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Councilmember Ed Reyes, Chairman
Councilmember Jose Huizar, Vice-Chair
Councilmember Mitchell Englander, Member
Planning and Land Use Management Committee of the
Los Angeles City Council
200 N. Spring Street, Room 525
Los Angeles, CA 90012-4801

VIA PERSONAL DELIVERY & E-MAIL TO Sharon.Gin@lacity.org

RE: Appeal of Case No. CPC-2009-456-ZC-ZV-ZAA-DB-SPR
CEQA: ENV-2009-457-MND
Project Location: 10601 Washington Boulevard

Dear Chairman Reyes, Vice-Chair Huizar, and Councilmember Englander:

This letter is written on behalf of Westside of Los Angeles Neighborhood and Community Coalition ("WLANCC"),[1] Westwood South of Santa Monica Homeowners Association,[2] the Coalition to Ban Billboard Blight,[3] and Brentwood Residents Coalition,[4] in support of WLANCC's appeal of the determination by the City Planning Commission ("CPC") in the above-captioned case. While WLANCC has appealed the entire determination, this letter focuses on two issues related to that appeal: (1) CPC's adoption of an inadequate Mitigated Negative Declaration; and (2) CPC's improper approval of three sign variances unsupported by substantial evidence supporting the mandated findings.

[1] The WLANCC is a not-for-profit, volunteer group of residents committed to preserving the quality of life and the residential character of historically under-served neighborhoods of western Los Angeles.

[2] Westwood South of Santa Monica Blvd. Homeowners Association, established as a non-profit mutual benefit organization in 1971, represents over 3,800 *single-family and condominium* homes located between Santa Monica and Pico Boulevards on the north and south, and Beverly Glen and Sepulveda Boulevards on the east and west.

[3] The Coalition to Ban Billboard Blight is a registered non-profit 501(c)(4) organization dedicated to defending our public spaces and protecting our visual environment. BBB represents groups and individuals committed to defending the urban landscape of Los Angeles from a proliferation of billboards, supergraphic signs, and other forms of outdoor advertising that blight our public spaces.

[4] The Brentwood Residents Coalition is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

I. An EIR is Required Because the Mitigated Negative Declaration is Inadequate and Substantial Evidence Supports a Fair Argument that the Project May Have a Significant Environmental Impact.

An MND is appropriate only where the "initial study has identified potentially significant effects on the environment, but . . . revisions in the project plans . . . would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur." CAL. PUB. RES. CODE § 21064.5 (emphasis added). An MND is therefore inadequate if the potentially significant impacts cannot be mitigated to insignificance. *Id.* Where "substantial evidence" in the whole record supports a "fair argument" that the project *may* have a significant effect on the environment, an EIR must be prepared. *See also, No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 75 (1974); *Communities for a Better Environment v. California Resources Agency*, 103 Cal. App. 4th 98, 111-12 (2002).

It is also improper to defer mitigation analysis for a future date. *See Sundstrom v. County of Mendocino*, 202 Cal. App. 3d. 296, 307 (1988). Deferring review of environmental impacts and associated mitigation measures until after project approvals have already been obtained diminishes the value of the CEQA process, transforming environmental review into a "post hoc rationalization" of an agency's prior action. *Id.* Simply put, an MND cannot be justified based on the presumed success of mitigation measures that have not been formulated at the time of approval. *Id.*

A. The MND is Not Adequate Because It Identifies Numerous Impacts That Are Not Mitigated to Insignificance.

The draft MND identifies numerous potentially significant impacts that are not mitigated to insignificance. The MND also defers mitigation analysis for other potentially significant impacts. If one of these flaws exists for any potentially significant impact, an EIR is required. This MND is filled with such flaws.

For example, **MND Section I.c.** identifies degradation of the existing visual character or quality of the site and its surroundings as a potentially significant impact unless mitigations are incorporated. MND at 6-7. The MND states that "the proposed sign mitigation measure will ensure that any signs for the ground floor commercial space are designed in a manner that is consistent with the Art Deco style of the proposed building, and that any related signs will not result in visual clutter." MND at 7. But the proposed mitigation measure, I-100, states that this mitigation specifically excludes signs proposed to be included per variances requested. MND at 8. Thus, the mitigation analysis doesn't even include all of the signs associated with the project, because the three blade signs for which the applicant seeks a variance are not included. Moreover, the proposed mitigation states that "[a] sign program shall be prepared," indicating that the mitigation is deferred to a later date. *Id.* That is plainly inadequate. As recognized in *Gentry v. City of Murrieta*, 36 Cal. App. 4th 1359, 1396 (1995), an MND cannot be justified based on the *future* formulation of mitigation measures.

