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Channel Law Group, LLP

8200 Wilshire Blvd.
Suite 300
Beverly Hills, CA 90211

Phone: (310) 347-0050
Fax: (323) 723-3960
www.channellawgroup.com

JULIAN K. QUATTLEBAUM, III *
JAMIE T. HALL **
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Colorado
**ALSO Admitted in Texas

April 23, 2018

VIA ELECTRONIC MAIL AND PERSONAL DELIVERY

City Council
c/o Zina Chang
City of Los Angeles
200 N. Sprint Street
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

Re: Case No. VTT-74169-1A, CPC-2016-1954-CU-MCUP-DB-SPP-SPR, ENV-2016-1955-MND (Council File Nos. 18-0193, 18-0193-S1

Dear President Wesson and Honorable Council Members:

This firm represents Los Feliz Improvement Association ("LFIA"). LFIA is writing this letter to object to the proposed multi-use development located at 1869, 1868 North Western Avenue and 5440, 5446, 5448 West Franklin Avenue, Los Angeles, CA 90027 which is proposed by developer Damon Porter and Western & Franklin, LLC (hereinafter referred to as the "Project"). LFIA offers the following additional arguments in support of its appeals:

I. THE PROJECT DOES NOT QUALIFY AS A TRANSIT PRIORITY PROJECT

The Project is located in part on "developed open space" as defined in PRC Section 21155.1(a) which disqualifies the project from the SCS Exemption.

The project includes the merger of 4.5' of right-of-way along Franklin Avenue. This right-of-way meets the statutory definition of "developed open space" in PRC 21155.1(a):

> (A) For the purposes of this paragraph, "developed open space" means land that meets all of the following criteria:

> (i) Is publicly owned, or financed in whole or in part by public funds.
> (ii) Is generally open to, and available for use by, the public.
> (iii) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

The merged right-of-way along Franklin Avenue is currently public owned, is generally open to the public, and is lacing in structural development. The project merges this "developed open space" to the project site which means the project is "located on developed open space" in violation of PRC 21155.1(a)(7).

The analysis in the record is deficient because it ignores the statutory definition entirely. The City's narrative provides:

> The TPP site is not located on developed open space. The project is not located on developed open space. The project site is located in a highly urbanized area that includes a mixture of low-, mid-, and high-rise buildings containing a variety of uses including commercial, retail, and residential. The project site is currently developed with a gas station and smog center and two residential buildings. There is limited landscaping within and surrounding the project site. The property is not publicly owned or financed in whole or in part by public funds, nor is it predominantly lacking in structural development.

The MND discloses that project grading will require use of an excavator and a front-loader causing noise levels of 85 and 80 dBA at a distance of 50 feet, respectively.[1] The MND further discloses that several sensitive receptors are located in close proximity to the project site, including 5432 Franklin Avenue Residences (apartment building located 6 feet from the project site) and Russell Avenue Residencies (multifamily residences located 20 feet south of the project site). The MND correctly identifies that threshold of significance for ongoing grading activities exceeding 10 days is 5 dBA, and it correctly discloses that construction activities may result in noise levels exceeding the City's thresholds before accounting for mitigation measures:

- At 5432 Franklin Avenue Residences, ambient noise levels will increase by 12.5 dBA from 70.0 to 82.4.
- At Russell Avenue Residences, ambient noise levels increase by 14.7 dBA from 67.7 to 82.4.[2]

The MND asserts that one regulatory compliance measure (RCM-NO-1) and six mitigation measures (MM 12-1 to 12-6) reduce noise impacts on these two receptors to less than significant levels. After mitigation, construction noise increases ambient noise by less than 5 dBA (1.0 and 1.6 dBA above existing ambient noise levels at these sites.[3]

There is no substantial evidence that the regulatory compliance and mitigation measures will reduce impacts to less than 5 dBA at these sensitive noise receptors.

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[1] MND, page 3-149.
[2] MND, Table 3.12-2.
[3] MND, Table 3.12-3.

RCM-NO-1 (Noise Ordinance) – Compliance with the City of Los Angeles Noise Ordinance would not address noise generated by the excavator and front-loader because meaningful noise reductions would likely be technically infeasible.

