FIX THE CITY

July 21, 2016

Via Email: James.K.Williams@LACity.org

The Hon. David Ambroz, President, LA City Planning Commission
200 North Spring Street
Los Angeles, CA 90012

RE: 8150 SUNSET APPEAL OF VTT AND CPC APPROVALS

Dear President Ambroz and Commissioners:

We applaud the choice of Frank Gehry. He is a national treasure. Our objections focus on the requested entitlements, not the architecture. The project overwhelms the adjacent community. It might be great in a Regional Center. But this is not a Regional Center.

We also support the project's affordable housing. We have asked that **8118 Sunset** be used for additional affordable housing and not incorporated into the project for free. In fact, the Housing Element designates 8118 Sunset as appropriate for affordable housing. It is zoned C4-1. Use it for this purpose!

Fix the City submits these comments in support of our appeal, and incorporates by reference all other documents submitted by the other appellants and the Applicant. Our Appeal focuses on multiple violations of city and state law.

1. **We request additional time to submit comments for distribution to CPC on the Staff Report and Appeal Analysis, which were dated July 19, 2016.** Comments are due by 11 AM July 21, 2016. This is hardly due process for the public to receive and respond within 24+ hours to a 234-page document.

2. ***The application is incomplete: do not hear this case until it is complete.***

- A development agreement is required to use 8118 Sunset, a city-owned parcel. Fifty years ago it was purchased for $100,000. It has value. The City Charter and LAMC Real Property, Chapter 1, require Fair Market Value. Not land grabs in the guise of a street improvement (which actually is far less safe). Use of city property must provide compensation to the taxpayers.

- A Conditional Use application is required for density in excess of 35% (LAMC 12.24 U.26, CP-3251-DB).

- A Height District Amendment is required because the current designation is C4-1D (1:1 FAR). (LAMC 12.32.H, LAMC 17.15, CP Form 7778).

- A Street Vacation is required under state and city law. Staff response is to claim that none was requested and therefore it was not before the Advisory Agency

does not make this lawful. Indeed, the EIR Response (D716.2 Merger vs. Vacation") made it clear that the closure was being done through the tract map (which is impossible since the street and 8118 Sunset are not part of the tract map). Staff has contradicted itself. The Advisory Agency certified the EIR. The EIR stated the closure was through the tract map, not a B permit and revocable permit.

The Appeal Response regarding a gift of public land misconstrues our point: use of city property requires Fair Market Value and a Development Agreement.

Use of land designated for affordable housing in the Housing Element requires reexamination of the proposal to incorporate this parcel, and to analyze in the EIR the impact on the Housing Element. The project is claiming city land as its off-site open space. That is chutzpah. See EIR Table 4.I.3-2. This land has value and its highest and best use is for affordable housing, not a sterile public plaza for a private party.

Our point is that it must be requested because they propose to close to vehicular access a portion of a public street. A B Permit is for a curb cut, not a street vacation. Staff is derelict in not requiring a street vacation and a report from the City Engineer. It has also ignored city and state law requiring the right turn of a commercial corner lot to be curbed, as it is presently. Citations below. **Of course, paving over a street is a vacation.** Complete Streets Program clearly opposes street vacations because they limit access for all modalities (MP 2035, p. 111).

- Private easement owners within the 1905 Crescent Heights Tract must be made aware of the loss of their property rights to vehicular access over the turn lane shown on their tract map (California Streets and Highway Code Section 8353(b)).

- State and Local laws (LAMC 17.05 and LAMC 12.37) require that the corner of a commercial lot on a highway be curved, just as it presently is. **This is a land grab, not a street improvement. And it violates state laws:** California Streets and Highways Code Section 8320-8325, 8353(b) and Complete Streets.

- Many of the required forms are missing from the Case File,

- The Design Guidelines questionnaire in the Case File, with its boxes for "Staff Review" are unchecked. There is no substantial evidence that staff reviewed the application.

- The Applicant claimed not once, but twice, that he was not vacating a portion of a public street (VTT Case File pp. 168, 181).

- The EIR claimed that a vacation was not required because this was incidental to a merger and re-subdivision. The EIR also cited CF 01-1459, "a vacation in conjunction with a development project exceeding the threshold as set forth in LAMC Section 16.05 [Site Plan Review] may be rejected. "The letter for the City Attorney in that CF made it clear that all of the due process requirements of street vacation state law had to be followed. The street is not within the tract, so there is no merger and re-subdivision involving the street. Only the ten air lots are merged and re-subdivided.

- The Staff response to the Appeal claimed that noise was analyzed for delivery trucks. However, a sensitive receptor [senior citizen residence] is located across the street from the commercial loading docks and it is not at all clear that impacts on these sensitive receptors was evaluated and mitigated, if required.

- **MP 2035 (p. 111) states that street vacations should be discouraged** because they hamper access for multi-modalities.

A CUP IS REQUIRED FOR DENSITY ABOVE 35%

- LAMC 12.22 A.25 Affordable Housing Bonus Ordinance: Off-Menu Incentives are for incentives **NOT** on the Menu (LAMC 12.22 A.25(g)(3)
- Form CP 3251-DB: A CUP and Findings required for density in excess of 35%.
- LAMC 12.24 U.26 A CUP required for FAR in excess of 35%
- LAMC 12.24 E: CUP Findings/Justifications
- The Master Land Use Application Checklist requires findings and justifications for incentives NOT on the menu. The findings are not provided because the Applicant has claimed that the incentive is by-right – what he did not qualify for on-menu. But Off-Menu incentives are for incentives NOT on-menu.