Similarly, the mitigation for the potentially significant impacts identified in **MND Section I.d.** references the same sign program, to be prepared in the future. *Id.*

MND Section VIII.g., noting the potentially significant impact of impaired implementation of or physical interference with an adopted emergency response plan or emergency evacuation plan, also calls for *future* mitigation. MND at 31. The mitigation for this impact states that "[p]rior to the issuance of a building permit, the applicant shall develop an emergency response plan in consultation with the Fire Department," indicating that the plan does not yet exist and is anticipated to be completed only following adoption of the MND. *Id.* The mitigation explanation goes on to state that the proposed mitigation measure is "expected to reduce any potential impacts to a level that is less than significant." In other words, it is not presently known whether the mitigation will reduce impacts to less than significant; it is "expected" to, but may not. That is not sufficient under CEQA.

MND Section X.b. addresses the potentially significant impacts associated with project conflicts with "any applicable land use plan, policy, or regulation of an agency with jurisdiction of the project . . . adopted for the purpose of avoiding or mitigating an environmental effect[.]" MND at 39. These are the project impacts related to the various project entitlements, including the Zone Change from C2-1 to RAS4-1, the Zone Variance to allow second floor commercial use, the Zone Variance to allow three "blade" signs, and other entitlements. MND at 40. In the discussion of these potentially significant impacts, the MND analysis does not even make clear what the potentially significant impacts might be. In fact, the MND appears to tie the hands of the decision-maker with regard to project entitlements, by suggesting that the project impacts will be greater without the requested entitlements than it would be with them. The MND states that "if any of the five requests are denied the proposed project will result in a conflict with the applicable land use plan, police or regulations which are applicable to the project site."[5] MND at 40.

The MND also states that "[i]mplementation of the proposed mitigation measures outlined in this document *should* reduce any impacts to a level of less-than-significant." MND at 41. As with the discussion of section VIII.g., above, the MND doesn't state that the mitigations *will* reduce impacts to less than significant, only that it *should*. But an MND cannot be justified unless the project impacts will be mitigated to insignificance because the mere *possibility* of adequate mitigation is insufficient to rebut a "fair argument" that a project may potentially have a significant impact. *Cf. No Oil,* 13 Cal. 3d at 85 (the "fair argument" standard recognizes that an EIR is necessary to "substitute some degree of factual certainty for tentative opinions and speculation").

[5] It must be noted that this statement is in direct conflict with statements contained within the proposed mitigation measures that follow. "The proposed project would permit intensities and or densities exceeding those permitted by the existing Harbor Gateway Community Plan and Zoning"; "[e]nvironmental impacts may result from project implementation due to an incompatibility with applicable environmental plans or policies"; "[t]he proposed project would permit a land use which is not compatible with that of the surrounding projects." MND at 41. (The reference to "Harbor Gateway" is an error; the project is in the Palms-Mar Vista-Del Rey Community Plan.)

Moreover, the potentially significant impacts are not tied to specific mitigation measures. Mitigation measures X-10 (General Plan Designation/Zoning), X-30 (Environmental Plans/Policies), and X-40 (Land Use) *all* state: "The applicant shall comply with mitigation measures required by this MND." *Id.* The explanation that follows these vague "mitigations" is uncertain whether they will actually mitigate the potentially significant impacts associated with the project entitlements. It states only that "the proposed mitigation measures outlined in this document *should* reduce any potential impacts to a level of less-than-significant." *Id.* (emphasis added).

MND Section XIV addresses impacts associated with public services. **MND Section XIV.a.** deals with fire protection, and identifies the increased demand for fire protection due to the increased number of dwelling units/residents as a potentially significant impact. MND at 48. The MND provides no analysis as to what the precise impact might be, but states that it "is not anticipated to be significant." *Id.* The mitigation explanation states: "[a] review of the proposed project by the Los Angeles Fire Department will ensure that the proposed project will be mitigated to a less-than-significant level." *Id.* This *future review* by LAFD is clearly intended to occur after the decision-maker had adopted the MND, and is thus an improper deferred mitigation.

