February 28, 2022

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Appeal of: **Case No.: CPC-2021-2035-DB-CU-CUB-SPR-HCA**
Project Addresses: 3209-3227 W. Sunset Blvd.

This is a partial appeal of the City Planning Commission's approval of the "3209 Sunset" project, a proposed 86-unit, 7-story, mixed-use development located at 3209 to 3227 W. Sunset Blvd. in Silver Lake.

This appeal challenges the Commission's January 13 approval of: 1) a Conditional Use for a 50-percent density increase, allowing 86 dwelling units in lieu of the 57 otherwise permitted; 2) a Site Plan Review; 3) a Conditional Use Beverage permit for a full line of alcoholic beverages for both on- and off-site consumption; and 4) a Class 32 Categorical Exemption from the California Environmental Quality Act (CEQA). The Off-Menu incentives granted to the project are not appealable.

I. PROJECT BACKGROUND

The proposed 3209 Sunset project received approval from the Commission to demolish an existing auto repair shop and adjacent surface parking lot and construct a 7-story, 83-foot tall, 86-unit, 84,662 sq. ft. mixed-use development with no required parking on a 22,449 sq. ft., 9-lot site at the intersection of Sunset Blvd. and Descanso Dr. The applicant, RYDA Ventures, proposes 69 unbundled parking spaces within a ground floor podium, in lieu of the 159 parking stalls otherwise required.

The applicant proposes to set aside 10 units for low-income housing. In exchange, the Commission granted the following waivers from the underlying zoning restrictions of the Los Angeles Municipal Code (LAMC):

1). A 50% density increase in lieu of 35% otherwise allowed, permitting 86 units in lieu of 57;
2). A 100% decrease in required residential parking;
3). A 100% decrease in required commercial parking;
4). An increase in the building's allowed Floor Area Ratio, from 1.5:1 to 3.76:1;
5). An increase in the maximum allowed building levels, from three to seven:
6). An increase in the maximum allowed building height, from 45 feet to 83 feet;
7). Elimination of the required side yard setback, from 10 feet to zero feet;
8). Elimination of the required rear yard setback, from 20 feet to zero feet;
9). A 24% reduction in the required amount of open space;
10). A permit for the sale of a full line of alcohol for on- and off-site consumption at two establishments;
11). A determination that the site is categorically exempt from environmental review (despite soil contamination from the auto repair shop and the site being in a Very High Fire Hazard Severity Zone)

12). Pursuant to LAMC Section 16.05, approval of a Site Plan Review;

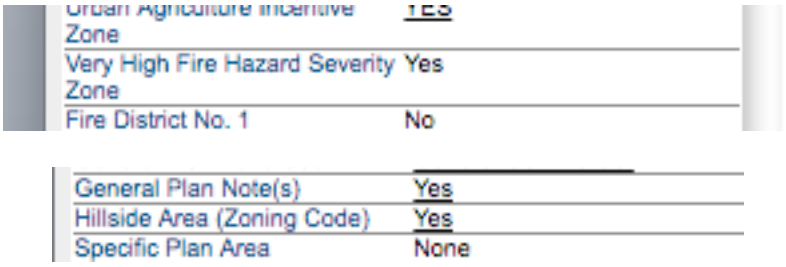
Note the below chart outlining the site's permitted zoning and the granted entitlements:

Project	**Permitted**	**Approved**
Density	57 dwelling units	86 dwelling units
FAR	1.5:1	3.76:1
Parking	109 residential; 50 commercial, total 159 required	Zero required parking
Height	45 feet permitted	83 feet, plus roof attachments, approved
Levels	3 levels permitted	7 levels approved
Side yards	10 feet required	Zero feet
Rear yard	20 feet required	Zero feet
Open Space	9,175 sq. ft. required	6,973 sq. ft. approved, a 24% reduction

The Project as approved by the Commission has no relationship to either the intent or purpose of the underlying community plan, or good planning practice. Put simply, the proposed Project – with a smidgeon of affordable housing units, limited parking, and a height that would exceed anything in the surrounding area – isn't designed for the benefit of our community, but is being utilized to mine the city for profitable land-use entitlements.

The Project is regulated by the zoning restrictions of the Silver Lake – Echo Park – Elysian Valley Community Plan. Updated in 2004 to guide all development, including use, location, height and density, to assure compatibility of uses, the Community Plan is not just a document of egalitarian goals, but is instead a roadmap for the future. Yet the city employed an illegal process to discard this plan and other applicable land use regulations.

