lots which may contain one, two, or three dwelling units, provided that the density of the subdivision complies with the minimum lot area per dwelling unit requirement established for each zone." LAMC §12.22(27). Appellant appears to clearly be misreading this provision—which allows for up to three

[3] http://cityplanning.lacity.org/Forms_Procedures%5C1801.pdf

dwelling units on each lot. This would allow a single family home, duplex or triplex to be built on each subdivided lot of a small lot subdivision. The Project only has a single dwelling unit per lot. This is obviously well under the three dwelling unit per lot maximum. Furthermore, the Project is in compliance with the minimum lot area per unit for the zone. Appellant is likely aware of this as Appellant's adjacent property has the same zoning and same density as the proposed Project.

5. *There Are No Height Issues With the Project*

In Appellant's complaint filed in Superior Court, an objection was raised regarding the height of the project. Appellant has claimed that the Project exceeds the 36-foot height limit imposed by the Hillside Ordinance. This objection has no basis whatsoever as the Project is clearly exempted from the Hillside Ordinance. The Hillside Ordinance states that compliance with the ordinance is preempted for any construction on a "street improved in such a manner that meets or exceeds the dimensions of a Hillside limited street." BOE Hillside Ordinance. BOE defines a Hillside limited street as a street with a 36-foot dedication and a 28-foot improvement. BOE Hillside Ordinance. Quintero Street is a Standard Local Street which has a 60-foot dedication and a 36-foot improvement. This substantially exceeds the dimensions of a Hillside limited street and therefore the Project is exempt from compliance with the Hillside Ordinance.

Conclusion

For all of the reasons set forth in this letter, the Planning and Land Use Management Committee should affirm the findings of the Area Planning Commission and reject Appellant's appeal.

Respectfully submitted,

LINER LLP

Ryan M. Leaderman

LEAP OF FAITH PARTNERS

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