APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning

Regarding Case Number: CPC-2013-2551-MCUP-DB-SPR, VTT-72370-CN-1A, ENV-2013-2552-EIR

Project Address: 8148-8182 W. Sunset Blvd., 1438-1486 N. Havenhurst Dr., 1435-1443 N. Crescent Heights Blvd.

Final Date to Appeal: 08/29/2016

Type of Appeal:
☐ Appeal by Applicant/Owner
☑ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): ~~City of West Hollywood~~ (Stephanie DeWolfe, Assistant City Manager)

Company: City of West Hollywood

Mailing Address: 8300 Santa Monica Blvd.

City: West Hollywood State: CA Zip: 90069

Telephone: (323) 848-6476 E-mail: sdewolfe@weho.org

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  ☐ Self ☑ Other: City of West Hollywood

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Beth Collins-Burgard & Dylan Johnson

Company: Brownstein Hyatt Farber Schreck, LLP

Mailing Address: 2049 Century Park East, Suite 3550

City: Los Angeles State: CA Zip: 90067

Telephone: (805) 882-1413 E-mail: djohnson@bhfs.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☑ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☑ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 8-25-16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: $89.00	Reviewed & Accepted by (DSC Planner): Tracy Williams T. Wm	Date: 8/26/2016
Receipt No: 0203346351	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

Application - Documents received 18 pages (Two) ac

Brownstein Hyatt Farber Schreck

Beth Collins-Burgard
Attorney at Law
Brownstein Hyatt Farber Schreck, LLP
2049 Century Park East, Suite 3550
Los Angeles, CA 90067
310.500.4600 tel
310.500.4602 fax
BCollins@bhfs.com

August 26, 2016

Appeal of the City Planning Commission's Decision Affirming the Advisory Agency's Approval of the 8150 Sunset Boulevard Project and Certification of the EIR

Case Nos. CPC-2013-2551-MCUP-DB-SPR and VTT-72370-CN-1A
CEQA Case No. ENV-2013-2552 EIR

Dear Honorable Council Members:

Brownstein Hyatt Farber Schreck, LLP submits this appeal letter on behalf of the City of West Hollywood ("West Hollywood"). On July 28, 2016, the City Planning Commission considered appeals filed by West Hollywood and three other appellants of the Advisory Agency's approval of the project located at 8150 Sunset Boulevard ("Project") and certification of the Environmental Impact Report ("EIR").[1] At the appeal hearing, the Planning Commission: (1) affirmed certification of the EIR, (2) approved a Master Conditional Use permitting sale of alcohol, (3) approved a density bonus, (4) approved Site Plan Review, (5) adopted conditions of approval, and (6) adopted findings (collectively, the "Project Approvals"). (See City Planning Commission Letters of Determinations for Case Nos. CPC-2013-2551-MCUP-DB-SPR and VTT-72370-CN-1A, mailing date of August 17, 2016.)

The Project is located on the border of City of West Hollywood, directly adjacent to a multi-family residential district within the City. The massive scale and intensity of the Project (5 structures composed of 249 residential units, 65,000 square feet of commercial space, two towers up to 15 stories high, a seven-story decorative architectural projection, 820 parking spaces all on a parcel of 96,328 square feet, with a FAR of 3:1 on a site zoned for 1:1 FAR) will have significant direct impacts on residents of West Hollywood and its infrastructure, as addressed herein and in previous public comments on the EIR submitted by West Hollywood and its residents. The EIR does not adequately address and mitigate the wide range of significant effects of the Project. West Hollywood is therefore compelled to submit this appeal to protect the public health, safety, and welfare of its citizens.

I. Request for Relief

West Hollywood respectfully requests that the Los Angeles City Council overturn the certification of the EIR and vacate the Project Approvals with direction that the deficiencies set forth in this appeal letter be corrected prior to reconsideration of the Project.

West Hollywood also requests that the hearing on this appeal be delayed until after the Cultural Heritage Commission and City Council have made a final determination as to the historic status of the Lytton Savings Building, which is currently under consideration for designation as a Monument.

II. Argument: The EIR for the Project Does Not Satisfy Requirements of Law

[1] The term "EIR," as used herein, encompasses the Draft EIR ("DEIR"), Recirculated DEIR ("RDEIR"), and Final EIR ("FEIR"), as well as all corrections, additions, attachments, and appendices thereto.

The EIR for the Project contains errors, is not supported by substantial evidence, fails to address significant impacts of the Project, and generally violates the California Environmental Quality Act ("CEQA").

A. The Council Should Not Approve the Project Until a Final Determination Is made on the Historic Status of the Lytton Savings Building

The approved project alternative – Alternative 9 – calls for demolition of the existing bank building on the site known as the Lytton Savings building, which is currently occupied by Chase Bank. The EIR recognizes that the Lytton Savings building may be eligible for designation under the Los Angeles Administrative Code ("LAAC") as a Historic-Cultural Monument. Several project alternatives included in the EIR would have preserved the Lytton Savings building. The EIR even states that Alternative 6 would meet or partially meet all of the project objectives. (DEIR, p. 5-180 to 5-182.) Nevertheless, the Planning Commission found that all preservation alternatives were infeasible based mainly on aesthetic concerns. (PC Letter of Determination, Case No. VTT-72370-CN-1A, p. 140.)