HEIGHT DISTRICT CHANGE REQUIRED

- LAMC 12.32 Land Use Legislative Actions
- LAMC 17.15 Vesting Tentative Map
- Form CP 7778

STREET VACATION REQUIRED

- California Streets and Highways Code Section 8320-8325, 8353(b)
- LA Charter & Administrative Code, Article 7, Vacation & Abandonment of Streets, Alleys, and other Public Places
- LAMC 12.37 Highway and Collector Street Dedication and Improvement

- **LAMC 17.05.D 4"Corner Cut-off** "At all block corners the property line shall be rounded. On all major and secondary highways, the corner shall have a 20-foot radius curve. And on all other streets, a fifteen-foot radius curve; provided, however, that where commercial development is permitted, a diagonal cut-off of fifteen feet times fifteen feet in lieu of a 20-foot radius curve and a ten-foot-by-ten-foot cutoff in lieu of a 15-foot radius curve may be used. Industrial zones the curve shall have a minimum radius of at least 40 feet." **LAMC 17. 05.D.5. Curves. Horizontal.** The centerline radii of curves shall be as large as possible, consistent with conditions. All curves shall have a sufficient length to avoid the appearance of an angle."
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GIFT OF PUBLIC LAND DESIGNATED FOR AFFORDABLE HOUSING

- Project Open Space Table 4.I.3-2 (EIR)
- Site Plan Review Instructions & Checklist CP-2152
- LAMC Chapter 1, Real Property (Fair Market Value, Open Bidding)
- LAMC 17.12 Park and Recreation Site Acquisition and Development Provisions
- CP 3511 Open Space Checklist

8118 SUNSET IS DESIGNATED FOR AFFORDABLE HOUSING IN THE <u>HOUSING ELEMENT</u> OF THE GENERAL PLAN (2013)

- Map of Housing Element HCP

PROJECT IS INCONSISTENT WITH AREA ZONING

- Zimas Map shows C4-1D for adjacent properties along Sunset

PROJECT DOES NO LONGER QUALIFIES FOR ELDP STATUS

- Legislative Analyst's Determination of Eligibility for ELDP Status, May 8, 2014 was based on an earlier alternative that increased commercial space that would create more jobs. Commercial space has been reduced, not increased, in Alternative 9.

<u>MISSING FROM VTT 72370-CN CASE FILE</u>

1. **CP-4043 Affordable Housing Affordable Housing Referral Form**
   "This form is to serve as a referral to Planning Public Counter for affordable housing case filing purposes (in addition to the required Master Land Use Application and any other necessary documentation) and as a referral to HCIDLA, CRA, LA County, or other City agency for project status and entitlement need purposes. Please refer to Affordable Housing Incentives Guidelines for additional information on completing this form. **This form shall be completed by the applicant and reviewed and signed by Planning staff.**"

2. **CP 3251-DB Affordable Housing Density Bonus, per 12.22 A.25(g)(3(i)a) is required "Requests for Waiver or Modification of any Development Standards (s) <u>Not</u> on the Menu."**
   "The request shall be made **on a form provided by the Department of City Planning [CP 3251-DB],** accompanied by applicable fees, and shall include a pro forma or other

documentation to show that the waiver for modification of any development standards(s) are needed in order to make the Restricted Affordable Units economically feasible."

3. Form CP-3251 Density Bonus CUP:
"Conditional Use Permit for Greater than 35% Density Bonus: LAMC 12.24 U.26 – Density Bonus requests for Housing Development Projects in which the density increase is greater than the maximum permitted in LAMC Section 12.22 A.25 shall also find that:

   1. The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region;

   2. The project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety;

   3. The project substantially conforms with the purpose, intent and provision of the General Plan, the applicable community plan, and any applicable specific plan.

   4. The project is consistent with and implements the affordable housing provisions of the Housing Element of the General Plan;

   5. The project contains the requisite number of affordable and/or senior citizen units as set forth in California Government Code Section 65915(b); and

   6. The project addresses the policies and standards contained in the City Planning Commission's Affordable Housing Incentives Guidelines. "

4. **"SPECIALIZED REQUIREMENTS:** When filing any of the above applications, the following items are required in addition to those specified in the *Master Filing Instructions* form (CP-7810)."

   1. **Affordable Housing Referral Form:** Provide the <u>original</u> *Affordable Housing Referral Form* (CP-4043) reviewed and signed by Department of City Planning, Case Management staff prior to case filing.

   3. **Pre-Filing Review:** Requests for a Density Bonus with off-menu incentives, a Conditional Use Permit for >35% Density Bonus, or a Public Benefit Project require consultation with staff assigned to the geographic area in which the project is located prior to the filing of your application. An appointment is required for this review. DCP's current Assignment List and Staff Directory, with contact information, can be found at http://planning.lacity.org under the "About" tab.

   6. **Citywide Design Guidelines Checklist:** This IS included in the case file, but the boxes for staff review are empty.

5. **"Density Bonus/Affordable Housing Incentives Program Determination (12.22 A.25(g)(2)(ii):**

"For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests up to three incentives listed in Paragraph (f), above, and that require other discretionary actions, the applicable procedures set forth in Section 12.36 of this Code shall apply."

a. "The decision must include a separate section clearly labeled **Density Bonus/Affordable Housing Incentives Program Determination**."

Given the deadline imposed to distribute testimony to every Commissioner, we hereby submit these comments, and reserve the right to submit additional comments, and urge that due to the insufficient time given the public to respond, that we have those additional comments also distributed to the Commission. We understand that additional comments will be part of the administrative record, but we really seek to inform the Commission.