Per LAMC Section 12.22.A.25(e)(2)(iv), the project is ineligible to receive any density bonus incentives, as the site is located in both a Hillside Area and a Very High Fire Hazard Severity Zone. As stated in the LAMC, a ***Housing Development Project shall not be located …in a Hillside Area or in a Very High Fire Hazard Severity Zone***.

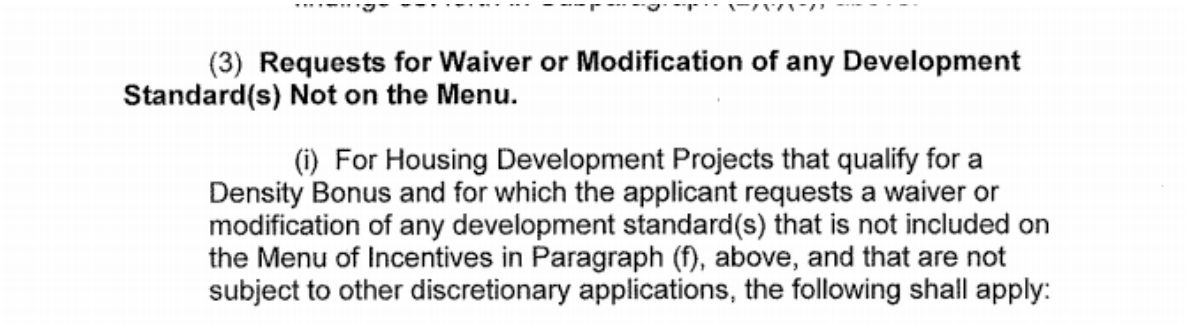


Urban Agriculture Incentive Zone	YES
Very High Fire Hazard Severity Zone	Yes
Fire District No. 1	No
General Plan Note(s)	Yes
Hillside Area (Zoning Code)	Yes
Specific Plan Area	None

The project site is also located in a Special Grading Area. Under the law, density bonus incentives in such locations are not permitted, as development in such areas would result in a specific adverse impact to public health and safety.

The project site is also ineligible as a Transit Oriented Communities (TOC) development. To circumvent these safety restrictions, the applicant sought and received Off-Menu Incentives under LAMC Section 12.22.A.25(g)(3) for the waiver of development standards limiting building height and yard setbacks, parking requirements, FAR and open space. Yet these requests are improper, as they evade the Density Bonus On-Menu incentive limitations for waivers of the Development Standards as imposed by the city council and codified in LAMC Section 12.22.A.25(f).

LAMC Section 12.22.A.25(g)(3) provides the process for requesting Off-Menu Incentives (Ordinance 179681), stating: "For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests a waiver or modification of any development standard(s) that <u>is not included on the Menu of Incentives</u> in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:" (emphasis added).



(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 requests 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:

All of the applicant's incentive requests are already offered as on-menu incentives, which the project is prohibited from receiving due to its location in a Very High Fire Severity Zone. To do an end-run around these safety restrictions, the applicant gamed the system and requested off-menu incentives, but off-menu incentives are only available to a project if such incentives are not already available as on-menu incentives.

In a February 2, 2006 report to the City Council, Interim Planning Director Mark Winogrond stated: "Staff believe that a clear distinction between 'on menu' and 'off menu' items should be maintained to discourage applicants from requesting unlimited deviations from all parts of the Zoning Code."

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For purposes of clarity it should be noted that the process for projects with requests for incentives "off the menu" calls for a public hearing with notice to property owners and residents within a 500' radius and a decision by the City Planning Commission with appeal to the City Council. Staff believe that a clear distinction between "on menu" and "off menu" items should be maintained to discourage applicants from requesting unlimited deviations from all parts of the Zoning Code.

The City Council subsequently approved the Density Bonus Ordinance with its clear distinction between On- and Off-Menu Incentives.

The City Council and City Planning Commission determined in 2006 that limitations must be placed on off-menu density bonus incentives to, in the words of Director of Planning Winogrod, "*discourage applicants from requesting unlimited deviations from all parts of the Zoning Code*." The restrictive language of the LAMC has not changed, yet the current city planning commission abused its discretion and chose to ignore it. The applicant purchased the site well aware of its development limitations, and has cheated both the system and this community to extract approvals for an unsafe, illegal development.

II. OBJECTIONS

1. PROPER ENVIRONMENTAL ANALYSIS IS REQUIRED

A. The project description does not reflect applicant RYDA's piecemeal development of three similar projects within a two-block corridor of Sunset Blvd.

