

## Communication from Public

**Name:** Anne Mitchell

**Date Submitted:** 04/28/2020 08:15 AM

**Council File No:** 20-0087

**Comments for Public Posting:** I am writing to oppose the project at 738 S. Normandie Avenue. I am a continuing visitor to this area. This oversized, high density, unaffordable development would destroy the historic character of the street. It would take away existing parking and destroy the neighborhood environment with increased carbon emissions, increased traffic and decreased light to surrounding residences. The current neighborhood offers safe walkability to working class laborers and low income residences. Additionally, the historical character of the neighborhood supports filming and artistic economic endeavors that provide jobs and economic support for neighboring businesses. Normandie Street of the “Normandie-Mariposa Historical Apartment District...displays a uniformity of mass...with designs...stylistically from Art Deco to Classical Revival...of similar height, width and density”(1994 Historical Assessment Report on the District) The proposal will definitely cause substantial adverse change in the significance of a historical resource, against CEQA Guidelines (15300.2(b) & (f)). Beside the impact on the historic resource damage for ongoing business activity, as noted above, the “Proposed entitlements are sought with Transit Oriented Communities affordable housing incentives, for which the project would include five units priced and reserved for extremely low-income households. This would allow for a 70 percent increase in allowable density, as well as reductions to open space and setback requirements. Additionally, the project would be permitted to provide 25 parking spaces...”, the project only provides 5 affordable units. The impact would lead to displacement of a stable, family oriented community. This, when local and state policy is designed to increase affordable living spaces. Ms. ANNE MITCHELL 575 SOQUEL AVENUE SANTA CRUZ, CA 95062

## Communication from Public

**Name:** Carolyn Zanelli  
**Date Submitted:** 04/28/2020 08:24 AM  
**Council File No:** 20-0087

**Comments for Public Posting:** Dear Councilmembers, CD10 Councilmember Herb Wesson, and Deputy Elizabeth Carlin, I am writing you because your constituents in CD10, Save Our Normandie Mariposa Historic District, need your help. We have been working with Jamison Properties, with your help, to improve the project at 738 S. Normandie Ave. Our goal is to preserve the Normandie-Mariposa Historic Apartment District. which is a California Historic District protected by CEQA. We have another meeting with Jamison this Friday. While the project's façade has slightly improved, they have not made any significant improvements to meet the CEQA guidelines. These are the architectural features needed for the Normandie-Mariposa Historic District, none of which have been met. Sixth and seventh-stories and the elevator shaft should be set well back from the plane of the front façade Left–right symmetry with a prominent central entrance Front façade flush with the historic streetwall No side yards at the front façade I fear that without your support of our appeal of the CEQA exemption, Jamison will not make the necessary changes to the project to comply with the CEQA guidelines. Attached to this email are alternative findings we hope you would adopt in support of our appeal of the CEQA exemption. Currently the City Council is to vote on the appeal on Tuesday April 22nd. The council file number is 20-0087. Please note, we are not asking for a smaller building, or an increase of parking. There is an incredible passion for this to be a great example of an Historic District infill project. I think we all want 738 S Normandie Ave. to be a building that would be both part of the neighborhood, and attract people to it. Thank you for your time, support, and leadership. I look forward to hearing from you. Sincerely, Carolyn Zanelli

**SUBSTITUTE FINDINGS Council File 20-0087**  
**Case No. ENV-2019-930-CE-1A**  
**Case: DIR-2019-929-TOC**  
**738 South Normandie Avenue**

**In support of appeal by Save our Normandie Mariposa Historic District**

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**SUBSTITUTE FINDING RE CLASS 32 CEQA EXEMPTION:**

## ENVIRONMENTAL FINDINGS

The Department of City Planning determined that the proposed project is exempt from CEQA pursuant to State CEQA Statute and Guidelines, Article 19, Section 15332 (Class 32 Urban In-Fill Development), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to State CEQA Statute and Guidelines, Section 15300.2 applies.

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

- 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;
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- c) The project site has no value as habitat for endangered, rare or threatened species;
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- e) The site can be adequately served by all required utilities and public services.

There are five (5) exceptions which the City is required to consider before finding a project exempt under Class 15332: (a) Cumulative Impacts; (b) Significant Effect; (c) Scenic Highways; (d) Hazardous Waste Sites; and (e) Historical Resources.

See *Justification for Categorical Exemption Case No. ENV-2019-930-CE* in the case file for the narrative demonstrating that the proposed project meets the five criteria under Class 32 and that exceptions do not apply.

**SUBSTITUTE FINDINGS OF FACT (CEQA), Finding (a):**

**THE CLASS 32 EXEMPTION FROM CEQA DOES NOT APPLY BECAUSE THE PROJECT IS INCONSISTENT WITH THE APPLICABLE GENERAL PLAN DESIGNATION AND APPLICABLE GENERAL PLAN POLICIES.**

The project involves the construction of a new building within the Normandie Mariposa Apartment Historic District. The Normandie Mariposa Apartment Historic District was formally determined eligible for listing in the National Register of Historic Places in 1994, and thus was subsequently automatically listed in the California Register of Historical Resources.

The adopted Wilshire Community Plan, General Plan Framework Element, Chapter 3 (Land Use) and General Plan Conservation Element each contain detailed provisions setting forth goals, objectives and policies designed to protect historic resources, including designated and eligible historic districts such as this one, from incompatible development.

Because the new building does not meet the Secretary of the Interior's Standards for Rehabilitation for new construction related to a historic resource, the project is incompatible with the adopted Wilshire Community Plan, the City's General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element. Therefore, the project is not entitled to a Categorical Exemption and full review must be performed under CEQA.

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

- 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;
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- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- e) The site can be adequately served by all required utilities and public services.

The Wilshire Community Plan includes the following Goals, Objectives and Policies relevant to the protection of designated and eligible historic districts:

**WILSHIRE COMMUNITY PLAN**

**GOAL 1**

**PROVIDE A SAFE, SECURE, AND HIGH QUALITY RESIDENTIAL ENVIRONMENT FOR ALL ECONOMIC, AGE, AND ETHNIC SEGMENTS OF THE WILSHIRE COMMUNITY.**

**Objective 1-3**

Preserve and enhance the varied and distinct residential character and integrity of existing residential neighborhoods.

**Policies**

**1-3.1**

Promote architectural compatibility and landscaping for new Multiple Family residential development to protect the character and scale of existing residential neighborhoods.

**1-3.2**

Support historic preservation goals in neighborhoods of architectural merit and/or historic significance.

**GOAL 17**

**PRESERVE AND RESTORE CULTURAL RESOURCES, NEIGHBORHOODS AND LANDMARKS WHICH HAVE HISTORICAL AND/OR CULTURAL SIGNIFICANCE.**

**Objective 17-1**

Ensure that the Wilshire Community’s historically significant resources are protected, preserved, and/or enhanced.

**Policies**

**17-1.1**

Encourage the preservation, maintenance, enhancement and reuse of existing historic buildings and the restoration of original facades.

**Program:** Adhere to the City’s Historic Properties Preservation Ordinances and City’s Cultural Heritage Commission requirements for preservation and implementation of design standards.

**Objective 17-2**

Preserve and enhance neighborhoods having a distinctive and significant historical character.

**Objective 17-3**

Encourage private owners of historic resources to maintain and enhance their properties in a manner that will preserve the integrity of such resources.

**Policies**

**17-3.1**

Assist private owners of historic resources to maintain and enhance their properties in a manner that will preserve the integrity of such resources.

**Program:** Support the creation and implementation of Hancock Park, Windsor Square, and other areas of architectural or historical significance as historic districts under the Planning Department’s HPOZ program.

**Program:** Continue to adhere to the City’s historic properties preservation ordinances and Cultural Heritage Commission requirements for preservation and implementation of design standards.

The General Plan Framework Element includes the following Goals and Objectives relevant to the protection of designated historic districts:

**GENERAL PLAN FRAMEWORK ELEMENT**

Chapter 3 - Land Use  
GOALS, OBJECTIVES AND POLICIES

*ISSUE TWO: USES, DENSITY, AND CHARACTER*

**HISTORIC DISTRICTS**

*Overview*

It is the intent of the General Plan Framework Element to preserve the historic and architectural heritage of Los Angeles by providing incentives and assistance to protect these resources in areas of the City in which they are concentrated. These districts will apply the range of policies and programs that have been implemented by the City in its Historic Preservation Overlay Zones to additional areas within Los Angeles.

**GOAL 3M**

A City where significant historic and architectural districts are valued.

Objective 3.17

Maintain significant historic and architectural districts while allowing for the development of economically viable uses.

The General Plan Conservation Element includes the following Objectives and Policies relevant to the protection of designated historic districts:

**GENERAL PLAN CONSERVATION ELEMENT Adopted September 2001**

**SECTION 5: CULTURAL AND HISTORICAL**

To identify, protect and preserve historic sites and structures for the enrichment of future generations various city, state and federal procedures have been promulgated. The most significant for Los Angeles are described in the following. The general plan Historic Preservation and Cultural Resources Element will address historic and cultural protection issues in greater detail.

**Conservation and protection.** Five types of historic protection designations apply in the city: (1) Historic-Cultural Monument designation by the city's Cultural Heritage Commission and approved by the City Council; (2) placement on the California Register of Historical Resources or (3) the National Register of Historic Places (1980 National Historic Preservation Act); (4) designation by the Community Redevelopment Agency (CRA) as being of cultural or historical significance within a designated redevelopment area; and (5) classification by the City Council (recommended by the planning commission) as an Historic Preservation Overlay Zone. Designations help protect structures and support rehabilitation fund requests.

The California Environmental Quality Act (CEQA) also protects significant cultural and historic resources. CEQA was revised in 1998 to redefine "historic resource" to include resources that are presumed to be significant, unless the preponderance of evidence is to the contrary. A property no longer must be designated officially as a landmark or of historic importance to be considered under CEQA review. The lead agency for permit processing may deem properties not formally listed and not included in historic surveys as "historically significant," if they meet criteria for listing in the California Register.

Under the city's CEQA guidelines, an environmental assessment must be prepared for any proposed demolition, destruction or significant modification of an Historic-Cultural Monument or resource listed on the national or state registers, or on the CRA list, or cited as a proposed historical resource by a community plan or historic preservation overlay zone survey, or which are over 50 years old and are substantially intact examples of an architectural style important in Los Angeles or are associated with an architect or other person of importance in Los Angeles history. Under the 1998 amendment, buildings less than 50 years old may also be considered.

Additional protections apply to structures or sites that are listed on the state or national registers. The National Park Service administers the National Register of Historic Places and the California Office of Historic Preservation administers the state register. Criteria applied to determine qualification for the registers includes context (importance to an historic theme, place, time), integrity (location, design, setting, workmanship, materials) and, if a recent resource, exceptional importance.

The Community Redevelopment Agency maintains a list of buildings and structures of historical significance for purposes of project planning and evaluating neighborhood improvement proposals.

**Conclusion.** The city has primary responsibility for identifying and protecting its cultural and historical heritage.

**Continuing issues:** loss of significant, important or contributory cultural and historical sites and structures to neglect, site redevelopment or damage.

**Cultural and historical objective, policy and programs:**



**Objective:** protect important cultural and historical sites and resources for historical, cultural, research, and community educational purposes.

**Policy:** continue to protect historic and cultural sites and/or resources potentially affected by proposed land development, demolition or property modification activities.

**Program 1:** development permit processing, monitoring, enforcement and periodic revision of regulations and procedures.

**Responsibility:** departments of \*Building and Safety, \*City Planning, \*Cultural Affairs and \*Community Redevelopment Agency and/or the \*lead agency responsible for project implementation.

In light of the above goals, objectives and policies, in order to be granted a Class 32 exemption under CEQA, the proposed project must, at a minimum, meet the Secretary of the Interior's Standards for Rehabilitation (the "Standards"), and specifically Standard #9 which addresses new construction related to a historical resource. The proposed new construction as designed does not meet Standard #9, and accordingly it violates the goals, objectives and policies of the Wilshire Community Plan, the General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element.

A project may be considered to meet Standard #9 if the "new work (is) differentiated from the old and... compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment".

While the project mimics the materials of 1920s buildings, it ignores issues of scale, design, setbacks, streetwall, and sheer size that present the greatest potential to adversely impact the district.

The proposed project consists of a seven-story 80-foot tall apartment building, 89-feet tall to the top of its elevator shaft. Most buildings on the 800 block of South Normandie are four to five stories tall, or approximately 50 to 60 feet tall. To maintain the streetscape of the Historic District, the sixth and seventh-stories of the proposed project would need to be set well back from the plane of the front façade.

The consistent size, height, and massing of the historic apartment buildings are key to the cohesiveness of the block.

In addition, all of the façades of the Historic District buildings feature left-right symmetry with a prominent central entrance. The proposed project façade, in contrast, is highly asymmetrical with a diminutive entry.

The combined façades (streetwall) of the Historic District are built to the property line facing the street; this streetwall defines the district. The proposed project façade is set back 9.6" from the property line, and highly articulated, with a substantial portion of the façade set back over ten feet from the property line.

The buildings of the Historic District feature no side yard setbacks. The proposed project features 7-foot side yards at the north and south of the building.

In conclusion, the massing, scale, and size of the building, particularly its bulk at the street, present an impact to the historic streetscape and the underlying historic district. Changing the details of the façade without changing its size and scale will be insufficient to avoid such impacts.

Because it does not meet Standard #9, the project is inconsistent with the goals, objectives and policies of the Wilshire Community Plan, the General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element.

**SUBSTITUTE FINDINGS OF FACT (CEQA), Finding (b):**

**THE CLASS 32 EXEMPTION FROM CEQA DOES NOT APPLY BECAUSE THE PROJECT MAY CAUSE A SUBSTANTIAL ADVERSE CHANGE IN THE SIGNIFICANCE OF A HISTORICAL RESOURCE.**

Under CEQA Guidelines section 15300.2(f), "A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource." The Class 32 exemption does not apply to the project because the massing, scale, and size of the building, and particularly its bulk at the street, may

cause a substantial adverse change in the historic streetscape and thus to the significance of a historical resource, i.e., the underlying Normandie Mariposa Apartment Historic District, which was formally determined eligible for listing in the National Register of Historic Places in 1994, and subsequently listed in the California Register of Historical Resources.

## Communication from Public

**Name:** Spencer Jones

**Date Submitted:** 04/28/2020 11:38 AM

**Council File No:** 20-0087

**Comments for Public Posting:** Hello Council member Herb Wesson and Fellow Council Members, Please consider the proposed development by Jamison Properties at 738 South Normandie Avenue as jeopardizing the fabric of the historic street. All the buildings represent a time capsule of an era and the new design does not pay attention to this at all. The proposed design has faux brick facade and it stands out like a sore thumb. This street in particular has not been developed on in almost 100 years and therefore should be taken into account when designing the new building. The design is entirely out of character of the existing block. I am asking that CD10 Council Member Herb Wesson and the rest of the city council allow the CEQA appeal for 738 South Normandie Avenue to help preserve the historic fabric of the block ensuring that the new design respects the existing historic structures. PLEASE do the right hing and preserve Koreatown's Little New York Street!!!!

## Communication from Public

**Name:**

**Date Submitted:** 04/28/2020 12:00 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Council Member Herb Wesson Jr. and Fellow City Council Members: Please click on the link below of an episode from a local TV show, The Crazy Preservationists, highlighting the beauty, mystique, and history of the 700 block of South Normandie Ave. This footage makes our argument and CEQA appeal of CF# 20-0087 that much more obvious and clear. <https://www.riplosangeles.com/2020/03/06/save-normandie/> Please stand and vote tomorrow, April 29th on the right side and protect our Los Angeles' history. Demand that Jamison Properties uphold CEQA, build a project that is supportive of the law, and protects the history of Normandie. Sincerely, Carolyn Zanelli

## Communication from Public

**Name:** ANNE MITCHELL  
**Date Submitted:** 04/28/2020 03:03 PM  
**Council File No:** 20-0087

**Comments for Public Posting:** I urge each LA City Council member, not to deny the appeal of the Class 32 exemption from CEQA for the proposed 7 story development at 738 S Normandie Avenue, in the Normandie Mariposa Apartment Historic District. The project is not entitled to a Categorical Exemption, and full review must be performed under CEQA. Under CEQA Guidelines section 15300.2 (f), “ A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource” The Historic District was admitted to the CA National Register of Historic Places in 1994, and thus listed in the CA Register of Historical Resources. The proposed Jamison building with the CEQA exemptions does not meet the Secretary of the Interior’s Standards for Rehabilitation for new construction related to a historic resource. It is also incompatible with the Wilshire Community Plan. The size and scale of the building is much more than would be allowed without the proposed CEQA/TOC exemptions allowing a 70% increase in density for 5 affordable units out of 50 units, plus a 25 space underground garage, and reduced setbacks. The proposed project on an empty lot in the middle of the block jeopardizes the historical significance of the entire street. It is entirely out of character with the existing block, which has not had any new construction in nine decades. The inclusion of 5 “affordable” out of 50 units to increase the size and scale of the building will undermine the socio-economic sustainability of the area that provides housing and business opportunities to working class families with average annual earnings of \$30,000. Truly affordable housing-that will be decimated by the construction above and below ground. This appeal to the CEQA exemption without a full review was made necessary by the denial of the appeal by PLUM. The city’s Planning & Land Use Management Committee has been smirched by the LA City Council member who was involved in a bribery scandal. After his resignation in December 2018, Jamison Services, Inc. submitted the plans with the proposed Categorical CEQA exemption in February 2019. The council member surrendered to FBI March 9, 2020. The L A City council must allow a full review of the appeal of the CEQA exemptions for the Jamison Services, Inc. project at 738 S. Normandie in the Normandie Mariposa Apartment Historic District. Vote for the

review, do not deny.

