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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — ALHAMBRA COURTHOUSE

The Silver Lake Heritage Trust, Petitioner, vs. **City of Los Angeles**; Los Angeles Department of City Planning; City Planning Commission; Vincent P. Bertoni, and DOES 1 through 20, inclusive, Respondents;	Case No.: 22STCP04323 Assigned for all purposes to: Hon. Joel L. Lofton, Dept. X **First Amended Verified Petition for Writ of Mandate; Complaint for Declaratory and Injunctive Relief** [CCP §§ 526, 1085, 1060] Complaint Filed: Dec. 12, 2022 Trial Date: Not Set
Aym Investment, LLC; Michael Masoud Aminpour; Andy Simhaee; and ROES 1 through20, inclusive, Real Parties in Interest.	

To the Honorable Judges of the Superior Court:

Petitioner **The Silver Lake Heritage Trust,** by this Verified Petition and Complaint for Declaratory and Injunctive Relief, petitions this court for a writ of mandate and/or requests declaratory relief and an injunction directed to Respondents and by this Petition alleges:

1. In this action, Petitioner challenges the City's approval of a development project located at 1251-1259 W. Sunset Blvd. in Los Angeles (the Project). The Project location is known commonly as the Stires Staircase Bungalow Court and is comprised of two parcels having APNs 5406-016-026 and 5406-015-001 (the Project Property).

2. The Project and the process by which it was approved are riddled with problems.

3. From a broad perspective, the Project Property is unique and CEQA review was necessary to consider its unusual circumstances. Different from other in-fill development projects in the City, this is one is on a steep hillside where the builder will carve out 20,000 cubic feet of earth to build an apartment building that is surrounded on three sides by retaining walls. This and other concerns required a greater degree of deliberation and more careful consideration than the Project was given.

4. More narrowly, the City Planning Commission unilaterally decided that its decision was final. In making that determination, the Commission and Planning Department staff denied Petitioner and others important appellate rights secured not only by CEQA but also by the City's Municipal Code. Consequently, the City Council never got to hear about the serious problems that might result from this Project if was deemed exempt from CEQA and fast-tracked through the approval process without careful consideration and a deliberative review.

5. On top of these problems, the City Planning Department flaunted applicable zoning laws and incentivized this dangerous project by giving the Real Parties incentives that it cannot legally provide. Los Angeles Measure JJJ—the purported basis for setback and height incentives—expressly prohibits those incentives as applied to this Project. Also problematic is recognition that those Guidelines cannot be effective until approved by the City Council.

6. These are multiple bases on which the City's approval of the Project must be set aside.

PARTIES

7. Petitioner **The Silver Lake Heritage Trust (SLHT)** is a nonprofit public benefit corporation organized under the laws of the State of California and having its principal place of business in the City of Los Angeles.

8. SLHT's members include residents and taxpayers of the City of Los Angeles who live in the Project's neighborhood and the neighborhoods adjacent to it. They pay income taxes to the state, which are used for the City's benefit. They also pay sales and use taxes for the benefit of the City; property taxes for property located in the City; and business license taxes for businesses located in the City. SLHT's membership advocates for health, public safety, and quality of life issues in the City.

9. With its members, SLHT opposes projects and programs that result in dangerous environmental impacts; unwarranted additions to population density that tax local infrastructure and increase Green House Gas emissions; increase building heights to mar historic neighborhoods; the eviction of low-income families; and the cumulative impacts of each of these concerns along with their direct and secondary effects. Petitioner's membership will be adversely impacted by the environmental effects of the Project. SLHT's members share these concerns, which are not specific or unique to any one person or small number of people; therefore, SLHT can litigate these issues on behalf of the collective group without requiring participation from any one person.

10. SLHT and many of its members objected to the project orally and/or in writing during the review process. Prior to filing suit, SLHT complied with the requirements of Public Resources code section 21167.5 and gave notice of their intent to sue.

11. Respondent **City of Los Angeles**, a California charter city, is a municipal corporation and political subdivision of the state.

12. Respondent **Los Angeles Department of City Planning** is a non-elected decision-making body of the City of Los Angeles. It is the lead agency of the City that shares responsibility for the decision at issue in this case.

13. Respondent **City Planning Commission** is the Mayor-appointed decision-making body within the Department of City Planning that shares responsibility for the decision at issue in this case.

14. Respondent **Vincent P. Bertoni** is the Director of the Department of City Planning for the City of Los Angeles. He is named in his official capacity and is the Mayor-appointed decision maker who shares in responsibility for the decision at issue in this case.

15. On information and belief, Real Party in Interest **Aym Investment, LLC** is a limited liability company organized under the laws of the State of California. Aym Investment named as the applicant on the Project application.

16. Real Party in Interest **Michael Masoud Aminpour** is an individual and is known as an agent of Aym Investment. The Project application identifies Aminpour as the property owner. On information and belief, Aminpour owns Aym Investment.

17. Real Party in Interest **Andy Simhaee** is an individual and is listed as the Project application as the owner's agent.

18. The true names of Respondent DOES 1 through 25, inclusive, are unknown to Petitioner, who therefore brings this action against DOES 1 through 25, inclusive, by such fictitious names and will seek leave of this Petition to show their true names, identities, and capacities when they have been ascertained.

19. The true names of Real Parties in Interest ROES 1 through 25, inclusive, are unknown to Petitioner, who therefore brings this action against ROES 1 through 25, inclusive, by such fictitious names and will seek leave of this Petition to show their true names, identities, and capacities when they have been ascertained.

JURISDICTION AND VENUE

20. Jurisdiction and venue are proper in Los Angeles County because this case concerns real property located in the City of Los Angeles.

21. Jurisdiction and venue are proper in Los Angeles County because the Respondents include government entities that operate exclusively within the boundaries of Los Angeles County. Respondents also include government officials, named in their official capacities, who work in Los Angeles County and act on behalf of a government entity located exclusively within its boundaries.

22. Jurisdiction and venue are appropriate as to the Real Parties in Interest because this action concerns their interest in the Project Property, which is located within Los Angeles County.

23. The relief sought is within the jurisdiction of this Court.

FACTS COMMON TO ALL CAUSES OF ACTION

A. Project Property Zoning

24. Zoning for the Project Property is C2-1VL. Abutting properties to the north and south are in the same zone.

25. Abutting parcels to the east are in a residential zone, [Q]R3-1VL.

26. To the west, the property abuts Sunset Blvd. On the opposite side of Sunset there are more properties in the C2-1VL zone. But behind them are residential properties in a RD2-1VL-HPOZ zone. Except for properties on Sunset Blvd., the property is surrounded by residential development.

27. The Project Property is subject to the Silver Lake-Echo Park-Elysian Valley Community Plan. It is in a Transit Priority Area, ZI-2452.

28. While apartment buildings are allowed in the C2 Zone (see L.A. Mun. Code § 12.14, incorporating *id.* § 12.13 and the R3 Zone), the 1VL is a height restricted district that limits properties to a "very low" height. The maximum height in this district is three stories and 45 feet. (L.A. Mun. Code § 12.21.1.A.)

B. The project approval.

29. At its July 14, 2022 meeting, the Los Angeles Planning Commission voted to approve the Project. That decision became final on October 20, 2022 when the Planning Commission mailed

its Letter of Determination approving the Project. A true and correct copy of this letter, obtained from the City, is attached as **Exhibit A** to this Petition.

30. The letter described the Project as follows:

> Construction, use, and maintenance of a new, seven-story, 70-unit residential development with 14 affordable units (10 units or 14 percent of the total number of dwelling units set aside for Extremely Low-Income Households and four units reserved for above moderate income households) in compliance with Transit Oriented Communities Affordable Housing Incentive Program and Los Angeles Housing Department's Replacement Unit Determination, dated October 25, 2018. The proposed development consists of two buildings (Building A and Building B). In total, the proposed development will encompass a total of 55,000 square feet of floor area resulting in a Floor Area Ratio (FAR) of 2.75 to 1. The Project will provide 38 parking spaces.