MM-12-1 (Notification) – Notification to residents within the sensitive receptors would not reduce the noise levels experienced during grading.

MM-12-2 (Mufflers) – The mitigation measure requires a reduction of only 3 dBA which would result in impacts remaining above the level of significance.

MM-12-3 (Staging Areas) – Requiring equipment warm-up and staging further from sensitive uses is not relevant to the operation of that equipment in close proximity to sensitive receptors. This mitigation measure would not reduce the highest noise levels generated during grading.

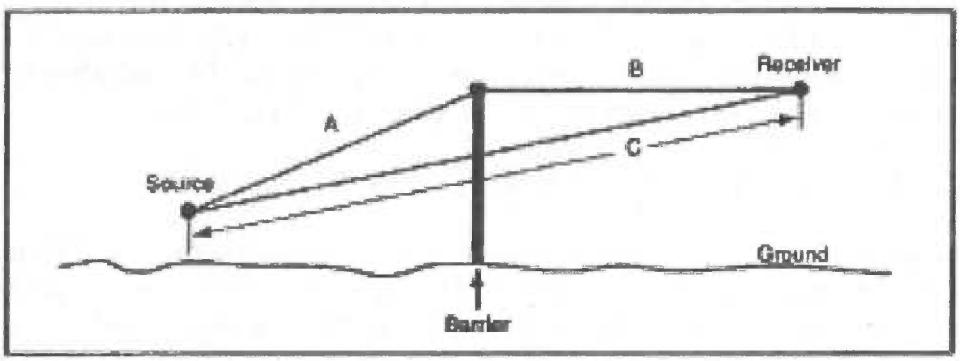
MM-12-4 (Noise Sheds for Generators) – This mitigation measure would not require noise sheds around excavators or front-loaders. As a result, the mitigation measure would not reduce the highest noise levels generated during grading.

MM-12-5 (Sound Barriers) – This mitigation measure requires that "Temporary sound barriers no less than 12 feet in height shall be erected to block line-of-sight noise travel from the Project site to 5432 Franklin Avenue Residences and Russell Avenue Residences." As applied to the project site, this mitigation measure is incoherent and contradictory. The adjacent apartment building at 5432 Franklin Avenue, for example, is four stories in height, and excavation is proposed approximately six feet from the structure. The mitigation measure as written requires only a 12-foot height which blocks line-of-sight noise travel *only for the first and second stories*. The third and fourth stories will remain within the line-of-sight noise travel for excavation and front-loading activities. This mitigation measure will provide limited, if any, noise reduction for residents of 5423 Franklin Avenue on the third or fourth stories.

As illustrated in the DKA Planning analysis, noise reduction from a barrier is properly applied only when the barrier is located in the line-of-site between the source and the receiver:

Sound Barrier Mitigation

Calculating A(sound barrier)



MM-12-6 (Hours of Operation) – Hours of operation are not relevant to the peak noise generated during grading.

There is not substantial evidence that the mitigation measures outlined in the MND would reduce construction noise impacts to less than significant levels. The regulatory compliance measures and mitigation measures do not sufficiently address excavation and front-loading activities, which are the principal noise generators exceeding the threshold of

significance. Further, the recommended noise wall would not shield residents of abutting sensitive uses except those at the first and perhaps second stories. The third and fourth stories would continue to have a direct line-of-sight to noise generators despite the noise wall. After assuming a 3 dBA noise reduction from mufflers, this sensitive use would still experience noise increases over existing ambient levels of 9.7 dBA and 13.7 dBA – far exceeding the 5 dBA threshold.

II. THE MITIGATED NEGATIVE DECLARATION PREPARED BY THE CITY IS INADEQUATE

The City relies on the exemption under Public Resources Code sections 21155 and 21155.1 as its justification for allowing this project to proceed without compliance with CEQA. However, as demonstrated in this letter and previous correspondence from us, this project does not qualify for this exemption.

A. The IS/MND improperly defers disclosure and mitigation measures.

Requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. Pub. Resources Code, § 21080, subd. (c)(2)). *See League for Protection of Oakland Architectural & Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Quall Botanical Ganlens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v. Cnty. of El Dorado* (1990) 225 Cal.App.3d 872, 884.