Sincerely,

Laura Lake

Laura Lake, Ph.D.
Fix the City

3:1 FAR can be denied by CPC under state law

July 21, 2016
Via Email: James.K.Williams@LACity.org

The Hon. David Ambroz, President, LA City Planning Commission 200 North Spring Street Los Angeles, CA 90012

RE: 8150 SUNSET APPEAL OF VTT AND CPC APPROVALS

Dear President Ambroz and Commissioners:

Regarding #3 before you on 7/28/2016.

Pursuant to LAMC Section 12.22-A,25(c), a Density Bonus setting aside 11% (28 units) of the total units for Very Low Income Households, and the utilization of Parking Option 1 to allow one on-site parking space for each residential unit of zero to one bedrooms, two on-site parking spaces for each residential unit of two to three bedrooms, and two-and-one-half on-site parking spaces for each residential unit of four or more bedrooms. The applicant is requesting two Off-Menu Affordable Housing Incentives as follows:

a. Pursuant to LAMC Section 12.22-A,25(g)(3), an Off-Menu Incentive to allow the lot area including any land to be set aside for street purposes to be included in calculating the maximum allowable floor area, in lieu of as otherwise required by LAMC Section 17.05; and

b. Pursuant to LAMC Section 12.22-A,25(g)(3), an Off-Menu Incentive to allow a 3:1 Floor Area Ratio for a Housing Development Project in which 50% of the commercially zoned parcel is located within 1,560 feet of a Transit Stop, in lieu of the 1,500 foot distance specified in LAMC Section 12.22- A,25(f)(4)(ii);

Staff asserts: The Applicant is seeking development incentives for the Project to provide for the development of affordable housing units, pursuant to the provisions of California Government Code Section 65915 et seq. and LAMC Section 12.22-A.25 et seq. Government Code Section 65915(e)(1) provides that a city shall not apply any development standard that will have the effect of physically precluding the construction of a development that qualifies for a density bonus, and that an applicant may submit a proposal for the waiver or reduction of development standards that physically preclude

the construction of such a development. Further, Government Code Section 65915(d)(1) provides that a city shall grant requested concessions or incentives to support the construction of affordable housing unless it makes a finding that: (1) the concession or incentive is not required to provide for affordable housing costs or (2) the concession would have a specific, adverse impact, as defined in Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment or on any property listed in the California Register of Historical Resources, and for which there is no feasible method to mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. Government Code Section 65589.5(d)(2), which defines "specific, adverse impact," states that "[i]nconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety."

We wish to bring to your attention that Staff and the Applicant mention Government Code 65589.5 (d)(2) but fail to mention 65589.5 (d)(1) which allows the City to disapprove this project due to its Housing Element. The Los Angeles Housing Element 2013-2021 identifies the following in the Hollywood Community Plan area to meet the City's Regional Housing Share.

	Sites	Net Units	Acres
Hollywood	2,024	24,185	662.1

One of the sites identified is 8118 Sunset which is identified as the Traffic Island associated with this project to be used as open space. We have stated we do not believe that is the proper use of a site identified in the Housing Element for Affordable Housing.

We believe the City of Los Angeles has identified sufficient sites in its Housing Element for the period 2013-2021 to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584 and that a written finding of compliance with the General Plan as well as the Hollywood Community plan is necessary for the approval of this project.

Additionally we wish to raise concerns about the use of a B permit to reconfigure the "traffic island" and to vacate the street. We do not believe this is proper.

Staff statements that:

- In order for the applicant to effectuate the proposed reconfiguration of the traffic island, a Revocable Permit and a B-Permit will be required from the Department of Public Works.
- The City has established processes aside from street vacations where, through B-Permits, and/or revocable permits, the City may permit a private party to use City land.

For your convenience we include additional parts of the Government Code Section 65589.5 we believe to be relevant in this case.

65589.5 (d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (h) of Section 50199.7 of the Health and Safety Code, for very low, low-, or moderate-income households, or an emergency shelter, or condition approval in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a "specific, adverse impact" means 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. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.

(5) The development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

Sincerely

James O'Sullivan

Fix The City

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July 20, 2016

VIA PERSONAL DELIVERY

David Ambroz, President
Renee Dake Wilson, Vice-President
Veronica Padilla, Commissioner
Caroline Choe, Commissioner
Samantha Millman, Commissioner
John Mack, Commissioner
Robert Ahn, Commissioner
Richard Katz, Commissioner
Dana M. Perlman, Commissioner
Los Angeles City Planning Commission
200 North Spring Street
Los Angeles, CA 90012

Re: VTT-72370-CN-1A
8150 Sunset Boulevard Mixed Use Project
CPC-2013-2551-CUB-DB-SPR/ENV-2013-2552-EIR

Honorable Commissioners:

Our law firm represents JDR Crescent, LLC and IGI Crescent, LLC, who are among the various Appellants in the within matter and who are the owners of the three story apartment building at 1425 N. Crescent Heights Boulevard, immediately to the south of the proposed 16-story, 333,903 sq. foot mixed-use development at 8150 Sunset Boulevard ("Project"). Our client and its tenants would be directly and negatively the most impacted if the Project was approved, **as proposed**, with deviations from the City's Zoning Code.[1]

Our client and their tenants strongly oppose the Project, **as proposed**, because of the substantial adverse impacts that would result from the Project and

[1] Our client is not opposed to a revised Project that is more compatible with the surrounding neighborhood and which lessens the current negative impacts.

the serious inadequacies in the proposed Environmental Impact Report ("EIR"). We ask that the City Planning Commission grant our appeal, and send the Project, as approved by the Planning Department, back for further review by the Advisory Agency and Planning Department staff.

I. The Severe, Unavoidable Impacts of the Project Far Outweigh any Project Benefits

Preliminarily, the Commission must be made aware that the Project presents severe, **un-mitigatable** impacts which, instead of revising the Project to alleviate, the Applicant has chosen to disregard, asking the City to simply adopt a **Statement of Overriding Considerations**, leaving the surrounding community to live with the unmitigated impacts.