31. The letter stated the Planning Commission's conclusion that the Project was exempt from CEQA pursuant to the CEQA Guidelines, Article 19, Section 15332, Class 32.

32. The Commission approved the project, with conditions, "pursuant to Section 12.22 A.31 of the Los Angeles Municipal Code (LAMC), a 50 percent increase in density consistent with the provisions of the Transit Oriented Communities Affordable Housing Incentive Program along with the following three incentives for a Tier 1 project totaling 70 dwelling units, reserving 10 units for Extremely Low-Income (ELI) Household and four units for above moderate income households occupancy for a period of 55 years …"

33. The three incentives were: (1) a 25% reduction in the required side yards; (2) a 25% reduction in the required rear yards; and (3) a height increase of one additional story up to 11 feet. Another incentive was a maximum Floor Area Ratio of 2.75:1 for the C2-1VL Zone the project was located in.

34. According to findings that accompanied the letter, these incentives were justified by section 12.22 A.25(g) of the L.A. Municipal Code.

35. The affordable housing conditions, set forth in the project description, were included as a condition of approval. Before obtaining a building permit, the owner will be required to execute a covenant "to designate 14 dwelling units for affordable housing including, 10 for Extremely Low Income Households, and four (4) for above Moderate Income Households, as defined by the Los

Angeles Housing and Community Investment Department (HCIDLA) and California Government Code Section 65915(c)(2) for sale or rental as determined to be affordable to such households by HCIDLA for a period of 55 years."

36. The owner will be required to replace four units restricted to Extremely Low Income Households, two units restricted for Very Low Income Households, and one unit restricted to Low Income Households—a total of seven.

37. Ordinarily, a party would have 15 days from the Planning Commission's October 20, 2022 notice of its final decision to appeal that decision to the City Council. (L.A. Mun. Code § 11.5.13.C.2.) That deadline would have been November 4, 2022. But the Planning Commission's Letter of Determination stated that the decision was final and not subject to appeal. This deprived SLHT of its right to appeal.

38. The City filed the Notice of CEQA Exemption on November 10, 2022. A true and correct copy of that notice is attached as **Exhibit B**.

C. <u>The application that started this process.</u>

39. On or about April 17, 2018, Aminpour and Aym Investment applied for a permit to demolish the Stires Staircase Bungalows and replace them with a 70-unit apartment building. Their application included a Planning Application and Environmental Assessment Form with the City's Planning Department.

40. The Environmental Assessment Form identified Aym Investment as the property owner. The Planning Application identified Aminpour as the owner. On information and belief, Aminpour owns Aym Investment. These application documents identified Shimaee as the applicant's agent and representative.

41. The environmental form provided a project description:

> TOC, Tier 1 Density Bonus with additional of 3 incentives [¶] 1- Height, 2- 25% reduction in South Side Yard from 10 feet to 7.5', 3- 25% reduction in rear yard from 19 feet to 15 feet [¶] for Construction and maintain of 70 unit multi family apartment building max total of 55,000 S.F., [¶] and 35 standard parking space, 70 long term bike rack. [¶] 8% (6 Units) will be set aside for extremely low income. [¶] Categorical exemption (class 32) is requested.
> (errors in original).

42. The description on Aminpour's Planning Application was similar except that it stated that six units would be set aside for *very low income* housing rather than for *extremely low income* housing, as indicated on the Environmental Assessment Form.

43. According to the Planning Application, the application's authorizing code is section 12.22.A.25 of the Los Angeles Municipal Code. Section 12.22.A.25 provides various affordable housing incentives.

44. In addition to demolition of the existing 10 buildings, the 55,000 square feet of new construction would require grading to remove nearly 20,000 square feet of earth from the hillside (85% of the property has a slope in excess of 15%) and the removal of at least 16 mature trees.

45. Aminpour also provided a TOC Affordable Housing Form with the Project Application and requested a Class 32 CEQA exemption for urban infill development.

D. <u>The Review Process</u>

46. In addition to the City's denial of SLHT's right to appeal the Planning Commission's decision, other problems arose during the review process. Examples include:

a. Early in the process, the City determined that the project was exempt from CEQA under the class 32 exemption for in-fill development. Both SLHT and individuals among its membership objected to that determination. They objected orally and/or in writing in connection to the July 2022 Planning Commission hearing and at various other times.

b. When the local Neighborhood Council considered the project and interpreted the local Community Plan plus related materials, it rejected the project three times before City staff accepted it over the Neighborhood Council's objection.

c. While the Real Parties' application was pending, the Los Angeles Cultural Heritage Commission determined that the Project Property was eligible for designation as a Historic Monument in the City.

d. There were inconsistencies in the Real Parties' representations to the City throughout the process. This included mixing up their use of "very low-income

housing" and "extremely low-income housing," a difference that matters (see Health & Saf. Code §§ 50105, 50106); differences in the number of prosed units; the removal of dozens of 100-year-old trees, and discrepancies relating to the existing housing at the Project Property that is subject to the City's Rent Stabilization Ordinance.

e. The City did not give full effect to the Project Property's hillside lot, which affects its zoning and poses very serious environmental concerns relating to the Real Parties' plan to remove 20,000 cubic feet of earth—the entire hillside—and its destabilizing effect on neighboring properties. A significant piece of evidence the City disregarded was a geologic study by Principal Geologist Ken Wilson which established a myriad of slope stability and other problems at the Project Site with jeopardize both the environment and public safety.

f. There was also lax oversight of the Real Parties and insufficient verification of the documentation they provided, necessary more so than may be required in other projects given their past bad faith and unlawful conduct, including the largest wage-theft case the City has ever prosecuted.

47. This and every other piece of evidence relating to each of CEQA's requirements should have been considered. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Together, these add to the project's cumulative directory and secondary impacts.

CAUSES OF ACTION

I. First Cause of Action
Failure to Allow for CEQA Appeal

48. Petitioner restates paragraphs 1-47, above, and incorporates them by reference.

49. When a non-elected decision-making body, *e.g.*, the Los Angeles Planning Commission, determines that a project is exempt from CEQA review, CEQA requires that the agency allow for an appeal to its elected decision-making body, *i.e.*, the City Council. (Pub. Res. Code § 21151; *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 76.)

50. The Planning Commission mailed its Letter of Determination approving the Project on October 20, 2022. (Ex. A.) That letter stated: "The decision of the Los Angeles City Planning Commission is final and effective upon the mailing of this determination letter **and is not further appealable**." (Ex. A, p. 2 [emphasis added].)

51. This deprived Petitioner of its right to appeal the Planning Commission's decision to the City Council. That is a standalone CEQA violation and a breach of the Planning Commission's public duty to provide this right. Subsequent discussions between SLHT and City staff confirmed that the City was not going to allow SLHT and other community members their right to appeal the decision.

52. In their first petition, SLHT alleged that the Planning Commission sent the Letter of Determination and gave notice of its decision after the appeal period expired. Knowing they have the right to appeal, they reasonably misconstrued the letter as sent after the appeal period expired. Nonetheless, SLHT asked the Planning Department to correct the letter—to provide for an appeal period—and it refused to do so. Based on the Planning Departments refusal to correct the letter and because the October 20, 2022 letter otherwise would have started the appeal period, the letter is more properly construed as foreclosing and denying SLTH's right to appeal. For reasons unknown, the Planning Commission determined that its decision was final without any possibility appeal immediately upon its issuance.

53. SLHT has satisfied the statute of limitations for this claim. (Pub. Res. Code § 21167(e).) The petition was timely filed within 30 days of the City's November 10, 2022 filing of the Notice of Exemption. (Ex. B.)