## Communication from Public

**Name:**

**Date Submitted:** 04/28/2020 03:37 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely Margaret Oleary

## Communication from Public

**Name:** Daniel Rosenberg

**Date Submitted:** 04/28/2020 12:26 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely, Daniel Rosenberg, zip code 90005



## Communication from Public

**Name:** Donald R Spivack

**Date Submitted:** 04/28/2020 12:32 PM

**Council File No:** 20-0087

**Comments for Public Posting:** CF# 20-0087 Dear City Council and CD10 Council Member Herb Wesson, I have been following the proposed development by Jamison Properties at 738 South Normandie Ave. and have participated in several telephonic meetings with the developer's representatives, historic preservation experts and community representatives. The current design for the proposed project risks adversely affecting the historic nature and significance of significant portions of South Normandie Avenue, specifically the 700 block, which sits in the Normandie-Mariposa Historic Apartment District. The structures in this block were built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. However, the existing apartment buildings on the block form a coherent and consistent residential community and represent a unique era and architectural styles worthy of recognition and preservation. Indeed, that coherence and consistency was the basis for the Historic District designation. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. The current design for the proposed building at 738 South Normandie Avenue, however, is entirely out of character with the existing block, which has not had any new construction in nine decades. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, Avenue to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. I am also asking that Council Member Wesson and others facilitate working with the developer to assure a project that is economically viable for the developer while also in keeping with the architectural and urban design character of the Historic District. Please act to help preserve Koreatown's Little New York Street while facilitating growth that advances the goals of the Wilshire Community Plan and the surrounding community. Sincerely Donald R Spivack, AICP, FRSA, 600 W 9th Street Apt 1107, Los Angeles, CA 90015

## Communication from Public

**Name:** Kim Cooper

**Date Submitted:** 04/28/2020 12:53 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The 700 block of South Normandie Avenue is a unique time capsule of architecturally distinguished multi-family RSO apartment buildings from the 1920s and 1930s. Because of its preservation, charm and architectural integrity, the block is frequently used for location filming, providing work for our creative community. The proposed development by Jamison Properties on the surface parking lot at 738 South Normandie is an unsuitable addition to the block. It is too contemporary in appearance, is asymmetrical when every other building on the block is balanced, has gaps along the side that break the rhythm of the street, and its enormous height is too visible from the sidewalk. Going back to the drawing board to produce a more sensitive design, incorporating setbacks to hide the height and reflecting the classical tradition that inspired all of the other buildings on this block, would allow the developer to build their project and enhance, rather than wreck, this Los Angeles landmark block. Please honor the efforts of the community members who have devoted so much of their time, without pay, to “Save Normandie Avenue.” Recognize their CEQA appeal and hold Jamison Properties accountable to be a good neighbor and build something that is beautiful, suitable and profitable, instead of just the latter. Sincerely Kim Cooper, Los Angeles historian, 90032

## Communication from Public

**Name:** Scott Craig

**Date Submitted:** 04/28/2020 01:01 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely Scott Craig 90026

## Communication from Public

**Name:** Steven Luftman - Save Our Normandie Mariposa Historic District  
**Date Submitted:** 04/28/2020 03:57 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** Dear Councilmember Wesson, On behalf of Save Our Normandie Mariposa Historic District I urge you to support Caroyln Zanelli's appeal of 738 South Normandie Avenue project's California Environmental Quality Act ("CEQA") exemption and adopt the attached substitute findings. Save Our Normandie Mariposa Historic District has been working with Jamison Properties to develop a building that will fit into the Normandie-Mariposa Historic District, but they have not made any significant changes to meet the CEQA guidelines. These are the architectural features needed for the Normandie-Mariposa Historic District, none of which have been met. Sixth- and seventh-stories and the elevator shaft should be set well back from the plane of the front façade Left-right symmetry with a prominent central entrance Front façade flush with the historic streetwall No side yards at the front façade Since these features have not been addressed, please support the appeal. Thank you. Sincerely, Steven Luftman  
310-503-9958 CC: Elizabeth Carlin Caroyln Zanelli  
CityClerk@lacity.org

**SUBSTITUTE FINDINGS Council File 20-0087**  
**Case No. ENV-2019-930-CE-1A**  
**Case: DIR-2019-929-TOC**  
**738 South Normandie Avenue**

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## ENVIRONMENTAL FINDINGS

The Department of City Planning determined that the proposed project is exempt from CEQA pursuant to State CEQA Statute and Guidelines, Article 19, Section 15332 (Class 32 Urban In-Fill Development), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to State CEQA Statute and Guidelines, Section 15300.2 applies.

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

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- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- e) The site can be adequately served by all required utilities and public services.

There are five (5) exceptions which the City is required to consider before finding a project exempt under Class 15332: (a) Cumulative Impacts; (b) Significant Effect; (c) Scenic Highways; (d) Hazardous Waste Sites; and (e) Historical Resources.

See *Justification for Categorical Exemption Case No. ENV-2019-930-CE* in the case file for the narrative demonstrating that the proposed project meets the five criteria under Class 32 and that exceptions do not apply.

**SUBSTITUTE FINDINGS OF FACT (CEQA), Finding (a):**

**THE CLASS 32 EXEMPTION FROM CEQA DOES NOT APPLY BECAUSE THE PROJECT IS INCONSISTENT WITH THE APPLICABLE GENERAL PLAN DESIGNATION AND APPLICABLE GENERAL PLAN POLICIES.**

The project involves the construction of a new building within the Normandie Mariposa Apartment Historic District. The Normandie Mariposa Apartment Historic District was formally determined eligible for listing in the National Register of Historic Places in 1994, and thus was subsequently automatically listed in the California Register of Historical Resources.

The adopted Wilshire Community Plan, General Plan Framework Element, Chapter 3 (Land Use) and General Plan Conservation Element each contain detailed provisions setting forth goals, objectives and policies designed to protect historic resources, including designated and eligible historic districts such as this one, from incompatible development.

Because the new building does not meet the Secretary of the Interior's Standards for Rehabilitation for new construction related to a historic resource, the project is incompatible with the adopted Wilshire Community Plan, the City's General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element. Therefore, the project is not entitled to a Categorical Exemption and full review must be performed under CEQA.

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**1-3.1**

Promote architectural compatibility and landscaping for new Multiple Family residential development to protect the character and scale of existing residential neighborhoods.

**1-3.2**

Support historic preservation goals in neighborhoods of architectural merit and/or historic significance.



**GOAL 17**

**PRESERVE AND RESTORE CULTURAL RESOURCES, NEIGHBORHOODS AND LANDMARKS WHICH HAVE HISTORICAL AND/OR CULTURAL SIGNIFICANCE.**

**Objective 17-1**

Ensure that the Wilshire Community’s historically significant resources are protected, preserved, and/or enhanced.

**Policies**

**17-1.1**

Encourage the preservation, maintenance, enhancement and reuse of existing historic buildings and the restoration of original facades.

**Program:** Adhere to the City’s Historic Properties Preservation Ordinances and City’s Cultural Heritage Commission requirements for preservation and implementation of design standards.

**Objective 17-2**

Preserve and enhance neighborhoods having a distinctive and significant historical character.

**Objective 17-3**

Encourage private owners of historic resources to maintain and enhance their properties in a manner that will preserve the integrity of such resources.

**Policies**

**17-3.1**

Assist private owners of historic resources to maintain and enhance their properties in a manner that will preserve the integrity of such resources.

**Program:** Support the creation and implementation of Hancock Park, Windsor Square, and other areas of architectural or historical significance as historic districts under the Planning Department’s HPOZ program.

**Program:** Continue to adhere to the City’s historic properties preservation ordinances and Cultural Heritage Commission requirements for preservation and implementation of design standards.

The General Plan Framework Element includes the following Goals and Objectives relevant to the protection of designated historic districts:

**GENERAL PLAN FRAMEWORK ELEMENT**

Chapter 3 - Land Use  
GOALS, OBJECTIVES AND POLICIES

*ISSUE TWO: USES, DENSITY, AND CHARACTER*

**HISTORIC DISTRICTS**

**Overview**

It is the intent of the General Plan Framework Element to preserve the historic and architectural heritage of Los Angeles by providing incentives and assistance to protect these resources in areas of the City in which they are concentrated. These districts will apply the range of policies and programs that have been implemented by the City in its Historic Preservation Overlay Zones to additional areas within Los Angeles.

**GOAL 3M**

A City where significant historic and architectural districts are valued.

Objective 3.17

Maintain significant historic and architectural districts while allowing for the development of economically viable uses.

The General Plan Conservation Element includes the following Objectives and Policies relevant to the protection of designated historic districts:

**GENERAL PLAN CONSERVATION ELEMENT Adopted September 2001**

**SECTION 5: CULTURAL AND HISTORICAL**

To identify, protect and preserve historic sites and structures for the enrichment of future generations various city, state and federal procedures have been promulgated. The most significant for Los Angeles are described in the following. The general plan Historic Preservation and Cultural Resources Element will address historic and cultural protection issues in greater detail.

**Conservation and protection.** Five types of historic protection designations apply in the city: (1) Historic-Cultural Monument designation by the city's Cultural Heritage Commission and approved by the City Council; (2) placement on the California Register of Historical Resources or (3) the National Register of Historic Places (1980 National Historic Preservation Act); (4) designation by the Community Redevelopment Agency (CRA) as being of cultural or historical significance within a designated redevelopment area; and (5) classification by the City Council (recommended by the planning commission) as an Historic Preservation Overlay Zone. Designations help protect structures and support rehabilitation fund requests.

The California Environmental Quality Act (CEQA) also protects significant cultural and historic resources. CEQA was revised in 1998 to redefine "historic resource" to include resources that are presumed to be significant, unless the preponderance of evidence is to the contrary. A property no longer must be designated officially as a landmark or of historic importance to be considered under CEQA review. The lead agency for permit processing may deem properties not formally listed and not included in historic surveys as "historically significant," if they meet criteria for listing in the California Register.

Under the city's CEQA guidelines, an environmental assessment must be prepared for any proposed demolition, destruction or significant modification of an Historic-Cultural Monument or resource listed on the national or state registers, or on the CRA list, or cited as a proposed historical resource by a community plan or historic preservation overlay zone survey, or which are over 50 years old and are substantially intact examples of an architectural style important in Los Angeles or are associated with an architect or other person of importance in Los Angeles history. Under the 1998 amendment, buildings less than 50 years old may also be considered.

Additional protections apply to structures or sites that are listed on the state or national registers. The National Park Service administers the National Register of Historic Places and the California Office of Historic Preservation administers the state register. Criteria applied to determine qualification for the registers includes context (importance to an historic theme, place, time), integrity (location, design, setting, workmanship, materials) and, if a recent resource, exceptional importance.

The Community Redevelopment Agency maintains a list of buildings and structures of historical significance for purposes of project planning and evaluating neighborhood improvement proposals.

**Conclusion.** The city has primary responsibility for identifying and protecting its cultural and historical heritage.

**Continuing issues:** loss of significant, important or contributory cultural and historical sites and structures to neglect, site redevelopment or damage.

**Cultural and historical objective, policy and programs:**

**Objective:** protect important cultural and historical sites and resources for historical, cultural, research, and community educational purposes.

**Policy:** continue to protect historic and cultural sites and/or resources potentially affected by proposed land development, demolition or property modification activities.

**Program 1:** development permit processing, monitoring, enforcement and periodic revision of regulations and procedures.

**Responsibility:** departments of \*Building and Safety, \*City Planning, \*Cultural Affairs and \*Community Redevelopment Agency and/or the \*lead agency responsible for project implementation.

In light of the above goals, objectives and policies, in order to be granted a Class 32 exemption under CEQA, the proposed project must, at a minimum, meet the Secretary of the Interior's Standards for Rehabilitation (the "Standards"), and specifically Standard #9 which addresses new construction related to a historical resource. The proposed new construction as designed does not meet Standard #9, and accordingly it violates the goals, objectives and policies of the Wilshire Community Plan, the General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element.

A project may be considered to meet Standard #9 if the "new work (is) differentiated from the old and... compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment".

While the project mimics the materials of 1920s buildings, it ignores issues of scale, design, setbacks, streetwall, and sheer size that present the greatest potential to adversely impact the district.

The proposed project consists of a seven-story 80-foot tall apartment building, 89-feet tall to the top of its elevator shaft. Most buildings on the 800 block of South Normandie are four to five stories tall, or approximately 50 to 60 feet tall. To maintain the streetscape of the Historic District, the sixth and seventh-stories of the proposed project would need to be set well back from the plane of the front façade.

The consistent size, height, and massing of the historic apartment buildings are key to the cohesiveness of the block.

In addition, all of the façades of the Historic District buildings feature left-right symmetry with a prominent central entrance. The proposed project façade, in contrast, is highly asymmetrical with a diminutive entry.

The combined façades (streetwall) of the Historic District are built to the property line facing the street; this streetwall defines the district. The proposed project façade is set back 9.6" from the property line, and highly articulated, with a substantial portion of the façade set back over ten feet from the property line.

The buildings of the Historic District feature no side yard setbacks. The proposed project features 7-foot side yards at the north and south of the building.

In conclusion, the massing, scale, and size of the building, particularly its bulk at the street, present an impact to the historic streetscape and the underlying historic district. Changing the details of the façade without changing its size and scale will be insufficient to avoid such impacts.

Because it does not meet Standard #9, the project is inconsistent with the goals, objectives and policies of the Wilshire Community Plan, the General Plan Framework Element, Chapter 3 (Land Use) and the General Plan Conservation Element.

**SUBSTITUTE FINDINGS OF FACT (CEQA), Finding (b):**

**THE CLASS 32 EXEMPTION FROM CEQA DOES NOT APPLY BECAUSE THE PROJECT MAY CAUSE A SUBSTANTIAL ADVERSE CHANGE IN THE SIGNIFICANCE OF A HISTORICAL RESOURCE.**

Under CEQA Guidelines section 15300.2(f), "A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource." The Class 32 exemption does not apply to the project because the massing, scale, and size of the building, and particularly its bulk at the street, may

cause a substantial adverse change in the historic streetscape and thus to the significance of a historical resource, i.e., the underlying Normandie Mariposa Apartment Historic District, which was formally determined eligible for listing in the National Register of Historic Places in 1994, and subsequently listed in the California Register of Historical Resources.

## Communication from Public

**Name:** Jena Zanelli  
**Date Submitted:** 04/28/2020 04:38 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** CF# 20-0087 Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely (Jena Zanelli, 90010)

## Communication from Public

**Name:** Tad Coughenour

**Date Submitted:** 04/28/2020 04:51 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely Thomas (Tad) Coughenour

## Communication from Public

**Name:** Mary Meyer

**Date Submitted:** 04/28/2020 02:29 PM

**Council File No:** 20-0087

**Comments for Public Posting:** CF# 20-0087 Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Sincerely Mary Meyer  
90057

## Communication from Public

**Name:** Kristina B

**Date Submitted:** 04/28/2020 05:56 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. The block, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel, a landmark which was demolished after a long preservation battle. Today, the 700 block of South Normandie Ave. is one of the City's most popular LAFILM locations due to its time capsule appearance. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve Koreatown's Little New York Street. Seriously, give it a rest. Stop letting developers ravage our city. Sincerely (Dr. Kristina Benson)



## Communication from Public

**Name:** Carol Cetrone

**Date Submitted:** 04/28/2020 07:01 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Councilman Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie jeopardizes the historical significance of the entire street. This project as currently planned is entirely out of character with the existing block, which has not had ANY new construction in NINE DECADES. The buildings on this block were constructed at the same time as the Ambassador Hotel, a landmark which was sadly demolished after a long preservation battle. Today, the 700 block of South Normandie is one of Hollywood's most popular filming locations due to its historic integrity of these buildings. I am urging CD10 Council Member Herb Wesson and the rest of City Council to help preserve the historic fabric of the block by allowing the CEQA appeal for this project, to ensure that any new construction respects and compliments, rather than contrast, the existing historic structures. Please do the right thing and help preserve Koreatown's Little New York Street..!!  
Sincerely Carol Cetrone, 90004 Silver Lake Heritage Trust Silver Lake NC Urban Design and Preservation Committee

## Communication from Public

**Name:**

**Date Submitted:** 04/28/2020 08:32 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Dear City Council and CD10 Council Member Herb Wesson, The proposed development by Jamison Properties at 738 South Normandie Ave. jeopardizes the historical significance of the entire street, because it is entirely out of character with the existing block, which has not had any new construction in nine decades. This block and its surrounding area are a wellspring of vanishing old-world elegance and indisputable historic importance. Please help us in preserving this invaluable asset for our city. One of the greatest joys of living in Los Angeles is marveling at the beauty of our historic buildings and blocks. Which makes it no surprise that it's one of the most photographed cities in the world—whether in classics like *The Long Goodbye* and *Chinatown*, new hits like *La La Land* and *Mad Men*, or on the Instagram pages of every tourist who visits our city. Reflecting on the richness of our architectural history and our city's visual presence throughout the decades is truly inspiring. Unfortunately, we've lost much of our history and legendary grand aesthetic to rushed, irresponsible development. Each time I stop to read the historical plaques that line our streets, I'm saddened to learn of magnificent landmarks destroyed to be quietly replaced by mundanity, and vacant land full of promise sloppily developed into yet another meaningless eyesore. The block in question today, which sits in the Normandie-Mariposa Historic Apartment District, was built at the same time as the Ambassador Hotel (a site of numerous historic events and frequented by an endless array of luminaries including Charlie Chaplin, F. Scott Fitzgerald, and Joan Crawford, to name a mere few). Sadly, this dazzling landmark was demolished after a long preservation battle. Today, because of its remaining historic structures, the 700 block of South Normandie Ave. is still one of the City's most popular LAFILM locations. In order to continue this legacy and ensure continued monetary gain for the city from these film shoots, we must maintain this area's stunning, time capsule appearance. You and your fellow council members have the power to not only preserve something invaluable in the visual integrity of this charming block but to set a precedent for creating new and beautiful structures that maintain the character of our great city for generations to come. Please keep Los Angeles a gorgeous destination that people all over the world visit, photograph, and

dream about. Don't allow our city to fall into ugliness because of lazy, uninspired planning. Just by paying attention and not settling for less than what we and our city deserve, we can have beauty and purpose together, stunning form and function at the same time. We can put laws into place today to keep the dream alive for our children and their children too. I am asking that CD10 Council Member Herb Wesson and the rest of City Council allow the CEQA appeal for 738 South Normandie, to help preserve the historic fabric of the block by ensuring that any new construction respects the existing historic structures and blends in, rather than standing out. Please do the right thing and help preserve this historic street for everyone's enjoyment for years to come. Sincerely, Ali Eaves, zip code 90005

## Communication from Public

**Name:** Noel Weiss  
**Date Submitted:** 04/28/2020 11:25 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** See attached public comment.