MND Section XVI addresses the impacts associated with transportation and traffic circulation. MND at 53. **MND Section XVI.a.** identifies as a potentially significant impact the "[c]onflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system." *Id.* The applicant submitted a traffic impact study report, which was reviewed by the Los Angeles Department of Transportation ("DOT"). *Id.* The MND notes that DOT concluded that the project would "not have significant traffic impacts at any of the intersections studied" in the report, but that DOT "determined that the residential impact analysis identified a potentially significant impact on Keystone Avenue south of Venice Boulevard." MND at 53-54. The sole mitigation offered to address this impact is centerline striping, which the MND states "may *or may not* suffice as mitigation." MND at 54 (emphasis added); *see also* Edward Guerrero Jr., Memo, Initial Traffic Assessment for the Proposed Mixed-Use Project Located at 10601 West Washington Boulevard, to Department of City Planning (June 3, 2010) at 2 ("[T]he applicant proposes to create a centerline striping along the roadway . . . which may or may not suffice as mitigation.") A mitigation that "may or may not suffice" is obviously inadequate, and demands preparation of an EIR. *See County of Inyo v. Yorty*, 32 Cal. App. 3d 795, 814 (1973) (observing that an EIR is necessary to resolve "uncertainty created by conflicting assertions.")

Because of the centerline striping, a minimal mitigation that the MND and DOT memo both admit "may not suffice," DOT proposes that the applicant execute a "Neighborhood Traffic Management agreement" to annually review potential neighborhood traffic concerns for three years following both project completion and 80% occupancy. MND at 54. Based on this multi-year review, and with the approval of DOT and in consultation with the Eleventh Council District, the applicant will be responsible to implement corrective measures, which could include, but are not limited to, speed humps, turn restrictions, and other similar traffic calming measures. *Id.* As with many other mitigations proposed in this MND, some already discussed

above, this deferred analysis of mitigations is simply not appropriate, thereby necessitating an EIR.

The mitigation offered for the potentially significant impact identified in **MND section XVI.b.**, the potential conflict with an applicable congestion management program, is the same as in section XVI.a. Although this is a separate and distinct potentially significant impact, there is no separate analysis offered within the MND. The centerline striping on Keystone, which "may or may not suffice," and the Neighborhood Traffic Management agreement which defers analysis and implementation for three years beyond completion of the project and 80% occupancy are just as inadequate for section XVI.b. of the MND as they are for section XVI.a.

MND Section XVI.d. identifies substantially increased hazards due to a design feature, to wit, the "common access driveway which will provide ingress and egress for the project site from Keystone Avenue and a Loading Zone which provides access to delivery vehicles from the Alley located at the rear of the property." MND at 56. The MND states that DOT review of the project did not include review of this potentially hazardous condition. *Id.* The proposed mitigations entirely defer mitigation analysis to a later date, by permitting the applicant to consult with DOT after the MND's approval, and requiring submission of detailed plans to DOT prior to issuance of building permits. *Id.*

An additional mitigation for Section XVI.d. proposes the installation of "appropriate traffic signs around the site" and submission of a "parking and driveway plan that incorporates design features that reduce accidents" to the Bureau of Engineering and DOT. *Id.* Based on the content of this second mitigation it is clear that at the time the CPC adopted the MND there was no "parking and driveway plan that incorporates design features that reduce accidents," which means that the project impacts that may need mitigation could not be known by the decision-maker. Again, this deferred analysis of project impacts and mitigation measures is not proper, and shows that an EIR is needed.

Similarly, **MND Section XVI.e.** identifies, in only a general way, potentially significant impacts that might result in inadequate emergency access to the subject property. Like the proposed mitigations for Section XVI.d., however, the suggested mitigation relies on the future submission to the Bureau of Engineering and DOT of a parking and driveway plan. Just as in Section XVI.d., this deferred analysis and future mitigation is improper.

Based on the above analysis of nine portions of the MND which identify impacts that may be potentially significant if not mitigated, it is quite clear that the MND is inadequate. The mitigations offered are either inadequate because they do not mitigate impacts to a level of insignificance, or because they defer review of environmental impacts and/or associated mitigation measures until after project approvals have already been obtained. As discussed above, neither approach is permitted. *See Communities for a Better Environment*, 103 Cal. App. 4th at 111-12; *see also Sundstrom*, 202 Cal. App. 3d. at 307. The MND is thus inadequate and an EIR is needed.