54. For this reason, the Court should issue a writ of mandate directing the City Planning Commission to set aside its approval of the project. (*McCann, supra*, 70 Cal.App.5th at p. 69.) If the Planning Commission issues a new Letter of Determination or otherwise approves the project, it should be ordered to do so in a way that preserves SLHT's right appeal that decision to the City Council. Then, if the City Council denies the appeal, SLHT can refile this action to

challenge the City's determination that the Project is exempt from CEQA review after having had the opportunity to exhaust every administrative remedy CEQA provides.

55. Additionally, there is an actual dispute between the parties as to whether the Planning Commission's Letter of Determination restricted or had the effect of restricting SLHT's right or ability to appeal the Commission's decision under CEQA. The Court should enter declaratory judgment that the Planning Commission's letter unlawfully denied SLHT their right to appeal its decision.

II. Second Cause of Action
Violation of L.A. Municipal Code section 11.5.13.C.

56. Petitioner restates paragraphs 1-47 and the First Cause of Action, above, and incorporates them by reference.

57. Section 11.5.13.C of the Los Angeles Municipal Code preserves the public's right to appeal the Planning Commission's determination that a project is exempt from CEQA review.

58. As stated in the First Cause of Action, the Planning Commission's October 20, 2022 Letter of Determination denied the public its right to appeal. In addition to violating CEQA, this violated the City's Municipal Code.

59. A writ of mandate should issue under section 1085 of the Code of Civil Procedure directing the City to set aside the Planning Commission's Letter of Determination. If the Planning Commission reissues the letter, it should do so in a way that preserves SLHT's right to appeal.

60. SLHT is beneficially interested in this claim because it concerns SLHT's right to appeal the Planning Commission's determination. SLHT also has public interest standing to ensure that the City complies with its Municipal Code.

61. Additionally, there is an actual dispute between the parties as to whether the Planning Commission's Letter of Determination restricted or had the effect of restricting SLHT's right or ability to appeal the Commission's decision under the City's Municipal Code. The Court should enter declaratory judgment that the Planning Commission's letter had this effect.

62. These remedies under the Municipal Code exist in addition to any CEQA remedies.

III. Third Cause of Action
Failure to Conduct CEQA Review

63. Petitioner restates paragraphs 1-47, above, and incorporates them by reference.

64. Setting aside the City's failure to allow for the required appeal, the Planning Commission's conclusion that the Project is exempt from CEQA review was an error.

65. Following the Planning Commission's October 20, 2022 Letter of Determination approving the Project, the City filed a Notice of Exemption with the County Clerk on November 10, 2022. That notice stated a categorical CEQA exemption under class 32. (Ex. B.)

66. Section 21083 of the Public Resources Code provides for the development of guidelines that aid in CEQA's implementation. The guidelines are to include "a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from this division." (Pub. Res. Code § 21084(a).)

67. The City determined that the project is exempt from CEQA review based on class 32, an exemption for in-fill development. (14 CCR § 15332.) This exemption was improper because:

a. The project is not consistent with the applicable general plan designation and all applicable general plan policies or with applicable zoning designation and regulations. (14 CCR § 15332(a).)

i. The multi-family residential Project at issue in this case is not consistent with the property's commercial zone. To the extent apartment buildings are generally allowed in commercial zones, projects of this type are not contemplated by the applicable Community Plan—which is part of the general plan. Rather than being consistent with *all* applicable general plan policies, the Project subverts many of them. For this reason, CEQA review was required.

ii. Rather than providing for developments of this type, the Community Plan recognizes the nuances of the neighborhood's hillside areas. It describes the streets as "substandard," and posing "a challenge for parking and circulation." For this reason—at properties like the Project Property—the general plan requires retention of existing densities. This project not only provides an increase beyond the existing density, but it also allows an exception in excess of the densities generally allowed, even if the hillside-limitation did not apply. By exceeding general and hillside density rules, the City compounded its error.

iii. The Community Plan requires a buffer between single-family residential areas and multi-family areas. The Project is directly adjacent to a single-family residential area without any buffer.

iv. These are examples of ways that the Project is inconsistent with the City's zoning laws and general plan. It is not an exhaustive list of every way the Project violates zoning laws and/or the general plan.

b. During the City's review process, SLHT and other community members provided evidence that the Project will have a significant impact relating to traffic, noise, air quality, and/or water quality. (14 CCR § 15332(d).) CEQA review was required on this basis as well.

68. But the City should never have reached the specifics of the class 32 exemption because the Project is in a category of properties that are excepted from the CEQA exemptions. (14 CCR § 15300.2.) One of the following exceptions to the exemptions applies:

a. Significant Effect: "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (14 CCR § 15300.2(c).) The following are examples of reasons why the Project is different from other types of

in-fill developments. The following are not hypothetical concerns but actual problems that exist in the record below.

i. The fact that the Project Property is designated as a Methane Hazard Site.

ii. The Project's hillside location and the fact that the entire hillside will be removed in order to accommodate it. This is the removal of 20,000 cubic feet of earth—the equivalent of a 200x10 square foot area that is dug down 10 feet.

iii. The substandard streets—explicitly identified in the Community Plan as a problem—that precludes high density projects.

b. Historical Resources: "categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource." (14 CCR § 15300.2(f).)

i. While the Project's approval was pending, the Project property was nominated for designation as a Historic-Cultural Monument in the City. That nomination described the Stires Staircase Bungalows, built in 1922, as a significant part of Los Angeles history.

ii. The City's Cultural Heritage Commission staff determined that the property is eligible for designation and recommended that the Commission take it under consideration.

iii. The Commission agreed with its staff—it concluded that the property conforms with the definition of a Monument pursuant to section 22.171.17 of the L.A. Administrative Code—and recommended that the City Council consider the designation.

iv. While the City Council declined to make a formal designation, the property has been deemed eligible for designation. This should require CEQA review under the Guidelines. (14 CCR § 15300.2(f).)

69. If the Court cannot set aside the Letter of Determination to allow SLHT to pursue an appeal before the City Council (as requested in the first and second causes of action), then the Court should deem SLHT to have exhausted its administrative remedies and consider SLHT's this claim that the Project was not exempt from CEQA review. (*California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1345.) To the extent CEQA generally requires exhaustion of administrative remedies by appeal to the City Council, Petitioner satisfied that requirement when the Planning Commission's Letter of Determination informed the SLHT and the public that there were no further appellate rights. With that statement by the Planning Commission, SLHT had no further administrative remedy to exhaust.

70. As discussed above, SLHT not only has public interest standing to seek relief, but also satisfies more specific standing requirement and its members are beneficially interested in the outcome of this case.

IV. Fourth Cause of Action
Violation of L.A. Measure JJJ

71. Petitioner restates paragraphs 1-47, above, and incorporates them by reference.

72. On November 8, 2016, Los Angeles voters approved Measure JJJ, the "Build Better LA Initiative."

73. Among other things, Measure JJJ established two different sets of tools to make it easier to build (A) affordable housing or (B) housing that is close to transit stops. The two programs are mutually exclusive: builders can receive the benefits from one program or the other but not both.

74. Relating to affordable housing, Measure JJJ provides a streamlined process to implement general plan amendments necessary to allow certain projects. (Measure JJJ, § 5.) It provides density bonuses and other incentives that are generally consistent with already-existing state and local law. (See Gov. Code § 65915; L.A. Mun. Code § 12.22.A.25.) Measure JJJ's focus here was more on the general plan amendment process because developers' ability to benefit from the

already-existing incentives was sometimes hampered by general plan restrictions. Measure JJJ, section 5, is not at issue in this case.

75. Measure JJJ's transit-related program is found in its section 6. Section 6 is the issue in this case.

76. Section 6 created a Transit Orientated Communities (TOC) Affordable Housing Overlay and created a TOC Affordable Housing Incentive Program (TOC Incentive Program). (See L.A. Mun Code § 12.22.A.31 [added by Measure JJJ, § 6].) This is the program the Planning Commission considered in its October 20, 2022 Letter of Determination.