The Applicant argues that the un-mitigatable impacts are "minor" and "temporary" which simply is untrue. In fact, the EIR **skews and plainly misrepresents the impacts of the Project in an effort to find "no significant impact," especially with regard to traffic** (one of the major issues impacting the neighborhood and greater community). We ask that the City Planning Commission independently review the EIR's deficiencies, an exercise we are certain will lead to Commissioners' independent judgment that more review is needed to scale back the Project in a manner as advocated by Councilmember David Ryu.

Simply stated, it is clear that the "unavoidable" impacts of the Project are, in fact, avoidable, if the Applicant were to scale the Project down to an alternative that is consistent in density, height and compatibility with the surrounding neighborhood, including the zoning limitations on the site.[2]

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[2] As set forth below, the Applicant has asked, as an "Off-Menu" Density Bonus item, for a 3:1 Floor Area Ratio ("FAR") in lieu of the otherwise 1:1 FAR imposed by the "D" limitation on the Subject Property. The Applicant, without a variance process, is asking the City allow a density that is three times what the zoning designation allows. There is absolutely no legal authority for this request; an "Off-Menu" Density Bonus incentive cannot be used to violate the law, including the City's Zoning Code. Notably, despite the neighborhood's concerns, the Applicant has failed to provide any justification whatsoever for why this zoning deviation is necessary or appropriate. Instead, the EIR takes the indifferent position that the imposition of the "D" limitation on the property is irrelevant.

We urge the City to weigh the benefits of the Project against the very real and unavoidable impacts to the surrounding community and deny the Project, as proposed, requiring the Applicant to revise the Project in a manner that respects the zoning designation on-site, the surrounding neighborhood and the environment.

II. The Advisory Agency Erred and Abused its Discretion Because the Required Findings Pursuant to the Subdivision Map Act Cannot be made with Substantial Supporting Evidence.

1. The Proposed Map and the design and improvement of the Proposed Subdivision are *not* consistent with the City's General Plan, Land Use Element or the Hollywood Community Plan.

The State of California *Government Code* §§ 66473.1, 66474.60, .61 and .63 (the Subdivision Map Act) require that all Proposed Maps, as well as the design and improvement of all proposed subdivisions be consistent with applicable general and specific plans. Here, the Proposed Map is *in*consistent with the City's Residential Citywide Design Guidelines for Multi-Family Residential Projects[3] and the Hollywood Community Plan.

The City's Residential Citywide Design Guidelines for Multi-Family Residential Projects, provide for the following principles, goals and objectives:

i. To *nurture neighborhood character* (p. 4);

ii. To *encourage projects **appropriate** to the context* of the City's climate and urban environment; facilitate safe, functional, and attractive development; and foster a sense of community and encourage pride of ownership (p. 4);

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[3] The City of Los Angeles's General Plan Framework Element and each of the City's 35 Community Plans promote architectural and design excellence in buildings, landscape, open space, and public space. They explicitly provide that *preservation of the City's character and scale*, including its traditional urban design form, shall be *emphasized* in consideration of future development. To this end, the Citywide Design Guidelines have been created to carry out the common design objectives that maintain neighborhood form and character while promoting design excellence and creative infill development solutions.

iii. To *establish height and massing transitions* from multi-family uses to commercial uses or less dense single-family residential (p. 7);

iv. To highlight the role that quality building design can play in creating visually interesting and attractive multi-family buildings by *contributing to existing neighborhood character* and creating a "sense of place" (p. 7);

v. To *consider neighborhood context* and linkages in building and site design (p. 8); and

vi. To *ensure that new buildings are compatible in scale, massing*, style, and/or architectural materials with existing structures in the surrounding neighborhood (p. 15);

vii. In older neighborhoods, to *respect the character of existing buildings with regards to height, scale*, style, and architectural materials (p. 15).

The Hollywood Community Plan further provides for the following purposes and objectives:

i. To promote an arrangement of land use, circulation, and services which will encourage and contribute to the economic, social and physical health, safety, welfare, and convenience of the Community;

ii. To *balance growth and stability;*

iii. To encourage the *preservation and enhancement* of the varied and distinctive *residential character* of the Community;

iv. To *promote economic well-being and public convenience* through allocating and distributing commercial lands for retail, service, and office facilities in quantities and patterns *based on accepted planning principles and standards;* and

v. To encourage the preservation of open space consistent with property rights when privately owned and to *promote the preservation of views*.

Here, the Proposed Map and the design and improvements of the Project consist of a maxed-out, over-height, and over-dense building inconsistent with all of the above design guidelines. And again, the Project proposes, as an "Off-Menu" Density Bonus item, a 3:1 FAR in lieu of the otherwise 1:1 FAR imposed by the "D" limitation on the Subject Property (*three* times what the zoning designation otherwise allows). What's more, the Proposed Project seeks to replace an 80,000 square foot, three-level structure with a 333,903 sq. foot, 16-story mega-plex all of which will be built *directly adjacent to 2-3 story residential dwellings* with which it will be completely inconsistent. These are undeniable facts that the Applicant, through the EIR, is urging the City to ignore.

Simply, the Project's mass, scale, height and density, along with location directly abutting 2-3 story residential dwellings, puts it at odds with all of the above stated Hollywood Community Plan purposes and objectives as well as the City's Residential Citywide Design Guidelines for Multi-Family Residential Projects, a part of the City's General Plan Framework Element. Accordingly, the required findings pursuant to the Subdivision Map Act cannot be made with substantial supporting evidence and the City must deny the Proposed Map and Project, as proposed.