Public Comment Submitted in Support of **Appeal of Carolyn Zanelli – Council File No. 20-0087**

Item No. 22 – City Council Agenda for **Wednesday, April 29, 2020.**

My client, Kent Apartments, LLC. supports the appeal of Carolyn Zanelli challenging the proposed CEQA Class 32 Categorical Exemption sought by 738 Normandie, LP in connection with its development of the 738 So. Normandie Ave site. Kent Apartments, LLC is the owner of the adjacent property located at 732 So. Normandie. The reasons the appeal should be granted are noted in greater detail in the attached letter to the City Council, but can be summarized as follows:

(1) An exception to the granting of the CEQA (in-fill) exemption applies under Section 15300.2(d) of the CEQA guidelines because the project if built-out as proposed will result in a substantial adverse change in the historic significance of the Normandie-Mariposa Historical Apartment District. The "District", as a protected historical resource, consists in this case of a geographic area on Normandie Avenue and Melrose Avenue, bordered by 7th Street on the North and 8th Street on the South. The "District" is, by definition, a "historical resource" and is presumed to be historically and culturally significant unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. Public Resources Code Section 21084.1 The integrity and significance of the Normandie Avenue streetscape will be substantially, materially, and prejudicially altered by this project because a contemporary 7 story structure is inserted in the middle of what is unbroken street frontage consisting of 4-5 story Victoria buildings which remain as they were when constructed in 1926-1930. This area of Normandie Ave. is possibly the single-best preserved block of 1920's (pre-war) apartment buildings in all of Los Angeles. The size, character and design of the 738 So. Normandie project is out of place with the Victorian design, sense, and sensibility of the historically protected geographic "District" and if built as designed, the integrity, setting, feeling, and association of the remaining buildings in the "District" will be destroyed. Therefore, the "exception" to the CEQA Class 32 "exception" applies. A CEQA work-up is merited so that mitigating measures can be taken to protect the "District" as a historical environmental resource. As part of the CEQA work-up, a shoring plan would be evaluated and approved to protect the adjacent historical property at 732 So. Normandie from damage during construction. Granting the CEQA Exemption would deny the owner of the 732 So. Normandie property this benefit.

(2) The CEQA work-up needed would also involve an analysis of the cumulative impacts of the project, which, when taken as a whole, would substantially diminish the historical significance of the "District". Planning omits reference to projects which have been approved at 715 So. Mariposa Ave or 744 So. Mariposa Avenue. Those projects ignored any evaluation of their impact on the significance of the "District" as a historical resource. Planning also omitted reference to the fact that in October, 2017, a variance was granted to this same applicant to build 34 units on the same site which, it now appears, the proponent has abandoned in lieu of this proposed 50 unit project. A CEQA work-up would properly take account of the development already approved and whether this project would further erode the historical significance of the "District". Under Berkeley Hillside Preservation vs. City of Berkeley (2015) 60 Ca. 4th 1086, to trigger the "exception" to the (CEQA) "exemption" one need only show a "reasonable possibility" of a significant effect due to an unusual circumstance. The unusual circumstances in this case are (i) that the "District" (the entire two-block visage) is a recognized historical resource, and (ii) that its character and feel and history as an example of a unique streetscape of 1920's buildings containing an unbroken street frontage of 4-5 story buildings of Victorian design, will

be completely obliterated and broken by a 7-story contemporary structure building constructed right in between two historic Victorian structures;

(3) Design guidelines adopted by the CRA to in December, 1995, and following, to protect the "District" as a historical resource, must be followed by the City as the successor to the CRA. By not having conducted a CEQA work-up and design review, the City has failed to carry out its responsibilities as the successor to the CRA to ensure that the Wilshire Center/Koreatown Redevelopment Plan is followed;

(4) To qualify for the exemption, the City must follow its own protocols and procedures. It has not done so in this case. (i) No Site Plan Review as required under LAMC Section 16.05(C)(1)(b) was done; (ii) No hearing before the City Planning Commission was held as a result of the use of "off-menu" incentives; & (iii) the proponent did not submit an economic pro-forma justifying the need for the concessions sought as per LAMC Section 12.22(25)(g)(3), as incorporated into LAMC Section 12.22(A)(31)(e).

## Communication from Public

**Name:** Noel Weiss  
**Date Submitted:** 04/28/2020 11:29 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** See attached letter in support of appeal of Carolyn Zanelli - Pages 1-10 (Pages 11-20 submitted separately)

**NOEL WEISS**

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April 28, 2020

**MEMBERS OF THE LOS ANGELES  
CITY COUNCIL**

**Via Email**

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

**RE: ITEM NO. 22 – AGENDA FOR WEDNESDAY, APRIL 29, 2019**  
**COUNCIL FILE NO. 20-0087 (Case Nos. DIR-2019-929-TOC;**  
**ENV-2019-930-CE**

**PROJECT SITE: 738 S. Normandie Avenue**

Dear Councilmembers:

I write on behalf of the owner of the property located at 732 So. Normandie Avenue (Kent Apartments, LLC) in support of the pending appeal of Carolyn Zanelli to the Class 32 CEQA exemption sought by the proponent of the development at 738 So. Normandie. The 738 So. Normandie property is immediately adjacent to my client's property. The lack of any CEQA work-up on the proposed project is prejudicial to my client because (i) potential damage could occur during construction to my client's building (built in the 1920's and historically protected) and a CEQA work-up would involve the evaluation and imposition of protective mitigation measures to obviate any potential damage during construction; and (ii) the 738 So. Normandie project, as designed, if constructed, would substantially, materially, and prejudicially alter the culturally unique and historically significant streetscape of the entire geographical area of the South Normandie block. That is because the unbroken streetscape of the Victorian designed 4-5 story buildings on the eastern side of the 700 So. Normandie Ave. would be broken and permanently and prejudicially altered by the insertion of a 7-Story contemporary-designed building right between two historic buildings. The 700 So. Normandy block, together with the properties on the 700 So. Mariposa Ave. block comprise the nationally recognized historic "District" known as "Normandie-Mariposa Historical Apartment District".



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Both of these matters should be taken up by way of a competent CEQA work-up, undertaken consistent with the City's procedures and protocols, none of which were followed in this instance, as detailed below. The appeal should be granted and the matter returned to the Planning Department so that all of the protections afforded the public by the City's laws will be respected and followed. Denying the appeal means that the only other alternative available to my client is to initiate a writ of mandate action which challenges the City's errors and omissions in its evaluation of the project and the errant effort to propagate and promote a CEQA exemption when the law directs that in this instance, a CEQA work-up is required because the property does not qualify for a CEQA exemption.

### *The Property Comes Within the "Exception" to the Class 32 CEQA "Exemption".*

While the 738 So. Normandie site is vacant, it is located within the geographical area on South Normandie Avenue whose properties comprise what has been identified and named as the "Normandie-Mariposa Apartment Historic District". The "District" is listed in the National Register of Historic Places, having been nominated in 1994 when the CRA was operating. It is listed in the California Register of Historic Resources. As such, the *Normandie-Mariposa Apartment Historic District* is presumed to be historically or culturally significant. (Public Resources Code §21084.1 which defines what constitutes a *Historical Resource*. Because the 738 So. Normandie property is also part of the *Wilshire Center/Koreatown Recovery Redevelopment Project Area (CRA)*, it is up to the City of Los Angeles, as successor agency to the CRA, to make sure that Section 520 of the CRA Guidelines adopted in December, 1995, are followed. That section provides for the implementation and administration of Design Guidelines of the precise type reflected by the character and scale of the *Normandie-Mariposa Historic District*. As such, the CRA Design Guidelines are applicable to this project and they have to be respected. This alone makes this site and this area unusual within the meaning of the holding of the California Supreme Court in *Berkeley Hillside Preservation vs. City of Berkeley* (2015) 60 Cal. 4<sup>th</sup> 1086.

That case held that "a party invoking the *exception* [to a CEQA Class 32 Exemption] may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In

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such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance. (*Berkeley Hillside Preservation vs. City of Berkeley, supra*, at page 1119). (Emphasis added).

Here, the unusual circumstance is reflected by the fact that (i) the Normandie Ave. streetscape is unique given that the entire 700 So. Normandie block consists of an unbroken chain of Victorian-designed 4-5 story structures built in the 1920's which (ii) have been recognized as unique and historic by their having been incorporated into a nationally recognized historic "district", and thus presumed to be historically significant.<sup>1</sup>

In addition, the *Wilshire Community Plan* has as one of its core objectives to "preserve and enhance neighborhoods having a distinctive and significant historical character." (Objective 17-2). This applies to in-fill developments as well as rehabilitation of existing structures. The scale of the existing historical resources within the "*Normandie-Mariposa Historical Apartment District*" must therefore be respected and evaluated in the context of a CEQA work-up.

The Planning Department's argument that the site is "non-contributing" to the District's historical significance and whose design will otherwise comply with the standards of the Secretary of Interior is a complete deflection. The historical "District" does not go away after the development is completed. It remains. The development must contribute to and not detract from the District's historical

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<sup>1</sup> The National Park Service defines a "historical district" as "*a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.*" (National Register Bulletin 15. How to Apply the National Register Criteria for Evaluation. Washington DC: National Park Service, US Department of the Interior, page 5.). As such, the "*Normandie-Mariposa Historical Apartment District*" derives its significance and uniqueness as a single unified entity (a group of buildings and sites (even undeveloped sites)). So even though the 738 So. Normandie site is vacant, when it is developed, it will be a contributing property to the character, scale, essence, and feel of the "*Normandie-Mariposa Historical Apartment District*". Ms. Zanelli's appeal notes that the street is used regularly for filming where there is a need for a real "New York streetscape". Constructing an over-sized 7-Story contemporary building between two historically recognized Victorian 4-5 story structures which "breaks" what is now an "unbroken" Victorian streetscape will be prejudicial and do substantial damage to the "*Normandie-Mariposa Historical Apartment District*".

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essence. How to preserve its historical significance and integrity and how to mitigate against adverse impacts to an important historical resource is the precise issue which needs to be evaluated by way of a CEQA work-up given that the historic identity of the entire (protected) 700 South Normandie Ave. block is substantially undermined by this project. Moreover, the Project, as designed, cannot be said to meet the criteria of Standard #9 of the Secretary of Interior Standards because it ignores issues of scale, design, set-backs, street-wall, sheer size, and the fact, as noted herein, that as an over-sized contemporary structure inserted into what is otherwise an unbroken chain of smaller (4-5 story) Victorian structures, substantially impairs the historical significance of the *Normandie-Mariposa Historical Apartment District*.

There is no question that the 700 So. Normandie block (both sides of the street) is considered to be historically significant. Under Section 15064.5(a)(3) of the State CEQA Guidelines, “[a] resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources.” The fact that we are talking here about an “area” (or accumulation of adjoining properties – labeled a (historic) “district”) means that the entire 700 So. Normandie block is historically significant. In its letter of February 13, 2020, Planning acknowledges that the “*Normandie-Melrose Apartment Historic District*” is listed in the California Register of Historic Resources.

The entire 700 So. Normandie block has retained its integrity of location, design, setting, feeling, and association for nearly a century. A significant, substantial, adverse impact on the historical significance of this historical resource (consisting of the entire 700 So. Normandie block) would occur where (in the words of the City’s CEQA Guidelines) the construction of the 738 So. Normandie 7-story contemporary designed project would reduce “the integrity and significance” of the entire “*Normandie-Mariposa Historic Apartment District*” by breaking up what is now an unbroken street frontage of 4-5 story Victorian designed buildings with a 7-Story contemporary structure. Having broken this “significance threshold”, the Project must undergo a CEQA work-up where ways can be discussed and found to mitigate what would otherwise be a substantial adverse change in the significance of an important historical resource, the *Normandie-Mariposa Historic Apartment District*.

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It is also an unusual circumstance that the project is going to be constructed next to the 732 So. Normandie building. Because the project will have an underground parking garage, a CEQA work-up will protect the interests of the owner of the 732 So. Normandie building because mitigation measures will need to be found to ensure against damage to the building or its foundations from the excavation or the construction. Giving the proponent a Class 32 CEQA exemption undermines this policy objective.

As part of a CEQA work-up, there would also be an evaluation of the level of significant adverse impact to the *Normandie-Mariposa Historic Apartment District* after mitigation. Without a CEQA work-up, no way exists to evaluate the full impact of the 738 So. Normandie development on either the *Normandie-Mariposa Historic Apartment District* or my client's adjacent building at 732 So. Normandie.

In short, the proposed "Findings" set out by Planning in its report to the Council in support of the CEQA exemption do not support the exemption. To the contrary, the facts demonstrate the existence of unusual circumstances where there is a reasonable possibility that the project will have an substantial, adverse change in the significance of a nationally and state-recognized historical resource – the "*Normandie-Mariposa Historical Apartment District*". As such, the provisions of the CEQA law which provide for an "exception" to the Class-32 CEQA exemption apply to defeat the request for the exemption and support the granting of the appeal.

Lastly, the Planning Department has prejudiced this proceeding in favor of the developer by omitting very important information; specifically (i) that this developer had already procured a variance in October, 2017, to develop a 7-Story 34-unit (all studios) contemporary structure on the site. (Case No. ZA-2-14-4100-ZV-ZAA-MS<sup>2</sup>)<sup>2</sup> In so doing, the developer has *de facto*, abandoned the existing entitlement.

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<sup>2</sup> This started out as a 26 unit (all studios), 6 story development which then morphed into a 34 unit (all studios) 7-Story development. The current project has less total square footage than did the approved (variance) project. That is because the size of the units were halved. This is objective evidence that the developer does not need 50 units to deliver 5 extremely low affordable units. It shows that the developer could deliver the affordable units in a building which has 5 stories of residential. The City's failure to enforce its laws respecting the mandate for an *economic pro-forma* when "off-menu" concessions or incentives are sought as part of the density bonus component of the

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Planning also omitted any reference to two other approved projects on South Mariposa; both of which should be considered as part of the cumulative impacts component of a CEQA work-up: (1) 744 So. Mariposa (Case No. ZA-2017-2285-ZV-ZAA approved April 30, 2018) (a six story (with two levels of parking – one at grade; one underground) 31 unit (19 studios; 12 1-Bedrooms); and (2) 715 So. Mariposa Ave. (Case No. ZA-2017-21 (ZA-ZAA-MSA – approved May 19, 2017) (7 story, 38 units (all studios- Started out as a 60’ tall structure with 29 units).

A CEQA work-up must, of necessity, evaluate whether the cumulative impacts of the proposed project and related projects in the area, when taken as a whole, would substantially impair the historical status of the *Normandie-Mariposa Historical Apartment District*. Granting a CEQA exemption precludes this very important and needed analysis. The omission by Planning from its work-up to date is prejudicial to the public and to the other property owners along the 700 So. Normandie block<sup>3</sup>.

Under Section 15300.2(b) of the State CEQA Guidelines, an “*exception*” to the exemption applies when “the cumulative impact of successive projects of the same type in the same place, over time, is significant”.

This will be now be the third project over the past three years to be developed within the geographical boundaries of the *Normandie-Mariposa Historical Apartment District*. As noted above, the area is unique because it is likely the best-preserved block of pre-war apartment buildings in Los Angeles. The fact that the Mariposa side has been compromised is not a license to obliterate the *Normandie Street side of the Normandie-Mariposa Historical Apartment District*. The So.

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Transit Oriented Communities Affordable Housing Incentive Program (LAMC §12.22(A)(31) is another error committed by the City which supports granting the appeal and sending the project back to Planning so that the provisions of LAMC §12.22(A)(25)(g)(3) can be properly and lawfully applied.

<sup>3</sup> Also excluded from the package presented to Council and the public was the proponent’s Transient-Oriented Communities Referral Form. This exclusion prejudices the process because the record lacks the facts reflective of how the proponent has calculated the number of density bonus units it seeks, and why it needs them to provide the affordable units. This omission was intentional and prejudicial. The proponent should not be aided by its omission from this record.

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Normandie Victorian streetscape is unique and unusual because of the unbroken Victorian streetscape of 4-5 story buildings. Inserting a contemporary designed structure right in the middle of what is an unbroken street-scape will result in substantial impairment of the historical resource known as the *Normandie-Mariposa Historical Apartment District*. This is the point where the proverbial straw is about to break the camel's back. Material impairment of the historical resource (i.e. the "District") resulting from these cumulative impacts of what has already been approved justify denial of the exemption and the invocation of the "exception".

***The Project Does Not Qualify for an Exemption because the Zoning Regulations, Procedures, and Protocols Attendant to the TOC Entitlement Were Not Followed.***

a. *The Lack of Site Plan Review.*

Because the project involves 50 units, a *Site Plan Review* is required under LAMC §16.05(C)(1)(b). The City attempts to get around this requirement by asserting that the threshold number which triggers the application of the Site Plan Review protocol is the base unit count allowed "by right" under the zoning code (in this case 37 units); rather than the 50 units which consist of the additional 8 market rate density bonus units which allegedly support and subsidize the 5 density bonus affordable units.

However, nothing in LAMC §16.05 (the Site Plan Review Ordinance) qualifies the 50 unit threshold in this way. The fact that the project is 50 units therefore mandates a site plan review. The project is subject to Site Plan Review under LAMC §16.05 because it contemplates 50 units; and nothing in the Site Plan Review Ordinance qualifies this 50 Unit requirement. The relevant portion of LAMC §16.05 reads:

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**C. Requirements.**

1. **Site Plan Review.** (Amended by Ord. No. 184,827, Eff. 3/24/17.) **No grading permit, foundation permit, building permit, or use of land permit shall be issued for any of the following development projects unless a site plan approval has first been obtained pursuant to this section.** This provision shall apply to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

(a) Any development project which creates, or results in an increase of, 50,000 gross square feet or more of nonresidential floor area.

(b) **Any development project which creates,** or results in an increase of, **50 or more** dwelling units **or guest rooms,** or combination thereof.

The City’s position is that because the project only involves 37 “by right” (base) units allowable under the zoning code, that is the number that controls for purposes of whether site plan review is to be initiated (i.e. the density bonus units are not taken into account). Noted below is a screen-shot of Item 9 (page 4 of 6) of the “*Transit-Oriented Communities – Referral Form*” (CP-4050[5.15.2018]) (omitted by Planning from the Council File)

i. **SITE PLAN REVIEW CALCULATION** An application for Site Plan Review may be required for projects that meet any of the Site Plan Review thresholds as outlined in LAMC Section 16.05.C. unless otherwise exempted per Section 16.05.D. For Transit Oriented Communities projects involving bonus units, please use the formula provided below to determine if the project meets the Site Plan Review threshold for unit count. If project meets the threshold(s) but qualifies under the exemption criteria per Section 16.05.D please confirm exemption with Department of City Planning’s DSC Housing Unit.

units allowed by right (permitted by LAMC) –  existing units =  units

- YES, Site Plan Review is required, if proposed by right units minus existing units is equal to or greater than 50'
- NO, Site Plan Review is not required, if Base Density units minus existing units is less than 50
- Exempt (please specify):

Site Plan Review requires an evaluation of the character and scale issues as well as the historical issues. While the Director has the discretion to set a public hearing, if a public hearing is not set, the decision can be appealed to the Area Planning Commission where there will be a public hearing. This, of course, the developer does not want to make happen. So it appears that Planning is very willing to accommodate the developer’s desires in that regard.