77. To be eligible for a TOC Incentive under Measure JJJ, a Project must satisfy three conditions. It must (1) provide the "minimum required percentages of On-Site Restricted Affordable Units"; (2) meet "any applicable requirements of Government Code section 65915(c)"; and (3) may not seek or receive "a density or development bonus under the provisions of California Government Code 65915 or any other State or local program that provides development bonuses. (L.A. Mun. Code § 12.22.A.31(b)(1).)

78. When a project is eligible, Measure JJJ's TOC Incentive program allows for the following incentives:

a. Density Increase of 35 percent or more accomplished by adjustments to minimum square feet requirements, floor area ratio, or both.

b. Parking Reductions consistent with Government Code section 65915(p).

c. Section 6 of Measure JJJ does not allow for height changes or setback adjustments.

79. Because the Planning Director and Commission approved the Project with an increase of allowed height and a reduction in the required setbacks, the City granted the Real Parties incentives that Measure JJJ does not allow.

80. Here, there is a conflict between Measure JJJ and its implementing Guidelines. The Guidelines describe Measure JJJ's TOC Incentives—the only incentives it allows—as "base

incentives." (§ VI.) The Guidelines then provide for "additional incentives" that do not appear anywhere in Measure JJJ, section 6. (§ VII.)

81. Nevertheless, the Planning Director's authority to create guidelines was limited to the creation of guidelines that implement Measure JJJ in a way that is consistent with its purpose. His allowance for "additional incentives" directly contradicts with Measure JJJ's plain terms and contravenes its purpose. Because voters have not approved the Guidelines, Measure JJJ's plain terms must prevail over the conflict.

82. It is notable that the Guidelines' "additional incentives" are generally the same as those found in section 12.22.A.25 of the Municipal Code; Measure JJJ, section 5; and Government Code 65915. That is their fatal flaw. Measure JJJ expressly states that a project is not eligible for a TOC Incentive if it receives a Government Code 65915 incentive. As indicated above, Measure JJJ allows one or the other but not both. Government Code 65915 provides for a smaller density bonus but allows developers to choose from a menu of other incentives. The TOC Incentive Program trades the menu of additional incentives for a much larger density bonus. But allowing the combination of the two is more than the voters allowed or contemplated when they adopted Measure JJJ.

83. In their demurrer, the City and Real Parties disputed SLHT's ability to challenge these guidelines on their face. In this Cause of Action, SLHT narrows its focus: The Guidelines, as applied to the instant Project do not allow the combination of density, parking, height, and setback incentives Respondents allowed because that combination directly contradicts Measure JJJ's plain terms.

84. To this end, both the Planning Director and Commission abused their discretion when they approved the project with incentives that the law expressly prohibits.

85. Measure JJJ provides that "[a]ny aggrieved person or resident of the City of Los Angeles shall have the right to maintain an action for equitable relief to restrain any violation of this Ordinance. (Measure JJJ, § 7.) This is a broad grant of authority to all Los Angeles residents

regardless of whether they have a beneficial interest in the outcome. SLHT satisfies this requirement because its membership largely consists of Los Angeles residents.

86. Regardless, SLHT's membership has both a beneficial interest in this action and satisfies public interest standing requirements to pursue writ relief against the City to compel its compliance with Measure JJJ.

87. SLHT also claims taxpayer standing under section 526a of the Code of Civil Procedure and allege that the expenditure of City resources, including staff time, is the type of waste of public funds that subject to injunction under that section.

V. Fifth Cause of Action
Violation of L.A. Zoning Code & General Plan

88. Petitioner restates paragraphs 1-47 and the Third and Fourth Causes of Action, above, and incorporates them by reference.

89. The Project approval violates the City's Zoning Codes and General Plan. There are no applicable exceptions. The Project may not be implemented as authorized by the Planning Commission.

VI. Sixth Cause of Action
Facial Challenge to TOC Guidelines

90. Petitioner restates paragraphs 1-47, above, and incorporates them by reference.

91. Under Section 6 of Measure JJJ, the Director of Planning was required to adopt Guidelines to implement Measure JJJ's TOC Incentive Program in a manner that is consistent with Measure JJJ. (L.A. Mun. Code § 12.22.A.31(b).)

92. The Director's TOC Guidelines are subject to approval. (L.A. Mun. Code § 12.22.A.31(c).) But Measure JJJ does not empower the Planning Commission to approve the Guidelines. Instead, the Planning Commission's authority is limited to making a recommendation to adopt or reject the Guidelines. While JJJ does not state who this this recommendation is given

to, it could only be the City Council. Because the Planning Commission's authority is limited to a recommendation, the Guidelines are ineffective until they are approved by the City Council.

93. In their demurrer to the first petition, the City and Real Parties argued that Government Code section 65009(c)(1) provided a 90-day statute of limitations applicable to any facial challenge relating to the Guidelines. That limitations period does not apply for two alternative reasons: (1) the Guidelines are not the type of decision that section 65009 applies to; and (2) because the City Council has not acted on the Planning Commission's recommendation, there is no action (of the type of section 65009 contemplates) to review.

94. Instead, there is only the Planning Director and Planning Commission's ongoing conduct and their continuing threat to apply "guidelines" that that have not been properly adopted. Their application of the Guidelines to projects in the City is without authority and is an abuse of discretion every time it is done. To prevent the continued waste of public funds and ongoing violation of Respondents' duty to act within the confines of the law, the Planning Director and Commission should be enjoined from applying the Guidelines unless and until they have been approved by the City Council. Then, if section 65009 applies, the 90-limitation period will begin.

95. Additionally, the as applied challenge provided for in the Fourth Cause of Action also exists on the face of the Guidelines. The so-called "Additional Incentives" can never apply to a project subject to the TOC Incentive Program because the TOC Incentive Program cannot lawfully apply when a project receives incentives through Government Code section 65915. Because the additional incentives are only permissible through section 65915 they are wholly inconsistent with Measure JJJ. In other words, the "Additional Incentives" as provided for in the Guidelines cannot exist simultaneously with the Guidelines' "Base Incentives"—they are mutually exclusive.

96. Because the section 65009 limitation period does not apply to this claim, the Court may, by writ of mandate or injunction, enjoin Respondents' continued application of the TOC Incentive Program Guidelines.

VII. Seventh Cause of Action
Compliance with Measure JJJ

97. Petitioner restates paragraphs 1-47 and the Sixth Cause of Action, above, and incorporates them by reference.

98. As set forth above, Measure JJJ requires the City Council's approval of the Planning Director's TOC Incentive Program Guidelines, and the City Council has failed to act on the Planning Commission's recommendation approve the Guidelines.

99. The City Council's failure to adopt *or reject* the Guidelines is a violation of its duty to act on them. While the Court cannot compel the City Council to take a particular action, it can compel the City Council's action. As such, a writ of mandate should issue directing the City Council to act on the proposed Guidelines.

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PRAYER FOR RELIEF

Wherefore, Petitioner prays that the Court:

1. **On the first and second causes of action:**
   a. Issue a writ of mandate ordering the Los Angeles Planning Commission to set aside its approval of this project and recall its October 20, 2022 Letter of Determination and the Notice of Exemption it filed on November 10, 2022 in order to secure SLHT's right to appeal the Planning Commission's decision.
   b. Enter a declaratory judgment that Planning Commission's October 20, 2022 Letter of Determination denied SLHT the right to appeal its determination to the City Council, in violation of CEQA and/or the Los Angeles Municipal Code.
2. **On the third cause of action:**
   a. Issue a writ of mandate ordering the Los Angeles Planning Commission to set aside its approval of this project and recall its October 20, 2022 Letter of Determination and the Notice of Exemption it filed on November 10, 2022 so it may complete the full CEQA review process required for the Project.
   b. Enter a declaratory judgment that the Project is not exempt from CEQA's requirements for environmental review.
3. **On the fourth cause of action:**
   a. Issue a writ of mandate and/or injunction directing Respondents to set aside their approval of the Project and reconsider it within Measure JJJ's limits. If the City provides a TOC Incentive, it is limited only to the incentives Measure JJJ allows.
4. **On the fifth cause of action:**
   a. Issue a writ of mandate and/or injunction directing Respondents to set aside their approval of the Project and reconsider it in accordance with the City's Zoning Codes and Genera Plan.
5. **On the sixth cause of action:**
   a. Issue a writ of mandate and/or injunction prohibiting the Director of Planning and Planning Commission from taking any further actions in reliance on the proposed

TOC Guidelines, which have not been approved by the City Council unless and until the City Council approves TOC Guidelines as provided for in Measure JJJ.