B. An EIR is Required Because Substantial Evidence in the Record Supports a Fair Argument that the Project May Have a Significant Environmental Impact.

An EIR must be prepared where "substantial evidence" in the whole record supports a "fair argument" that a project may have a significant effect on the environment an EIR must be prepared. *No Oil, Inc.*, 13 Cal. 3d at 75; *Communities for a Better Environment*, 103 Cal. App. 4th at 111-12. This is a "low threshold test." *Stanislaus Audubon Society*, 33 Cal. App. 4th 144, 151 (1995).

The MND itself provides many examples where substantial evidence exists to meet the low threshold "fair argument" test. In particular, where the MND notes that a proposed mitigation may or may not mitigate a potentially significant impact to less than significant, clearly a "fair argument" can be made that an EIR is appropriate. For example, MND Section 1.c. entirely excludes from analysis signs that may be permitted by three sign variances. MND at 8. Because the potential impacts are not even analyzed, a "fair argument" can be made that the impacts may be significant.

In Section X.b. the MND states that "if any of the five [entitlement] requests are denied the proposed project *will result in a conflict* with the applicable land use plan, policy or regulations which are applicable to the project site."[6] MND at 40 (emphasis added). This potential conflict meets the "fair argument" test that substantial evidence exists that significant impacts might occur, because it was possible at the time the MND was adopted by the CPC that they might not adopt all of the entitlements associated with the project, and indeed, the decision-maker here should not be hamstrung in its determination of the CEQA outcome when, as discussed below, the strict variance findings required to allow some of the entitlements cannot be met. One need not look far within the administrative record for additional substantial evidence when the MND itself asserts that failure to adopt all entitlements conflicts with applicable land use plans, policies, or regulations. This is essentially an admission that an EIR should have been prepared, because the decision-maker has no choice in whether to exercise its discretion with regard to entitlements – if it does not provide all of the entitlements, the result is a potentially substantial and completely unmitigated impact.

Further, MND Section XVI.a. identifies as a potentially significant impact the "[c]onflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system." MND at 53. Both the MND and a letter from DOT in the record determined a potentially significant impact on Keystone Avenue exists and that the sole mitigation offered, centerline striping on Keystone, "may or may not suffice." MND at 54; Edward Guerrero Jr., letter to Planning at 2. The only additional mitigation offered that could

[6] It must be noted that this statement is in direct conflict with statements contained within the proposed mitigation measures that follow. "The proposed project would permit intensities and or densities exceeding those permitted by the existing Harbor Gateway Community Plan and Zoning"; "[e]nvironmental impacts may result from project implementation due to an incompatibility with applicable environmental plans or policies"; "[t]he proposed project would permit a land use which is not compatible with that of the surrounding projects." MND at 41. (As previously noted in fn.3, the reference to "Harbor Gateway" is an error; the project is in the Palms-Mar Vista-Del Rey Community Plan.)

address this potentially significant impact is the "Neighborhood Traffic Management agreement," which as described above, is clearly an improper deferred mitigation. Thus, the low threshold for an EIR is met based on insufficiently and improperly mitigated Keystone impacts.

There is additional substantial evidence in the administrative record related to the Keystone and other traffic impacts in the form of expert testimony received from Barry Kurtz on behalf of the City of Culver City. Mr. Kurtz's testimony meets the "fair argument" test because he identified a 34% impact on Keystone Avenue traffic that was not mitigated to insignificance in his expert opinion, far above DOT's own defined threshold of significance for traffic volume impacts of 12%. Mr. Kurtz also questioned the LADOT methodology in that he disagreed with the traffic counting discounts that DOT used, among numerous other issues. CEQA Guideline Section 15064(g) states, in part, that "in marginal cases where it is not clear whether there is substantial effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR." CEQA Guidelines § 15064(g). This standard "reflect[s] a preference for requiring an EIR to be prepared." *Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322, 332 (2005). Mr. Kurtz's testimony with respect to the Keystone Avenue traffic impacts suggest that this is not a "marginal case," but even if it were and if DOT's own experts disagreed with him, the "low threshold" would still be met here to require preparation of an EIR.