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To be noted is the fact that even though the developer is asking for 50 units, the building permit application submitted on December 23, 2019 (Permit No. 19010-10000-06053) states that the permit seeks permission to build 49 units.

Coincidence? Doubtful given the 50 unit threshold to initiate site plan review. It is more likely that Jamison is trying to game the system by deflecting attention away from the fact that site plan review is needed; and then once the City Council has concluded its work, Building & Safety will process the permit (either accidentally or by design) for a 50 unit building. If they tried to play games, the building permit would have to be challenged.

What is the significance of having a Site Plan Review? (1) It triggers the need for a public hearing (in the Director's discretion (which if abused can be challenged in court); (2) it provides for an appeal right to the Area Planning Commission, with a further appeal to Council; (3) *specific "Findings" have to be made that the project is or will be compatible with existing and future development as respects adjacent and neighboring properties*; and of equal importance, (4) *no grading permit can be issued in the absence of a competent site plan review having been undertaken*. The ordinance specifically mentions that the developer proceeds at its own risk should it try to obtain a grading permit without having first complied with the site plan review protocol set out in LAMC Section 16.05.

It is thus in the interests of the City and the developer to do the right thing and grant this appeal.

### b. *The Infirm TOC Process Utilized Here.*

Again, the significance of this discussion is that the issuance of a valid CEQA exemption presumes that all of the City's land use entitlement protocols and requirements have been met. If not, then there can be no CEQA exemption.

In its effort to deny the public a meaningful opportunity to provide comment on large projects (which require site plan review), the City has decided to create a system which it allies with developers to facilitate the gaming of the City's own procedures and protocols intended to (i) provide procedural and substantive due process in connection with "straight" density bonus projects (LAMC Section 12.22(A)(25)) and with density bonus projects which are incorporated into the



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*Transit Oriented Communities Affordable Housing Incentive Program* (LAMC Section 12.22(A)(3)).

Because the City's land use entitlement laws are such a jig-saw puzzle-like morass of seeming confusion borne, in part, out of how the various ordinances cross-reference each other, it is easy to game the system and disable meaningful public discourse by attempting to obviate and eliminate what should be required public hearings (in this case by the City Planning Commission) where the public can communicate the legal and factual reasons why a project should be rejected or modified.

In this case, the pattern used was to (i) ignore the mandate of LAMC Section 12.22(A)(25)(g)(3) (the City's density bonus implementation ordinance) that *off-menu* incentives be heard by the City Planning Commission at a public hearing. This was done by way of the reference in the TOC (*Transit Oriented Community Ordinance*) that the procedures to process the TOC Application are to be the procedures "outlined" in LAMC Section 12.22(A)(25)(g). Because sub-paragraph (g) of LAMC Section 12.22(A)(25) has three sub-paragraphs, all of them are relevant. However, the TOC protocol in this case only used the protocol involving "on-menu" incentives (sub-paragraph (g)(2)) and ignored the sub-paragraph which deals with "off-menu" incentives (sub-paragraph (g)(3)). This contradicts the TOC Ordinance. Sub-paragraph (g)(3) requires a hearing of off-menu incentives be heard by the CPC. The incentives here for set-backs (front, side, and rear), and for open space were all "off-menu" incentives. They were processed as "on-menu" incentives under sub-paragraph (g)(2). They should have been processed as "off-menu" incentives under sub-paragraph (g)(3) (which would have resulted in a public hearing before the CPC).

Secondly, the TOC Ordinance incorporates the state density bonus law (*Government Code §65915(d)(2)*) in the granting of concessions and incentives. Here, the developer sought and was granted 3 "off-menu" concessions and incentives. However, Government Code §65915(d)(2) only permits or allows *two* concessions in this circumstance where 10% of the units are set aside for very low income households. (The state law does not have a category for "extremely low income" as does the TOC law. The extremely very low affordable income category is therefore subsumed within the "very low" category for purposes of this analysis). Planning made use of the base number of 37 units allowed under the zoning "by right" as one factor, then substituted a factor of 11% instead of the state law use of 15% (to qualify for the third incentive). This, it is contended, is

## Communication from Public

**Name:** Noel Weiss  
**Date Submitted:** 04/28/2020 11:31 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** See attached letter in support of appeal of Carolyn Zanelli - Pages 11-20 (Pages 1-10 submitted separately)

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legal error because it contradicts the express wording of the state density bonus law. The state density bonus law is made relevant by virtue of its incorporation into the TOC Ordinance (LAMC §12.22(A)(31)(b)(2)(iii)). So either way, there should not be a third incentive.

There is an additional argument that there should only be one incentive because under Government Code §65915(d)(2)(B), to get two incentives, at least 20% of the total units must be set aside for very low income households. Here, only 5% of the total units are set aside for very low income households. Under that scenario, as per Government Code §65915(d)(2)(A), only one concession is available. Now the Council could amend the TOC ordinance and eliminate the reference to the state density bonus law (Government Code Section 65915(d)(2)) as the controlling criteria; but it has not done so. Since the Guidelines cannot supersede the Ordinance, the Ordinance's reference to Government Code Section 65915(d)(2) controls. Either way, the granting of three incentives is too many; and arguably, two incentives is also one too many.

*c. The City Planning Commission is the Initial Decision-Maker under TOC Ordinance which Incorporates the Protocol Under the City's Density Bonus Implementation Ordinance.*

Where the City Planning Commission is the initial decision-maker and the TOC Ordinance incorporates the entire protocol of subsection (g) of LAMC Section 12.22(A)(25) (not just sub-paragraphs (g)(1) and (g)(2)), the attempt by the TOC Guidelines to ignore the Ordinance is opined to be unlawful since the guidelines cannot obviate, supersede, or contravene the Ordinance which specifically and clearly states that it is the totality of the procedures set out in LAMC Section 12.22(A)(25)(g) that control; not just sub-paragraphs (g)(1) or (g)(2).

LAMC §12.22(A)(31)(b)(2)(iii) (The TOC Ordinance), reads as follows:

(iii) **Incentives and Concessions.** *An Eligible Housing Development may be granted up to either two or three incentives or concessions based upon the requirements set forth in California Government Code Section 65915(d)(2).*

The requirements of Government Code Section 65915(d)(2) are noted in Footnote 1. Because the scope of TOC guidelines is, by definition, limited by the scope of

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the Ordinance, the guidelines must conform to the ***the requirements of the density bonus law*** in Government Code §65915(d)(2)). Government Code Section 65912(d)(2) conditions the granting of a *second* concession on there being at least a 10% set aside of the total units for very low income households. To obtain a *third* concession or incentive, the set aside to very low income households has to be 15% or more. (There is no “extremely very low” category in the state law– so it is assumed that “extremely very low” and “very low” fall into the same “very low” category for purposes of applying the Government Code §65915(d)(2) standard set out in the Ordinance).

Here, the set-aside for the extremely very low income households is 10%. Under Government Code §65915(d)(2), only one concession should be available.

Even under the City’s interpretation, where they calculate the number of incentives on the density allowable under the zoning (37 units), they only come up with a set aside percentage of 13% of the 37 base units (5 affordable units/37 units allowable under the zoning = 13%). This fails to meet the 15% threshold for the third incentive under Government Code §65912(d)(2).

Also to be kept in mind is that it is not clear whether how many of the 45 market rate units are to be short-term transitory rentals (Air BnB) or longer-term (traditional/non-transitory) rentals. This is important because it impacts on the economics of the project and whether the developer needs as many market rate units to subsidize the provision of the 5 extremely very low affordable units).

The Bottom Line: The project only qualifies for only one additional concession if the criteria mandated by Government Code §65915(d)(2) is used; for only two concessions if the contrived “tiered” criteria, as applied by the City, for this TOC project given that only 13% of the base units (37 units allowed under the zoning) are set aside, instead of the required 15% under Government Code §65915(d)(2).

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Here is the City's contention which, for the reasons noted above, is legally infirm:

The project is seeking three (3) Additional Incentives for reduced front/rear yard setbacks, reduced side yard setbacks, and reduction in usable open space, which requires at least 11 percent, or five (5) units, of the 37 base units to be set aside for Extremely Low Income Households. The project proposes to set aside five (5) dwelling units for Extremely Low Income Households, which is 13 percent of the 37 base units. As such, the project meets the eligibility requirement for three Additional Incentives.

1. The TOC Ordinance adopts the protocol from the City's density bonus implementation ordinance when it comes to implementing the TOC Ordinance. Here is the specific language from the Ordinance LAMC §12.22(A)(e):

(e) **Procedures.** *Application for the TOC Incentives shall be made on a form provided by the Department of City Planning, and shall follow the procedures outlined in Los Angeles Municipal Code Section 12.22 A.25.(g).*

Note that the TOC ordinance references *the complete* subparagraph (g) of the City's density bonus implementation ordinance (LAMC §12.22(A)(25)). However, when it comes to processing the TOC application, the TOC Guidelines only references sub-paragraph (g)(2) of LAMC §12.22(A)(25) as follows:

- b. **Projects Requesting Additional Incentives.** Projects requesting Additional Incentives shall be reviewed by the Department of City Planning per the procedures in LAMC 12.22 A.25(g)(2).

Sub-paragraph (g)(2) of LAMC §12.22(A)(25) covers the procedures and protocol attendant to the choice of "on-menu" incentives. In that circumstance, the Director makes the determination, issues a letter of determination to abutting landowners, including property owners across the street or alley, or having a common corner with the property to be developed (no mention of tenants). Any appeal from the determination is then made to the City Planning Commission. What is omitted is sub-paragraph

Sub-Paragraph (g)(3) of LAMC §12.22(A)(25) sets out the procedures to be followed when "off-menu" incentives are chosen. This section is reprinted below. For our purposes there are two criteria which are important: (1) the requirement

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for an economic pro-forma, and (2) the mandate that the initial decision-maker is the City Planning Commission. This protocol was not followed here and the failure to adhere to the protocol was a violation of a mandatory duty and thus and error of law.

### “(3) Requests for Waiver or Modification of any Development Standard(s) **Not** on the Menu.

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant request a waiver or modification of any development standard(s) that is not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. *The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible.*

b. **Notice and Hearing.** The application shall follow the procedures for conditional uses set forth in Section 12.24 D. of this Code. *A public hearing shall be held by the City Planning Commission* or its designee. The decision of the City Planning Commission shall be final.

c. *The City Planning Commission shall approve* a Density Bonus and requested waiver or modification of any development standard(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

(ii) For Housing Development Projects requesting waiver or modification of any development standard(s) *not* included on the Menu of Incentives in Paragraph (f) above, *and which include other discretionary applications*, the following shall apply:

a. *The applicable procedures set forth in Section 12.36 of this Code shall apply.*

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b. The decision must include a separate section clearly labeled “Density Bonus/Affordable Housing Incentives Program Determination”.

c. The decision-maker shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the decision-maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

So, in summary, the full menu protocol set out in 12.22A25.(g) (incorporated into the TOC Ordinance) is to be utilized (i.e. the distinction between on-menu and off-menu incentives), and (ii) the protocol to be utilized when *off-menu* incentives are chosen (as is the case here because the front, side, and rear yard set-backs all exceed the 20% divergent threshold, as does the open space incentive) is set out in Section 12.22A.25(g)(3). That protocol mandates (i) the submission of an *economic pro-forma* justifying the need for the incentives and concessions sought (i.e. that without them, the 5 extremely low affordable units could not be provided and be subsidized by the requested number of market rate units (45)<sup>4</sup>

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<sup>4</sup> ***There is an issue here with regard to the unit mix*** and specifically whether all of the market rate units are going to be long-term rentals, or whether a portion of the units are to be set-aside for short-term (AirBnb-type) rentals. In the latter instance (where there is a mix between long-term and short-term rentals, the revenue streams arguably are greater; thus removing the need for as many market-rate units. This is the kind of project-specific economic work-up (as opposed to just a general economic study) “pro-forma” should be submitted as part of the application package. The City takes the position that AB 2501 amended the density bonus law to remove any need for an economic pro-forma. All the legislature did was eliminate the requirement for an economic study. If the legislature had intended to remove the requirement for *economic pro-formas*, it would have done so clearly and explicitly. Moreover, the City Council never removed the language in the density bonus implementation law which mandated an economic pro-forma for off-menu concessions or incentives sought by the developer. So the mandatory duty to require it still exists. If the City Council believed the legislature’s action in AB 2501 was controlling, then it should have repealed this provision. Finally, it should be noted that *by definition*, the TOC Ordinance explicitly, by its terms, only applies in lieu of any density bonus “ask” by the developer, not in addition to or on-top of any other rights a developer would have under the density bonus law. This is relevant and significant because the TOC law references the City’s density bonus implementation law for purposes of specifying the protocol to be followed when a developer proposes a TOC project which includes density bonus units. So the density bonus protocol (the full

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- c. The City Planning Commission as the Initial Decision-Maker under LAMC §12.36 (Projects Requiring Multiple Approvals).

If Site Plan Review is required, two levels of discretionary approval are implicated. LAMC §12.36 directs that in such a circumstance, the City Planning Commission will make all the decisions as the initial decision-maker. Here is the relevant portion of LAMC §12.36(C)(1):

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protocol) must be applied as written. . . That means (i) making use of the “on-menu/off-menu” choice, (ii) requiring an economic pro-forma for off-menu incentives, and most importantly, (iii) a public hearing before the City Planning Commission who acts as the initial decision-maker. So the protocol used here where the director was the initial (and sole decision-maker) was and is inconsistent with the protocol mandated by the code.

Finally, it also should be noted that if the project (because it has 50 residential units) ***requires*** *site plan review* under LAMC 16.05 then under LAMC Section 12.26, that determination would be made by the City Planning Commission as the *initial decision-maker*. That was not done here either. Planning says erroneously that the 50 unit threshold to trigger site plan review under LAMC Section 16.05 excludes the density bonus units from the calculation. As noted herein, LAMC Section 16.05 does not provide any such exclusion, which supports the assertion that that Planning is wrong here as well, as a matter of law (versus applying an abuse of discretion standard - because here we have two mandatory actions directed under the City’s protocol (1) the granting of a density bonus, and (2) the invocation of site plan review (both of which are two separate discretionary actions) which are being ignored for the purpose of avoiding at all costs any kind of (a) extended public hearing, where the public is notified and has a chance to comment (a clear denial of procedural and substantive due process).



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**C. Decision-makers.** Notwithstanding any provision of this Code to the contrary, the following shall apply for projects requiring multiple approvals.

**1. City Planning Commission.** If a project requires any approval or recommendation separately decided by an Area Planning Commission, the Zoning Administrator, and/or the Director, as the initial decision-maker, and also requires any approval or recommendation by the City Planning Commission as the initial decision-maker, then the City Planning Commission shall have initial decision-making authority for all of the approvals and/or recommendations.

So either way, whether by application of the density bonus implementation protocol, combined with Site Plan Review, or just the use of the density bonus protocol by itself, the City erred in failing to have the City Planning Commission act as the initial decision-maker with respect to this project.

*d. The Project Does Not Have to Go 7 Stories For the Proponent to Supply the 5 Extra Very-Low Income Units*

The project originally started out as 26 units (all studios), 6 stories, with one level underground parking. That meant that the residences would consist of 4 stories, with one story ground level parking, and one story below ground. See Screen-Shot from the MND below:

<b>PROJECT LOCATION</b> 738 S NORMANDIE AVE
<b>PROJECT DESCRIPTION</b> 1) A Zoning Administrator's Adjustment per Section 12.28 of the Los Angeles Municipal Code to permit a) a 0-foot front yard in lieu of a 15-foot front yard, and b) a side yard of 5-feet in lieu of a 9-foot side yard, and c) a 10-foot rear yard in lieu of the 18-foot rear yard, all otherwise required by Section 12.12-C, and 2) Pursuant to the provisions of LAMC Section 12.27, relief from the requirement to accumulate 15-points from the landscaping requirements contained in LAMC Section 12.40-43, all in conjunction with the construction of a 60-foot tall 26-unit residential building over one level of underground parking, sited on a 7,518 square foot lot zoned R5-2.

These studio units were 845 sq. feet in size as per the screen shot below from the approved plans:

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**738 S. Normandie Ave**

Site Address	738 S. Normandie Ave					
Zoning	Existing	R5-2	Proposed	R5-2		
Density	Allowable Unit #*	37.9	Proposed Unit #	34		
	* 200 sf/unit per R5-2/ Regional Center					
FAR	Allowable	R5-2	Proposed	5.0		
Lot Area	R5-2	7,517.7				
	Total	7,517.7				
FAR Calc Area(S.F.)	Allowable	5750x6.0=	34,500	Proposed		
				28,734		
	*Buildable R5-2 Area=4,765					
Parking	Required*	Residential	34	Proposed		
				Residential 29		
	* 1 for Studio, 1.5 for 1BR, 2 for 2BR W/ 15% TRANSIT REDUCTION					
				TOTAL 29		
Bike Parking	Required*	Residential	38	Proposed		
				Residential 38		
	* 34 for long term & 4 for short term					
				TOTAL 38		
Open Space	Studio	34 units	Proposed			
			Comm Space			
			Court yard/ Roof Deck	1,700		
			Rear yard			
			Private Deck	1,700		
	Required*		3,400	Total		
				3,400		
	* 100sf for Studio					
Unit Mix		STUDIO	1BR	2BR	TOTAL	Remark
	GROUND FLR.					
	2F	6			6	
	3F	6			6	
	4F	6			6	
	5F	6			6	
	6F	5			5	
	7F	5			5	
	TOTAL	34			34	
	% of Total	100.0%	0.0%	0.0%	100.0%	
	Unit Average	845.00				
	Net Rentable	28,730.00				

Total Residential Building Area	32,749.00
Total Subterranean Parking	7,105.00
Total Surface Parking	5,379.00

This latest iteration has the studio units cut in half to between 360 sq. ft and 438 sq. ft. So instead of the studio units averaging 845 sq. ft., they average 399 sq. ft. which is less than half of the average sq. footage of the studio units in the prior iterations.