6. <u>On the seventh cause of action:</u>

a. Issue a writ of mandate directing the City of Los Angeles and its City Council to take action on the Proposed TOC Guidelines, as implemented by the Director of Planning and recommended for approval by the Planning Commission.

7. <u>On all causes of action:</u>

a. Award Petitioner its attorneys' fees and costs reasonably incurred herein; and

b. Grant such other and further relief as the Court deems proper.

DATE: June 8, 2023

Respectfully Submitted,
LAW OFFICE OF CHAD D. MORGAN

By: /s/
Chad D. Morgan Esq.
Attorney for Petitioner, The Silver Lake Heritage Trust

EXHIBIT
A

LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: OCT 20 2022

Case No. DIR-2018-6634-TOC-1A Council District: 1 – Cedillo
CEQA: ENV-2018-6635-CE
Plan Area: Silver Lake – Echo Park – Elysian Valley

Project Site: 1251 – 1259 West Sunset Boulevard

Applicant: Aym Investment, LLC
Representative: Andy Simhaee, Simha Engineering, Inc.

Appellant: Richard Courtney

At its meeting of **July 14, 2022**, the Los Angeles City Planning Commission took the actions below in conjunction with the approval of the following Project:

Construction, use, and maintenance of a new, seven-story, 70-unit residential development with 14 affordable units (10 units or 14 percent of the total number of dwelling units set aside for Extremely Low-Income Households and four units reserved for above moderate income households) in compliance with Transit Oriented Communities Affordable Housing Incentive Program and Los Angeles Housing Department's Replacement Unit Determination, dated October 25, 2018. The proposed development consists of two buildings (Building A and Building B). In total, the proposed development will encompass a total of 55,000 square feet of floor area resulting in a Floor Area Ratio (FAR) of 2.75 to 1. The Project will provide 38 parking spaces.

1. **Determined**, based on the whole of the administrative record, that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15332, Class 32, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies;
2. **Denied** the appeal **in part** and **Granted** the appeal **in part** and **sustained** the Planning Director's determination letter dated August 16, 2021;
3. **Approved** with Conditions, pursuant to Section 12.22 A.31 of the Los Angeles Municipal Code (LAMC), a 50 percent increase in density consistent with the provisions of the Transit Oriented Communities Affordable Housing Incentive Program along with the following three incentives for a Tier 1 project totaling 70 dwelling units, reserving 10 units for Extremely Low-Income (ELI) Household and four units for above moderate income households occupancy for a period of 55 years:
   a. Side Yards. A 25 percent reduction in the required side yards;
   b. Rear Yard. A 25 percent reduction in the required rear yard; and
   c. Height. A height increase of one additional story up to 11 additional feet;
4. **Adopted** the attached Modified Conditions of Approval; and
5. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved:	Perlman
Second:	Dake Wilson
Ayes:	Choe, López-Ledesma, Millman
Absent:	Campbell, Hornstock, Leung, Mack

Vote: 5 – 0

Cecilia Lamas, Commission Executive Assistant
Los Angeles City Planning Commission

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

Effective Date/Appeals: The decision of the Los Angeles City Planning Commission is final and effective upon the mailing of this determination letter and not further appealable.

Notice: An appeal of the CEQA clearance for the Project pursuant to Public Resources Code Section 21151(c) is only available if the Determination of the non-elected decision-making body (e.g., ZA, AA, APC, CPC) **is not further appealable** and the decision is final. The applicant is advised that any work undertaken while the CEQA clearance is on appeal is at his/her/its own risk and if the appeal is granted, it may result in (1) voiding and rescission of the CEQA clearance, the Determination, and any permits issued in reliance on the Determination and (2) the use by the City of any and all remedies to return the subject property to the condition it was in prior to issuance of the Determination.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings, Interim Appeal Filing Procedure (CEQA)

c: Heather Bleemers, Senior City Planner
Oliver Netburn, City Planner
Stephanie Escobar, Planning Assistant

CONDITIONS OF APPROVAL

(As Modified by the City Planning Commission at its meeting on July 13, 2022)

Pursuant to LAMC Section 12.22-A,31, the following conditions are hereby imposed upon the use of the subject property:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the applicant, stamped "Exhibit A," and attached to the subject case file. Minor deviations may be allowed in order to comply with the provisions of the LAMC or the project conditions. Changes beyond minor deviations required by other City Departments or the LAMC may not be made without prior review by the Department of City Planning, Expedited Processing Section, and written approval by the Director of City Planning. Each change shall be identified and justified in writing.

2. **Base Incentives.**

   a. **Residential Density**. The project shall be limited to a maximum density of 70 residential dwelling units, including On-site Restricted Affordable Units.

   b. **Floor Area Ratio (FAR)**. The project is permitted to have a maximum FAR of 2.75 to 1 in the C2-1VL Zone.

   c. **Parking.**

      i. **Automotive Parking.** Automobile parking shall be provided consistent with the LAMC Section 12.22-A,31, which permits 0.5 parking space per bedroom for a Tier 1 Project.

      ii. **Bicycle Parking.** Bicycle parking shall be provided consistent with LAMC 12.21-A,16.

      iii. **Adjustment of Parking.** In the event that the number of Restricted Affordable Units should increase or the composition of such units should change (i.e. the number of bedrooms, or the number of units made available to Senior Citizens and/or Disabled Persons), and no other Condition of Approval or incentive is affected, then no modification of this determination shall be necessary, and the number of parking spaces shall be re-calculated by the Department of Building and Safety based upon the ratios set forth pursuant to LAMC Section 12.22-A,25.

      iv. **Unbundling.** Required parking may be sold or rented separately from the units, with the exception of all Restricted Affordable Units which shall include any required parking in the base rent or sales price, as verified by HCIDLA.

3. **Additional Incentives.**

   a. **Rear Yard.** The project shall be permitted a 25% reduction in the required side yards.

   b. **Side Yards.** The project shall be permitted a 25% reduction in the required rear yard.

c. **Height.** The project shall be permitted a height increase of one (1) additional story up to 11 additional feet.

4. **On-site Restricted Affordable Units.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of HCIDLA to designate 14 dwelling units for affordable housing including, 10 for Extremely Low Income Households, and four (4) for above Moderate Income Households, as defined by the Los Angeles Housing and Community Investment Department (HCIDLA) and California Government Code Section 65915(c)(2) for sale or rental as determined to be affordable to such households by HCIDLA for a period of 55 years. In the event the applicant reduces the proposed density of the project, the number of required set-aside affordable units may be adjusted, consistent with LAMC Section 12.22-A,31, to the satisfaction of HCIDLA, and in consideration of the project's AB2556 Determination. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file. The project shall comply with the Guidelines for the Affordable Housing Incentives Program adopted by the City Planning Commission and with any monitoring requirements established by the HCIDLA. Refer to the Density Bonus Legislation Background section of this determination.

   Housing replacement units required pursuant to AB2556 may be used to satisfy the On-site Restricted Affordable Units provided such units meet the income levels, to the satisfaction of HCIDLA.

5. **Changes in On-site Restricted Units**. Deviations that increase the number of restricted affordable units or that change the composition of units or change parking numbers shall be consistent with the Transit Oriented Communities Guidelines.

