



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

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

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
- Specifically the points at issue
- How you are aggrieved by the decision
- 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: <u>\$89-</u>	Reviewed & Accepted by (DSC Planner): <u>LFS</u>	Date: <u>7/5/16</u>
Receipt No: <u>0102602598</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)



CITY OF WEST HOLLYWOOD

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**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 signaling the intersection at Fountain Avenue and Havenhurst Drive would effectively make Havenhurst Drive a cut-through route, generating additional traffic congestion and 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