> The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA. California Code of Regulations, title 14, section 15070, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures "*before* the proposed negative declaration is released for public review . . . ." (Italics added.) Here, the use permit contemplates that project plans may be revised to incorporate needed mitigation measures after the final adoption of the negative declaration. This procedure, we repeat, is contrary to law.

Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 306–307

Mitigation Measure 4-1 inappropriately "kicks the can down the road" in that it allows the required Tree Report including the location, size, type, and condition of all existing trees in the adjacent public right-of-way to be prepared and submitted for review and approval by the Urban Forestry Division of the Bureau of Street Services, Department of Public Works at some unspecified point in the future. It also does not provide for specific mitigation measures in that the required measures are simply articulated as "[m]itigation measures ***such as*** replacement by a minimum of 24-inch box trees in the parkway and on the site, on a 1:1 basis . . . ." IS/MND, p. 3-36.

Mitigation measure 14-2 similarly fails to delineate specific mitigation measures, relying instead on an incomplete list of suggested measures, none of which can actually be required

unless they are approved by the LAPD at some future point. IS/MND, p. 1-16. Many of the measures in mitigation measure 14-3 also suffer from such vagueness and lack of specific enforceability. *Ibid.*

Another instance of noncompliance with CEQA's requirements regarding disclosure and mitigation can be seen in the failure to properly conduct the required consultation with Native American Tribes. The IS/MND notes that public agencies are required by Public Resources Code sections 21080.3.1 and 21080.3.2 to "consult with California Native American Tribes identified by the Native American Heritage Commission (NAHC) for the purpose of mitigating impacts tor tribal cultural resources," and states, "The Project would comply with this requirement." IS/MND, p. 3-43. However, it does not indicate that the City has done so yet. In fact, the IS/MND merely states, "The NAHC was contacted and a consultation tribal list was received on March 11, 2016." *Ibid.* Not only is there no evidence in the record that there are unlikely to be human remains buried under the Project site, the IS/MND specifically acknowledges that "Environmental impacts may result from project implementation due to discovery of unrecorded human remains." *Ibid.* One cannot simply rely on a regulatory compliance measure in an MND to claim that the potential will be kept to a level of less than significance when there has been no inquiry as to the scope of the potential impact.

The approach taken in the IS/MND with respect to hazards and hazardous materials suffers from similar deficiencies. RCM-HAZ-1 (Asbestos), RCM-HAZ-2 (Lead Paint) and RCM-HAZ-3 (Polychlorinated Biphenyl – Commercial and Industrial Buildings) (IS/MND, p. 1-21) all fail to disclose the extent of any potential environmental hazards. In addition, RCM-HAZ-3 relies on a future "survey of the project site to identify and assist with compliance with applicable state and federal rules and regulation governing PCB removal and disposal." *Ibid.* This is a classic deficiency of the type condemned by the cases cited above.
In addition, the IS/MND improperly defers both analysis and formulation of mitigation measures with respect to the risk of liquefaction. RCM-GEO-2 (Liquefaction) provides:

> Prior to the issuance of grading or building permits, the applicant shall submit a geotechnical report, prepared by a registered civil engineer or certified engineering geologist, to the Department of Building and Safety, for review and approval. The geotechnical report shall assess potential consequences of any liquefaction and soil strength loss, estimation of settlement, lateral movement or reduction in foundation soil-bearing capacity, and discuss mitigation measures that may include building design consideration.

IS/MND, p. 1-20.

The same improper deferral was also utilized by the City in RCM-HAZ-4 (Removal of Underground Storage Tanks):

> Underground Storage Tanks shall be decommissioned or removed as determined by the City Fire Department Underground Storage Tank Division. If any contamination is found, further remediation measures shall be developed with the assistance of the Los Angeles City Fire Department and other appropriate State agencies.

IS/MND, p. 1-21.