6. **Housing Replacement.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of HCIDLA to replace a total of seven (7) dwelling units including: four (4) units restricted to Extremely Low Income Households; two (2) units restricted for Very Low Income Households, and one (1) unit restricted to Low Income Households, for sale or rental as determined to be affordable to such households by HCIDLA for a period of 55 years. Enforcement of the terms of said covenant shall be the responsibility of HCIDLA. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file. The project shall comply with the Guidelines for the Affordable Housing Incentives Program adopted by the City Planning Commission and with any monitoring requirements established by the HCIDLA. Refer to the Density Bonus Legislation Background section of this determination.

   On-site Restricted Affordable Units may be used to satisfy the housing replacement units required pursuant to AB 2556 provided such units meet the income levels, to the satisfaction of HCIDLA.

7. Prior to the issuance of a demolition permit, the Applicant or successor shall provide certified mailing receipts of proof of service, to the Department of City Planning Development Services demonstrating that existing qualified tenants were provided an offer to enter into a private agreement with the applicant (or successor) that includes the following terms: 1) the ability for the tenant to return to a comparable unit within the project; and, 2) during construction of the project, funding of the difference in rent of a comparably-sized unit between the tenant's rental rate immediately prior to the demolition of the building and the tenant's new rental rate, until the ability to return, if accepted, is exercised. The Applicant (or successor) shall provide a copy of the signed agreement(s) with, or written rejection from, the tenant(s). Where the

Applicant (or successor) is not able to enter into an agreement with the tenant(s), the Applicant (or successor) shall submit a written declaration, under penalty of perjury, that best faith efforts have been made to enter into a private agreement with the tenant(s). The applicant (or their successor) shall also submit to the Department of City Planning Development Services, concurrent with certified mailing receipts of proof of service signed under penalty of perjury, the rent roll of occupied units at the time the offer is commenced.

8. **Design Conformance.**

   a. **Entrance.** Submit enlarged Site and Landscape Plans showing an enhanced building entrance including, but not limited to, a canopy, paving and/or landscape features.

   b. **Parking Garage.** Exterior screening shall be installed to minimize the spill light from lights within the parking garage. The screening shall also be installed so as to minimize the views and potential glare of headlights of motor vehicles within the garage from the public right-of-way. Screening measures may include, but are not limited to, shielding attached to the luminaire, building, or site structures.

   c. **Landscaping.**

      i. Submit a Landscape Plan showing landscaping, such as climbing vines, which will cover the entire First and Second Floor Plans parking garage walls.

      ii. Submit Landscape Plans showing all levels where landscaping is proposed and required.

      iii. All open areas not used for buildings, driveways, parking areas, recreational facilities or walks shall be attractively landscaped, including an automatic irrigation system, and maintained in accordance with a landscape plan prepared by a licensed landscape architect or licensed architect, and submitted for approval to the Department of City Planning.

      iv. All planters containing trees shall have a minimum depth of 48 inches (48”), including those located on the rooftop.

   d. **Mechanical Equipment.** All mechanical equipment on the roof shall be screened from view. The transformer, if located in the front yard, shall be screened with landscaping.

   e. **Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source does not illuminate adjacent residential properties or the public right-of-way, nor the above skies.

   f. **Maintenance.** The subject property (including all trash storage areas, associated parking facilities, walkways, common open space, and exterior walls along the property lines) shall be maintained in an attractive condition and shall be kept free of trash and debris.

Administrative Conditions

9. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building & Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building & Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building

permit by the Department of Building & Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.

10. **Notations on Plans.** Plans submitted to the Department of Building & Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet and shall include any modifications or notations required herein.

11. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.

12. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.

13. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assigns. The agreement shall be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.

14. **Department of Building & Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the LAMC, Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building & Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building & Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.

15. **Department of Water and Power.** Satisfactory arrangements shall be made with the Los Angeles Department of Water and Power (LADWP) for compliance with LADWP's Rules Governing Water and Electric Service. Any corrections and/or modifications to plans made subsequent to this determination in order to accommodate changes to the project due to the under-grounding of utility lines, that are outside of substantial compliance or that affect any part of the exterior design or appearance of the project as approved by the Director, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.

16. **Enforcement.** Compliance with and the intent of these conditions shall be to the satisfaction of the Department of City Planning.

17. **Expiration.** In the event that this grant is not utilized within three years of its effective date (the day following the last day that an appeal may be filed), the grant shall be considered null and void. Issuance of a building permit, and the initiation of, and diligent continuation of, construction activity shall constitute utilization for the purposes of this grant.

18. **Expedited Processing Section Fee.** <u>Prior to the clearance of any conditions</u>, the applicant

shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.

19. **Indemnification and Reimbursement of Litigation Costs.**

Applicant shall do all of the following:

a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.

b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out, in whole or in part, of the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.

c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than $50,000. The City's failure to notice or collect the deposit does not relieve the applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).

e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with

respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

> "City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.
>
> "Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with <u>any</u> federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the applicant otherwise created by this condition.

FINDINGS

TRANSIT ORIENTED COMMUNITIES AFFORDABLE HOUSING INCENTIVE PROGRAM / AFFORDABLE HOUSING INCENTIVES COMPLIANCE FINDINGS

Pursuant to Section 12.22-A,31(e) of the LAMC, the Director shall review a Transit Oriented Communities Affordable Housing Incentive Program project application in accordance with the procedures outlined in LAMC Section 12.22-A,25(g).

1. Pursuant to Section 12.22 A.25(g) of the LAMC, the Director shall approve a density bonus and requested incentive(s) unless the director finds that:

a. The incentives do not require in identifiable and actual cost reductions to provide for affordable housing costs, as defined in California Health and Safety Code Section 5005.2 or Section 50053 for rents for the affordable units.

The California Health & Safety Code Sections 50052.5 and 50053 define formulas for calculating affordable housing costs for very low, low, and moderate income households. Section 50052.5 addresses owner-occupied housing and Section 50053 addresses rental households. Affordable housing costs are a calculation of residential rent or ownership pricing not to exceed a percent gross income based on area median income thresholds dependent on affordability levels. There were no substantial evidence that would allow the Director to make a finding that the requested incentives are not necessary to provide for affordable housing costs per State Law.

The list of base incentives in the Transit Oriented Communities Guidelines were pre-evaluated at the time the Transit Oriented Communities Affordable Housing Incentive Program Ordinance was adopted to include various types of relief that minimize restrictions on the size of the project. The base incentives are required to provide for affordable housing costs because the incentives by their nature may result in increasing the scale of the project. The additional incentives requested to utilize up to a 25 percent reduction in the side and rear yard requirements and increase in height would result in building design or construction efficiencies that provide for affordable housing costs. As a result of the prescribed incentives, it is likely that the Director will always conclude that the incentives are required for such projects to provide for affordable housing units as identified by the TOC Guidelines.

Rear Yard. Eligible Housing Developments in Tier 1 may reduce the required width or depth of the rear yard or setback by up to 25%. In this case, the project would be required a 19 rear yard. The project seeks to utilize the permitted reduction thereby establishing a minimum 15-foot rear yard requirement. This requested incentive will allow the developer to reduce setback requirements so the units reserved for affordable housing can be constructed and the overall space dedicated to residential uses is increased. This requested incentive will result in a building design that facilitates affordable housing costs and supports the applicant's decision to reserve 10 units for Extremely Low Income Households and four (4) for Above Moderate Income Households.

Side Yards. Eligible Housing Developments in Tier 1 in residential zones may reduce the required width or depth of two (2) individual yards or setbacks by up to 25%. In this case, the project would be required nine-foot side yards. The project seeks to utilize the permitted reduction thereby establishing a minimum seven-foot, six-inch (7'-6") side yard requirement for both side yards. This requested incentive will result in a building design

that facilitates affordable housing costs and supports the applicant's decision to reserve 10 units for Extremely Low Income Households and four (4) for Above Moderate Income Households.