On August 4, 2016, six days after the City Planning Commission hearing on the appeals, the Los Angeles Cultural Heritage Commission considered an application to designate the Lytton Savings building as a Historic-Cultural Monument pursuant to provisions of the LAAC. The Cultural Heritage Commission decided by unanimous vote to take the application under consideration, with one Commissioner noting it was a "no brainer."

If the Lytton Savings building is designated as a Historic-Cultural Monument, Alternative 9 cannot be approved. The Cultural Heritage Commission is required to "take all steps necessary to preserve" a Monument, including assisting in establishment of private funds for acquisition and recommendations for government acquisition. (LAAC, § 22.171.11.) The Code also mandates that the Commission "shall take all steps within the scope of its powers and duties as it determines are necessary for the preservation of the Monument...." (LAAC, § 22.171.15.) No permit for demolition may be issued for a Monument under consideration by the Commission. (LAAC, § 22.171.12.) After designation, no Monument may be demolished without first referring the matter to the Commission and the Commission making a determination based on a report "regarding the structural soundness of the building or structure and its suitability for continued use, renovation, restoration or rehabilitation." (LAAC, § 22.171.14.)

The plain implication of the LAAC provisions is that a Monument cannot be demolished unless it is structurally unsound and unsuitable for continued use, renovation, restoration or rehabilitation. There is no evidence that the Lytton Savings building is in any way structurally unsound or that it is unsuitable for use. In fact, it is currently being used as a bank.

The Cultural Heritage Commission will make a report and recommendation to the City Council within 75 days of the August 4 hearing and the City Council must act on the recommendation within 90 days of the hearing before the Commission on the proposed designation, with an option to extend for a maximum of 15 days. (LAAC, §§ 22.171.10(e), 22.171.10(f).) The City Council should delay this appeal hearing until a final determination is made with regard to the historic status of the Lytton Savings building. Alternative 9 cannot be approved if the Lytton Savings building is designated as a Monument.

B. The EIR Fails to Demonstrate that the Historic Preservation Alternatives Are Infeasible and Fails to Include Adequate Mitigation for Impacts to Historic Resources

The Planning Commission approved Alternative 9 despite the inclusion of environmentally superior alternatives that would preserve the Lytton Savings building, which it assumes is eligible for designation under the LAAC as a Monument. The Planning Commission found that the preservation alternatives would not achieve project objectives such as providing an attractive retail face along street frontages,

redeveloping and revitalizing a commercial site, providing high quality commercial uses, improving the visual character of the area, and enhancing pedestrian activity. (PC Letter of Determination, Case No. VTT-72370-CN-1A, p. 140.) Yet the EIR provides that Alternative 6 would achieve substantially all of these stated objectives. (See DEIR, p. 5-181.) The Draft EIR states that the only objective Alternative 6 would not at least partially meet is the objective to provide more commercial use. Alternative 6 reduces the commercial use to 62,231 sq. ft. (DEIR, p. 5-150.) Yet the selected Alternative 9 provides only slightly more commercial use, providing 65,000 sq. ft. (RDEIR, p. 2-1.)

An agency's findings that alternatives are infeasible must be supported by substantial evidence in the record. (Pub. Res. Code, § 21081.5.) The evidence in the record contradicts the Planning Commission's finding that the bank preservation alternatives are infeasible.

Additionally, the only relocation mitigation measure included in the EIR calls for conducting a study to determine the feasibility of relocation and then advertising the availability of the building on historic preservation websites. (DEIR, p. 4.C.2-27.) The relocation feasibility study must be completed prior to EIR certification and project approval so that the decision-makers are fully informed when deciding whether to approve an alternative that calls for demolition. Furthermore, the study may reveal that it would be feasible for the developer to relocate the building, rather than seeking a third party to do so, in which case relocation by the developer should be included as a mitigation measure in the EIR.

The decision to approve Alternative 9 should be overturned because the finding that Alternative 6 is infeasible, an alternative that is environmentally superior, is not supported by substantial evidence. A relocation feasibility study should also be conducted prior to completion of the EIR and, if determined feasible, the EIR should be revised to include a mitigation measure requiring the developer to relocate the building in the event that an alternative is approved that would require removal or demolition.

C. The Traffic Analysis Fails to Address Impacts, Does Not Include Required Mitigation, and Relies on Invalid Assumptions

1. Failure to Consider Feasible Mitigation

CEQA includes a clear mandate to mitigate significant impacts. "Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so." (Pub. Res. Code, § 21002.1(b).) In contravention of this clear mandate, the Planning Commission affirmed certification of the EIR and approved the Project despite the lack of a feasible mitigation measure to mitigate significant traffic impacts to the Fountain Avenue/Havenhurst Drive intersection.