Yet another deferred formulation of a mitigation measure is found in mitigation measure 16-1, which requires the applicant to "submit a parking and driveway plan that incorporates design features that reduce accidents, to the Bureau of Engineering and the Department of Transportation for approval." IS/MND, p. 1-17. In the absence of such a plan at the time of the adoption of the MND, there is no evidence that this mitigation measure will reduce impacts to a level of insignificance. And the requirement, "Temporary pedestrian facilities should be adjacent to the project site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility," (*ibid.*) is so vague as to be meaningless.

Undecipherable vagueness is also apparent in one of the measures in RCM-AQ-1 (Demolition, Grading and Construction Activities) that reads, "Limit soil disturbance to the amounts analyzed in this air quality analysis."

IS/MND, p. 1-18.

B. <u>The Regulatory Compliance Measures cited in the IS/MND with respect to Cultural Resources are not sufficient to mitigate the potential impacts on such resources.</u>

Public Resources Code, § 21083.2 says, "If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources." The IS/MND concedes that there is "the potential for buried prehistoric and historic resources within the Project boundaries." Waiting until after such resources are discovered is not the same as the mitigation measures that would be required if the extent of such resources were known beforehand, as evidenced by the very measures cited by the IS/MND. For example, subdivision (b) of Public Resources Code, § 21083.2 lists the following suggested mitigation measures when it can be demonstrated that a project will cause damage to a unique archaeological resource:

> (1) Planning construction to avoid archaeological sites.
> (2) Deeding archaeological sites into permanent conservation easements.
> (3) Capping or covering archaeological sites with a layer of soil before building on the sites.
> (4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

In addition, although under RCM-CR-1 (Archaeological), "If archaeological resources are discovered during excavation, grading, or construction activities, work shall cease in the area of the find until a qualified archaeologist has evaluated the find in accordance with federal, State, and local guidelines . . . ," that regulatory compliance measure would permit construction activities to "continue unimpeded on other portions of the Project site." Given that it would be impossible to know, prior to the professional archeologist's evaluation, the extent of the archeological resources, allowing construction activities to continue on other portions of the Project site would not necessarily limit the impacts of the project on the archeological resources that may underlie the Project site.

This argument is even more compelling with respect to paleontological resources because there is no evidence in the record whatsoever that there are no such resources under the Project site. The only basis for concluding that there are no paleontological resources under the Project site is that the site has been previously disturbed. However, the IS/MND acknowledges that, as in the case of archeological resources, because of new excavation, "there is still the potential for buried paleontological resources within the Project Site." Thus, the regulatory compliance measures, which parallel those for archeological resources, would again permit construction activities to "continue unimpeded on other portions of the Project site." And the same potential for significant impacts to paleontological resources would exist.

III. THE CITY SHOULD NOT ISSUE THE OFF MENU INCENTIVE REQUESTED BY THE APPLICANT BASED ON THE EVIDENCE PRESENTED TO THE CITY

A. The Off-Menu Incentives Result in a Windfall to the Applicant Far Exceeding the Waivers Needed to Compensate for the Affordable Units

The essence of the density bonus statute, and the City's implementing ordinance, is to afford developers targeted development incentives sufficient to make a project financially viable including affordable units. "The idea of density bonus law is to *cover at least some of the financing gap* of affordable housing with regulatory incentives, rather than additional subsidy."[4] To this end, developers may be eligible for increased height and floor area, among other incentives.

This authority, however, is not a blanket authority to waive development standards for projects including affordable units. The finding mandated by PRC Section 65915(d)(1)(A) requires that the incentive results in "identifiable and actual cost reductions, consistent with subdivision (k), *to provide for affordable housing costs*" [emphasis added].

The language above implies a connection between each incentive and the viability of the project including affordable units. If an incentive merely explodes the cap rate far beyond a reasonable profit adjusted for risk, then the incentive, or a portion thereof, lacks a logical connection to provision of affordable housing and the incentive must be denied.

Prior to the project's hearing and approval at the February 8th meeting of the City Planning Commission, appellants submitted an economic analysis from a California Certified General Appraiser, Armen Makasjian of Armen Makasjian & Associates (the **"Makasjian Letter"**), questioning whether all the incentives were required for project feasibility. Based on the Makasjian Letter, the applicant's profit margins (16.24%-22.40%) were multiples of expected returns on comparable development project (typically 3-4%, occasionally 6-7%). The Makasjian Letter concludes that the high yields required for the project were based on investment criteria not disclosed in the applicant's pro forma justifying substantially above-market returns.