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So the developer did not increase the number of units by increasing the square footage of the building. The unit increase came from a decrease in the square footage of the units. Usually, when developers seek concessions or incentives to incorporate density bonus units into their project (some of which are market-rate units (to subsidize the provision of the affordable units; while others are the affordable density bonus units), they increase the square footage of the project.

What occurred here is precisely the opposite. The square footage of the market rate units was reduced and affordable units added. Does this make any sense?

Answer: No. What it means is that since the size of the studio units can be manipulated (in this case decreased), the developer could and should be able to provide the five extra-low affordable units consistent with the six-story structure (twenty-feet shorter) originally proposed. So, for example, assuming the 26 studio units originally proposed were 845 sq. ft, and assuming further the size of the studio units was reduced by half, that would mean that within the same building envelope 52 studio units could be provided in a sixty-foot tall structure and the project still be profitable. This project has 50 units total, and 5 affordable units (extra-very-low affordable units).

Therefore, there is nothing in the record which demonstrates that the developer is unable to provide the 5 affordable units within the five residential stories contemplated in the 26 (studio) unit proposal given that the number of studio units has now risen from 26 (then 34) to now 45. The only difference is that the building is 1-2 stories taller.

But in going for those extra 1-2 stories, as noted above, the developer is significantly damaging and impairing a very important historical resource, the *Normandie-Mariposa Historical Apartment District*.

In short, this entire proposal is a scam to artificially increase the developer's profit using the TOC law (Transit-Oriented Affordable Housing Incentive Program) while getting a CEQA exemption to boot when the facts and evidence demonstrate on their face that the five affordable units could be provided within a 5-6 story building envelope simply by decreasing the square footage of the studio units (and thus increasing the number of units).

All of this can and should be more thoroughly evaluated in the context of a "re-do" before the Planning Commission as required under LAMC

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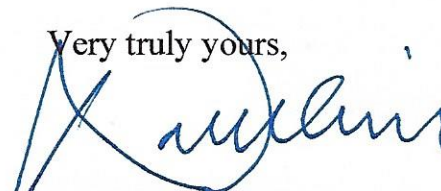
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§12.22(A)(5)(g)(3), based on the economic pro-forma mandated under LAMC §12.22(A)(25)(g)(3)(a), together with a CEQA work-up which objectively evaluates the impact this proposed development will have on the *Normandie-Mariposa Historical Apartment District*.

For each of the foregoing reasons, the appeal of Carolyn Zanelli should be granted.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Noel Weiss", is written over a circular stamp or seal.

**NOEL WEISS**

NW: nww  
042820

cc: Client & Counsel  
Carolyn Zanelli

## Communication from Public

**Name:**

**Date Submitted:** 04/28/2020 11:32 PM

**Council File No:** 20-0087

**Comments for Public Posting:** Please see attached legal letter supporting appeal, CF#20-0087.

**NOEL WEISS**

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April 28, 2020

**MEMBERS OF THE LOS ANGELES  
CITY COUNCIL**

**Via Email**

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

**RE: ITEM NO. 22 – AGENDA FOR WEDNESDAY, APRIL 29, 2019**  
**COUNCIL FILE NO. 20-0087 (Case Nos. DIR-2019-929-TOC;**  
**ENV-2019-930-CE**

**PROJECT SITE: 738 S. Normandie Avenue**

Dear Councilmembers:

I write on behalf of the owner of the property located at 732 So. Normandie Avenue (Kent Apartments, LLC) in support of the pending appeal of Carolyn Zanelli to the Class 32 CEQA exemption sought by the proponent of the development at 738 So. Normandie. The 738 So. Normandie property is immediately adjacent to my client's property. The lack of any CEQA work-up on the proposed project is prejudicial to my client because (i) potential damage could occur during construction to my client's building (built in the 1920's and historically protected) and a CEQA work-up would involve the evaluation and imposition of protective mitigation measures to obviate any potential damage during construction; and (ii) the 738 So. Normandie project, as designed, if constructed, would substantially, materially, and prejudicially alter the culturally unique and historically significant streetscape of the entire geographical area of the South Normandie block. That is because the unbroken streetscape of the Victorian designed 4-5 story buildings on the eastern side of the 700 So. Normandie Ave. would be broken and permanently and prejudicially altered by the insertion of a 7-Story contemporary-designed building right between two historic buildings. The 700 So. Normandy block, together with the properties on the 700 So. Mariposa Ave. block comprise the nationally recognized historic "District" known as "Normandie-Mariposa Historical Apartment District".

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Both of these matters should be taken up by way of a competent CEQA work-up, undertaken consistent with the City's procedures and protocols, none of which were followed in this instance, as detailed below. The appeal should be granted and the matter returned to the Planning Department so that all of the protections afforded the public by the City's laws will be respected and followed. Denying the appeal means that the only other alternative available to my client is to initiate a writ of mandate action which challenges the City's errors and omissions in its evaluation of the project and the errant effort to propagate and promote a CEQA exemption when the law directs that in this instance, a CEQA work-up is required because the property does not qualify for a CEQA exemption.

### *The Property Comes Within the "Exception" to the Class 32 CEQA "Exemption".*

While the 738 So. Normandie site is vacant, it is located within the geographical area on South Normandie Avenue whose properties comprise what has been identified and named as the "Normandie-Mariposa Apartment Historic District". The "District" is listed in the National Register of Historic Places, having been nominated in 1994 when the CRA was operating. It is listed in the California Register of Historic Resources. As such, the *Normandie-Mariposa Apartment Historic District* is presumed to be historically or culturally significant. (Public Resources Code §21084.1 which defines what constitutes a *Historical Resource*. Because the 738 So. Normandie property is also part of the *Wilshire Center/Koreatown Recovery Redevelopment Project Area (CRA)*, it is up to the City of Los Angeles, as successor agency to the CRA, to make sure that Section 520 of the CRA Guidelines adopted in December, 1995, are followed. That section provides for the implementation and administration of Design Guidelines of the precise type reflected by the character and scale of the *Normandie-Mariposa Historic District*. As such, the CRA Design Guidelines are applicable to this project and they have to be respected. This alone makes this site and this area unusual within the meaning of the holding of the California Supreme Court in *Berkeley Hillside Preservation vs. City of Berkeley* (2015) 60 Cal. 4<sup>th</sup> 1086.

That case held that "a party invoking the *exception* [to a CEQA Class 32 Exemption] may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In

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such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance. (*Berkeley Hillside Preservation vs. City of Berkeley, supra*, at page 1119). (Emphasis added).

Here, the unusual circumstance is reflected by the fact that (i) the Normandie Ave. streetscape is unique given that the entire 700 So. Normandie block consists of an unbroken chain of Victorian-designed 4-5 story structures built in the 1920's which (ii) have been recognized as unique and historic by their having been incorporated into a nationally recognized historic "district", and thus presumed to be historically significant.<sup>1</sup>

In addition, the *Wilshire Community Plan* has as one of its core objectives to "preserve and enhance neighborhoods having a distinctive and significant historical character." (Objective 17-2). This applies to in-fill developments as well as rehabilitation of existing structures. The scale of the existing historical resources within the "*Normandie-Mariposa Historical Apartment District*" must therefore be respected and evaluated in the context of a CEQA work-up.

The Planning Department's argument that the site is "non-contributing" to the District's historical significance and whose design will otherwise comply with the standards of the Secretary of Interior is a complete deflection. The historical "District" does not go away after the development is completed. It remains. The development must contribute to and not detract from the District's historical

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<sup>1</sup> The National Park Service defines a "historical district" as "*a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.*" (National Register Bulletin 15. How to Apply the National Register Criteria for Evaluation. Washington DC: National Park Service, US Department of the Interior, page 5.). As such, the "*Normandie-Mariposa Historical Apartment District*" derives its significance and uniqueness as a single unified entity (a group of buildings and sites (even undeveloped sites)). So even though the 738 So. Normandie site is vacant, when it is developed, it will be a contributing property to the character, scale, essence, and feel of the "*Normandie-Mariposa Historical Apartment District*". Ms. Zanelli's appeal notes that the street is used regularly for filming where there is a need for a real "New York streetscape". Constructing an over-sized 7-Story contemporary building between two historically recognized Victorian 4-5 story structures which "breaks" what is now an "unbroken" Victorian streetscape will be prejudicial and do substantial damage to the "*Normandie-Mariposa Historical Apartment District*".



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essence. How to preserve its historical significance and integrity and how to mitigate against adverse impacts to an important historical resource is the precise issue which needs to be evaluated by way of a CEQA work-up given that the historic identity of the entire (protected) 700 South Normandie Ave. block is substantially undermined by this project. Moreover, the Project, as designed, cannot be said to meet the criteria of Standard #9 of the Secretary of Interior Standards because it ignores issues of scale, design, set-backs, street-wall, sheer size, and the fact, as noted herein, that as an over-sized contemporary structure inserted into what is otherwise an unbroken chain of smaller (4-5 story) Victorian structures, substantially impairs the historical significance of the *Normandie-Mariposa Historical Apartment District*.

There is no question that the 700 So. Normandie block (both sides of the street) is considered to be historically significant. Under Section 15064.5(a)(3) of the State CEQA Guidelines, “[a] resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources.” The fact that we are talking here about an “area” (or accumulation of adjoining properties – labeled a (historic) “district”) means that the entire 700 So. Normandie block is historically significant. In its letter of February 13, 2020, Planning acknowledges that the “*Normandie-Melrose Apartment Historic District*” is listed in the California Register of Historic Resources.

The entire 700 So. Normandie block has retained its integrity of location, design, setting, feeling, and association for nearly a century. A significant, substantial, adverse impact on the historical significance of this historical resource (consisting of the entire 700 So. Normandie block) would occur where (in the words of the City’s CEQA Guidelines) the construction of the 738 So. Normandie 7-story contemporary designed project would reduce “the integrity and significance” of the entire “*Normandie-Mariposa Historic Apartment District*” by breaking up what is now an unbroken street frontage of 4-5 story Victorian designed buildings with a 7-Story contemporary structure. Having broken this “significance threshold”, the Project must undergo a CEQA work-up where ways can be discussed and found to mitigate what would otherwise be a substantial adverse change in the significance of an important historical resource, the *Normandie-Mariposa Historic Apartment District*.

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It is also an unusual circumstance that the project is going to be constructed next to the 732 So. Normandie building. Because the project will have an underground parking garage, a CEQA work-up will protect the interests of the owner of the 732 So. Normandie building because mitigation measures will need to be found to ensure against damage to the building or its foundations from the excavation or the construction. Giving the proponent a Class 32 CEQA exemption undermines this policy objective.

As part of a CEQA work-up, there would also be an evaluation of the level of significant adverse impact to the *Normandie-Mariposa Historic Apartment District* after mitigation. Without a CEQA work-up, no way exists to evaluate the full impact of the 738 So. Normandie development on either the *Normandie-Mariposa Historic Apartment District* or my client's adjacent building at 732 So. Normandie.

In short, the proposed "Findings" set out by Planning in its report to the Council in support of the CEQA exemption do not support the exemption. To the contrary, the facts demonstrate the existence of unusual circumstances where there is a reasonable possibility that the project will have an substantial, adverse change in the significance of a nationally and state-recognized historical resource – the "*Normandie-Mariposa Historical Apartment District*". As such, the provisions of the CEQA law which provide for an "exception" to the Class-32 CEQA exemption apply to defeat the request for the exemption and support the granting of the appeal.

Lastly, the Planning Department has prejudiced this proceeding in favor of the developer by omitting very important information; specifically (i) that this developer had already procured a variance in October, 2017, to develop a 7-Story 34-unit (all studios) contemporary structure on the site. (Case No. ZA-2-14-4100-ZV-ZAA-MS<sup>2</sup>)<sup>2</sup> In so doing, the developer has *de facto*, abandoned the existing entitlement.

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<sup>2</sup> This started out as a 26 unit (all studios), 6 story development which then morphed into a 34 unit (all studios) 7-Story development. The current project has less total square footage than did the approved (variance) project. That is because the size of the units were halved. This is objective evidence that the developer does not need 50 units to deliver 5 extremely low affordable units. It shows that the developer could deliver the affordable units in a building which has 5 stories of residential. The City's failure to enforce its laws respecting the mandate for an *economic pro-forma* when "off-menu" concessions or incentives are sought as part of the density bonus component of the

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Planning also omitted any reference to two other approved projects on South Mariposa; both of which should be considered as part of the cumulative impacts component of a CEQA work-up: (1) 744 So. Mariposa (Case No. ZA-2017-2285-ZV-ZAA approved April 30, 2018) (a six story (with two levels of parking – one at grade; one underground) 31 unit (19 studios; 12 1-Bedrooms); and (2) 715 So. Mariposa Ave. (Case No. ZA-2017-21 (ZA-ZAA-MSA – approved May 19, 2017) (7 story, 38 units (all studios- Started out as a 60’ tall structure with 29 units).

A CEQA work-up must, of necessity, evaluate whether the cumulative impacts of the proposed project and related projects in the area, when taken as a whole, would substantially impair the historical status of the *Normandie-Mariposa Historical Apartment District*. Granting a CEQA exemption precludes this very important and needed analysis. The omission by Planning from its work-up to date is prejudicial to the public and to the other property owners along the 700 So. Normandie block<sup>3</sup>.

Under Section 15300.2(b) of the State CEQA Guidelines, an “*exception*” to the exemption applies when “the cumulative impact of successive projects of the same type in the same place, over time, is significant”.

This will be now be the third project over the past three years to be developed within the geographical boundaries of the *Normandie-Mariposa Historical Apartment District*. As noted above, the area is unique because it is likely the best-preserved block of pre-war apartment buildings in Los Angeles. The fact that the Mariposa side has been compromised is not a license to obliterate the *Normandie Street side of the Normandie-Mariposa Historical Apartment District*. The So.

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Transit Oriented Communities Affordable Housing Incentive Program (LAMC §12.22(A)(31) is another error committed by the City which supports granting the appeal and sending the project back to Planning so that the provisions of LAMC §12.22(A)(25)(g)(3) can be properly and lawfully applied.

<sup>3</sup> Also excluded from the package presented to Council and the public was the proponent’s Transient-Oriented Communities Referral Form. This exclusion prejudices the process because the record lacks the facts reflective of how the proponent has calculated the number of density bonus units it seeks, and why it needs them to provide the affordable units. This omission was intentional and prejudicial. The proponent should not be aided by its omission from this record.

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Normandie Victorian streetscape is unique and unusual because of the unbroken Victorian streetscape of 4-5 story buildings. Inserting a contemporary designed structure right in the middle of what is an unbroken street-scape will result in substantial impairment of the historical resource known as the *Normandie-Mariposa Historical Apartment District*. This is the point where the proverbial straw is about to break the camel's back. Material impairment of the historical resource (i.e. the "District") resulting from these cumulative impacts of what has already been approved justify denial of the exemption and the invocation of the "exception".

***The Project Does Not Qualify for an Exemption because the Zoning Regulations, Procedures, and Protocols Attendant to the TOC Entitlement Were Not Followed.***

a. *The Lack of Site Plan Review.*

Because the project involves 50 units, a *Site Plan Review* is required under LAMC §16.05(C)(1)(b). The City attempts to get around this requirement by asserting that the threshold number which triggers the application of the Site Plan Review protocol is the base unit count allowed "by right" under the zoning code (in this case 37 units); rather than the 50 units which consist of the additional 8 market rate density bonus units which allegedly support and subsidize the 5 density bonus affordable units.

However, nothing in LAMC §16.05 (the Site Plan Review Ordinance) qualifies the 50 unit threshold in this way. The fact that the project is 50 units therefore mandates a site plan review. The project is subject to Site Plan Review under LAMC §16.05 because it contemplates 50 units; and nothing in the Site Plan Review Ordinance qualifies this 50 Unit requirement. The relevant portion of LAMC §16.05 reads:

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**C. Requirements.**

1. **Site Plan Review.** (Amended by Ord. No. 184,827, Eff. 3/24/17.) **No grading permit, foundation permit, building permit, or use of land permit shall be issued for any of the following development projects unless a site plan approval has first been obtained pursuant to this section.** This provision shall apply to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

(a) Any development project which creates, or results in an increase of, 50,000 gross square feet or more of nonresidential floor area.

(b) **Any development project which creates,** or results in an increase of, **50 or more** dwelling units **or guest rooms,** or combination thereof.

The City’s position is that because the project only involves 37 “by right” (base) units allowable under the zoning code, that is the number that controls for purposes of whether site plan review is to be initiated (i.e. the density bonus units are not taken into account). Noted below is a screen-shot of Item 9 (page 4 of 6) of the “*Transit-Oriented Communities – Referral Form*” (CP-4050[5.15.2018]) (omitted by Planning from the Council File)

i. **SITE PLAN REVIEW CALCULATION** An application for Site Plan Review may be required for projects that meet any of the Site Plan Review thresholds as outlined in LAMC Section 16.05.C. unless otherwise exempted per Section 16.05.D. For Transit Oriented Communities projects involving bonus units, please use the formula provided below to determine if the project meets the Site Plan Review threshold for unit count. If project meets the threshold(s) but qualifies under the exemption criteria per Section 16.05.D please confirm exemption with Department of City Planning’s DSC Housing Unit.

units allowed by right (permitted by LAMC) –  existing units =  units

- YES, Site Plan Review is required, if proposed by right units minus existing units is equal to or greater than 50'
- NO, Site Plan Review is not required, if Base Density units minus existing units is less than 50
- Exempt (please specify):

Site Plan Review requires an evaluation of the character and scale issues as well as the historical issues. While the Director has the discretion to set a public hearing, if a public hearing is not set, the decision can be appealed to the Area Planning Commission where there will be a public hearing. This, of course, the developer does not want to make happen. So it appears that Planning is very willing to accommodate the developer’s desires in that regard.

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To be noted is the fact that even though the developer is asking for 50 units, the building permit application submitted on December 23, 2019 (Permit No. 19010-10000-06053) states that the permit seeks permission to build 49 units.

Coincidence? Doubtful given the 50 unit threshold to initiate site plan review. It is more likely that Jamison is trying to game the system by deflecting attention away from the fact that site plan review is needed; and then once the City Council has concluded its work, Building & Safety will process the permit (either accidentally or by design) for a 50 unit building. If they tried to play games, the building permit would have to be challenged.

What is the significance of having a Site Plan Review? (1) It triggers the need for a public hearing (in the Director's discretion (which if abused can be challenged in court); (2) it provides for an appeal right to the Area Planning Commission, with a further appeal to Council; (3) *specific "Findings" have to be made that the project is or will be compatible with existing and future development as respects adjacent and neighboring properties*; and of equal importance, (4) *no grading permit can be issued in the absence of a competent site plan review having been undertaken*. The ordinance specifically mentions that the developer proceeds at its own risk should it try to obtain a grading permit without having first complied with the site plan review protocol set out in LAMC Section 16.05.