The EIR provides only one mitigation measure to mitigate impacts to the Fountain/Havenhurst intersection. Mitigation Measure TR-1 requires the developer to guarantee the necessary funds to enable West Hollywood to install a signal at the intersection of Fountain/Havenhurst. (See PC Letter of Determination, Case No. VTT-72370-CN-1A, p. 146.) The Planning Commission did not find that there were no other feasible mitigation measures capable of mitigating the impact to Fountain/Havenhurst. (See PC Letter of Determination, Case No. VTT-72370-CN-1A, pp. 146-147.) In fact, at the Planning Commission's July 28 hearing, staff stated, for the first time, that it had explored other feasible mitigation measures and TR-1 was determined to be the "most appropriate...." Yet no other mitigation measures were identified in the EIR. West Hollywood has sole jurisdiction over the impacted intersection and West Hollywood has made clear since at least January 2015 that its traffic engineers and staff do not believe it is appropriate to install a traffic light at that location. West Hollywood has stated unequivocally on numerous occasions that it will not install a light in that location. The EIR states, without any evidence in support, that no other feasible improvements to the intersection have been identified. (DEIR, p. 4.J-66.) Even if this were supported by

any evidence in the record, which it is not, it appears that staff has considered other feasible measures that would mitigate impacts to Fountain/Havenhurst, but failed to include them in the EIR.

In fact, to call TR-1 a mitigation measure is illusory. TR-1 is not and never has been a feasible mitigation measure because it is solely within the control of West Hollywood, which has informed the City of Los Angeles on numerous occasions that it will not implement TR-1. To rely solely on this mitigation measure without disclosing or discussing other feasible mitigation confounds CEQA's purpose. A mitigation measure must be enforceable through permit conditions, agreements, or other legally binding instruments. (CEQA Guidelines, § 15126.4(a)(2).) An EIR must identify feasible mitigation measures for each significant impact and when the legal feasibility of a mitigation measure is uncertain, the EIR should suggest substitute mitigation measures that can be implemented in its place. (Kostka and Zischke, Practice Under the California Environmental Quality Act (2d ed. Cal CEB) §§ 14.2, 14.26; see also *Madera Oversight Coal., Inc. v. Cty. of Madera* (2011) 199 Cal.App.4th 48, 83, disapproved of on other grounds by *Neighbors for Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439 and *Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 244 [finding that EIRs must identify feasible mitigation measures for each significant impact].) The City of Los Angeles has no authority to enforce TR-1 and therefore has not satisfied CEQA's clear mandate to identify enforceable mitigation measures for each impact.

West Hollywood has good reason to refuse to install the signal at Fountain and Havenhurst – the intersection is not capable of accommodating the addition of a left-turn lane and the equipment necessary to make this a feasible option. In addition, as stated previously, the proposed signal at Sunset Boulevard and Havenhurst Drive, along with the signal proposed by TR-1, would result in cut-through traffic on Havenhurst. Speed humps and mistiming the two signals, as proposed by City of Los Angeles staff, would only have the effect of slowing the traffic on Havenhurst and would not deter cut-through traffic.

Instead of identifying alternative feasible mitigation measures, the Planning Commission assumed that the impact to the Fountain/Havenhurst intersection would remain significant because West Hollywood may "determine that it does not wish to install the signal" and adopted a statement of overriding considerations to override the impact. (See PC Letter of Determination, Case No. VTT-72370-CN-1A, p. 198.) This is precisely the type of action that the Supreme Court has disapproved. An agency may disclaim the responsibility for mitigating a significant impact "only when the other agency said to have responsibility has exclusive responsibility." (*City of San Diego v. Bd. of Trustees of California State Univ.* (2015) 61 Cal.4th 945, 957.) An EIR that incorrectly disclaims the power and duty to mitigate identified environmental effects is not sufficient as an informative document. (See *Id.* at 956, citing *City of Marina v. Bd. of Trustees of the California State Univ.* (2006) 39 Cal.4th 341, 356.) West Hollywood does not have exclusive responsibility to mitigate this impact. As the lead agency for the Project, the City of Los Angeles has responsibility to mitigate this impact. "CEQA does not allow agencies to approve projects after refusing to require feasible mitigation measures for significant impacts." (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 690, as modified on denial of reh'g (May 11, 2007).)

City of Los Angeles staff has apparently considered feasible measures to mitigate the impacts to the Fountain/Havenhurst intersection and nevertheless neglected to include these in the EIR. The City of Los Angeles may not disclaim responsibility to mitigate a significant impact caused by a project within its jurisdiction. The EIR must be revised to include feasible mitigation measures to mitigate impacts to the Fountain/Havenhurst intersection.

2. Use of Invalid Assumptions Not Supported by Substantial Evidence

Many unfounded assumptions are utilized in the Traffic Impact Analysis ("TIA") to reduce the amount of trips for the proposed Project.

a. Pass-By Trips for the Project Are Overstated

For example, the TIA provides that retail and restaurants will experience 10% of their patronage from Project residents, the supermarket will experience 15% of its patronage from Project residents, and the bank and health/fitness facilities will experience 5% of its patronage from Project residents without explaining the basis for these percentages. (See DEIR, Appx. H, p. 13.) Conclusions and determinations reached in an EIR, including the methodology used to study an impact, must be supported by substantial evidence. (*City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, 839.)

The TIA also applies a substantial reduction for pass-by trips. Projected trips for the restaurant component are reduced by 10%, projected trips for the dance/yoga uses and bank are reduced by 20%, projected trips for the supermarket are reduced by 40%, and projected trips for the retail/commercial component are reduced by 50%. (RDEIR, Appx. A, "Trip Generation Calculations.") The reduction totals 1,277 trips, which amounts to a 25% reduction in overall trips.