The analysis in Mr. Makasjian's letter, properly submitted to the City Planning Commission for its consideration, was entirely ignored in its determination and in the findings of

[4] Legislative Analysis of AB 2501 before the Senate Committee on Transportation and Housing, page 7, June 21, 2016. Emphasis added.

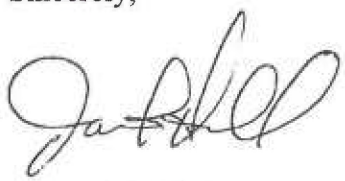
approval. Despite expert opinion concluding the incentives are granting a windfall to the developer, the findings do not even address this possibility. The administrative record, therefore, includes substantial and unrefuted evidence that at least a portion of the project's waivers are not required "to provide for affordable housing costs" – rather, they only inflate profits for the project beyond a reasonable return.

The essence of the density bonus statute, and the City's implementing ordinance, is to afford developers targeted development incentives sufficient to make a project financially viable including affordable units. "The idea of density bonus law is to *cover at least some of the financing gap* of affordable housing with regulatory incentives, rather than additional subsidy."[5] To this end, developers may be eligible for increased height and floor area, among other incentives.

IV. CONCLUSION

LFIA respectfully requests that its appeals be granted. I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

[5] Legislative Analysis of AB 2501 before the Senate Committee on Transportation and Housing, page 7, June 21, 2016. Emphasis added.

NOEL WEISS

13700 Marina Pointe Drive, #922
Marina del Rey, California 90292
Telephone: (310) 822-0239
Facsimile: (310) 822-7028
Email Address: noelweiss@ca.rr.com

April 24, 2018

MEMBERS OF THE LOS ANGELES CITY COUNCIL

Via Hand-Delivery

Los Angeles City Hall
200 North Spring Street
Los Angeles, California 90012

RE: ***ITEM NOS. 15 & 16 – AGENDA FOR TUESDAY, APRIL 24, 2018 COUNCIL FILE NO. 18-0193 (Case No. CPC-2016-1954-CU-MCUP-DB-SPP-SPR (Item No. 15) & COUNCIL FILE NO. 18-0193-S1 (Case No. VTT-74169-1 (Item No. 16)***

PROJECT SITE: 1860, 1868 North Western Avenue & 5440-5446 West Franklin Avenue and 5448 West Franklin Avenue

Dear Councilmembers:

I write on behalf of four tenants who currently reside at ~~5444~~ 5446 West Franklin Avenue. These tenants have rights to relocation monies which are being completely ignored by the City. It is not right; and it is a condition which this Council can and should rectify as part of the Council's determination as to whether to grant the applicant the land use entitlements it seeks in this case (a Vested Tract Map; a Density Bonus; and another "stacked" density bonus on top of that under the auspices and rubric of approving a conditional use permit).

These tenants were promised in writing that their rights would be respected and honored. That promise was contained in a letter dated July 20, 2017, a copy of which is attached. That promise has not been honored.

The portion of the project which fronts West Franklin Avenue involves one single family home (5448 West Franklin Avenue) and one duplex (5446-5440 West Franklin Avenue) (See attached Zimas Maps identifying those properties). The tenants reside in the 5446 West Franklin Avenue side of the duplex.

The tenants wish that Councilman O'Farrell would insist that they not be "rolled" in this process; and that all relocation monies to which they are entitled be paid as a condition of approving of the entitlements. Councilman O'Farrell has been silent and unsupportive, even though he could have insisted as a condition of approval of the Vested Tentative Tract Map that these tenants be paid their full relocation monies up front. The property owner is unwilling to do so; as is the project proponent. There is precedent for the City advancing the costs of relocation, as evidenced by the current motion of Councilmember Harris-Dawson (Council File No. 18-0239) to direct the City to advance the relocation monies from the Affordable Housing Trust Fund No. 44G. (Hearing date: Tomorrow in Committee).