Height. Eligible Housing Developments in Tier 1 may increase the maximum permitted building height by one (1) additional story up to 11 additional feet. The C2-1VL allows for a maximum height of 45 feet. Pursuant to LAMC Section 12.21.1-B,2, whenever the highest point of elevation of the adjoining sidewalk or ground surface within a five-foot horizontal distance measured from the exterior wall of a building exceeds grade level by more than 20 feet, a building or structure may exceed the height by not more than 12 feet. Therefore, the maximum height allowed on the site is 57 feet. With the utilization of the incentive, the project would be allowed a maximum height of 68 feet above the otherwise permitted 57 feet. This requested incentive will result in a building design that facilitates affordable housing costs and supports the applicant's decision to reserve 10 units for Extremely Low Income Households and four (4) for Above Moderate Income Households.

b. *The Incentive will have a specific adverse impact upon public health and safety or the physical environment, or on any real property that is listed in the California Register of Historical Resources and for which there are no feasible methods to satisfactorily mitigate or avoid the specific adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or the general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.*

There is no evidence that the proposed incentive will have a specific adverse impact upon public health and safety or the physical environment, or any real property that is listed in the California Register of Historical Resources. A "specific adverse impact" is defined as "a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (LAMC Section 12.22 A.25(b)). The project does not involve a contributing structure in a designated Historic Preservation Overlay Zone or on the City of Los Angeles list of Historical-Cultural Monuments. According to ZIMAS, the project is not located on a substandard street in a Hillside area or a Very High Fire Hazard Severity Zone. Additionally, on March 2, 2021 the City Council disapproved the Cultural Heritage Commission's recommendation to include the Stires Staircase Bungalow Court located at the project site as a Historic Cultural Monument, therefore, there is no substantial evidence that the proposed project, and thus the requested incentive, will have a specific adverse impact on the physical environment, on public health and safety or the physical environment, or on any Historical Resource.

ADDITIONAL MANDATORY FINDINGS

2. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located in Zone C2-1VL, which is categorized as areas of 0.2% annual chance flood.

COVID-19 UPDATE

Interim Appeal Filing Procedures

Fall 2020

LOS ANGELES CITY PLANNING

Consistent with Mayor Eric Garcetti's "Safer At Home" directives to help slow the spread of COVID-19, City Planning has implemented new procedures for the filing of appeals for non-applicants that eliminate or minimize in-person interaction.

OPTION 1: Online Appeal Portal

(planning.lacity.org/development-services/appeal-application-online)

Entitlement and CEQA appeals can be submitted online and payment can be made by credit card or e-check. The online appeal portal allows appellants to fill out and submit the appeal application directly to the Development Services Center (DSC). Once the appeal is accepted, the portal allows for appellants to submit a credit card payment, enabling the appeal and payment to be submitted entirely electronically. A 2.7% credit card processing service fee will be charged - there is no charge for paying online by e-check. Appeals should be filed early to ensure DSC staff has adequate time to review and accept the documents, and to allow Appellants time to submit payment. On the final day to file an appeal, the application must be submitted and paid for by 4:30PM (PT). Should the final day fall on a weekend or legal holiday, the time for filing an appeal shall be extended to 4:30PM (PT) on the next succeeding working day. Building and Safety appeals (LAMC Section 12.26K) can only be filed using Option 2 below.

OPTION 2: Drop off at DSC

An appellant may continue to submit an appeal application and payment at any of the three Development Services Center (DSC) locations. City Planning established drop off areas at the DSCs with physical boxes where appellants can drop.

Metro DSC
(213) 482-7077
201 N. Figueroa Street
Los Angeles, CA 90012

Van Nuys DSC
(818) 374-5050
6262 Van Nuys Boulevard
Van Nuys, CA 91401

West Los Angeles DSC
(310) 231-2901
1828 Sawtelle Boulevard
West Los Angeles, CA 90025

City Planning staff will follow up with the Appellant via email and/and or phone to:

- Confirm that the appeal package is complete and meets the applicable LAMC provisions
- Provide a receipt for payment

EXHIBIT B

EXHIBIT B

THIS NOTICE WAS POSTED

ON November 10 2022

UNTIL December 12 2022

REGISTRAR – RECORDER/COUNTY CLERK

2022 245885

FILED
Nov 10 2022

Dean C. Logan, Registrar – Recorder/County Clerk

Electronically signed by LAKEISHA MCCOY

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 395
LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT

NOTICE OF EXEMPTION

(PRC Section 21152; CEQA Guidelines Section 15062)

Pursuant to Public Resources Code § 21152(b) and CEQA Guidelines § 15062, the notice should be posted with the County Clerk by mailing the form and posting fee payment to the following address: Los Angeles County Clerk/Recorder, Environmental Notices, P.O. Box 1208, Norwalk, CA 90650. Pursuant to Public Resources Code § 21167 (d), the posting of this notice starts a 35-day statute of limitations on court challenges to reliance on an exemption for the project. Failure to file this notice as provided above, results in the statute of limitations being extended to 180 days.

PARENT CASE NUMBER(S) / REQUESTED ENTITLEMENTS
DIR-2018-6634-TOC

LEAD CITY AGENCY	CASE NUMBER
City of Los Angeles (Department of City Planning)	ENV-2018-6635-CE
PROJECT TITLE: 1251 West Sunset Boulevard	COUNCIL DISTRICT

PROJECT LOCATION (Street Address and Cross Streets and/or Attached Map) ☐ Map attached.
1251, 1251 1/2, 1251 1/4, 1253, 1253 1/2, 1253 1/4, 1255, 1255 1/2, 1257 1/2, 1259 West Sunset Blvd.

PROJECT DESCRIPTION: Demo of ten existing residential structures and the construction of a 70-unit Residential development ☑ Additional page(s) attached.

NAME OF APPLICANT / OWNER:
AYM Investment, LLC

CONTACT PERSON (If different from Applicant/Owner above)	(AREA CODE) TELEPHONE NUMBER	EXT.
Andy Simhaee	213-747-2560	

EXEMPT STATUS: (Check all boxes, and include all exemptions, that apply and provide relevant citations.)

STATE CEQA STATUTE & GUIDELINES

☐ STATUTORY EXEMPTION(S)

Public Resources Code Section(s) _____

☑ CATEGORICAL EXEMPTION(S) (State CEQA Guidelines Sec. 15301-15333 / Class 1-Class 33)

CEQA Guideline Section(s) / Class(es) Section 15332, Class 32

☐ OTHER BASIS FOR EXEMPTION (E.g., CEQA Guidelines Section 15061(b)(3) or (b)(4) or Section 15378(b))

JUSTIFICATION FOR PROJECT EXEMPTION: ☑ Additional page(s) attached

☒ None of the exceptions in CEQA Guidelines Section 15300.2 to the categorical exemption(s) apply to the Project.
☐ The project is identified in one or more of the list of activities in the City of Los Angeles CEQA Guidelines as cited in the justification.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.
If different from the applicant, the identity of the person undertaking the project.

CITY STAFF USE ONLY:

CITY STAFF NAME AND SIGNATURE	STAFF TITLE
Stephanie Escobar Stephanie Escobar	Planning Assistant

ENTITLEMENTS APPROVED
Transit Oriented Communities (TOC)

DISTRIBUTION: County Clerk, Agency Record
Rev. 6-22-2021

DEPARTMENT OF CITY PLANNING

COMMISSION OFFICE
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA

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MAYOR

EXECUTIVE OFFICES
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ARTHI L. VARMA, AICP
DEPUTY DIRECTOR

LISA M. WEBBER, AICP
DEPUTY DIRECTOR

JUSTIFICATION FOR PROJECT EXEMPTION CASE NO. ENV-2018-6635-CE

On December 26, 2018, the City of Los Angeles determined based on the whole of the administrative record that the project is exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies. The project was found to be exempt based on the following:

Project Description:

The project is located at 1251 – 1259 West Sunset Boulevard in the Silver Lake – Echo Park – Elysian Valley Community Plan Area.

