

MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

ORIGINAL

APPEAL TO THE: CITY COUNCIL

(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: DD DIR 2012-2836-DB SPR CDO 4A; ENV-2012-2837-MND

PROJECT ADDRESS: 12027-12035 Wilshire Boulevard

FINAL DATE TO APPEAL: Not applicable. Appealable to City Council pursuant to Pub. Res. Code § 21151(c).

- TYPE OF APPEAL:
1. ☐ Appeal by Applicant
 2. ☒ Appeal by a person, other than the applicant, claiming to be aggrieved
 3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Robert P. Silverstein & Daniel E. Wright, Attorneys for Appellant
Name: GE RealProp, LP, authorized to sign on behalf of Appellant.

- Are you filing for yourself or on behalf of another party, organization or company?

☐ Self ☒ Other: GE RealProp, LP

Address: 215 N. Marengo Avenue, 3rd Fl.

Pasadena, CA

Zip: 91101

Telephone: (626) 449-4200

E-mail: robert@robertsilversteinlaw.com

- Are you filing to support the original applicant's position?

☐ Yes ☒ No

REPRESENTATIVE INFORMATION

Robert P. Silverstein & Daniel E. Wright, Attorneys for Appellant
Name: GE RealProp, LP, authorized to sign on behalf of Appellant.

Address: 215 N. Marengo Avenue, 3rd Fl.

Pasadena, CA

Zip: 91101

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

RECEIVED AT THE PUBLIC
COUNTER ON: 2/5/14

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☒ Entire

☐ Part

Your justification/reason must state:

- The reasons 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

ADDITIONAL INFORMATION/REQUIREMENTS

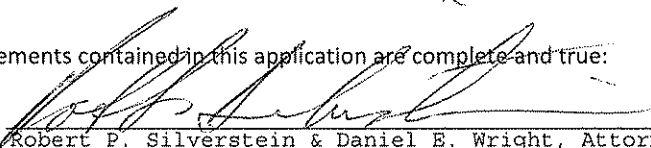
- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."

--CA Public Resources Code § 21151 (c)

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

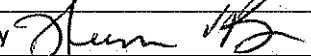
Appellant Signature:


Robert P. Silverstein & Daniel E. Wright, Attorneys
for Appellant GE RealProp, LP, authorized to sign on
behalf of Appellant.

Date:

2/4/2014

Planning Staff Use Only

Amount <u>106.80</u>	Reviewed and Accepted by 	Date <u>2/5/2014</u>
Receipt No. <u>0101255114</u>	Deemed Complete by	Date

☐ Determination Authority Notified

☐ Original Receipt and BTC Receipt (if original applicant)

THE SILVERSTEIN LAW FIRM

A Professional Corporation

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VIA PERSONAL DELIVERY

February 4, 2014

Los Angeles City Council
c/o Los Angeles City Clerk
200 N. Spring Street, Rm. 395
Los Angeles, CA 90012

Re: Appeal of Case No. DIR-2012-2836-DB-SPR-CDO and ENV-2012-2837-MND

Dear Members of the City Council:

This office represents GE RealProp, LP, owner of the Wilshire Motel at 12023 Wilshire Blvd., Los Angeles, California. The Wilshire motel is a one-story motor court style motel that is adjacent to, and will be adversely affected by, the proposed Picasso Brentwood Project ("Project") at 12027-12035 Wilshire Blvd. This appeal of Case No DIR-2012-2836-DB-SPR-CDO and ENV-2012-2837-MND is filed on its behalf.

As a preliminary matter, please ensure that notice of all hearings, actions, events and decisions related to the Project are timely provided to this office. All objections, including those regarding proper notice and due process, are expressly reserved. All prior objection letters submitted on behalf of the appellants are incorporated herein by reference.

Reasons for the appeal include, but are not limited to:

1. **There Is A Fair Argument Of Potentially Significant Noise Impacts That Have Not Been Analyzed Or Mitigated.**

The Initial Study and MND fail to take into account that the adjacent property is a single-story motel, a use treated in the Los Angeles Municipal Code as a sensitive receptor to noise. Construction that begins at 7:00 a.m. (with construction staging that may begin earlier) will have a potentially significant, unmitigable impact on motel guests.

Counsel for the Applicant suggested additional measures in his November 8, 2013 letter to the Planning Commission, but no such changes appear in the Determination Letter. However, even if those additional measures were imposed, there still would be significant, unmitigable impacts caused by the Project.