The request is that any approval of these entitlements be made expressly conditional on the tenants receipt of the relocation monies to which they are entitled forthwith, with proof of payment being presented as a condition precedent to the issuance of any administrative permits.

The tenants further take exception to the procedure and protocol utilized in the approval process. It has been deficient in that contrary to the mandate of LAMC §17.06(A), there has been insufficient notice given to occupants of the project's boundaries. That section requires notice of all hearings be given to all occupants residing within 500' of the proposed subdivision. As is evidenced by the mailing list included in the file, this was not done. For example, immediately next door to 5440 West Franklin, sits a 33 unit apartment house (5432 West Franklin). The mailing list includes just one unit from that building (a resident in Apt. No. 303).

Moreover, the residents of the 5446 West Franklin half of the "5446-5440 West Franklin Avenue Duplex" were not given any notice whatsoever. Because insufficient notice was given to the surrounding residents and to the occupants of the 5446 West Franklin Avenue side of the duplex, the entitlement grant should be denied and the matter re-noticed in order to comply with the mandated notice provisions of LAMC §17.06(A).

Substantively, the City Council should not grant the entitlements because the project, as proposed, seeks to "stack" added density on top of the density bonus already granted (call it "density-squared") by perverting, misusing, and misapplying the "conditional use" process and protocol which *de facto* generates the functional equivalent of a "spot zone"; a result which is inconsistent with basic planning principles, state law, and the City Charter.

What this developer seeks is an additional 12 market rate units over and above the 14 market rate units which it sought and was granted under the "core" density bonus entitlement. The developer wants to go from 20 extra units (from 55 base density units) to 32 extra units, of which 11 would be set aside for very low income occupants. These are very expensive "affordable" units; and there has been no showing that the provision of these 4 added very low income units (over and above the 7 very low income units to be set aside under the "core" density bonus grant) would not or could not be made within the parameters of the initial "core" density bonus grant of 75 (total) units.

The fact that these extra four very expensive "affordable" (core) density bonus units are authorized by a "conditional use permit" is very problematic. It represents a misuse and perversion of the conditional use process because it takes what is a "use" limitation (typical under a conditional use permit) and converts it to a "development standard" (the density and intensity of the proposed use). Development standards are incorporated into the City's zoning laws; they are not and should not be made part of or otherwise incorporated into the "conditional use permit" process or protocol.

To do so would undermine the core planning principles set out in the basic cases such as *Orinda vs. Board of Supervisors of Contra Costa County* (1986) 182 Cal. App. 3d 1145; the core principle being that if one wishes to "vary" from the zoning laws (and development standards incorporated therein), one needs to procure a "variance". That is because a conditional use permit assumes the use is consistent with the use "permitted" in the zone, but must be further "conditioned" for one or more reasons. When development standards such as density begin to be applied under conditional use permit criteria instead of under zoning criteria, the entire process breaks down; and we end up with what amounts to "spot zoning" on a project-by-project basis. This undermines the whole concept of "planning".

The City needs to reevaluate this project properly and abandon the use of the "conditional use permit" process as a substitute for what amounts to allowing the developer a "variance" from the development standards incorporated into the zoning laws of the City.

It the City Council cannot see its way clear to do this, then it is appropriate to mount a court challenge to the City Council's action in this case of "stacking" density on top of density via the use of the "conditional use permit" process.

Thank you for your consideration of the points and issues raised in this letter.

Respectfully submitted,

NOEL WEISS

NW: nww
0424-L1. CC

Enclosures

DYNAMIC
DEVELOP · DESIGN · BUILD

DYNAMIC DEVELOPMENT COMPANY, LLC

Date: July 20, 2017

From: E. Kelly Harrison, Director of Development

To: Subtenants of 5440, 5442 and 5448 Franklin Avenue

Re: Project Update & SummonsTo Alberto Rivera

Dear Subtenants:

I am pleased to share with you that Dynamic is back under contract and our escrow to purchase the above reference property continues. We have been granted the additional time we think we need to complete the entitlements for our project for which many of you have been supportive.

As such, we are now in a position to start talking about individual relocation settlement agreements with each of you. We will be asking Shober Relocation Services to reengage with each of you, so as to share important relocation information with you. We will work to make this process an easy and positive experience for you each.

