ORANGE COUNTY
CLERK-RECORDER
CEQA FILING COVER SHEET

THIS SPACE FOR CLERK'S USE ONLY

Complete and attach this form to each CEQA Notice filed with the County Clerk-Recorder

TYPE OR PRINT CLEARLY

Project Title

NOTICE OF CHALLENGED CONDUCT - POSTING OF NOTICE OF CHALLENGED CONDUCT PURSUANT TO CALIFORNIA GOVERNMENT CODE 65589.5 AND GOVERNMENT CODE 65589.1

Check Document being Filed:

- ☐ Environmental Impact Report (EIR)
- ☐ Mitigated Negative Declaration (MND) or Negative Declaration (ND)
- ☐ Notice of Exemption (NOE)
- ☑ Other (Please fill in type): PUBLIC NOTICE

FILED IN THE OFFICE OF THE ORANGE
COUNTY CLERK-RECORDER ON 02/07/2025
Posted 02/07/2025 **Removed** _____
Returned to agency on _____
DEPUTY 409

Filing fees are due at the time a Notice of Determination/Exemption is filed with our office. For more information on filing fees and No Effect Determinations, please refer to California Code of Regulations, Title 14, section 753.5.

NOTICE OF CHALLENGED CONDUCT

To: County Clerk
County of Orange
601 N. Ross Street
Santa Ana, CA 92701

From: City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832

SUBJECT: Posting of Notice of Challenged Conduct pursuant to California Government Code § 65589.5 and Government Code § 65589.5.1

Government Code section 65589.5(h)(6)(D) provides that when a project applicant files written notice detailing challenged conduct which the applicant believes is for an improper purpose, such conduct can constitute a disapproval of the housing development project when specified conditions are met. Government Code section 65589.5.1 provides that disapproval of the use of an exemption can constitute disapproval when specified conditions are met. The first step under both cases is for the applicant to provide written notice detailing the challenged conduct. The second step is for the local agency to post the notice on both the City's website and to file the notice with the county clerk.

The City of Fullerton received the attached letter on February 3, 2025 regarding a 28 unit development located at 243 East Valencia Drive. While the City does not believe the attached correspondence satisfies either of these statutes and reserves all rights to challenge the correspondence, it is posting this notice in an abundance of caution.

This notice is to be posted by the County Clerk in the manner set forth in Public Resources Code section 21152(c).

Lead Agency
Contact Person: David Lopez **Area Code/Telephone:** 714-738-6878

Signature: **Date:** 2-7-25 **Title:** Senior Planner

☑ Signed by Lead Agency

Bo Paul Chen
243 E. Valencia Drive
Fullerton, CA 92832

01/30/2025

VIA ELECTRONIC MAIL

David Lopez, Senior Planner
City of Fullerton
Email: david.lopez@cityoffullerton.com

RE: Request for Reconsideration – Class 32 CEQA Exemption (ZON-2024-0106)

Dear Mr. Lopez:

Thank you for your January 16, 2025, response to our request for a Class 32 Categorical Exemption determination for the proposed 28-unit residential infill project at 243 E. Valencia Drive (ZON-2024-0106). While we acknowledge the City's reference to its 2020 CEQA consultant policy, we respectfully assert that this requirement conflicts with state law, CEQA Guidelines, and recent legislative mandates. Below, we outline our legal and factual basis for urging the City to issue the exemption without third-party consultant involvement.

1. The Project Qualifies for a Class 32 Exemption

As demonstrated in our December 19, 2024 submission, the project meets all criteria for a Class 32 exemption:

- **Infill Location**: The 8,412 sq. ft. site is within a highly urbanized area, adjacent to transit and existing development.
- **No Exceptions Apply**: The project does not involve sensitive habitats, historical resources, or cumulative impacts (CEQA Guidelines § 15300.2).
- **Consistency with General Plan/Zoning**: 65915.5(f)(6)(D)(iii) provides that a qualifying Builder's Remedy project shall be deemed consistent, compliant and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan, and implementing instruments (or other similar provision) for all purposes. Further, the project complies with the Density Bonus Law (Gov. Code § 65915) and is entitled to waivers.