2. **The design of the subdivision and proposed improvements are likely to cause substantial environmental damage.**

The above mentioned sections of the Subdivision Map Act further require that a design of a subdivision and its proposed improvements be found not likely to cause substantial environmental damage. However, for all the reasons set forth below, the EIR for the Project is sorely deficient. Therefore, the design of the subdivision and proposed improvements are likely to cause substantial environmental damage.

III. The EIR is Deficient.

An EIR must provide the decision-makers, and the public, with *all* relevant information regarding the environmental impacts of a project. If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and a final EIR is inadequate as a matter of law.

In summary of the more detailed analysis hereinbelow, the EIR is deficient for the following reasons:

1. **It *misrepresents* and *fails to address* that a discretionary Street Vacation process will be necessary for the Project;**

2. **It *skews* and *ignores* the plain words of thresholds, including traffic thresholds (see Threshold TR-6) in order to find less than significant impact;**

3. **It *fails to analyze compatibility with respect to the entire multi-residential community immediately to the south* of the Proposed Project Site;**

4. **It fails to provide information/context regarding the imposition of the "D" limitation on the Property Site;**

5. It fails to analyze inconsistencies with applicable land use and environmental plans/policies in violation of *CEQA Guidelines Section 15125(d);*

6. It fails to analyze consistency with the land use policy/plan impacts it identifies, instead it provides conclusory statements with no evidence to substantiate them;

7. It fails to analyze consistency with the City's Mobility Plan 2035;

8. It fails to provide why and how the use of general traffic thresholds, where traffic at all nearby intersections is already at LOS of D or lower, is an appropriate measure of transportation impacts for the Proposed Project;

9. It fails to analyze at the existing environment (including the "D" Limitation) as the applicable baseline when evaluating land use impacts;

10. It relies on a January 8, 2014 Preliminary Alquist-Priolo Earthquake Fault Zone Map which is outdated, the December 4, 2015 update shows that the Project site is located on the active Hollywood Fault, a substantial impact which must be evaluated;

11. It proposes illusory Mitigation Measures which do not actually mitigate the impact they are intended to mitigate, including Mitigation Measures

TR-1 and TR-2 and the Project's TDM Program, which are supposed to mitigate the potential impacts to inadequate emergency vehicle response times, but all which have to do with traffic circulation on-site and along Havenhurst;

12. It proposes unenforceable mitigation measures including Mitigation Measure TR-1, the installation of a traffic signal at Fountain Avenue/Havenhurst, which intersection is entirely in the City of West Hollywood; and "phantom" Mitigation Measures TR-3 and TR-4 which are nowhere to be found in the EIR or Mitigation Monitoring Plan;

13. It requires adoption of mitigation measures from a *future* studies (see, for example, Mitigation Measure GS-1), improperly deferring environmental assessment; and

14. It fails to provide why and how the use of general noise thresholds is an appropriate measure of noise impacts for a Proposed Project of this scale.

More specifically:

Land Use and Planning – Consistency:

CEQA requires **strict compliance** with the procedures and mandates of the statute. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118. In the context of "land use and planning," in order to be legally adequate, the EIR must identify and discuss, as part of its substantive disclosure requirements, any *in*consistencies between the Project and applicable general plans and regional plans, including relevant environmental policies in other applicable plans. *See CEQA Guidelines Section 15125(d); L.A. CEQA Thresholds Guide.*[4]

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[4] The L.A. CEQA Threshold Guide with respect to "land use consistency" states: The determination of significance shall be made on a case-by-case basis, considering:

- Whether the proposal is **inconsistent** with the adopted land use/density designation in the Community Plan, redevelopment plan or specific plan for the site; and
- Whether the proposal is **inconsistent** with the General Plan or adopted environmental goals or policies contained in other applicable plans.

Here, in order to get around the requirements set forth in the CEQA Guidelines, the EIR: (1) assumes land use consistency based upon the projected approval of the Project; and (2) concludes that it could not "identify any plan elements or policies with which the Project is inconsistent."

On their face, both of these approaches are not only incorrect, they obscure the language and intent of the CEQA statute. It is inherently against the CEQA mandates to simply state that once the density bonus is granted, the Project will be consistent with the zoning on-site, and therefore with all applicable land use regulations and policies. If such were the standard, any and all zone changes, general plan amendments, and variances would be inherently "consistent" with applicable land use plans. If such argument were accepted, the entirety of the "conformance with applicable land use plans" findings, both under the CEQA and the LAMC, would be eviscerated.

In reality, under CEQA, the threshold question that must always be answered is what environmental effects the project will have on the **existing** environment. Projected, future, conditions may only be used as the baseline for impact analysis if their use in place of measured existing conditions, a departure from the norm, is justified by some unusual aspects of the project or the surrounding conditions. However, even in such unusual circumstances, an agency still does not have the discretion to completely omit an analysis of impacts on existing conditions, unless inclusion of such an analysis would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public. *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 508-09.

Here, there are simply no "unusual" circumstances which would in any way render the "existing" conditions baseline required inapplicable. And, again, even if there were, there is still a burden on the City to include the impacts on the existing land use policies, including the existing "D" limitation, and, if appropriate, present the facts warranting the use of the projected future conditions as the baseline.