The property is currently improved with 10 residential units totaling 5,280 square feet. The proposed project includes the demolition of the existing 10 residential structures and the construction, use, and maintenance of a new, seven-story, 70-unit residential development with six (6) units (8% of the total number of dwelling units) set aside for Extremely Low Income Households. The proposed development consists of two (2) buildings (Building A and Building B). In total, the proposed development will encompass a total of 55,000 square feet of floor area resulting in a Floor Area Ratio (FAR) of 2.75 to 1. The project proposes a total of 38 parking spaces, 70 long-term bicycle spaces and seven (7) short-term bicycle spaces. The unit mix will be comprised of 27 studios and 43 one-bedroom units. A total of 7,025 square feet of open space will be provided throughout the proposed project. The project will maintain a 0-foot front yard, a 10-foot northern side yard, a 7-foot 6-inch southern side yard, and a 15-foot rear yard

Building A is located on the eastern portion of the lot with a frontage along Sunset Boulevard. and consists of five (5) residential levels over two (2) levels of at grade parking with a maximum height of 68 feet. Building B will be constructed with six (6) residential levels over one (1) level of at-grade parking with a maximum height of 68. The project also includes the export of approximately 18,200 cubic yards of earth. There are 16 non-protected trees and no protected trees located on the subject property. Per the Los Angeles Municipal Code (L.A.M.C.) the trees may need to be replaced. Accordingly, the trees will be subject to replacement requirements to the satisfaction of the Department of Public Works, Urban Forestry Division.

The project requires the following:

Pursuant to the Transit Oriented Communities Affordable Housing Incentive Program Guidelines (TOC Guidelines), the Tier 1 Project is eligible for and has been granted three (3) Additional Incentives in order to construct the proposed project:

a. **Rear Yard.** A 25% reduction in the required rear yard to allow 15 f minimum 19 feet required for a seven-story housing development in the

b. **Side Yard.** A 25% reduction in the required southern side yard to allow seven (7) feet and six (6) inches in lieu of the minimum 10 feet required for a seven-story housing development in the C2-1VL Zone.

c. **Height.** The TOC height incentive allows for an additional 11 feet in height thereby creating a building envelope with the area necessary to accommodate the affordable housing units. The project is 68 feet in height, 11 feet above the allowable 57 feet maximum height.

Implementation of the California Environmental Quality Act

Pursuant to Section 21084 of the Public Resources Code, the Secretary for the Natural Resources Agency found certain classes of projects not to have a significant effect on the environment and declared them to be categorically exempt from the requirement for the preparation of environmental documents.

The project meets the conditions for a Class 32 Exemption found in CEQA Guidelines, Section 15332 (In-Fill Development Projects), and none of the exceptions to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 apply.

Conditions for a Class 32 Exemption

Class 32 consists of projects characterized as in-fill development meeting the conditions described below:

1) 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;
2) The proposed developed occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
3) The project site has no value as habitat for endangered, rare or threatened species;
4) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
5) The site can be adequately served by all required utilities and public services.

The project is located within the Silver Lake – Echo Park – Elysian Valley Community Plan which designates the subject property for General Commercial land uses and the property is zoned C2-1VL. The project is consistent with the applicable general plan land use designation and all applicable general plan policies as well as with the applicable zoning designation and regulations.

The subject site is wholly within the City of Los Angeles, on a site that is approximately 0.46 acres in size. Lots adjacent to the subject properties are developed with the following urban uses: single-family and multi-family residential uses and a variety of commercial uses. The site is currently developed and surrounded by development and therefore is not, and has no value as, a habitat for endangered, rare or threatened species. There are no protected trees on the site.

The project would not result in any significant effects related to traffic, noise, air quality, or water quality.

- A Traffic study dated August 28, 2018 was prepared by Jano Baghdanian & Associates concluded that based on the City's significance criteria, the study intersections would not

be significantly impacted as a result of the addition of the project traffic. On September 10, 2018, the Department of Transportation issued a memo stating that the traffic study prepared for the project adequately evaluated the project's traffic impacts on the surrounding community and that no significant traffic impacts would occur at any of the two (2) intersections analyzed.

- A Noise Study dated August 2018 was prepared by Meridian Consultants concluded that the project will result in less than significant impacts.

- An Air Quality Study dated August 2018 was prepared by Meridian Consultants concluded that the project will result in less than significant impacts.

- The project will be subject to Regulatory Compliance Measures, which require compliance with pollutant discharge, dewatering, stormwater conditions; and Best Management Practices for stormwater runoff.

- The project would not result in significant impacts to water quality.

The project site is currently and will continue to be adequately served by all public utilities and services.

Exceptions to Categorical Exemptions

There are six (6) exceptions to categorical exemptions must be considered in order to find a project exempt from CEQA: (a) Location; (b) Cumulative Impacts; (c) Significant Effect; (d) Scenic Highways; (e) Hazardous Waste Sites; and (f) Historical Resources.

The project is not located on or near any environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. There is not a succession of known projects of the same type and in same place as the subject project. The project would not reasonably result in a significant effect on the environment due to unusual circumstances. The project is not located near a State Scenic Highway. Furthermore, according to Envirostor, the State of California's database of Hazardous Waste Sites, neither the subject site, nor any site in the vicinity is identified as a hazardous waste site. The project site has not been identified as a historic resource by local or state agencies, and the project site has not been determined to be eligible for listing in the National Register or Historic Places, California Register of Historical Resources, the Los Angles Historic-Cultural Monuments Register, and/or any local register, and was not found to be a potential historic resource based on the City's HistoricPlacesLA website or SurveyLA, the citywide survey of Los Angeles. Additionally, on March 2, 2021 the City Council disapproved the Cultural Heritage Commission's recommendation to include the Stires Staircase Bungalow Court located at the project site as a Historic Cultural Monument, therefore, there is no substantial evidence that the proposed project, and thus the requested incentive, will have a specific adverse impact on the physical environment, on public health and safety or the physical environment, or on any Historical Resource.

2022 245885

FILED
Nov 10 2022

Dean C. Logan, Registrar – Recorder/County Clerk

Electronically signed by LAKEISHA MCCOY

I hereby certify and attest this to be a true and correct copy of the original record on file in the office of the Department of City Planning of the City of Los Angeles

designated as OFFICE TRAINEE ADMIN.

NORA MORALES 11/09/2022

Department Representative

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NORA MORALES 11/09/2022

Department Representative

This is a true and certified copy of the record
if it bears the seal, imprinted in purple ink,
of the Registrar-Recorder/County Clerk

DEC 09 2022

Dean C. Logan REGISTRAR-RECORDER/COUNTY CLERK
LOS ANGELES COUNTY, CALIFORNIA

REGISTRAR-RECORDER/COUNTY CLERK
COUNTY OF LOS ANGELES - CALIFORNIA

VERIFICATION

I, Chad Morgan declare that I counsel the Petitioner in this action, The Silver Lake Heritage Trust. I make this declaration on Petitioner's behalf because my office is located outside the county where Petitioner is located. I have read the foregoing **First Amended Verified Petition for Writ of Mandate; Complaint for Declaratory & Injunctive Relief** and know the contents thereof to be true to my own knowledge, except as to those statements made upon information and belief, and as to them, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 8, 2023.

Chad Morgan, Attorney for Petitioner,
The Silver Lake Heritage Trust

PROOF OF SERVICE

Case: **Silver Lake Heritage Trust v. City of Los Angeles**
Case No: **22STCP04323**

I, the undersigned, declare:

I am a citizen of the United States, over the age of 18, and not a party to this action. My business address is 40729 Village Drive #8, Big Bear Lake, CA 92315.

On the date specified below, I served the following:

1. **First Amended Verified Petition for Writ of Mandate; Complaint for Declaratory & Injunctive Relief**

on the following party(ies) in this action: see attached list

_X_ By Electronic Mail: By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail addresses of each party listed pursuant to California Rules of Court Rule 2-251. The email address from which I served the documents is chad@chadmorgan.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 8, 2023 at Anaheim, California.

CHAD D. MORGAN

Service List

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