The City's reliance on a subjective "as needed" standard for mandating CEQA consultants violates state housing law and the Builder's Remedy provisions. Under the Housing Accountability Act (HAA) and AB 1633, housing projects—particularly Builder's Remedy projects—are subject to **strictly objective standards**, and local agencies may not impose discretionary or subjective hurdles.

2. Builder's Remedy Projects Are Exempt from Subjective Local Requirements

As a Builder's Remedy project under Gov. Code § 65589.5(d)(1), this development is entitled to **bypass subjective local requirements** that conflict with state housing mandates. The HAA explicitly prohibits cities from denying or conditioning housing projects based on "subjective or arbitrary standards" (Gov. Code §.65589.5(j)(1)(C)). The City's CEQA consultant policy, which applies consultants "as needed" without objective criteria, constitutes an unlawful subjective barrier under this statute.

3. AB 1633 Prohibits Subjective CEQA Delays for Housing

AB 1633 (Stats. 2023, ch. 382, § 4) codifies that local agencies may not use CEQA to impose **"procedural or substantive requirements beyond those expressly required by [CEQA]"** for housing projects. The statute mandates that CEQA determinations for housing must adhere to **strict timelines and objective criteria** (Pub. Res. Code § 21185.6). The City's "as needed" consultant policy—which lacks defined triggers or standards—violates AB 1633's prohibition on subjective delays.

4. CEQA Guidelines Require Objective Exemption Determinations

CEQA Guidelines § 15061(a)(2) obligates the City, as lead agency, to independently determine exemption eligibility without deferring to third parties. Courts have held that CEQA exemptions are **"self-executing"** upon meeting regulatory criteria, requiring no further discretionary review (*North Coast Rivers Alliance v. Marin Municipal Water Dist. (2013) 216 Cal.App.4th 614, 629*). The City's subjective consultant requirement unlawfully injects discretion into a process CEQA reserves for objective agency review.

5. The City's Policy Conflicts with State Housing Priorities

The August 18, 2020, City Council minutes approving CEQA consultants "as needed" predate AB 1633 and recent HAA amendments prioritizing **objective, ministerial approvals** for housing (Gov. Code § 65913.4(a)). Under the "builder's remedy," the City lacks authority to condition approval on subjective consultant reviews, as such requirements contravene the HAA's mandate to streamline housing (Gov. Code § 65589.5(k)(1)(B)).

6. The "Common Sense Exemption" Further Supports Exemption

Even if the Class 32 exemption was inapplicable (which it is not), the project qualifies for the **"common sense exemption"** under CEQA Guidelines § 15061(b)(3). This exemption applies where "**no possibility of significant environmental impact**" exists. The City's own analysis of the Parkwest Project (a significantly larger development) concluded "less than significant impacts" on all environmental factors. Our project, a fraction of Parkwest's scale, clearly meets this threshold.

7. Request for Clarification and Compliance

The City has not identified deficiencies in our submission or articulated a legal basis for requiring third-party review. We therefore request:

1. **Specific Reasons**: A written explanation of why consultant analysis is necessary, including any alleged deficiencies in our submission.
2. **Legal Authority**: Citation to the CEQA provision or municipal code authorizing consultant mandates for Class 32 exemptions.
3. **Defined Scope**: A detailed scope of work for the consultant, identifying which exemption criteria require external verification. Or, Waive the consultant requirement, which lacks statutory or regulatory basis.
4. Promptly issue a Notice of Exemption (NOE) for the Class 32 exemption.

According to Gov. Code § 65589.5(h)(6)(A)(i), failure to issue a determination within **60 days of our original submission** will result in a "deemed disapproval," triggering remedies under the HAA.

We remain available to discuss this matter at your convenience.

Sincerely,

Bo Paul Chen
626-374-4619
pchen@bpcholdings.com

CC: Sunayana Thomas, Director of Community & Economic Development