The applicant, RYDA Ventures, has at least four major projects planned or approved within a two-block segment of Sunset Blvd. These four projects would add approximately 350 new residential units and multiple retail storefronts to an area of Sunset Blvd. currently characterized by low-level commercial properties and few households.

At 3004-3016 Sunset Blvd. RYDA received approval in 2021 under Case No. DIR-2020-7392-TOC-WDI-HCA for a 74-unit, 5-story, 49,967 sq. ft. mixed-use development with 64 parking spaces. At 3301-3327 Sunset Blvd. RYDA received approval in 2019 under Case No. DIR-2019-1957-TOC-SPR for a 104-unit, 56-foot tall, 75,571 sq. ft. mixed-use development with 88 parking spaces. The 3209 Sunset project has been approved for 86 units within an 83-foot tall, 84,662 sq. ft. mixed-use building with no required parking. And across the street from this site, RYDA is designing a fourth project, of potentially equal size to the 3301 site, for approximately another 100 units with no parking requirements. Combined, the four RYDA projects would create approximately 300,000 sq. ft. of new commercial and residential construction within just two blocks. And yet, each of these projects has received a Class 32 Categorical Exemption from CEQA.

Rendering of RYDA's approved 104-unit project at 3301-3327 Sunset Blvd.

RYDA Project	**Residential Units**	**Building Square Footage**	**CEQA Determination**
3209-3227 Sunset Blvd.	86 dwelling units	84,662 sq. ft.	Categorically Exempt
3004-3016 Sunset Blvd.	74 dwelling units	49,967 sq. ft.	Categorically Exempt
3301-3327 Sunset Blvd.	104 dwelling units	75,571 sq. ft.	Categorically Exempt
3210-3218 Sunset Blvd.	Approx. 100 units	Approx. 80,000 sq. ft.	Project not yet submitted
Total	Approx. 350 new residential units	Approximately 300,000 new sq. ft. of construction	No CEQA review

Environmental analysis under CEQA must include all project components comprising the "whole of the action," so that "*environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences*." Burbank-Glendale Pasadena Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 592.

Failure to effectively consider the environmental impacts associated with the "whole" project constitutes a piecemeal approach to cumulative impact analysis. Such segmentation is expressly forbidden under CEQA.

Development of the four RYDA sites is one project under CEQA. Under CEQA a "project" "means the whole of an action." Guidelines § 15378. CEQA's "*requirements cannot be avoided by chopping up proposed projects into bite-size pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial*." Plan for Arcadia, Inc. v. City Council of Arcadia (1974) 42 Cal.App.3d 712, 726. "Such conduct amounts to 'piecemealing,' a practice CEQA forbids." Lincoln Place Tenants Ass'n v. City of Los Angeles (2007) 155 Cal.App.4th 425, 450; see also Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora (2007) 155 Cal.App.4th 1214, 1231 [The Court invalidating an MND because of a City's failure to consider a retail development and adjacent road project as one single project for the purposes of CEQA. "City violated CEQA by treating them as separate projects subject to separate environmental reviews."]; Lighthouse Field Beach Rescue v. City of Santa Cruz (2005) 131 Cal.App.4th 1170, 1200 [The city's failure to consider the whole of the project compelled the Court to overturn the city's adoption of a negative declaration.]

Here, the City has refused to acknowledge the four RYDA developments as one project, the "whole of an action."

As noted in CEQA Guidelines Section 15165:

> Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

The four RYDA projects are one overall development by one entity. CEQA requires that the City consider the three existing projects and one future project as one project, to properly review the "whole of an action."

The City has failed to proceed in a manner prescribed by law and consequently must initiate proper re-review of the environmental impacts associated with development of the Sunset Blvd. corridor impacted by the four RYDA developments. The City cannot claim that the four RYDA developments are unrelated projects when undertaken by the same applicant.

Section 15355 of the CEQA Guidelines defines a cumulative impact as the condition under which:

> "…two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.
>
> "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.
>
> "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."

In a January 3, 2022 letter submitted to the case file, Silver Lake resident David Richardson offered his observations regarding traffic and other specific adverse impacts related to the 3209 Sunset project, both individually and cumulatively, based upon personal knowledge as a 17-year homeowner on Hamilton Way. As noted in Mr. Richardson's comment letter, his personal observations carry force sufficient to constitute "substantial evidence" for purposes of CEQA. Yet the commission ignored such substantial evidence in approving the Class 32 Categorical Exemption.

B. Legal Basis for an EIR

The major premise behind the establishment of the California Environmental Quality Act of 1970 was to require public agencies to give serious and proper consideration to activities which affect the quality of our environment, to find feasible alternatives in order to prevent damage to the environment, and to provide needed information to the public. Public Resources Code § 21061.