In the interim, the landlord, Adly Abedelmalak, has summoned Alberto Rivera for past due rent. We have asked and confirmed with Mr. Abedelmalak that no subtenants will be removed from the premises prior to their voluntary relocation.

We are excited the project is back up and moving forward and we look forward to meeting with you again in the very near future. Until then, if you have any issues, please direct them to Austin Cyr at austincyr427@gmail.com or (480) 250-4927.

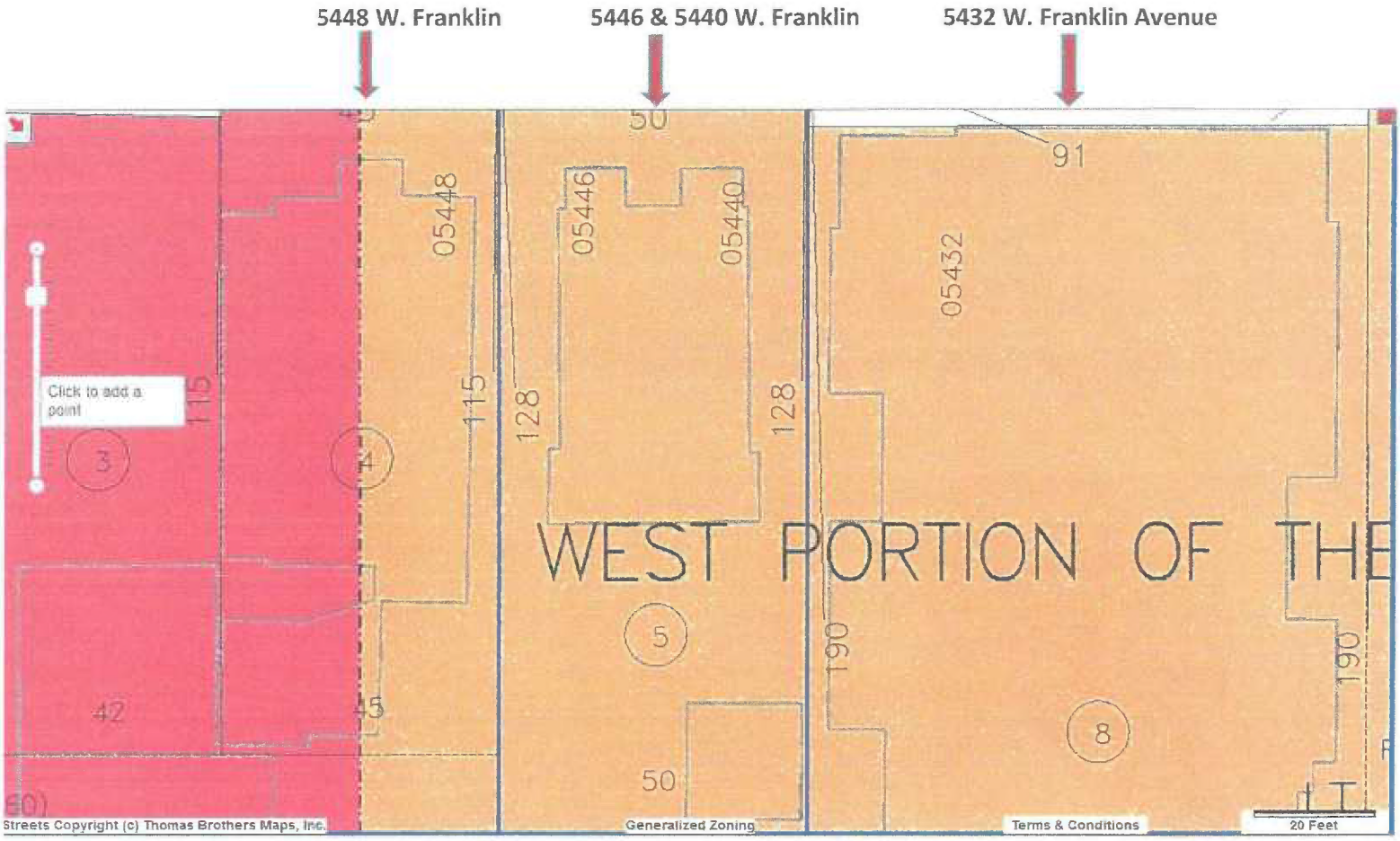
Thank you

E. Kelly Harrison

Cc: Adly Abedelmalak

Telephone:
[illegible]
Fax: [illegible]
[illegible]