It is thus in the interests of the City and the developer to do the right thing and grant this appeal.

### b. *The Infirm TOC Process Utilized Here.*

Again, the significance of this discussion is that the issuance of a valid CEQA exemption presumes that all of the City's land use entitlement protocols and requirements have been met. If not, then there can be no CEQA exemption.

In its effort to deny the public a meaningful opportunity to provide comment on large projects (which require site plan review), the City has decided to create a system which it allies with developers to facilitate the gaming of the City's own procedures and protocols intended to (i) provide procedural and substantive due process in connection with "straight" density bonus projects (LAMC Section 12.22(A)(25)) and with density bonus projects which are incorporated into the

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*Transit Oriented Communities Affordable Housing Incentive Program* (LAMC Section 12.22(A)(3)).

Because the City's land use entitlement laws are such a jig-saw puzzle-like morass of seeming confusion borne, in part, out of how the various ordinances cross-reference each other, it is easy to game the system and disable meaningful public discourse by attempting to obviate and eliminate what should be required public hearings (in this case by the City Planning Commission) where the public can communicate the legal and factual reasons why a project should be rejected or modified.

In this case, the pattern used was to (i) ignore the mandate of LAMC Section 12.22(A)(25)(g)(3) (the City's density bonus implementation ordinance) that *off-menu* incentives be heard by the City Planning Commission at a public hearing. This was done by way of the reference in the TOC (*Transit Oriented Community Ordinance*) that the procedures to process the TOC Application are to be the procedures "outlined" in LAMC Section 12.22(A)(25)(g). Because sub-paragraph (g) of LAMC Section 12.22(A)(25) has three sub-paragraphs, all of them are relevant. However, the TOC protocol in this case only used the protocol involving "on-menu" incentives (sub-paragraph (g)(2)) and ignored the sub-paragraph which deals with "off-menu" incentives (sub-paragraph (g)(3)). This contradicts the TOC Ordinance. Sub-paragraph (g)(3) requires a hearing of off-menu incentives be heard by the CPC. The incentives here for set-backs (front, side, and rear), and for open space were all "off-menu" incentives. They were processed as "on-menu" incentives under sub-paragraph (g)(2). They should have been processed as "off-menu" incentives under sub-paragraph (g)(3) (which would have resulted in a public hearing before the CPC).

Secondly, the TOC Ordinance incorporates the state density bonus law (*Government Code §65915(d)(2)*) in the granting of concessions and incentives. Here, the developer sought and was granted 3 "off-menu" concessions and incentives. However, Government Code §65915(d)(2) only permits or allows *two* concessions in this circumstance where 10% of the units are set aside for very low income households. (The state law does not have a category for "extremely low income" as does the TOC law. The extremely very low affordable income category is therefore subsumed within the "very low" category for purposes of this analysis). Planning made use of the base number of 37 units allowed under the zoning "by right" as one factor, then substituted a factor of 11% instead of the state law use of 15% (to qualify for the third incentive). This, it is contended, is

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legal error because it contradicts the express wording of the state density bonus law. The state density bonus law is made relevant by virtue of its incorporation into the TOC Ordinance (LAMC §12.22(A)(31)(b)(2)(iii)). So either way, there should not be a third incentive.

There is an additional argument that there should only be one incentive because under Government Code §65915(d)(2)(B), to get two incentives, at least 20% of the total units must be set aside for very low income households. Here, only 5% of the total units are set aside for very low income households. Under that scenario, as per Government Code §65915(d)(2)(A), only one concession is available. Now the Council could amend the TOC ordinance and eliminate the reference to the state density bonus law (Government Code Section 65915(d)(2)) as the controlling criteria; but it has not done so. Since the Guidelines cannot supersede the Ordinance, the Ordinance's reference to Government Code Section 65915(d)(2) controls. Either way, the granting of three incentives is too many; and arguably, two incentives is also one too many.

*c. The City Planning Commission is the Initial Decision-Maker under TOC Ordinance which Incorporates the Protocol Under the City's Density Bonus Implementation Ordinance.*

Where the City Planning Commission is the initial decision-maker and the TOC Ordinance incorporates the entire protocol of subsection (g) of LAMC Section 12.22(A)(25) (not just sub-paragraphs (g)(1) and (g)(2)), the attempt by the TOC Guidelines to ignore the Ordinance is opined to be unlawful since the guidelines cannot obviate, supersede, or contravene the Ordinance which specifically and clearly states that it is the totality of the procedures set out in LAMC Section 12.22(A)(25)(g) that control; not just sub-paragraphs (g)(1) or (g)(2).

LAMC §12.22(A)(31)(b)(2)(iii) (The TOC Ordinance), reads as follows:

(iii) **Incentives and Concessions.** *An Eligible Housing Development may be granted up to either two or three incentives or concessions based upon the requirements set forth in California Government Code Section 65915(d)(2).*

The requirements of Government Code Section 65915(d)(2) are noted in Footnote 1. Because the scope of TOC guidelines is, by definition, limited by the scope of



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the Ordinance, the guidelines must conform to the ***the requirements of the density bonus law*** in Government Code §65915(d)(2)). Government Code Section 65912(d)(2) conditions the granting of a *second* concession on there being at least a 10% set aside of the total units for very low income households. To obtain a *third* concession or incentive, the set aside to very low income households has to be 15% or more. (There is no “extremely very low” category in the state law– so it is assumed that “extremely very low” and “very low” fall into the same “very low” category for purposes of applying the Government Code §65915(d)(2) standard set out in the Ordinance).

Here, the set-aside for the extremely very low income households is 10%. Under Government Code §65915(d)(2), only one concession should be available.

Even under the City’s interpretation, where they calculate the number of incentives on the density allowable under the zoning (37 units), they only come up with a set aside percentage of 13% of the 37 base units (5 affordable units/37 units allowable under the zoning = 13%). This fails to meet the 15% threshold for the third incentive under Government Code §65912(d)(2).

Also to be kept in mind is that it is not clear whether how many of the 45 market rate units are to be short-term transitory rentals (Air BnB) or longer-term (traditional/non-transitory) rentals. This is important because it impacts on the economics of the project and whether the developer needs as many market rate units to subsidize the provision of the 5 extremely very low affordable units).

The Bottom Line: The project only qualifies for only one additional concession if the criteria mandated by Government Code §65915(d)(2) is used; for only two concessions if the contrived “tiered” criteria, as applied by the City, for this TOC project given that only 13% of the base units (37 units allowed under the zoning) are set aside, instead of the required 15% under Government Code §65915(d)(2).

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Here is the City's contention which, for the reasons noted above, is legally infirm:

The project is seeking three (3) Additional Incentives for reduced front/rear yard setbacks, reduced side yard setbacks, and reduction in usable open space, which requires at least 11 percent, or five (5) units, of the 37 base units to be set aside for Extremely Low Income Households. The project proposes to set aside five (5) dwelling units for Extremely Low Income Households, which is 13 percent of the 37 base units. As such, the project meets the eligibility requirement for three Additional Incentives.

1. The TOC Ordinance adopts the protocol from the City's density bonus implementation ordinance when it comes to implementing the TOC Ordinance. Here is the specific language from the Ordinance LAMC §12.22(A)(e):

(e) **Procedures.** *Application for the TOC Incentives shall be made on a form provided by the Department of City Planning, and shall follow the procedures outlined in Los Angeles Municipal Code Section 12.22 A.25.(g).*

Note that the TOC ordinance references *the complete* subparagraph (g) of the City's density bonus implementation ordinance (LAMC §12.22(A)(25)). However, when it comes to processing the TOC application, the TOC Guidelines only references sub-paragraph (g)(2) of LAMC §12.22(A)(25) as follows:

- b. **Projects Requesting Additional Incentives.** Projects requesting Additional Incentives shall be reviewed by the Department of City Planning per the procedures in LAMC 12.22 A.25(g)(2).

Sub-paragraph (g)(2) of LAMC §12.22(A)(25) covers the procedures and protocol attendant to the choice of "on-menu" incentives. In that circumstance, the Director makes the determination, issues a letter of determination to abutting landowners, including property owners across the street or alley, or having a common corner with the property to be developed (no mention of tenants). Any appeal from the determination is then made to the City Planning Commission. What is omitted is sub-paragraph

Sub-Paragraph (g)(3) of LAMC §12.22(A)(25) sets out the procedures to be followed when "off-menu" incentives are chosen. This section is reprinted below. For our purposes there are two criteria which are important: (1) the requirement

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for an economic pro-forma, and (2) the mandate that the initial decision-maker is the City Planning Commission. This protocol was not followed here and the failure to adhere to the protocol was a violation of a mandatory duty and thus and error of law.

**“(3) Requests for Waiver or Modification of any Development Standard(s) Not on the Menu.**

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant request a waiver or modification of any development standard(s) that is not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. *The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible.*

b. **Notice and Hearing.** The application shall follow the procedures for conditional uses set forth in Section 12.24 D. of this Code. *A public hearing shall be held by the City Planning Commission* or its designee. The decision of the City Planning Commission shall be final.

c. *The City Planning Commission shall approve* a Density Bonus and requested waiver or modification of any development standard(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

(ii) For Housing Development Projects requesting waiver or modification of any development standard(s) *not* included on the Menu of Incentives in Paragraph (f) above, *and which include other discretionary applications*, the following shall apply:

a. *The applicable procedures set forth in Section 12.36 of this Code shall apply.*

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b. The decision must include a separate section clearly labeled “Density Bonus/Affordable Housing Incentives Program Determination”.

c. The decision-maker shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the decision-maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

So, in summary, the full menu protocol set out in 12.22A25.(g) (incorporated into the TOC Ordinance) is to be utilized (i.e. the distinction between on-menu and off-menu incentives), and (ii) the protocol to be utilized when *off-menu* incentives are chosen (as is the case here because the front, side, and rear yard set-backs all exceed the 20% divergent threshold, as does the open space incentive) is set out in Section 12.22A.25(g)(3). That protocol mandates (i) the submission of an *economic pro-forma* justifying the need for the incentives and concessions sought (i.e. that without them, the 5 extremely low affordable units could not be provided and be subsidized by the requested number of market rate units (45)<sup>4</sup>

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<sup>4</sup> ***There is an issue here with regard to the unit mix*** and specifically whether all of the market rate units are going to be long-term rentals, or whether a portion of the units are to be set-aside for short-term (AirBnb-type) rentals. In the latter instance (where there is a mix between long-term and short-term rentals, the revenue streams arguably are greater; thus removing the need for as many market-rate units. This is the kind of project-specific economic work-up (as opposed to just a general economic study) “pro-forma” should be submitted as part of the application package. The City takes the position that AB 2501 amended the density bonus law to remove any need for an economic pro-forma. All the legislature did was eliminate the requirement for an economic study. If the legislature had intended to remove the requirement for *economic pro-formas*, it would have done so clearly and explicitly. Moreover, the City Council never removed the language in the density bonus implementation law which mandated an economic pro-forma for off-menu concessions or incentives sought by the developer. So the mandatory duty to require it still exists. If the City Council believed the legislature’s action in AB 2501 was controlling, then it should have repealed this provision. Finally, it should be noted that *by definition*, the TOC Ordinance explicitly, by its terms, only applies in lieu of any density bonus “ask” by the developer, not in addition to or on-top of any other rights a developer would have under the density bonus law. This is relevant and significant because the TOC law references the City’s density bonus implementation law for purposes of specifying the protocol to be followed when a developer proposes a TOC project which includes density bonus units. So the density bonus protocol (the full

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- c. The City Planning Commission as the Initial Decision-Maker under LAMC §12.36 (Projects Requiring Multiple Approvals).

If Site Plan Review is required, two levels of discretionary approval are implicated. LAMC §12.36 directs that in such a circumstance, the City Planning Commission will make all the decisions as the initial decision-maker. Here is the relevant portion of LAMC §12.36(C)(1):

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protocol) must be applied as written. . . That means (i) making use of the “on-menu/off-menu” choice, (ii) requiring an economic pro-forma for off-menu incentives, and most importantly, (iii) a public hearing before the City Planning Commission who acts as the initial decision-maker. So the protocol used here where the director was the initial (and sole decision-maker) was and is inconsistent with the protocol mandated by the code.

Finally, it also should be noted that if the project (because it has 50 residential units) ***requires*** *site plan review* under LAMC 16.05 then under LAMC Section 12.26, that determination would be made by the City Planning Commission as the *initial decision-maker*. That was not done here either. Planning says erroneously that the 50 unit threshold to trigger site plan review under LAMC Section 16.05 excludes the density bonus units from the calculation. As noted herein, LAMC Section 16.05 does not provide any such exclusion, which supports the assertion that that Planning is wrong here as well, as a matter of law (versus applying an abuse of discretion standard - because here we have two mandatory actions directed under the City’s protocol (1) the granting of a density bonus, and (2) the invocation of site plan review (both of which are two separate discretionary actions) which are being ignored for the purpose of avoiding at all costs any kind of (a) extended public hearing, where the public is notified and has a chance to comment (a clear denial of procedural and substantive due process).

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**C. Decision-makers.** Notwithstanding any provision of this Code to the contrary, the following shall apply for projects requiring multiple approvals.

**1. City Planning Commission.** If a project requires any approval or recommendation separately decided by an Area Planning Commission, the Zoning Administrator, and/or the Director, as the initial decision-maker, and also requires any approval or recommendation by the City Planning Commission as the initial decision-maker, then the City Planning Commission shall have initial decision-making authority for all of the approvals and/or recommendations.

So either way, whether by application of the density bonus implementation protocol, combined with Site Plan Review, or just the use of the density bonus protocol by itself, the City erred in failing to have the City Planning Commission act as the initial decision-maker with respect to this project.

*d. The Project Does Not Have to Go 7 Stories For the Proponent to Supply the 5 Extra Very-Low Income Units*

The project originally started out as 26 units (all studios), 6 stories, with one level underground parking. That meant that the residences would consist of 4 stories, with one story ground level parking, and one story below ground. See Screen-Shot from the MND below:

<b>PROJECT LOCATION</b> 738 S NORMANDIE AVE
<b>PROJECT DESCRIPTION</b> 1) A Zoning Administrator's Adjustment per Section 12.28 of the Los Angeles Municipal Code to permit a) a 0-foot front yard in lieu of a 15-foot front yard, and b) a side yard of 5-feet in lieu of a 9-foot side yard, and c) a 10-foot rear yard in lieu of the 18-foot rear yard, all otherwise required by Section 12.12-C, and 2) Pursuant to the provisions of LAMC Section 12.27, relief from the requirement to accumulate 15-points from the landscaping requirements contained in LAMC Section 12.40-43, all in conjunction with the construction of a 60-foot tall 26-unit residential building over one level of underground parking, sited on a 7,518 square foot lot zoned R5-2.

These studio units were 845 sq. feet in size as per the screen shot below from the approved plans:

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**738 S. Normandie Ave**

Site Address	738 S. Normandie Ave					
Zoning	Existing	R5-2	Proposed	R5-2		
Density	Allowable Unit #*	37.9	Proposed Unit #	34		
	* 200 sf/unit per R5-2/ Regional Center					
FAR	Allowable	R5-2	Proposed	5.0		
Lot Area	R5-2	7,517.7				
	Total	7,517.7				
FAR Calc Area(S.F.)	Allowable	5750x6.0=	34,500	Proposed		
				28,734		
	*Buildable R5-2 Area=4,765					
Parking	Required*	Residential	34	Proposed Residential		
				29		
	* 1 for Studio, 1.5 for 1BR, 2 for 2BR W/ 15% TRANSIT REDUCTION					
Bike Parking	Required*	Residential	38	Proposed Residential		
				38		
	* 34 for long term & 4 for short term					
Open Space	Studio	34 units	Proposed			
			Comm Space			
			Court yard/ Roof Deck	1,700		
			Rear yard			
			Private Deck	1,700		
	Required*		3,400	Total		
				3,400		
	* 100sf for Studio					
Unit Mix		STUDIO	1BR	2BR	TOTAL	Remark
	GROUND FLR.					
	2F	6			6	
	3F	6			6	
	4F	6			6	
	5F	6			6	
	6F	5			5	
	7F	5			5	
	TOTAL	34			34	
	% of Total	100.0%	0.0%	0.0%	100.0%	
	Unit Average	845.00				
	Net Rentable	28,730.00				

Total Residential Building Area	32,749.00
Total Subterranean Parking	7,105.00
Total Surface Parking	5,379.00

This latest iteration has the studio units cut in half to between 360 sq. ft and 438 sq. ft. So instead of the studio units averaging 845 sq. ft., they average 399 sq. ft. which is less than half of the average sq. footage of the studio units in the prior iterations.

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So the developer did not increase the number of units by increasing the square footage of the building. The unit increase came from a decrease in the square footage of the units. Usually, when developers seek concessions or incentives to incorporate density bonus units into their project (some of which are market-rate units (to subsidize the provision of the affordable units; while others are the affordable density bonus units), they increase the square footage of the project.

What occurred here is precisely the opposite. The square footage of the market rate units was reduced and affordable units added. Does this make any sense?

Answer: No. What it means is that since the size of the studio units can be manipulated (in this case decreased), the developer could and should be able to provide the five extra-low affordable units consistent with the six-story structure (twenty-feet shorter) originally proposed. So, for example, assuming the 26 studio units originally proposed were 845 sq. ft, and assuming further the size of the studio units was reduced by half, that would mean that within the same building envelope 52 studio units could be provided in a sixty-foot tall structure and the project still be profitable. This project has 50 units total, and 5 affordable units (extra-very-low affordable units).

Therefore, there is nothing in the record which demonstrates that the developer is unable to provide the 5 affordable units within the five residential stories contemplated in the 26 (studio) unit proposal given that the number of studio units has now risen from 26 (then 34) to now 45. The only difference is that the building is 1-2 stories taller.

But in going for those extra 1-2 stories, as noted above, the developer is significantly damaging and impairing a very important historical resource, the *Normandie-Mariposa Historical Apartment District*.

In short, this entire proposal is a scam to artificially increase the developer's profit using the TOC law (Transit-Oriented Affordable Housing Incentive Program) while getting a CEQA exemption to boot when the facts and evidence demonstrate on their face that the five affordable units could be provided within a 5-6 story building envelope simply by decreasing the square footage of the studio units (and thus increasing the number of units).