In contrast, the majority of the pass-by trips applied in calculating trips for the existing project are trips for the fast food restaurants, totaling 2,190 trips. (RDEIR, Appx. A, "Trip Generation Calculations.") It makes sense that a fast food restaurant would attract a large number of pass-by trips as people do not typically make a single trip to seek out a specific fast food restaurant, but rather integrate it into another trip. The proposed Project does not include any fast food restaurants that would merit a similarly large reduction.

The substantial reductions granted for pass-by trips are not merited for this proposed Project. The Project is likely to be a destination due to the high-end and unique nature of the complex (explained further below). The application of a 25% total reduction for pass-by trips is not supported by substantial evidence in the context of this unique Project.

The trip calculation in the TIA also fails to account for other important factors, including the fact that the Project will provide a large amount of commercial public parking (494 spaces). The TIA does not provide a comparison of proposed parking to existing parking in order to allow a determination of the degree to which the proposed Project would increase the number of spaces provided. Sunset Boulevard is a destination area for local residents and visitors. Parking in the area is scarce. The site is located nearby several popular destinations such as Bar Marmont and the Laugh Factory, in addition to numerous other bars and restaurants. With its ample parking, the proposed Project will undoubtedly attract a number of trips completely unassociated with the Project itself. This has not been accounted for in the traffic analysis.

The traffic analysis also fails to account for the likelihood that a building designed by Frank Gehry will attract architecture buffs and others interested in unique designs. The proposed Project is certain to be a destination in and of itself, regardless of the uses. The TIA does not account for this unique aspect of the Project that will generate additional trips.

b. The TIA Appears to Use an Improper Traffic Baseline

The EIR states that the "baseline conditions for the project are at the time that that the project NOP is filed." (FEIR, p. 2.B-182.) However, the EIR does not clearly state or provide evidence to support exactly what the occupancy level was at the time the NOP was filed. The TIA calculates baseline traffic levels using trips for a fully leased and occupied project. (See FEIR, Appx. A, "Trip Generation Calculations.") According to the Response to Comments, the reasoning for this seems to be that the use of existing conditions at the time the NOP was filed would not account for factors such as "current economic conditions that could result in 'underperforming uses, or seasonal variations in the operations of the uses.'" (FEIR, p. 2.A-29.) However, the FEIR fails to provide evidence to support the conclusion that the "existing use over time" for the site was in fact a fully leased and occupied shopping center. To the contrary, if there

are in fact underperforming uses or seasonal variations, which is to be expected, the statements in the FEIR support a conclusion that the Project was not fully leased at any time in recent history, let alone at the time the NOP was issued. Without such evidence, there is no support for the use of a fully leased and occupied center as the baseline. The EIR cannot use a baseline of hypothetical conditions. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 316.)

The Responses to Comments also state that when an assumed vacancy of 4,637 square feet of retail use is incorporated into the analysis, the change in trips when compared to the fully occupied Project would be a reduction of 99 net total projected trips. (FEIR, p. 2.A-30.) The Responses to Comments state that this reduction in baseline traffic conditions would not lead to a change in the impacts analysis. Yet when the additional 99 trips are added to the other improperly credited trips, the impacts may very well increase. Most importantly, there is no evidence in the record to demonstrate that these additional trips would not create new significant impacts.[2]

D. The Greenhouse Gas Analysis Relies on Invalid Assumptions, Fails to Address Impacts, and Does Not Include Required Mitigation

The Greenhouse Gas ("GHG") analysis relies in part on the traffic analysis as a basis for evaluating GHG impacts. Therefore, like the traffic analysis, the GHG analysis assumes an inflated number of baseline traffic trips and a deflated number of traffic trips related to the proposed Project. Therefore, the EIR understates the amount of GHG emissions. The EIR also does not quantify the additional GHG emissions that would be associated with the 99 additional trips disclosed in the Responses to Comments (discussed above). The GHG analysis takes credit for planting new trees, but does not consider impacts associated with removal of existing trees. In short, the GHG analysis is not supported by substantial evidence and must be revised and corrected.

E. The Analysis of Impacts to Sewer Infrastructure Fails to Address Potential Impacts from Constructing a New Connection

The Project site is served by a 12-foot long City of Los Angeles sewer line which conveys the sewage directly into and through lines owned and operated by West Hollywood and ultimately to the Hyperion Treatment Plant. (RDEIR, p. 3-26.) The EIR originally included a requirement for the Project developer to contribute fair share payments to West Hollywood for use of its sewer lines. (FEIR, p. 3-4.) But on the day of the Planning Commission hearing, staff recommended that the Planning Commission remove this requirement, claiming that West Hollywood had been unable to identify any impacts to its sewer infrastructure. (July 28, 2016 letter from William Lamborn to City Planning Commission.) This assertion of course defies logic. Use of infrastructure inevitably takes capacity, increases risk of spillage, increases the potential volume of spill, and causes wear and tear. The Project's contribution of wastewater to West Hollywood's sewer system will have a proportionate effect on the system, requiring maintenance and repair. Without that maintenance and repair, the system risks causing environmental impacts. These factors all can result in environmental impacts associated with wastewater and sewer usage.