ZIMAS GENERALIZED ZONING MAP – 5448-5446-5440 West Franklin



ZIMAS GENERALIZED ZONING MAP – 5448-5446-5440 West Franklin

Re: Case no. VTT-74169-1A, CPC-2016-1954-CU-MCUP-DB-SPP-SPR,
ENV-2016-1955-MND (Council File Nos. 18-0193, 18-0193-S1)

April 24, 2018

Jamie T. Hall

Channel Law Group. LLP

8200 Wilshire Blvd., Suite 300

Beverly Hills, CA 90211

Re: Franklin & Western Project

Dear Mr. Hall:

As per your request, we have reviewed the construction noise impact analysis contained in the Initial Study/Mitigated Negative Declaration for the above project. Given the extremely small source/receiver separations to the abutting noise-sensitive receivers and the various vertical elements that preclude use of effective mitigation, construction noise impacts cannot be reduced to less than significant levels.

The IS/MND contends that the inability to comply with the City of Los Angeles Noise Ordinance is not a CEQA flaw because the ordinance does not apply in cases of technical infeasibility. However, as noted in *Keep Our Mountains Quiet*. Etc., even if a project could comply with an established ordinance limit, that is not adequate evidence of a less than significant noise impact. The fact that the proposed project is not in technical violation of the City's Noise Ordinance is not a justifiable basis for listing it as a regulatory compliance measure since it does not reduce the severity of any potential impact.

It IS/MND makes a number of unsubstantiated assumptions in support of its conclusions. It assumes that upper story steelwork would make no clearly audible noise by ignoring pounding on girders with sledgehammers to align them for riveting and welding. Similarly, air compressors and generators may be used to install mechanical equipment or to lay floors or ceilings once the steel framework is in place. Elevated sources and elevated receivers will have a direct line of sight until the project exterior is completed. The statement that excavators and loaders are louder for an hourly average than steelwork ignores the fact that steel driving noise may be highly intrusive and not shielded by any proposed barriers.

The IS/MND relies primarily on the installation of a 12-foot high barrier along the adjacent property line of the nearest noise-sensitive residential uses. This analysis suffers from a variety of technical defects as follows:

1. Noise associated with the installation of the proposed barriers and support structures as close a six feet from the nearest residences is not discussed. Similarly, vibration from drilling of barrier supports as close as six feet from any residence is also not discussed.

2. Second story receivers will experience a much reduced noise reduction from heavy equipment operations.

3. Higher elevation existing residences will experience zero noise reduction except from a few extra feet of travel distance.

4. The IS/MND fails to indicate dimensions of source height, receiver height and source/receiver setback distance from the barrier. The provided sketch seems to indicate that the noise source is near ground level while the equipment exhaust stack is near ten feet above ground level.

5. The path length difference calculation seems to suggest that no heavy equipment would operate closer than ten feet of any residential property line. That assumptions needs to be developed into a mitigation measure that outlines monitoring and enforcement procedures.

6. The reference noise level in Table 3-12-2 seems suspect for equipment proposed to operate within a few feet of the nearest neighbor. Assuming that an 85 dB excavator (at 50 feet) operating at a 40% works within 16 feet of an adjacent residence, the presumed baseline of 82.2 dB seems extremely low. The fact that the 20-foot separation along Russell Avenue produces the same 82.2 dB reference as the 6-foot separation is doubly suspicious./

It is our professional opinion that calculated noise reductions are grossly overstated and unsupported by data included in the IS/MND. Surrounding elevated receivers would not benefit from noise reduction measures Correction of multiple technical deficiencies in the calculation assumptions would verify that a MND would not be the appropriate form of CEQA clearance. Please call me with any questions.

Hans Giroux, Senior Analyst

Giroux & Associates