All of this can and should be more thoroughly evaluated in the context of a "re-do" before the Planning Commission as required under LAMC



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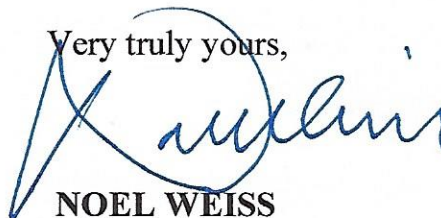
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§12.22(A)(5)(g)(3), based on the economic pro-forma mandated under LAMC §12.22(A)(25)(g)(3)(a), together with a CEQA work-up which objectively evaluates the impact this proposed development will have on the *Normandie-Mariposa Historical Apartment District*.

For each of the foregoing reasons, the appeal of Carolyn Zanelli should be granted.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Noel Weiss", is written over a circular stamp or seal. The signature is fluid and cursive.

**NOEL WEISS**

NW: nww  
042820

cc: Client & Counsel  
Carolyn Zanelli

## Communication from Public

**Name:** Spencer Jones  
**Date Submitted:** 04/28/2020 11:36 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** Please see the attached legal documentation supporting the appeal, CF#20-0087.

**NOEL WEISS**

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Marina del Rey, California 90292  
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Email Address: [noelweiss@ca.rr.com](mailto:noelweiss@ca.rr.com)

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**MEMBERS OF THE LOS ANGELES  
CITY COUNCIL**

**Via Email**

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

**RE: ITEM NO. 22 – AGENDA FOR WEDNESDAY, APRIL 29, 2019**  
**COUNCIL FILE NO. 20-0087 (Case Nos. DIR-2019-929-TOC;**  
**ENV-2019-930-CE**

**PROJECT SITE: 738 S. Normandie Avenue**

Dear Councilmembers:

I write on behalf of the owner of the property located at 732 So. Normandie Avenue (Kent Apartments, LLC) in support of the pending appeal of Carolyn Zanelli to the Class 32 CEQA exemption sought by the proponent of the development at 738 So. Normandie. The 738 So. Normandie property is immediately adjacent to my client's property. The lack of any CEQA work-up on the proposed project is prejudicial to my client because (i) potential damage could occur during construction to my client's building (built in the 1920's and historically protected) and a CEQA work-up would involve the evaluation and imposition of protective mitigation measures to obviate any potential damage during construction; and (ii) the 738 So. Normandie project, as designed, if constructed, would substantially, materially, and prejudicially alter the culturally unique and historically significant streetscape of the entire geographical area of the South Normandie block. That is because the unbroken streetscape of the Victorian designed 4-5 story buildings on the eastern side of the 700 So. Normandie Ave. would be broken and permanently and prejudicially altered by the insertion of a 7-Story contemporary-designed building right between two historic buildings. The 700 So. Normandy block, together with the properties on the 700 So. Mariposa Ave. block comprise the nationally recognized historic "District" known as "Normandie-Mariposa Historical Apartment District".

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Both of these matters should be taken up by way of a competent CEQA work-up, undertaken consistent with the City's procedures and protocols, none of which were followed in this instance, as detailed below. The appeal should be granted and the matter returned to the Planning Department so that all of the protections afforded the public by the City's laws will be respected and followed. Denying the appeal means that the only other alternative available to my client is to initiate a writ of mandate action which challenges the City's errors and omissions in its evaluation of the project and the errant effort to propagate and promote a CEQA exemption when the law directs that in this instance, a CEQA work-up is required because the property does not qualify for a CEQA exemption.

### *The Property Comes Within the "Exception" to the Class 32 CEQA "Exemption".*

While the 738 So. Normandie site is vacant, it is located within the geographical area on South Normandie Avenue whose properties comprise what has been identified and named as the "Normandie-Mariposa Apartment Historic District". The "District" is listed in the National Register of Historic Places, having been nominated in 1994 when the CRA was operating. It is listed in the California Register of Historic Resources. As such, the *Normandie-Mariposa Apartment Historic District* is presumed to be historically or culturally significant. (Public Resources Code §21084.1 which defines what constitutes a *Historical Resource*. Because the 738 So. Normandie property is also part of the *Wilshire Center/Koreatown Recovery Redevelopment Project Area (CRA)*, it is up to the City of Los Angeles, as successor agency to the CRA, to make sure that Section 520 of the CRA Guidelines adopted in December, 1995, are followed. That section provides for the implementation and administration of Design Guidelines of the precise type reflected by the character and scale of the *Normandie-Mariposa Historic District*. As such, the CRA Design Guidelines are applicable to this project and they have to be respected. This alone makes this site and this area unusual within the meaning of the holding of the California Supreme Court in *Berkeley Hillside Preservation vs. City of Berkeley* (2015) 60 Cal. 4<sup>th</sup> 1086.

That case held that "a party invoking the *exception* [to a CEQA Class 32 Exemption] may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In

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such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance. (*Berkeley Hillside Preservation vs. City of Berkeley, supra*, at page 1119). (Emphasis added).

Here, the unusual circumstance is reflected by the fact that (i) the Normandie Ave. streetscape is unique given that the entire 700 So. Normandie block consists of an unbroken chain of Victorian-designed 4-5 story structures built in the 1920's which (ii) have been recognized as unique and historic by their having been incorporated into a nationally recognized historic "district", and thus presumed to be historically significant.<sup>1</sup>

In addition, the *Wilshire Community Plan* has as one of its core objectives to "preserve and enhance neighborhoods having a distinctive and significant historical character." (Objective 17-2). This applies to in-fill developments as well as rehabilitation of existing structures. The scale of the existing historical resources within the "*Normandie-Mariposa Historical Apartment District*" must therefore be respected and evaluated in the context of a CEQA work-up.

The Planning Department's argument that the site is "non-contributing" to the District's historical significance and whose design will otherwise comply with the standards of the Secretary of Interior is a complete deflection. The historical "District" does not go away after the development is completed. It remains. The development must contribute to and not detract from the District's historical

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<sup>1</sup> The National Park Service defines a "historical district" as "*a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.*" (National Register Bulletin 15. How to Apply the National Register Criteria for Evaluation. Washington DC: National Park Service, US Department of the Interior, page 5.). As such, the "*Normandie-Mariposa Historical Apartment District*" derives its significance and uniqueness as a single unified entity (a group of buildings and sites (even undeveloped sites)). So even though the 738 So. Normandie site is vacant, when it is developed, it will be a contributing property to the character, scale, essence, and feel of the "*Normandie-Mariposa Historical Apartment District*". Ms. Zanelli's appeal notes that the street is used regularly for filming where there is a need for a real "New York streetscape". Constructing an over-sized 7-Story contemporary building between two historically recognized Victorian 4-5 story structures which "breaks" what is now an "unbroken" Victorian streetscape will be prejudicial and do substantial damage to the "*Normandie-Mariposa Historical Apartment District*".

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essence. How to preserve its historical significance and integrity and how to mitigate against adverse impacts to an important historical resource is the precise issue which needs to be evaluated by way of a CEQA work-up given that the historic identity of the entire (protected) 700 South Normandie Ave. block is substantially undermined by this project. Moreover, the Project, as designed, cannot be said to meet the criteria of Standard #9 of the Secretary of Interior Standards because it ignores issues of scale, design, set-backs, street-wall, sheer size, and the fact, as noted herein, that as an over-sized contemporary structure inserted into what is otherwise an unbroken chain of smaller (4-5 story) Victorian structures, substantially impairs the historical significance of the *Normandie-Mariposa Historical Apartment District*.

There is no question that the 700 So. Normandie block (both sides of the street) is considered to be historically significant. Under Section 15064.5(a)(3) of the State CEQA Guidelines, “[a] resource shall be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources.” The fact that we are talking here about an “area” (or accumulation of adjoining properties – labeled a (historic) “district”) means that the entire 700 So. Normandie block is historically significant. In its letter of February 13, 2020, Planning acknowledges that the “*Normandie-Melrose Apartment Historic District*” is listed in the California Register of Historic Resources.

The entire 700 So. Normandie block has retained its integrity of location, design, setting, feeling, and association for nearly a century. A significant, substantial, adverse impact on the historical significance of this historical resource (consisting of the entire 700 So. Normandie block) would occur where (in the words of the City’s CEQA Guidelines) the construction of the 738 So. Normandie 7-story contemporary designed project would reduce “the integrity and significance” of the entire “*Normandie-Mariposa Historic Apartment District*” by breaking up what is now an unbroken street frontage of 4-5 story Victorian designed buildings with a 7-Story contemporary structure. Having broken this “significance threshold”, the Project must undergo a CEQA work-up where ways can be discussed and found to mitigate what would otherwise be a substantial adverse change in the significance of an important historical resource, the *Normandie-Mariposa Historic Apartment District*.

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It is also an unusual circumstance that the project is going to be constructed next to the 732 So. Normandie building. Because the project will have an underground parking garage, a CEQA work-up will protect the interests of the owner of the 732 So. Normandie building because mitigation measures will need to be found to ensure against damage to the building or its foundations from the excavation or the construction. Giving the proponent a Class 32 CEQA exemption undermines this policy objective.

As part of a CEQA work-up, there would also be an evaluation of the level of significant adverse impact to the *Normandie-Mariposa Historic Apartment District* after mitigation. Without a CEQA work-up, no way exists to evaluate the full impact of the 738 So. Normandie development on either the *Normandie-Mariposa Historic Apartment District* or my client's adjacent building at 732 So. Normandie.

In short, the proposed "Findings" set out by Planning in its report to the Council in support of the CEQA exemption do not support the exemption. To the contrary, the facts demonstrate the existence of unusual circumstances where there is a reasonable possibility that the project will have an substantial, adverse change in the significance of a nationally and state-recognized historical resource – the "*Normandie-Mariposa Historical Apartment District*". As such, the provisions of the CEQA law which provide for an "exception" to the Class-32 CEQA exemption apply to defeat the request for the exemption and support the granting of the appeal.

Lastly, the Planning Department has prejudiced this proceeding in favor of the developer by omitting very important information; specifically (i) that this developer had already procured a variance in October, 2017, to develop a 7-Story 34-unit (all studios) contemporary structure on the site. (Case No. ZA-2-14-4100-ZV-ZAA-MS<sup>2</sup>)<sup>2</sup> In so doing, the developer has *de facto*, abandoned the existing entitlement.

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<sup>2</sup> This started out as a 26 unit (all studios), 6 story development which then morphed into a 34 unit (all studios) 7-Story development. The current project has less total square footage than did the approved (variance) project. That is because the size of the units were halved. This is objective evidence that the developer does not need 50 units to deliver 5 extremely low affordable units. It shows that the developer could deliver the affordable units in a building which has 5 stories of residential. The City's failure to enforce its laws respecting the mandate for an *economic pro-forma* when "off-menu" concessions or incentives are sought as part of the density bonus component of the

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Planning also omitted any reference to two other approved projects on South Mariposa; both of which should be considered as part of the cumulative impacts component of a CEQA work-up: (1) 744 So. Mariposa (Case No. ZA-2017-2285-ZV-ZAA approved April 30, 2018) (a six story (with two levels of parking – one at grade; one underground) 31 unit (19 studios; 12 1-Bedrooms); and (2) 715 So. Mariposa Ave. (Case No. ZA-2017-21 (ZA-ZAA-MSA – approved May 19, 2017) (7 story, 38 units (all studios- Started out as a 60’ tall structure with 29 units).

A CEQA work-up must, of necessity, evaluate whether the cumulative impacts of the proposed project and related projects in the area, when taken as a whole, would substantially impair the historical status of the *Normandie-Mariposa Historical Apartment District*. Granting a CEQA exemption precludes this very important and needed analysis. The omission by Planning from its work-up to date is prejudicial to the public and to the other property owners along the 700 So. Normandie block<sup>3</sup>.

Under Section 15300.2(b) of the State CEQA Guidelines, an “*exception*” to the exemption applies when “the cumulative impact of successive projects of the same type in the same place, over time, is significant”.

This will be now be the third project over the past three years to be developed within the geographical boundaries of the *Normandie-Mariposa Historical Apartment District*. As noted above, the area is unique because it is likely the best-preserved block of pre-war apartment buildings in Los Angeles. The fact that the Mariposa side has been compromised is not a license to obliterate the *Normandie Street side of the Normandie-Mariposa Historical Apartment District*. The So.

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Transit Oriented Communities Affordable Housing Incentive Program (LAMC §12.22(A)(31) is another error committed by the City which supports granting the appeal and sending the project back to Planning so that the provisions of LAMC §12.22(A)(25)(g)(3) can be properly and lawfully applied.

<sup>3</sup> Also excluded from the package presented to Council and the public was the proponent’s Transient-Oriented Communities Referral Form. This exclusion prejudices the process because the record lacks the facts reflective of how the proponent has calculated the number of density bonus units it seeks, and why it needs them to provide the affordable units. This omission was intentional and prejudicial. The proponent should not be aided by its omission from this record.



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Normandie Victorian streetscape is unique and unusual because of the unbroken Victorian streetscape of 4-5 story buildings. Inserting a contemporary designed structure right in the middle of what is an unbroken street-scape will result in substantial impairment of the historical resource known as the *Normandie-Mariposa Historical Apartment District*. This is the point where the proverbial straw is about to break the camel's back. Material impairment of the historical resource (i.e. the "District") resulting from these cumulative impacts of what has already been approved justify denial of the exemption and the invocation of the "exception".

***The Project Does Not Qualify for an Exemption because the Zoning Regulations, Procedures, and Protocols Attendant to the TOC Entitlement Were Not Followed.***

a. *The Lack of Site Plan Review.*

Because the project involves 50 units, a *Site Plan Review* is required under LAMC §16.05(C)(1)(b). The City attempts to get around this requirement by asserting that the threshold number which triggers the application of the Site Plan Review protocol is the base unit count allowed "by right" under the zoning code (in this case 37 units); rather than the 50 units which consist of the additional 8 market rate density bonus units which allegedly support and subsidize the 5 density bonus affordable units.

However, nothing in LAMC §16.05 (the Site Plan Review Ordinance) qualifies the 50 unit threshold in this way. The fact that the project is 50 units therefore mandates a site plan review. The project is subject to Site Plan Review under LAMC §16.05 because it contemplates 50 units; and nothing in the Site Plan Review Ordinance qualifies this 50 Unit requirement. The relevant portion of LAMC §16.05 reads:

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**C. Requirements.**

1. **Site Plan Review.** (Amended by Ord. No. 184,827, Eff. 3/24/17.) **No grading permit, foundation permit, building permit, or use of land permit shall be issued for any of the following development projects unless a site plan approval has first been obtained pursuant to this section.** This provision shall apply to individual projects for which permits are sought and also to the cumulative sum of related or successive permits which are part of a larger project, such as piecemeal additions to a building, or multiple buildings on a lot, as determined by the Director.

(a) Any development project which creates, or results in an increase of, 50,000 gross square feet or more of nonresidential floor area.

(b) **Any development project which creates,** or results in an increase of, **50 or more** dwelling units **or guest rooms,** or combination thereof.

The City’s position is that because the project only involves 37 “by right” (base) units allowable under the zoning code, that is the number that controls for purposes of whether site plan review is to be initiated (i.e. the density bonus units are not taken into account). Noted below is a screen-shot of Item 9 (page 4 of 6) of the “*Transit-Oriented Communities – Referral Form*” (CP-4050[5.15.2018]) (omitted by Planning from the Council File)

i. **SITE PLAN REVIEW CALCULATION** An application for Site Plan Review may be required for projects that meet any of the Site Plan Review thresholds as outlined in LAMC Section 16.05.C. unless otherwise exempted per Section 16.05.D. For Transit Oriented Communities projects involving bonus units, please use the formula provided below to determine if the project meets the Site Plan Review threshold for unit count. If project meets the threshold(s) but qualifies under the exemption criteria per Section 16.05.D please confirm exemption with Department of City Planning’s DSC Housing Unit.

units allowed by right (permitted by LAMC) –  existing units =  units

- YES, Site Plan Review is required, if proposed by right units minus existing units is equal to or greater than 50'
- NO, Site Plan Review is not required, if Base Density units minus existing units is less than 50
- Exempt (please specify):

Site Plan Review requires an evaluation of the character and scale issues as well as the historical issues. While the Director has the discretion to set a public hearing, if a public hearing is not set, the decision can be appealed to the Area Planning Commission where there will be a public hearing. This, of course, the developer does not want to make happen. So it appears that Planning is very willing to accommodate the developer’s desires in that regard.

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To be noted is the fact that even though the developer is asking for 50 units, the building permit application submitted on December 23, 2019 (Permit No. 19010-10000-06053) states that the permit seeks permission to build 49 units.

Coincidence? Doubtful given the 50 unit threshold to initiate site plan review. It is more likely that Jamison is trying to game the system by deflecting attention away from the fact that site plan review is needed; and then once the City Council has concluded its work, Building & Safety will process the permit (either accidentally or by design) for a 50 unit building. If they tried to play games, the building permit would have to be challenged.

What is the significance of having a Site Plan Review? (1) It triggers the need for a public hearing (in the Director's discretion (which if abused can be challenged in court); (2) it provides for an appeal right to the Area Planning Commission, with a further appeal to Council; (3) *specific "Findings" have to be made that the project is or will be compatible with existing and future development as respects adjacent and neighboring properties*; and of equal importance, (4) *no grading permit can be issued in the absence of a competent site plan review having been undertaken*. The ordinance specifically mentions that the developer proceeds at its own risk should it try to obtain a grading permit without having first complied with the site plan review protocol set out in LAMC Section 16.05.

It is thus in the interests of the City and the developer to do the right thing and grant this appeal.

### b. *The Infirm TOC Process Utilized Here.*

Again, the significance of this discussion is that the issuance of a valid CEQA exemption presumes that all of the City's land use entitlement protocols and requirements have been met. If not, then there can be no CEQA exemption.

In its effort to deny the public a meaningful opportunity to provide comment on large projects (which require site plan review), the City has decided to create a system which it allies with developers to facilitate the gaming of the City's own procedures and protocols intended to (i) provide procedural and substantive due process in connection with "straight" density bonus projects (LAMC Section 12.22(A)(25)) and with density bonus projects which are incorporated into the

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*Transit Oriented Communities Affordable Housing Incentive Program* (LAMC Section 12.22(A)(3)).

Because the City's land use entitlement laws are such a jig-saw puzzle-like morass of seeming confusion borne, in part, out of how the various ordinances cross-reference each other, it is easy to game the system and disable meaningful public discourse by attempting to obviate and eliminate what should be required public hearings (in this case by the City Planning Commission) where the public can communicate the legal and factual reasons why a project should be rejected or modified.