In fact, the EIR's conclusion that it need not provide the history/explanation of the existence of the "D" limitation on the property is also inconsistent with CEQA. Again, an EIR must provide the decision-makers, and the public, with all relevant information regarding the environmental impacts of

a project and may not ignore or assume solutions to problems identified in that EIR. Here, **the "D" limitation was imposed as part of the 1989 Ordinance No. 164, 714 upon the explicit finding by the City Planning Commission that such was "necessary to protect the best interests of, and to ensure a development more compatible with, the surrounding property; to secure an appropriate development in harmony with the General Plan; and to mitigate the potential adverse environmental effects." [*See* City Plan Case No. 86-831-GPC]. *Is compatible development and development in harmony with the General Plan no longer sought by the City Planning Commission?*** If so, it must make findings to that effect. In any case, a decision to deviate from the "D" zoning limitation now cannot be legally accomplished by ignoring its existence, and it must be analyzed, in sufficient detail, in the EIR.

What's more, for the EIR to conclude that it could not "identify any plan elements or policies with which the Project is inconsistent" is nothing if not willfully ignorant. Not only are the comments to the EIR full of factual testimony about the land use policies within which the Project is inconsistent, the Project flatly asks for a ***deviation*** from its zoning FAR limitation. By definition, that is an ***inconsistency*** with the applicable General Plan designation for the property. In fact, the Project is not ***inconsistent*** with all of the purposes and the City's Residential Citywide Design Guidelines for Multi-Family Residential Projects and Hollywood Community Plan listed above, not to mention the City's own findings in City Plan Case No. 86-831-GPC.

It must be also noted that the EIR, in order to find "consistency" also ignores the plain words of the applicable plans' objectives and goals:

1. The Hollywood Community Plan states, as Objective 3.b, that it is meant to encourage the *preservation* and *enhancement* of the varied and distinctive *residential* character of the Community.

Here, in its analysis of consistency, all the EIR provides is that the "Project would preserve and enhance the residential community by limiting development to the Project site and providing residential uses on a commercially zoned property." But that, in no way, shows consistency with Objective 3.a, which requires *preservation* of the residential character of the Community.

2. The Hollywood Community Plan states, as Objective 4.a, that it is meant to *promote* economic well-being and *public convenience* through allocating

and distributing commercial lands for retail, service, and office facilities in quantities and patterns *based on accepted planning principles and standards.*

Here, in its analysis of consistency on this point, the EIR completely fails to analyze how the Project promotes public convenience and how it is in any way based on accepted planning principles and standards. Presumably, this is because the Project fails to promote public convenience and, with regard to massing, scale, and height is inconsistent with accepted planning principles and standards. But, the EIR cannot ignore such inconsistencies, it must analyze them.

3. The Hollywood Community Plan states, as Objective 7, that it is meant to encourage the preservation of open space consistent with property rights when privately owned and to *promote the preservation of views.*

Here, in its analysis of consistency, all the EIR provides is that it "would no result in significant adverse effects to existing views of scenic resources." But, again, that is not what Objective 7 says. Objective 7 requires an analysis as to how the Project promotes *preservation* of views. Whether or not the Project meets the threshold for "significant effect to existing view" under the CEQA Thresholds has absolutely nothing to do with this finding.

Simply put, selective statements of "consistency" are not enough. The EIR must analyze *in*consistencies with Objectives 3.b, 4.a and 7 to be legally adequate.

Finally, the EIR fails to analyze (or even acknowledge) the Project's consistency with the City's Mobility Plan 2035 ("MB 2035"). This is a fatal error in the EIR as the Project, by eliminating a portion of a public right of way, is inconsistent with MB 2035. This information must be disclosed and analyzed to provide for informed decisionmaking.

Land Use and Planning – Compatibility:

In finding that the Project would have a less than significant impact on land use compatibility, the EIR completely fails to analyze compatibility with respect to the entire multi-residential community immediately to the south of the Subject Site. Focusing on the development along Sunset Boulevard, the EIR intentionally distorts the land use patterns in the area in order to conclude that there is a less than significant impact.

However, it is not enough to provide the conclusory statement that the characteristic land use patter in the area is the "juxtaposition" of higher intensity commercial uses with lower density residential uses. Specificity and use of detail in EIR's must be used since conclusory statements that are unsupported by empirical or experimental data, scientific authorities, or explanatory information afford no basis for comparison of the problems involved with a proposed project and the difficulties involved in the alternatives. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.

Here, the Project seeks to replace an 80,000 square foot, three-level structure with a 333,903 sq. foot, 16-story megaplex which will be built directly adjacent to 2-3 story residential dwellings. Its compatibility to such lower density residential uses is therefore completely different from the existing use, and must be analyzed, in tangible, factual detail.

Traffic

With regard to traffic impacts, it must preliminary be noted that per the very traffic study relied upon in the EIR, *almost all* of the intersections in the vicinity of the Project are at an existing LOS of D or lower, including 10 which are *already* at an LOS of E of F. LOS E represents a traffic volume that is at capacity, which results in stoppages and unstable traffic flow, while LOS F represents volumes which are overloaded and characterized by stop-and-go traffic with stoppages of long duration (otherwise commonly referred to as "bursting at the seams").

Where traffic is already at LOS of D or lower, it is unacceptable to add any extra traffic impacts. Failing infrastructure cannot accommodate development that will only aggravate its already failing condition. Nevertheless, hiding behind significance thresholds, the EIR disingenuously concludes that, except with regard to construction related traffic, the Project will cause a less than significant impact on traffic/transportation. This is incomprehensible and not in accordance with law.

The fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant, and the use of the Guidelines' thresholds does not necessarily equate to compliance with CEQA. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09. Therefore, in order to provide the

requisite detail/information necessary for informed decisionmaking, the EIR must address why and how the thresholds being used for this particular Project, where traffic at all nearby intersections is already at LOS of D or lower, is an appropriate measure of its transportation impacts. If it cannot, ***it must disclose that the impacts on traffic are significant and unavoidable***.