C. The Potentially Significant Density and Intensification Impacts of the C2 to RAS4 Zone Change Are Not Mitigated

MND Section X.b. is discussed briefly in Part I.A. above, which discusses the general inadequacies of the MND with respect to the vague identification of potentially significant impacts and the non-specific mitigations offered that theoretically mitigate those impacts. It is necessary to focus some additional attention on Section X of the MND, however, because not only is it vague, it also does not use the proper baseline analysis. Under CEQA Guideline Section 15125(a), the baseline conditions against which project impacts must be measure is the actual conditions "on the ground" and not the amount of development "that could or should have been present according to a plan or regulations." *Community for a Better Environment v. So. Coast Air Quality Management District*, 48 Cal. 4th 310, 320 (2010).

The baseline here is a two-story 11,000 square foot office building in a C2 (Commercial) Zone, currently used as a church. MND at 2; Appeal to Case No. CPC-2009-456-ZC-ZV-ZAA-DB-SPR at Tab 3, p.3 (Mar. 12, 2012). Surrounding properties include Medium Residential to the north and northeast, and General Commercial to the east along Washington Boulevard. These uses are consistent with the Palms-Mar Vista-Del Rey Community Plan. MND at 2-3. The properties to the north of the project along Overland Boulevard, the western boundary of the project, were only recently downzoned from R5 and R4, to R3. Appeal at Tab 3, p.3.

The project seeks a Zone Change from C2 to RAS4, which would permit a much larger scale project with associated higher intensities than what would be permitted by right in a C2 Zone. The MND admits the project "would permit a land use which is not compatible with the

surrounding projects," and "would permit intensities and densities exceeding those permitted by the existing" Community Plan.[7] MND at 41. As discussed above, the MND's proposed mitigations are vague and not specific to the impacts relative to the Zone Change request, and thus the MND is inadequate.

In addition to that deficiency, however, the MND simply does not analyze the impacts relative to the baseline conditions. In the CPC's Determination Letter for the subject property, the CPC relies heavily on its previous approval of a project at 9901-9925 W. Washington Boulevard (approximately six blocks east of the subject property).[8] While that project may seem superficially similar in that the project approvals and entitlements were similar to the subject property, the underlying zoning of that parcel and the description of the surrounding properties are completely different. The 9901-9925 W. Washington project is located in an entirely commercial area, whereas here, the predominant uses are medium density residential. The 9901 W. Washington project was described as being sited "adjacent to commercial and employment centers, including the downtown Culver City retail and restaurant district and major entertainment studios (Culver and Sony Studios). Surrounding properties are zoned for commercial land uses (C2-1, CR-1, P-1) and multiple family residential land uses (R4-1 and R5-1)." Here the predominant nearby residential projects, adjacent to the north and northeast, are medium density residential R3 zones. The surrounding uses of the 9901 W. Washington project are thus considerably greater intensity in both their commercial and residential uses than the subject property here.

The more appropriate comparison project based on a similar environmental baseline, rather than similar entitlements sought, is the RAS4 project proposed for Motor Avenue in 2006, for which a similar Zone Change was denied by the CPC in March 2007. CPC-2006-724-ZC-ZV-ZAA-SPR.[9] Like the instant project, that proposed RAS4 project was surrounded predominantly by medium density R3 residential. There the C2 to RAS4 was denied by the CPC because the higher density of RAS4 was deemed to be incompatible with the nearby residential properties, and also because the height of the project, only 60 feet (25 feet less than the height of the proposed project here), was out of scale and inconsistent with the character of the surrounding area.

It would set a very dangerous precedent for the many nearby medium-density R3 communities if the Zone Change from C2 to RAS4 project here were permitted, especially following the recent down-zoning from R4 and R5 to R3 of nearby residential property along Overland Avenue. Because the analysis of the instant project did not properly compare existing uses with the increased density and intensified uses that the Zone Change would bring, but instead focused on similarities between entitlements sought at a nearby project, the MND's baseline analysis is flawed. Moreover, the substantial evidence in the record, including in the MND itself, illustrates

[7] The MND mistakenly references the Harbor Gateway Plan, but it is the Palms-Mar Vista-Del Rey Community Plan that applies.

[8] CPC-2008-23452-ZA-ZV-BD[sic]-SPR.