Added sewage from the Project therefore would result in impacts to West Hollywood's sewer infrastructure, associated environmental impacts, and may result in growth inducing impacts. A person utilizing West Hollywood's sewer services must pay an annual sewer service charge, which is levied on properties within

[2] West Hollywood also expressly incorporates in this appeal letter additional traffic and circulation issues included in its appeal to the Planning Commission provided under the heading "Additional Issues." (Appeal to the Planning Commission is attached as Exhibit A.) The Additional Issues were not adequately addressed by staff responses provided in the Appeal Recommendation Report to the Planning Commission.

its jurisdiction. (West Hollywood Municipal Code, § 15.12.010.) Since the Project is located outside of West Hollywood's boundaries, West Hollywood has no authority to levy the charge and no duty to serve the Project. If the Project developer refuses to voluntarily agree to pay the standard charge for utilization of West Hollywood's sewer system and Los Angeles refuses to fairly compensate West Hollywood for use of its sewer system, West Hollywood may determine that it cannot provide sewer service to the property. The developer should not be permitted to have free use of West Hollywood's sewer system simply because it is located outside of West Hollywood's boundaries. If West Hollywood is forced to refuse sewer service to the Project site because the developer and Los Angeles refuse to pay a fair share contribution for use of the sewer system, Los Angeles will be required to construct a new connection to the property. The process of constructing a new sewer connection could have several potential significant impacts not considered in the EIR, including impacts to air quality, traffic, GHG, noise, cultural resources, and geology and soils. The addition of new infrastructure may also have growth inducing effects that must be analyzed. Unless the Project Approvals require the developer to pay its fair share for use of the West Hollywood sewer system, the Project may lead to further environmental impacts not analyzed in the EIR.

The Project Approvals should be revised to require the developer to pay a fair share fee as determined by West Hollywood based on its use of the sewer system or the EIR must be revised to include analysis of impacts from constructing new infrastructure to serve the property. If Los Angeles agrees to compensate West Hollywood for the added burden imposed on its sewer facilities through serving a project within Los Angeles' jurisdiction, such agreement must be executed prior to Project approval to ensure that the Project will not result in additional impacts.

F. The Alternatives Analysis Is Inadequate Because it Does Not Address Alternative Locations

The alternatives analysis in the EIR does not include a detailed consideration of an alternative location for the Project. While it is true that an EIR need not always consider alternative locations, in this case where the Project presents several unmitigatable impacts caused by its location it is not reasonable to exclude consideration of alternative locations. (See *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1179.) As noted by many commenters, the scale and intensity of this Project is inappropriate for the area. This Project is more suited to downtown Los Angeles or another area with large multi-story complexes.

The EIR should be revised to include a detailed consideration of an alternative location.

G. The Scale of the Project is Incompatible with the Area, Inconsistent with Applicable Policies, and Creates Significant Shading Impacts

While Alternative 9, the approved Project, attempted to address objections to the bulk, scale, and density of the development, the Project remains incompatible with the scale and character of the adjacent buildings and surrounding neighborhood. The existing high rise elements along Sunset Boulevard in the vicinity of the Project are generally ten stories at the highest. The Project includes towers one to six stories higher than the tallest surrounding buildings. Other towers in the Project's vicinity are located on smaller sites and interspersed among low rise elements. The overall bulk and scale of the Project elements taken together, including the 11 and 15 foot towers with a five-story element between them, and another building with a seven story architectural projection, is incompatible with even the other towers in the area. The Project also is located adjacent to a multi-family residential zone and in close proximity to a number of small scale multi-family residential structures. In contrast to determinations made in the EIR, the bulk, scale, and density of the Project make it inconsistent with numerous policies directing that projects be designed to be compatible with the scale and character of adjacent uses. (See, e.g., DEIR, pp. 4.F-21, 4.F-31 [discussing compatibility policies].)

The Hollywood Community Plan also requires that the intensity and density of projects shall be limited in accordance with the ability of the local streets and highways to accommodate the project. (Hollywood Community Plan, pp. HO-2, HO-4.) As noted above, the traffic impacts caused by the Project, in particular the significant impact to the Fountain/Havenhurst intersection, mean that the Project is inconsistent with policies of the Hollywood Community Plan.

Appendix G to the CEQA Guidelines asks whether the project would conflict with any applicable land use plan, policy, or regulation. The LA CEQA Thresholds Guide (2006) states that the analysis should consider (1) whether the proposal is inconsistent with the adopted land use/density designation in the existing Community Plan, Redevelopment Plans, or Specific Plans for the Site; and (2) whether the proposal is inconsistent with the General Plan or adopted environmental goals or policies contained in other applicable plans. As discussed above, the Project would be inconsistent with applicable land use policies and plans. Furthermore, the EIR failed to address the inconsistencies with the intensity/density policies related to transportation in the Hollywood Community Plan. The EIR for the Project must be modified to address the inconsistencies by reducing the overall scale to make it compatible with the surrounding neighborhood.

In addition, while the EIR does not identify the users of Sunset Boulevard as sensitive receptors in its analysis of shading impacts, the development will in fact shade over 300 feet of Sunset Boulevard for most of the day according to Figure 2-6 of the RDEIR. Under the City of Los Angeles thresholds of significance, this shading would have a significant adverse impact on users on Sunset Boulevard. (See DEIR, 4.A.-17.) This significant impact must be addressed through mitigation measures or modifications to the design.

III. Conclusion

For the reasons set forth above, West Hollywood respectfully requests that the City Council overturn the certification of the EIR and vacate the Project Approvals with the direction that the deficiencies set forth in this appeal letter be corrected prior to reconsideration of the Project.