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.

Under CEQA and CEQA Guidelines, if a project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. No Oil, Inc. v. City of Los Angeles, *supra*, 13 Cal.3d at 83. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

This standard sets a "low threshold" for requiring preparation of an EIR. Citizen Action To Serve All Students v. Thornley (1990) 222 Cal.App.3d 748, 754. If substantial evidence supports a "fair argument" that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. No Oil, Inc. v. City of Los Angeles, *supra*; Brentwood Association for no Drilling, Inc. v. City of Los Angeles (1982) 134 Cal.App.3d 491.

The CEQA Guidelines at 14 Cal. Code Regs. § 15384(a) define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached…" Under Pub. Res. Code §§ 21080(e), 21082.2(c), and CEQA Guidelines §§ 15064(f)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

"Under the fair argument approach, *any* substantial evidence supporting a fair argument that a project may have a significant environment effect would trigger the preparation of an EIR." Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App 4th 98, 113 (italics in original).

Communities for a Better Environment is also significant because it clarifies that agency "thresholds of significance" are not necessarily the threshold that may be used in determining the existence of a "significant" impact. A significant impact may occur even if the particular impact does not trigger or exceed an agency's arbitrarily set threshold of significance. Id. at 114.

An agency must prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact. If there is substantial evidence both for and against preparing an EIR, the agency must prepare the EIR.

> "The EIR has been aptly described as the heart of CEQA. Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment but also informed self-government. [T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. The error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process." Napa Citizens for Honest Government v. Napa County Board of Supervisors (2001) 91 Cal.App.4th 342, 355-356 (italics in original).

2. THE APPLICANT HAS NOT SATISFIED THE RIGOROUS FINDINGS REQUIRED FOR APPROVAL OF THE SITE PLAN REVIEW

The Project does NOT consist of an arrangement of buildings that is or will be compatible with existing and future development on neighboring properties. The proposed 83-foot-tall structure is significantly taller than other development in the area by four stories and will tower over all other commercial and residential development along Sunset Blvd.

The Project does NOT incorporate feasible mitigation measures to lessen its significant impacts. Instead, the applicant has evaded proper environmental analysis and mitigation.

The Project is NOT consistent with the Community Plan, but instead establishes precedents.

Under LAMC Section 16.05, the purposes of a Site Plan Review are: "*to promote orderly development, evaluate and mitigate significant environmental impacts, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting, and to control and mitigate the development of projects which are likely to have a significant adverse effect on the environment*." None of these goals is accomplished here.

Site Plan Review requires a finding under LAMC §16.05 F.2 "*that the project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities… and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties*."

Yet the project's height and massing are incompatible with the surrounding built environment and greatly out of character with the immediate neighborhood. At 7 stories and covering 9 parcels, the proposed building would dwarf the existing neighborhood, as shown in the below photo:

When mitigating a development's effects, the City has broad authority to condition and/or modify a project. Under the Site Plan Review Ordinance, the City can change projects so long as those changes do not inhibit State density development rights. Therefore, with the Project, as long as the unit count meets the 35% density bonus, the City is both authorized and required to ensure that the development fits within our community.

The City's serial entitlement approvals granting special privileges to the applicant disregard the core values underpinning our zoning system. As the California Supreme Court held in Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 509, a zoning

scheme is a contract in which ***"each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare***." (at 517).

III CONCLUSION

The commission's actions ignoring and violating applicable laws and regulations is cause for relief. The city council should acknowledge that the proposed 3209 Sunset project is illegal under the limitations of the LAMC, and that the Conditional Use findings, Site Plan Review findings, and authorization for a Class 32 CEQA Categorical Exemption cannot be made.

The City cannot rely on a Class 32 Categorical Exemption to approve the project. Further, the commission's approval of the project's Site Plan Review was contrary to law and unsupported by the record, as LAMC Section 16.05(E) provides that the Director of Planning stall not approve or conditionally approve a site plan review for a development project unless an appropriate environmental review clearance has been prepared.

CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigations measures. Without an adequate analysis and description of feasible mitigation measures, it is impossible for agencies to meet this obligation.

Here, the purposes of Site Plan Review have not been fulfilled. Further, the appropriate environmental review clearance has not been prepared. The commission's findings ignore substantial evidence submitted into the record, and are therefore contrary to law. The city must vacate the commission's approval of the project.

As a community, we respectfully request that the city uphold this appeal. Thank you.

Nicole Antoine, on behalf of the
Responsible Urban Development Initiative