[9] *See* Appeal Tab 13, Exhibit 1.

that the "fair argument" standard that the project's impacts will be significant are easily met, and an EIR is appropriate.

II. The Signage Variances Were Improperly Approved Because the Findings Are Not Supported by Substantial Evidence.

In order to receive a variance, strict findings are required by the decision-maker. *See* LAMC § 12.27(D); Los Angeles City Charter § 562. A sign variance cannot be granted unless the three mandated findings[10] are made and supported by substantial evidence. *See Zakessian v. City of Sausolito*, 28 Cal. App. 3d 794, 798 (1972); *West Chandler Boulevard Neighborhood Association v. City of Los Angeles*, 198 Cal. App. 4th 1506 (2011); *Topanga Association for a Scenic Community*, 11 Cal 3d. 506 (1974). No variance may be granted unless the Zoning Administrator finds that:

1) The strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
2) There are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity; and
3) The variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question.

LAMC § 12.27(D).

Additionally, a variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. LAMC § 12.27(D); *see also*, *Topanga Ass'n*, 11 Cal. 3d at 520.

Three sign variances were requested: (1) permit a sign known as a "blade" sign where normally such a sign is not permitted in any zone;[11] (2) permit one 30 sq. ft. of *internally* illuminated wall signs on one wall (on Overland Ave.), and either one 60 sq. ft. sign or two 30 sq. ft. *internally* illuminated signs on another, where normally the limit is one 20 sq. ft. *externally* illuminated wall signs; and (3) permit the projection into the right of way by 36" rather than the 24" inches normally permitted. None of these variances should have been granted because substantial evidence does not support any, much less all, of the mandated findings.

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[10] Five findings are required for most variances, but two of the findings do not apply to sign variances because they arguably implicate First Amendment issues. *See Desert Outdoor Advertising Inc v. City of Oakland,* 506 F. 3rd 789 (2007).

[11] A "blade" sign is not a sign referenced or permitted by the Municipal Code. Moreover, the project visualizations do not appear to include any examples of what this type of sign looks like.

A. Variance Finding (1) Is Conclusory and Not Based On Substantial Evidence.

The first required variance finding is that "the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations." LAMC § 12.27(D)(1). The finding states that "in order for the project to be viable, additional and larger signs are necessary to identify the building and individual tenants, including adequate visibility for vehicular patrons." But this "finding" is entirely conclusory and cites virtually no evidence demonstrating that "practical difficulties or unnecessary hardships" exist. *See* CPC Determination at F-4. Moreover, the only signs mentioned in the cursory analysis are the 20 sq. ft. externally illuminated signs permitted in the RAS4 Zone. The so-called "blade" signs are not even mentioned. In sum, no discussion connects any practical difficulty or unnecessary hardship to the granting of any of the sign variances.

Moreover, under the municipal code and case law, a variance cannot grant a special privilege to the applicant. LAMC § 12.27(D); *Topanga Ass'n*, 11 Cal. 3d at 520. A variance is not intended to be used for convenience or to increase the property value of a parcel. If a property may be put to effective use, the fact that a variance would make the property more valuable or increase the owner's income is irrelevant. *Hamilton v. Board of Supervisors*, 269 Cal. App. 2d 64, 67 (1969). There is absolutely no evidence in the administrative record to suggest that practical difficulties or unnecessary hardships exist, or if they do that larger signs, or signs with internal as opposed to external illumination, or blade signs, will correct the problem. The conclusory findings are therefore insufficient to support variance finding number (1), and thus none of the sign variances should have been granted.

B. Variance Finding (2) Is Conclusory and Not Based On Substantial Evidence.

The second required variance finding is that "there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity." LAMC § 12.27(D)(2). Just as the first variance finding analysis is brief, references no substantial evidence in the administrative record to support the variance finding, and does not discuss the specific sign variances at issue, the second is similarly deficient. *See* CPC Determination at F-4. For this second variance, the only reference to evidence is the location of the project along "major transportation and commercial corridors." The one and only sentence that could conceivably justify variance finding (2) states: "The intersection that the project fronts is heavily trafficked, and *demands* larger, more clear, and lit signage to properly engage vehicular traffic that is moving at speeds much faster than the regulations of RAS4 zone had originally anticipated." *Id.*

But if traffic speed and a generally bustling location is the "special circumstance" upon which this variance finding relies, the record is devoid of any evidence that the traffic speeds or other conditions that "demand" a variance are different nearby, or how these facts do not also apply to other property in the same zone and vicinity. This is dispositive because it is improper for a variance to grant a special privilege to the applicant, *Topanga Ass'n*, 11 Cal. 3d at 520, and a variance is not intended to be used for convenience or to increase the value of the property.