West Hollywood also requests that the hearing on this appeal be delayed until after the Cultural Heritage Commission and City Council have made a final determination as to the historic status of the Lytton Savings Building, which is currently under consideration for designation as a Monument.

Sincerely,

Beth Collins-Burgard

Beth Collins-Burgard

Attachments:

Exhibit A – West Hollywood Letter of Appeal to Planning Commission

EXHIBIT A

APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☒ City Planning Commission ☐ City Council ☐ Director of Planning

Regarding Case Number: ENV-2013-2552-EIR, VTT-72370-CN

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Final Date to Appeal: 07/05/2016

Type of Appeal:
- ☐ Appeal by Applicant/Owner
- ☑ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
- ☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Community Development Department (Attn: Scott Lunceford)

Company: City of West Hollywood

Mailing Address: 8300 Santa Monica Blvd.

City: West Hollywood State: CA Zip: 90069

Telephone: (323) 848-6427 E-mail: slunceford@weho.org

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  ☐ Self ☑ Other: City of West Hollywood

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Scott Lunceford

Company: City of West Hollywood

Mailing Address: 8300 Santa Monica Blvd.

City: West Hollywood State: CA Zip: 90069

Telephone: (323) 848-6427 E-mail: slunceford@weho.org

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☐ Entire ☑ Part

Are specific conditions of approval being appealed? ☑ Yes ☐ No

If Yes, list the condition number(s) here: Mitigation Measure TR-1 & PDF-WW-1

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 07/05/2016

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: $89-	Reviewed & Accepted by (DSC Planner): LFS	Date: 7/5/16
Receipt No: 0102602598	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

City of West Hollywood
California 1984

CITY OF WEST HOLLYWOOD

CITY HALL
8300 SANTA MONICA BLVD.
WEST HOLLYWOOD, CA
90069-6216
TEL: (323) 848-6475
FAX: (323) 848-6575

TTY: For hearing impaired
(323) 848-6496

COMMUNITY DEVELOPMENT DEPARTMENT

July 5, 2016

RE: Appeal of the Advisory Agency decision to approve the Certification of the Final Environmental Impact Report for the 8150 Sunset Boulevard Mixed-Use Project
Case Numbers: VTT-72370-CN, CPC-2013-2551-CUB-DB-SPR
CEQA Number: ENV-2013-2552-EIR

The City of West Hollywood appeals the Advisory Agency decision to certify the Final Environmental Impact Report (FEIR) for the 8150 Sunset Boulevard Mixed-Use Project (Project) given the following outstanding issues regarding key items within the Letter of Determination (LOD):

MITIGATION MEASURE TR-1

Mitigation Measure TR-1, involving the signalization of the intersection of Fountain Avenue and Havenhurst Drive, must be removed from the list of mitigation measures in the FEIR and must be replaced with a substitute feasible mitigation measure to eliminate the traffic impact at this intersection. The City of West Hollywood objects to the installation of a traffic signal at this location and has reported to the City on numerous occasions that it will not approve the installation of a traffic signal at this intersection under any circumstances.

Including this mitigation measure in the Final EIR and CEQA Findings in the Letter of Determination (LOD) is misleading to the public, the applicant and the City's decision makers and therefore violates CEQA's mandate to provide a meaningful analysis of the project's impact on the environment. The vast majority of the EIR and CEQA findings suggest that the traffic impact at Fountain and Havenhurst will be mitigated through installation of the new traffic signal. One has to read through hundreds of pages and find buried in the statement of overriding consideration that there will be an un-mitigatable impact at this intersection if West Hollywood does not approve the signal.

There is evidence in the record that this mitigation measure will never be completed. Thus it is misleading to the public to maintain this as a required mitigation measure and to suggest that the impact is capable of being mitigated to a level of insignificance. This error is fatal to the EIR and deprives the public, applicant and decision makers of a meaningful description of the project impacts. It also leaves the applicant in an untenable situation of being required to comply with a condition for which it cannot comply. Including the mitigation measure as a condition of approval in several sections of the CEQA findings in the Letter of Determination, (including the references in public safety, emergency response times and traffic) also creates an ambiguity that obfuscates the Project's traffic impacts relative to future project review and implementation.

Pursuant to CEQA Section 15126.4.a.2, mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments in order to be viable. Given that the City of West Hollywood does not support and will not approve said traffic signal installation, mitigation measure TR-1

is unenforceable. Therefore, the FEIR inadequately addresses a known significant traffic impact, and the EIR should not be certified without revision.
Additionally, the City of Los Angeles has a duty to identify all feasible mitigation measures that could mitigate or reduce this impact. 14 Cal. Code Regs. 15126. With the knowledge that MM TR-1 is infeasible and unenforceable through permit conditions, the City has not met its burden to mitigate the identified impact under CEQA. Further, the City's finding XI.6 in the Letter of Determination is not supported by substantial evidence because the traffic impact at Havenhurst and Fountain has not been mitigated to the extent feasible. There is no evidence that the City has explored any other feasible means of mitigating this impact to the environment, notwithstanding that the West Hollywood has repeatedly reported that the traffic signal is objectionable and will not be approved. Contrary to the statement in Los Angeles' response letter dated June 21, 2016, it is not the City of West Hollywood's role to identify feasible mitigation measures for this project.