In this case, the pattern used was to (i) ignore the mandate of LAMC Section 12.22(A)(25)(g)(3) (the City's density bonus implementation ordinance) that *off-menu* incentives be heard by the City Planning Commission at a public hearing. This was done by way of the reference in the TOC (*Transit Oriented Community Ordinance*) that the procedures to process the TOC Application are to be the procedures "outlined" in LAMC Section 12.22(A)(25)(g). Because sub-paragraph (g) of LAMC Section 12.22(A)(25) has three sub-paragraphs, all of them are relevant. However, the TOC protocol in this case only used the protocol involving "on-menu" incentives (sub-paragraph (g)(2)) and ignored the sub-paragraph which deals with "off-menu" incentives (sub-paragraph (g)(3)). This contradicts the TOC Ordinance. Sub-paragraph (g)(3) requires a hearing of off-menu incentives be heard by the CPC. The incentives here for set-backs (front, side, and rear), and for open space were all "off-menu" incentives. They were processed as "on-menu" incentives under sub-paragraph (g)(2). They should have been processed as "off-menu" incentives under sub-paragraph (g)(3) (which would have resulted in a public hearing before the CPC).

Secondly, the TOC Ordinance incorporates the state density bonus law (*Government Code §65915(d)(2)*) in the granting of concessions and incentives. Here, the developer sought and was granted 3 "off-menu" concessions and incentives. However, Government Code §65915(d)(2) only permits or allows *two* concessions in this circumstance where 10% of the units are set aside for very low income households. (The state law does not have a category for "extremely low income" as does the TOC law. The extremely very low affordable income category is therefore subsumed within the "very low" category for purposes of this analysis). Planning made use of the base number of 37 units allowed under the zoning "by right" as one factor, then substituted a factor of 11% instead of the state law use of 15% (to qualify for the third incentive). This, it is contended, is

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legal error because it contradicts the express wording of the state density bonus law. The state density bonus law is made relevant by virtue of its incorporation into the TOC Ordinance (LAMC §12.22(A)(31)(b)(2)(iii)). So either way, there should not be a third incentive.

There is an additional argument that there should only be one incentive because under Government Code §65915(d)(2)(B), to get two incentives, at least 20% of the total units must be set aside for very low income households. Here, only 5% of the total units are set aside for very low income households. Under that scenario, as per Government Code §65915(d)(2)(A), only one concession is available. Now the Council could amend the TOC ordinance and eliminate the reference to the state density bonus law (Government Code Section 65915(d)(2)) as the controlling criteria; but it has not done so. Since the Guidelines cannot supersede the Ordinance, the Ordinance's reference to Government Code Section 65915(d)(2) controls. Either way, the granting of three incentives is too many; and arguably, two incentives is also one too many.

*c. The City Planning Commission is the Initial Decision-Maker under TOC Ordinance which Incorporates the Protocol Under the City's Density Bonus Implementation Ordinance.*

Where the City Planning Commission is the initial decision-maker and the TOC Ordinance incorporates the entire protocol of subsection (g) of LAMC Section 12.22(A)(25) (not just sub-paragraphs (g)(1) and (g)(2)), the attempt by the TOC Guidelines to ignore the Ordinance is opined to be unlawful since the guidelines cannot obviate, supersede, or contravene the Ordinance which specifically and clearly states that it is the totality of the procedures set out in LAMC Section 12.22(A)(25)(g) that control; not just sub-paragraphs (g)(1) or (g)(2).

LAMC §12.22(A)(31)(b)(2)(iii) (The TOC Ordinance), reads as follows:

(iii) **Incentives and Concessions.** *An Eligible Housing Development may be granted up to either two or three incentives or concessions based upon the requirements set forth in California Government Code Section 65915(d)(2).*

The requirements of Government Code Section 65915(d)(2) are noted in Footnote 1. Because the scope of TOC guidelines is, by definition, limited by the scope of

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the Ordinance, the guidelines must conform to the ***the requirements of the density bonus law*** in Government Code §65915(d)(2)). Government Code Section 65912(d)(2) conditions the granting of *a second* concession on there being at least a 10% set aside of the total units for very low income households. To obtain a *third* concession or incentive, the set aside to very low income households has to be 15% or more. (There is no “extremely very low” category in the state law– so it is assumed that “extremely very low” and “very low” fall into the same “very low” category for purposes of applying the Government Code §65915(d)(2) standard set out in the Ordinance).

Here, the set-aside for the extremely very low income households is 10%. Under Government Code §65915(d)(2), only one concession should be available.

Even under the City’s interpretation, where they calculate the number of incentives on the density allowable under the zoning (37 units), they only come up with a set aside percentage of 13% of the 37 base units (5 affordable units/37 units allowable under the zoning = 13%). This fails to meet the 15% threshold for the third incentive under Government Code §65912(d)(2).

Also to be kept in mind is that it is not clear whether how many of the 45 market rate units are to be short-term transitory rentals (Air BnB) or longer-term (traditional/non-transitory) rentals. This is important because it impacts on the economics of the project and whether the developer needs as many market rate units to subsidize the provision of the 5 extremely very low affordable units).

The Bottom Line: The project only qualifies for only one additional concession if the criteria mandated by Government Code §65915(d)(2) is used; for only two concessions if the contrived “tiered” criteria, as applied by the City, for this TOC project given that only 13% of the base units (37 units allowed under the zoning) are set aside, instead of the required 15% under Government Code §65915(d)(2).

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Here is the City's contention which, for the reasons noted above, is legally infirm:

The project is seeking three (3) Additional Incentives for reduced front/rear yard setbacks, reduced side yard setbacks, and reduction in usable open space, which requires at least 11 percent, or five (5) units, of the 37 base units to be set aside for Extremely Low Income Households. The project proposes to set aside five (5) dwelling units for Extremely Low Income Households, which is 13 percent of the 37 base units. As such, the project meets the eligibility requirement for three Additional Incentives.

1. The TOC Ordinance adopts the protocol from the City's density bonus implementation ordinance when it comes to implementing the TOC Ordinance. Here is the specific language from the Ordinance LAMC §12.22(A)(e):

(e) **Procedures.** *Application for the TOC Incentives shall be made on a form provided by the Department of City Planning, and shall follow the procedures outlined in Los Angeles Municipal Code Section 12.22 A.25.(g).*

Note that the TOC ordinance references *the complete* subparagraph (g) of the City's density bonus implementation ordinance (LAMC §12.22(A)(25)). However, when it comes to processing the TOC application, the TOC Guidelines only references sub-paragraph (g)(2) of LAMC §12.22(A)(25) as follows:

- b. **Projects Requesting Additional Incentives.** Projects requesting Additional Incentives shall be reviewed by the Department of City Planning per the procedures in LAMC 12.22 A.25(g)(2).

Sub-paragraph (g)(2) of LAMC §12.22(A)(25) covers the procedures and protocol attendant to the choice of "on-menu" incentives. In that circumstance, the Director makes the determination, issues a letter of determination to abutting landowners, including property owners across the street or alley, or having a common corner with the property to be developed (no mention of tenants). Any appeal from the determination is then made to the City Planning Commission. What is omitted is sub-paragraph

Sub-Paragraph (g)(3) of LAMC §12.22(A)(25) sets out the procedures to be followed when "off-menu" incentives are chosen. This section is reprinted below. For our purposes there are two criteria which are important: (1) the requirement

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for an economic pro-forma, and (2) the mandate that the initial decision-maker is the City Planning Commission. This protocol was not followed here and the failure to adhere to the protocol was a violation of a mandatory duty and thus and error of law.

### “(3) Requests for Waiver or Modification of any Development Standard(s) **Not** on the Menu.

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant request a waiver or modification of any development standard(s) that is not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. *The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible.*

b. **Notice and Hearing.** The application shall follow the procedures for conditional uses set forth in Section 12.24 D. of this Code. *A public hearing shall be held by the City Planning Commission* or its designee. The decision of the City Planning Commission shall be final.

c. *The City Planning Commission shall approve* a Density Bonus and requested waiver or modification of any development standard(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

(ii) For Housing Development Projects requesting waiver or modification of any development standard(s) *not* included on the Menu of Incentives in Paragraph (f) above, *and which include other discretionary applications*, the following shall apply:

a. *The applicable procedures set forth in Section 12.36 of this Code shall apply.*



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b. The decision must include a separate section clearly labeled “Density Bonus/Affordable Housing Incentives Program Determination”.

c. The decision-maker shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the decision-maker, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)c., above.

So, in summary, the full menu protocol set out in 12.22A25.(g) (incorporated into the TOC Ordinance) is to be utilized (i.e. the distinction between on-menu and off-menu incentives), and (ii) the protocol to be utilized when *off-menu* incentives are chosen (as is the case here because the front, side, and rear yard set-backs all exceed the 20% divergent threshold, as does the open space incentive) is set out in Section 12.22A.25(g)(3). That protocol mandates (i) the submission of an *economic pro-forma* justifying the need for the incentives and concessions sought (i.e. that without them, the 5 extremely low affordable units could not be provided and be subsidized by the requested number of market rate units (45)<sup>4</sup>

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<sup>4</sup> ***There is an issue here with regard to the unit mix*** and specifically whether all of the market rate units are going to be long-term rentals, or whether a portion of the units are to be set-aside for short-term (AirBnb-type) rentals. In the latter instance (where there is a mix between long-term and short-term rentals, the revenue streams arguably are greater; thus removing the need for as many market-rate units. This is the kind of project-specific economic work-up (as opposed to just a general economic study) “pro-forma” should be submitted as part of the application package. The City takes the position that AB 2501 amended the density bonus law to remove any need for an economic pro-forma. All the legislature did was eliminate the requirement for an economic study. If the legislature had intended to remove the requirement for *economic pro-formas*, it would have done so clearly and explicitly. Moreover, the City Council never removed the language in the density bonus implementation law which mandated an economic pro-forma for off-menu concessions or incentives sought by the developer. So the mandatory duty to require it still exists. If the City Council believed the legislature’s action in AB 2501 was controlling, then it should have repealed this provision. Finally, it should be noted that *by definition*, the TOC Ordinance explicitly, by its terms, only applies in lieu of any density bonus “ask” by the developer, not in addition to or on-top of any other rights a developer would have under the density bonus law. This is relevant and significant because the TOC law references the City’s density bonus implementation law for purposes of specifying the protocol to be followed when a developer proposes a TOC project which includes density bonus units. So the density bonus protocol (the full

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- c. The City Planning Commission as the Initial Decision-Maker under LAMC §12.36 (Projects Requiring Multiple Approvals).

If Site Plan Review is required, two levels of discretionary approval are implicated. LAMC §12.36 directs that in such a circumstance, the City Planning Commission will make all the decisions as the initial decision-maker. Here is the relevant portion of LAMC §12.36(C)(1):

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protocol) must be applied as written. . . That means (i) making use of the “on-menu/off-menu” choice, (ii) requiring an economic pro-forma for off-menu incentives, and most importantly, (iii) a public hearing before the City Planning Commission who acts as the initial decision-maker. So the protocol used here where the director was the initial (and sole decision-maker) was and is inconsistent with the protocol mandated by the code.

Finally, it also should be noted that if the project (because it has 50 residential units) ***requires*** *site plan review* under LAMC 16.05 then under LAMC Section 12.26, that determination would be made by the City Planning Commission as the *initial decision-maker*. That was not done here either. Planning says erroneously that the 50 unit threshold to trigger site plan review under LAMC Section 16.05 excludes the density bonus units from the calculation. As noted herein, LAMC Section 16.05 does not provide any such exclusion, which supports the assertion that that Planning is wrong here as well, as a matter of law (versus applying an abuse of discretion standard - because here we have two mandatory actions directed under the City’s protocol (1) the granting of a density bonus, and (2) the invocation of site plan review (both of which are two separate discretionary actions) which are being ignored for the purpose of avoiding at all costs any kind of (a) extended public hearing, where the public is notified and has a chance to comment (a clear denial of procedural and substantive due process).

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**C. Decision-makers.** Notwithstanding any provision of this Code to the contrary, the following shall apply for projects requiring multiple approvals.

**1. City Planning Commission.** If a project requires any approval or recommendation separately decided by an Area Planning Commission, the Zoning Administrator, and/or the Director, as the initial decision-maker, and also requires any approval or recommendation by the City Planning Commission as the initial decision-maker, then the City Planning Commission shall have initial decision-making authority for all of the approvals and/or recommendations.

So either way, whether by application of the density bonus implementation protocol, combined with Site Plan Review, or just the use of the density bonus protocol by itself, the City erred in failing to have the City Planning Commission act as the initial decision-maker with respect to this project.

*d. The Project Does Not Have to Go 7 Stories For the Proponent to Supply the 5 Extra Very-Low Income Units*

The project originally started out as 26 units (all studios), 6 stories, with one level underground parking. That meant that the residences would consist of 4 stories, with one story ground level parking, and one story below ground. See Screen-Shot from the MND below:

<b>PROJECT LOCATION</b> 738 S NORMANDIE AVE
<b>PROJECT DESCRIPTION</b> 1) A Zoning Administrator's Adjustment per Section 12.28 of the Los Angeles Municipal Code to permit a) a 0-foot front yard in lieu of a 15-foot front yard, and b) a side yard of 5-feet in lieu of a 9-foot side yard, and c) a 10-foot rear yard in lieu of the 18-foot rear yard, all otherwise required by Section 12.12-C, and 2) Pursuant to the provisions of LAMC Section 12.27, relief from the requirement to accumulate 15-points from the landscaping requirements contained in LAMC Section 12.40-43, all in conjunction with the construction of a 60-foot tall 26-unit residential building over one level of underground parking, sited on a 7,518 square foot lot zoned R5-2.

These studio units were 845 sq. feet in size as per the screen shot below from the approved plans:

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**738 S. Normandie Ave**

Site Address	738 S. Normandie Ave					
Zoning	Existing	R5-2	Proposed	R5-2		
Density	Allowable Unit #*	37.9	Proposed Unit #	34		
	* 200 sf/unit per R5-2/ Regional Center					
FAR	Allowable	R5-2	Proposed	5.0		
Lot Area	R5-2	7,517.7				
	Total	7,517.7				
FAR Calc Area(S.F.)	Allowable	5750x6.0=	34,500	Proposed		
				28,734		
	*Buildable R5-2 Area=4,765					
Parking	Required*	Residential	34	Proposed Residential		
				29		
	* 1 for Studio, 1.5 for 1BR, 2 for 2BR W/ 15% TRANSIT REDUCTION					
				TOTAL		
				29		
Bike Parking	Required*	Residential	38	Proposed Residential		
				38		
	* 34 for long term & 4 for short term					
				TOTAL		
				38		
Open Space	Studio	34 units	Proposed			
			Comm Space			
			Court yard/ Roof Deck	1,700		
			Rear yard			
			Private Deck	1,700		
	Required*		3,400	Total		
				3,400		
	* 100sf for Studio					
Unit Mix		STUDIO	1BR	2BR	TOTAL	Remark
	GROUND FLR.					
	2F	6			6	
	3F	6			6	
	4F	6			6	
	5F	6			6	
	6F	5			5	
	7F	5			5	
	TOTAL	34			34	
	% of Total	100.0%	0.0%	0.0%	100.0%	
	Unit Average	845.00				
	Net Rentable	28,730.00				

Total Residential Building Area	32,749.00
Total Subterranean Parking	7,105.00
Total Surface Parking	5,379.00

This latest iteration has the studio units cut in half to between 360 sq. ft and 438 sq. ft. So instead of the studio units averaging 845 sq. ft., they average 399 sq. ft. which is less than half of the average sq. footage of the studio units in the prior iterations.

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So the developer did not increase the number of units by increasing the square footage of the building. The unit increase came from a decrease in the square footage of the units. Usually, when developers seek concessions or incentives to incorporate density bonus units into their project (some of which are market-rate units (to subsidize the provision of the affordable units; while others are the affordable density bonus units), they increase the square footage of the project.

What occurred here is precisely the opposite. The square footage of the market rate units was reduced and affordable units added. Does this make any sense?

Answer: No. What it means is that since the size of the studio units can be manipulated (in this case decreased), the developer could and should be able to provide the five extra-low affordable units consistent with the six-story structure (twenty-feet shorter) originally proposed. So, for example, assuming the 26 studio units originally proposed were 845 sq. ft, and assuming further the size of the studio units was reduced by half, that would mean that within the same building envelope 52 studio units could be provided in a sixty-foot tall structure and the project still be profitable. This project has 50 units total, and 5 affordable units (extra-very-low affordable units).

Therefore, there is nothing in the record which demonstrates that the developer is unable to provide the 5 affordable units within the five residential stories contemplated in the 26 (studio) unit proposal given that the number of studio units has now risen from 26 (then 34) to now 45. The only difference is that the building is 1-2 stories taller.

But in going for those extra 1-2 stories, as noted above, the developer is significantly damaging and impairing a very important historical resource, the *Normandie-Mariposa Historical Apartment District*.

In short, this entire proposal is a scam to artificially increase the developer's profit using the TOC law (Transit-Oriented Affordable Housing Incentive Program) while getting a CEQA exemption to boot when the facts and evidence demonstrate on their face that the five affordable units could be provided within a 5-6 story building envelope simply by decreasing the square footage of the studio units (and thus increasing the number of units).

All of this can and should be more thoroughly evaluated in the context of a "re-do" before the Planning Commission as required under LAMC

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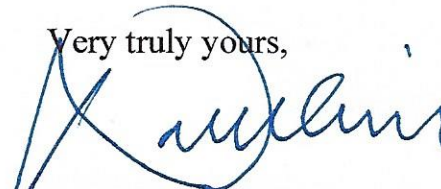
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§12.22(A)(5)(g)(3), based on the economic pro-forma mandated under LAMC §12.22(A)(25)(g)(3)(a), together with a CEQA work-up which objectively evaluates the impact this proposed development will have on the *Normandie-Mariposa Historical Apartment District*.

For each of the foregoing reasons, the appeal of Carolyn Zanelli should be granted.

Very truly yours,



NOEL WEISS

NW: nww  
042820

cc: Client & Counsel  
Carolyn Zanelli

## Communication from Public

**Name:** Noel Weiss  
**Date Submitted:** 04/28/2020 09:40 PM  
**Council File No:** 20-0087  
**Comments for Public Posting:** Please see attached. . . . Letter in Support of Appeal of Carolyn Zanelli