Moreover, it is clear that the EIR, in order to make findings of "less than significant," skews the plain words of the thresholds. For instance, the EIR acknowledges that "Threshold TR-6," provides that a significant access impact would occur "if the intersection(s) nearest to the primary site access are projected to operate at LOS E or F during the a.m. or p.m. peak hour, under cumulative plus conditions." Completely ignoring the language of the threshold, however, the EIR instead concludes that the "operational characteristics, expected minimum driveway capacities, and the projected peak hour driveway traffic volumes of the Project would provide adequate capacity to accommodate the anticipated maximum vehicular demands for both entering and existing traffic at each of the driveways. In addition, the driveways would provide sufficient queuing. Therefore, the Project would result in less than significant impact with regard to access."

But this "explanation" does not in any way address the actual threshold question about whether the intersection(s) nearest to the primary site access are projected to operate at LOS E or F during the a.m. or p.m. peak hour, under cumulative plus conditions. Again, this is because, in fact, if the threshold were applied correctly, this question would have to be answered in the affirmative and traffic impacts would be rendered significant and unavoidable. The EIR must disclose this.

Similarly, the EIR acknowledges that "a significant impact related to consistency with plans would result if the project would conflict with the implementation of adopted transportation programs, plans, and policies," but flatly concludes, without analyzing the requisite *in*consistencies, including MB 2035, that the Project would support the Community Plan in that the Project would not hinder the City's efforts to provide a circulation system coordinated with land uses and densities and adequate to accommodate traffic.

But that is not the threshold, the threshold requires a finding of whether or not the Project "conflicts," not whether or not it "hinders." Clearly, any project which increases density and/or number of residents in this already traffic-

plagued area conflicts with the Community Plan to provide a circulation system coordinated with land uses and densities and *adequate* to accommodate traffic. At LOS of D or lower, the traffic surrounding the Project Site is already inadequate and therefore conflicts with the Community Plan. The EIR must disclose and analyze this impact.

Finally, as noted by the City of West Hollywood, the major impact (and therefore "problem") the EIR recognizes is that the Project will result in a significant traffic impact at the un-signalized intersection of Fountain Avenue and Havenhurst Drive, but the EIR concludes that Mitigation Measure TR-1 (installation of a traffic signal at Fountain Avenue/Havenhurst) will reduce this impact. The EIR lists the City's Department of Transportation and Building and Safety as the enforcement agencies responsible for Mitigation Measure TR-1. **But the entirety of the Fountain Avenue/Havenhurst Drive intersection is in the City of West Hollywood!** How can the City in any way enforce Mitigation Measure TR-1? It cannot and therefore the Mitigation Measure is illusory and unenforceable. *CEQA Guidelines*, § 15126.4 (a)(2) (mitigation measures must be "fully enforceable").

Public Services – Fire and Police Protection

Compounding the detrimental impacts caused by the existing and projected traffic for residents and anticipated visitors to the Project, the EIR admits that the traffic in the area could significantly affect emergency vehicle response times (both fire and police) by further increasing traffic, thus further delaying such emergency response times. However, the EIR concludes that these impacts will be rendered less than significant by the imposition of Mitigation Measures TR-1 through TR-4, the Project's TDM Program, as well as improvements planned by the Los Angeles Fire Department ("LAFD") to improve their systems, processes and practices with regard to Fire Protection.

First, there are no proposed Mitigation Measures TR-3 or TR-4, the only traffic related mitigation measures are TR-1 (a traffic signal at Fountain Avenue/Havenhurst) and TR-2 (restrict the drop-off, turnout lane on Crescent to a right-turn only).

Second, it is completely unclear how Mitigation Measures TR-1 and TR-2, the Project's TDM Program, all of which have to do with traffic circulation on-site and along Havenhurst (including the fact that TR-1 is unenforceable) are in

any way going to alleviate the significant impacts on emergency vehicle response times for LAFD vehicles which must travel *at least* 0.9 miles to get to the Project Site (the closest station, which only a "Single Engine Company" station, is 0.9 miles east of the Project, the other two, actual "Task Force Truck Company" stations are over 2 miles away) and police vehicles which must travel two miles from the 1358 North Wilcox Avenue police station. In other words, there is no nexus between the mitigation measures and the actual impact. *See CEQA Guidelines, §15126.4(a)(4)(A); Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)(there must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest).

Similarly, it is uncontested that the Applicant has absolutely no control over LAFD, or any of its plans to improve systems, processes and practices. Accordingly, there is no way to assure or enforce such implementation and reliance on this "mitigation measure" is plainly inappropriate. *CEQA Guidelines*, § 15126.4 (a)(2) (mitigation measures must be "fully enforceable").

The City should take note that the LAFD itself expressed these concerns about the Project, **noting both that the required fire-flow requirements cannot currently be met for the Subject Property** and that **emergency medical response from the Truck Company station would be inadequate**. LAFD recommended that definitive plans and specifications be submitted to guarantee that all safety standards are met. But the EIR does not include any such mitigation efforts.

In order to be legally adequate, the EIR must analyze the specific impacts on fire and police protection the entirety of the way from their respective station(s), in detail, and provide, if possible, mitigation measures accordingly. It cannot simply state that Mitigation Measures which have nothing to do with the actual impact render the impacts "less than significant."

Geology and Soils

The January 8, 2014 Preliminary Alquist-Priolo Earthquake Fault Zone Map on which the EIR relies to evaluate geology and soils, particularly with regard to the Hollywood Fault, and which it concludes is located about 100 feet northwest of the Project site and not within it, is outdated. The Revised Official Maps of Alquist-Priolo Earthquake Fault Zones, released on December 4, 2015, show that the Project site is located on the active Hollywood Fault. This is a substantial change from the circumstances under which the original EIR was

evaluated, and constitutes a danger to the community. To allow for complete, informed decisionmaking, the EIR must be updated to analyze this impact.