PROJECT DESIGN FEATURE PDF-WW-1

Although the City of Los Angeles has acknowledged that the Project must be subject to the same fair-share contribution as other projects which use City of West Hollywood sewers, the language as written for PDF-WW-1 is vague and ambiguous and does not address the City's main concern. Specifically, the measure must make clear that the applicant is responsible for its fair share of operation and maintenance of the sewer system. As drafted, PDF-WW-1 suggests that the developer must pay for a proportional share of future sewer upgrades. However, this is not the case; the developer must pay its fair share for costs for ongoing operation and maintenance of the existing sewer system.

If this was an identical project within West Hollywood, the property owner would be paying an annual City Sewer Service charge on their property tax bill that is not applicable to this project in the City of Los Angeles. Since West Hollywood does not have a mechanism to collect sewer usage fees on properties outside of the City boundary, we recommend the developer make a one-time payment to cover the equivalent of 50 years of City Sewer Service charge. The City Sewer Service Charge is based on the concept of the Equivalent Sewer Unit (ESU). A single family residential property's City Sewer Service Charge is 1 ESU. The City Sewer Service Charge rates for all other land uses are based on the proportional use of the sewer system, in multiples of the ESU. The formula for calculation of the City Sewer Service Charge remains unchanged from the method of calculation adopted by the City Council in 1997. Per the table below, based on the Project land uses listed in the FEIR, the sewer usage by the proposed development is 270 Equivalent Sewer Units (ESU).

Land Use	Quantity	Unit	Factor	GPD (gallons per day)	ESU (equivalent sewer unit)
Studio Unit	54	Residential Units	156.00	8,424	32
One Bed Unit	134	Residential Units	156.00	20,904	80
Two Bed Unit	35	Residential Units	156.00	5,460	21

Three Bed Unit	24	Residential Units	260.00	6,240	24
Four Bed Unit	2	Residential Units	260.00	520	2
Retail	11,937	Square Feet	0.10	1,194	5
Restaurant	23,158	Square Feet	1.00	23,158	89
Supermarket	24,811	Square Feet	0.15	3,722	14
Bank	5,094	Square Feet	0.10	509	2
			Total	70,131	270

The annual City Sewer Service Charge rate for Fiscal Year 2016-17 is $40.91 per ESU. Considering the proposed project of 270 ESU, the City Sewer Service Charge for FY 2016-17 would be $11,034.80. The City Sewer Service Charge is adjusted by the CPI-LA on July 1 of each year. For example, the CPI-LA which has been applied for calculation of the 2016-17 assessment rates is 3.266%. Assuming a 50-year term for calculation of the developer's obligation for funding their fair-share of costs for on-going operation and maintenance of the City of West Hollywood sewer system, as well as an annual CPI-LA of 3% per year for the next 50 years, the amount the developer would need to pay the City of West Hollywood is $1,244,691.30. Again, this dollar amount would need to be paid to the City of West Hollywood prior to issuance of the Building Permits.

Therefore, the City of West Hollywood requests the language of PDF-WW-1 be revised as follows:

- **PDF-WW-1:** In order to address ~~potential future improvements to~~ the operation and maintenance costs for sewage conveyance facilities within the City of West Hollywood that serve the project site, prior to issuance of Building Permits the applicant shall pay to the City of West Hollywood a lump sum amount of $1,244,691.30 which is the amount equal to the West Hollywood City Sewer Service Charge to be paid by an identical project generating 270 Equivalent Sewer Units (ESU) located in the City of West Hollywood for 50 years. ~~the project shall contribute fair share payments to the City of West Hollywood commensurate with the project's incremental impact to affected facilities. Prior to the issuance of building permits, the applicant shall enter into an agreement with the City of West Hollywood determining the project's specific fair-share contribution for West Hollywood sewage system upgrades. The fair share contribution shall be calculated in the same manner used to calculate the fair share contribution for development projects within the City of West Hollywood, and the project's specific contribution shall be determined at such a time that the necessary improvements and associated capital costs are known, and shall be proportional to the project's contribution to total wastewater flows in each affected West Hollywood owned sewer. The applicant shall guarantee (by bond, cash or irrevocable letter of credit, subject to the approval of the City of West Hollywood) the necessary funding to enable the City of West Hollywood to design and install the necessary improvements~~.

There is a less expensive alternative to paying the above stated $1,244,691.30 to the City of West Hollywood. The City of Los Angeles could require the developer to design and construct a new 8-inch diameter sewer to be aligned in Crescent Heights

Boulevard. The proposed sewer would flow south from the project site to connect to an 8-inch diameter sewer in Crescent Heights Boulevard, just south of Santa Monica Boulevard. This new 8-inch diameter sewer would be owned and maintained by the City of Los Angeles, similar to other sewers owned and maintained by City of Los Angeles that pass through West Hollywood elsewhere. The construction would need to be completed prior to issuance of the certificate of occupancy for the proposed development. The City of West Hollywood would be willing to issue the necessary Encroachment Permits for construction of the new sewer. By building this new sewer, the proposed project would no longer utilize the City of West Hollywood sewer system, and would not need to pay for their fair-share of the cost of on-going operation and maintenance of the City of West Hollywood sewer system.

Under either approach, the language of PDF-WW-1 is incorrect and must be revised to more accurately reflect how the project will address its impact on the West Hollywood sewer system.