Hamilton, 269 Cal. App. 2d at 67. The applicant must show that characteristics establishing his hardship differ from other similarly situated properties. *Topanga Ass'n*, 11 Cal. 3d at 520. This has not been done. The particular characteristics of a property are not by themselves sufficient to support the grant of a variance. *Id*.

Moreover, the alleged hardship is not even supported by the record. The location of the project very near a T intersection suggests that cars stopping at the nearby stoplight traveling in three different directions *will* have the opportunity to observe the location while slowing and stopping and waiting at the nearby traffic light. If anything, logic suggests that much of the time, especially during peak traffic hours, vehicular traffic near the intersection will be traveling considerably *slower* than at other locations near the subject property. This undermines any suggestion of hardship – much less does it show the type of unique hardship necessary to support finding (2).

Since variance finding (2) cannot be met, none of the sign variances should have been granted.

C. Variance Finding (3) Is Conclusory and Not Based on Substantial Evidence in the Administrative Record.

The third required variance finding is that "the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question." Here too, the analysis is completely lacking in the requisite specificity. "The requested zone variances for modifications of the RAS4 sign restrictions is reasonable and are consistent with zone variances that have been approved by both the City Planning Commission and Zoning Administrators." CPC Determination at F-5. But the question is not whether CPC or ZAs have previously granted variances at other similarly zoned properties, or whether such prior variances were reasonable. The question is whether *this* requested variance, at *this* location, is *necessary* (not merely reasonable) to preserve the enjoyment of a substantial property right or use generally possessed by other property *in the same zone*.

With respect to the so-called "blade" signs, no other property anywhere in the City has the right to use "blade" signs, let alone other properties in the same zone as the subject property. Allowing the use of "blade" signs would be a special right conferred upon only the property owner here. Allowing variances for blade signs and the 50% greater projection (from 24" to 36") into the right of way would convey special benefits upon the applicant that other similarly situated property owners do not have. That is the type of special privilege that cannot justify a variance. *Topanga Ass'n*, 11 Cal. 3d at 520; *see also* LAMC § 12.27(D). These same principals apply to the increase from 20 sq. ft. to 30 sq. ft. signs per tenant, and the change from externally to internally illuminated.

Finally, the decision-maker "may deny a variance if the conditions creating the need for the variance were self-imposed." LAMC § 12.27(D); *see also Broadway, Laguna, Vallejo Association v. Board of Permit Appeals*, 66 Cal. 2d 767, 778 (1967). Here, the determination

suggests that nearby commercially zoned properties have two or three times the tenant signage that the applicant can obtain within the RAS4 Zone. But the applicant could have had all the same signage associated with any other C2 Zone simply by not requesting the Zone Change. Because the applicant requested the Zone Change, presumably with a knowledge of what the limitations for the changed RAS4 Zone were at the time he requested the Zone Change, it is improper for the applicant to now claim that there exists a special circumstance, practical difficulty, or unnecessary hardship. The applicant cannot have his cake and eat it, too. But that is what a variance would accomplish by granting the applicant the special benefits of a new and improved combination C2/RAS4 Zone enjoyed by no one else. The limitations of the RAS4 Zone were self-imposed by the applicant, so to obtain a variance in order to continue to retain the benefits of C2 as well is improper under the LAMC and case law.

The required variance finding (3) cannot be met, and thus none of the sign variances should have been granted.

III. CONCLUSION.

Based on all of the foregoing, (1) the CPC erred when it adopted the Mitigated Negative Declaration, because an EIR should have been prepared instead; and (2) the sign variances should not have issued, because none of the required variance findings were supported by substantial evidence in the record. The Council should grant appellant's appeal and reverse the incorrect determinations previously made by the CPC.

Sincerely

John Given, esq.

cc: Councilmember Rosendahl, CD11
Councilmember Koretz, CD5
WLANCC
Westwood South of Santa Monica Blvd. Homeowners Association
Coalition to Ban Billboard Blight
Brentwood Residents Coalition