Further, in order to mitigate the impacts on geology and soils, the EIR imposes Mitigation Measure GS-1 requiring that a qualified geotechnical engineer prepare a report that provides recommendations, and that those recommendations be included into the Project. But it is well settled law that under CEQA requiring adoption of mitigation measures from a *future* study is impermissible. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07 (requiring applicant to submit a future hydrology study and soils study subject to review by County found deficient for improperly deferring environmental assessment to a later date); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 (deferral is impermissible when agency "simply Los Angeles Advisory Agency requires a project applicant to obtain a biological report and then comply with recommendations that may be made in the report").

Therefore, any review and recommendation by a geotechnical engineer must be completed **before** the Project is approved.

Noise

Similar to traffic, in order to avoid a detailed analysis of noise impacts, the EIR simply concludes that because Project-related noise would not exceed established thresholds, impacts are less than significant. But, as discussed above, the use of the Guideline's thresholds does not necessarily equate to compliance with CEQA. In order to provide the requisite detail/information necessary for informed decisionmaking, the EIR must address why and how the thresholds being used for this particular Project, where the Project seeks to introduce an FAR that is triple what is otherwise allowed by the zoning limitations on the site and 249 residential units where no residential units currently exist, is an appropriate measure of its operational noise impacts.

IV. The Project, and EIR, Fail to Discuss the Need for a Street Vacation.

In connection with the Project, the Applicant proposes removal of the existing independent right turn lane off of Sunset Boulevard and to connect the existing triangular island at the southwest corner of the intersection to the Project site to create a plaza area adjacent to the northeast corner of the site. The EIR takes the incomprehensible position that such "connection" will not require any

easements/dedications, but would, somehow, be "improved and maintained as public by the project applicant." **There is no process under the law for such a result**.

In fact, there are two legal options available to the Applicant. If the Applicant chooses to build a part of the Project on the existing, currently-public independent right turn lane, Street Vacation proceedings must be initiated on that portion of Crescent Heights Boulevard on which the Project will be situated, a process[5] (which includes Street Vacation findings which cannot be made here) that must be disclosed within the scope of the Project in the EIR and analyzed (including a requisite report from the City Engineer). A private applicant cannot just decide to build upon an otherwise-public right of way by promising to "maintain" it.

Alternatively, if the Applicant does not want to go through a Street Vacation process, he must keep the Project within the boundaries of the private property which it owns. In that case, he must re-do the Project plans and update the traffic study, and floor area ratio calculations to analyze this change.

In any case, as it currently stands, **the Applicant is *misrepresenting* that a B-permit is all that is required for the construction of the Project onto Crescent Heights Blvd., a public right of way**. A street vacation is required and the impacts of a street vacation, including the process involved, must be disclosed and analyzed as part of the Project.

V. The Findings for Site Plan Review Cannot be Made

Affirmative Findings for Site Plan Review pursuant to LAMC § 16.05.F cannot be made. First, as noted above, the Project is not in substantial conformance with the Hollywood Community Plan.

Second, the Project does not consists of an arrangement of buildings and structures (including height, *bulk* and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be *compatible* with existing and future development

[5] The hearing notice for the Tract Map, Conditional Use, Density Bonus and Spite Plan Review have failed to include a street vacation proceeding or the need for a street vacation.

on *adjacent* properties and *neighboring* properties. Indeed, it is up to 13 stories higher than the immediately adjacent, existing multi-family residential community and exceeds the otherwise planned density on the site three times.

Notably, in an attempt to appear compatible, the Applicant has provided a "spin" that the location of the Project is one that is "highly urbanized" and built out; in the more "active" regional center of Hollywood with a mixed-use blend of commercial, restaurant, bars, studio/production, office, and entertainment. The Applicant only off-handedly mentions that there are also residential uses in the vicinity of the Project.

But the reality is that the **entirety of the properties to the south of the proposed Project are low-height multi-family residential**. When taken in context with these low-height residential buildings, the Project completely fails with regard to consistency. Its visibility, a direct consequence of its completely out-of-scale request for triple density allowance, will forever scar the compatibility between it and the existing multi-family residential community; while its traffic impacts will make the already difficult process of ingress and egress from residents' homes an almost impossibility. And, again, its height and density are completely out of character with such multi-family residential housing.

VI. Alternative 9 is NOT an Adequate Solution

Alternative 9, the alternative which is supposed to alleviate view and parking concerns fails on both accounts. The projected Alternative 9 simulations clearly show that the alternative in no way improves the view concerns of the surrounding neighborhood. In fact, Alternative 9 is nothing more than a superficially "scaled down" version which does not alleviate the one impact of the Project which is causing all other problems: its density. **Alternative 9 retains the same *triple* FAR as the Original Project**.

Simply, no amount of creative findings drafting can take this inherently overwhelming and inappropriate impact away. The only way to reduce the impacts of the Project and to make the Project compatible with the surrounding neighborhood would be to scale the Project down to the FAR otherwise allowed on the Site.

The Commission should be aware that the recirculated EIR for Alternative 9, which eliminates access to the Project from Sunset Blvd. in no way explains how this alternative will alleviate congestion along Sunset Boulevard, which the EIR conclusively states will occur. In order to be adequate under CEQA, the EIR cannot simply assume a solution to an identified environmental impact, it must, with detail and specificity explain its impacts and the proposed mitigation measures/solutions.

For all of these reasons, the City should grant our appeal, deny the Project, as proposed, and send the Project and EIR back for further review by the Advisory Agency and Planning Department.

Very truly yours,

LUNA & GLUSHON

ROBERT L. GLUSHON