Additional Issues:

The City raised the following issues in its comment letter dated May 23, 2016 and the planning staff and Advisory Agency did not resolve these issues.

Elimination of Site Access on Havenhurst Drive

The current version of the Project proposes removal of driveway access to the site along Sunset Boulevard. The LOD has conditioned the project such that all residential traffic access the site on Havenhurst Drive and all commercial traffic to access the site on Crescent Heights Boulevard. However, the LOD and FEIR state commercial delivery and service trucks will also access the site from Havenhurst Drive. The City of West Hollywood requests that the LOD and FEIR be revised, and preclude all commercial traffic (including delivery and service trucks) from accessing the site from Havenhurst Drive.

Traffic Impacts Along Fountain Avenue

On Fountain Avenue, the level of service calculations show worsening conditions at all intersections studied. Although the signalized intersections of Fountain/Olive and Fountain/Laurel were not included in the analysis, they too will be impacted. To mitigate the worsening of conditions at these intersections, the developer should be required to fund the upgrade of the traffic signal controller equipment, replacing existing 170 controllers with 2070 controllers, as well as fund installation of battery back-up systems for the following City of West Hollywood signalized intersections: Fountain/La Cienega; Fountain/Olive; Fountain/Sweetzer; Fountain/Crescent Heights; and Fountain/Laurel (Fountain/Fairfax is not included, as that intersection already has an upgraded 2070 controller and has a battery back-up system).

Traffic Impacts Along Havenhurst Drive

The proposed traffic signal at Sunset Boulevard and Havenhurst Drive along with the proposed signalizing the intersection at Fountain Avenue and Havenhurst Drive would effectively make Havenhurst Drive a cut-through route, generating additional traffic congestionand noise impacts to the residential neighborhood along this portion of Havenhurst Drive. In Response No. A9-10, the FEIR erroneously states that the

installation of new signals at both ends of the segment of Havenhurst Drive between Sunset Boulevard and Fountain Avenue will not result in any significant cut-through traffic because there are already a series of speed humps along this segment of Havenhurst Drive, and the two new traffic signals could be intentionally "mis-timed" to delay and deter cut-through traffic. To the contrary, this will only slow down the increased traffic going through this segment of Havenhurst Drive and cause more traffic congestion, rather than lessen the anticipated impacts. Thus, the FEIR must be revised to address these impacts, and have an added project alternative with no vehicular access off Havenhurst Drive.

Safe Pedestrian Access

The proposed project will increase both vehicular and pedestrian traffic in the surrounding area, and this increase in pedestrian traffic levels warrants an upgrade to the existing mid-block crosswalk located south of the project site on Crescent Heights Boulevard. In Response No. A9-11, the FEIR states there is no nexus between the proposed Project and any significant pedestrian related impacts on Crescent Height Boulevard to justify upgrading the existing mid-block crosswalk, because development in the surrounding area will create more traffic in the area and contribute much more toward possible increases in conflicts between vehicles and pedestrians than the proposed Project itself. However, this reasoning is flawed in that it does not recognize the increase in pedestrian traffic caused specifically *by the proposed Project*.

Therefore, the City of West Hollywood requests the project be condition to upgrade the current crosswalk to a mid-block pedestrian signal. Pedestrian visibility enhancements should also be incorporated into the signalization of this crosswalk (i.e. sidewalk bulb-outs, refuge island, reflective markings, etc.).

The above comments in this appeal are related to the certification of the EIR. The City of West Hollywood reserves the right to, and will, raise additional issues pertaining to the project at subsequent public hearings.

Sincerely,

Scott Lunceford, AICP
Associate Planner
Current and Historic Preservation Planning
City of West Hollywood

Office: Van Nuys
Applicant Copy
Application Invoice No: 31677

City of Los Angeles
Department of City Planning

Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: CITY OF WEST HOLLYWOOD - DEWOLFE, STEPHANIE (B:323-8486476)
Representative: BROWNSTEIN H YATT - COLLINS-BURGARD, BETH (B:805-8821413)
Project Address: 1435 1/2 N CRESCENT HEIGHTS BLVD, 90046

NOTES:

VTT-72370-CN-2A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	$89.00	100%	$89.00
		Case Total	$89.00

Item	Charged Fee
*Fees Subject to Surcharges	$89.00
Fees Not Subject to Surcharges	$0.00
Plan & Land Use Fees Total	$89.00
Expediting Fee	$0.00
OSS Surcharge (2%)	$1.78
Development Surcharge (6%)	$5.34
Operating Surcharge (7%)	$6.23
General Plan Maintenance Surcharge (5%)	$4.45
Grand Total	$106.80
Total Invoice	$106.80
Total Overpayment Amount	$0.00
Total Paid(this amount must equal the sum of all checks)	$106.80

LA DBS
DEPARTMENT OF BUILDING AND SAFETY

LA Department of Building and Safety
VN ERNI 203086321 8/26/2016 1:12:58 PM

PLAN & LAND USE $106.80

Sub Total: $106.80

Receipt #: 0203346351

Council District: 5
Plan Area: Hollywood
Processed by WILLIAMS, TRACY on 08/26/2016

Signature:

LA Department of Building and Safety
VN ERNI 203086321 8/26/2016 1:12:58 PM
PLAN & LAND USE
Receipt #: 0203346351