The November 8, 2013 submittal from counsel for the Applicant also notes that construction noise impacts may remain above the 75 dBA threshold limit as found in the Los Angeles Municipal Code, but that compliance with this standard is allegedly only required where mitigation is technically feasible. That does not, as Applicant's counsel incorrectly suggests, mean that the impact is reduced to a level of less than significant. It does not mean the threshold or the significant impact disappears. Rather, the noise threshold will admittedly be exceeded, resulting in a significant impact even after proposed mitigation, a fact which the Initial Study and MND fail to properly acknowledge. The Applicant has thus admitted a significant, unmitigable impact. In turn, that mandates preparation of an EIR for the Project and denial of the Project and MND as currently proposed.

2. **There Is A Fair Argument Of Potentially Significant Ground Borne Vibration Impacts That Have Not Been Analyzed Or Mitigated.**

Ground borne vibration is not analyzed in the Initial Study. It merely indicates that it is potentially significant unless mitigated and offers limitations on hours of construction as mitigation to reduce impacts to an alleged level of less than significant.

There is, however, no nexus between hours of operation and damage to adjacent structures that may be caused by ground borne vibration. There is zero nexus between the time of the damage and the magnitude of the damage. If heavy equipment is operating within a few feet of the 75-year old motel, the time of day has no effect on whether cracks appear in the building. There is no analysis whatsoever in the Initial Study of the possible damage or any possible remedy. To the contrary, a fair argument exists that the Project may cause significant, unmitigable vibration impacts.

3. **There Is A Fair Argument Of Potentially Significant Aesthetics Impacts That Have Not Been Analyzed Or Mitigated.**

The Initial Study and Determination Letter fail to take into account that the adjacent property is a single-story motel. As a place where people regularly sleep, motels are considered a sensitive receptor to light and glare. An impact is acknowledged and mitigation provided for adjacent residential properties with regard to light, but not for the

motel. Counsel for the Applicant agreed to add mitigation in his November 8, 2013 letter to the Planning Commission, but no such change appears in the Determination Letter. All mitigation measures are encouraged and sought, but even if this mitigation measure were imposed, presently it remains unclear whether the Project construction's significant vibration impacts would be mitigated to a level of less than significant.

4. **There Is A Fair Argument Of Potentially Significant Transportation Impacts That Have Not Been Analyzed Or Mitigated.**

These significant impacts are both local and regional in scope. Locally, vehicular access is through a rear alley. To the west, the alley traverses a supermarket parking lot/entrance, and that portion of the alley is also frequently used by pedestrians, creating a potentially significant traffic safety impact as well as pedestrian safety impact.

To the east, vehicular access is to Westgate. The additional traffic expected to use the Westgate/Wilshire intersection – an unsignalized intersection – may create an additional potentially significant impact that must be analyzed and mitigated. These significant impacts related to local traffic, parking, safety hazards, and pedestrian conflicts have not been studied, disclosed to the public, or mitigated.

On a more regional scale, Caltrans District 7 recently objected to the City's use of a faulty traffic impact analysis and the failure to use appropriate Caltrans criteria in assessing impacts of the controversial Millennium Hollywood Project on the Hollywood Freeway. The Caltrans correspondence can be found at <https://s3.amazonaws.com/s3.documentcloud.org/documents/715653/col-mill-calt-may-7-letter-to-city.pdf> and is incorporated herein by reference.

As an outgrowth of those objections in the Millennium matter, the City and Caltrans entered into a binding agreement regarding freeway impact analysis procedures that would apply to all projects in the City of Los Angeles going forward, including the Project that is the subject of this appeal.

However, the analysis of traffic impacts to the San Diego Freeway in the Project's traffic study did not use the methodology demanded by Caltrans in its objections to the Millennium Hollywood Project and/or the resulting agreement with the City. The MND's traffic analysis is additionally flawed on this ground.

5. The Project Lacks Effective Mitigation.

There is substantial evidence that the City routinely imposes a stock set of project mitigation measures without regard to the individual facts and circumstances of each case. This pattern and practice by the City violates the City's duty to exercise considered and independent judgment in assessing environmental impacts and determining appropriate mitigation.

For instance, the City claims without any substantial basis that interference with the Appellant's internet WiFi network is not an environmental issue. The WiFi issue can be analogized to other intangible intrusions such as light, air and noise. The City may not shift the burdens of the impacts of the Project onto adjoining landowners. That is not fair. This issue should be analyzed and resolved. Mitigation measures for this issue, as other issues, should be a Project condition, or the Applicant should offer it and it should become a binding condition to accommodate Appellant's concerns.

6. Findings for Site Plan Review Compliance Cannot Be Made.

One of the required findings for site plan review compliance is that the "project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties."

The proposed six-story Project is not compatible with the adjacent one-story buildings that comprise the motel. It is also generally not compatible with the neighboring properties "along Wilshire Boulevard which range from one to three stories within the same block as the subject site" or the multi-family buildings to the rear which generally range from two to four stories. Reference to buildings up to 15 stories west of Bundy are not properly contemplated by the phrase "adjacent properties and neighboring properties."

7. Conclusion.

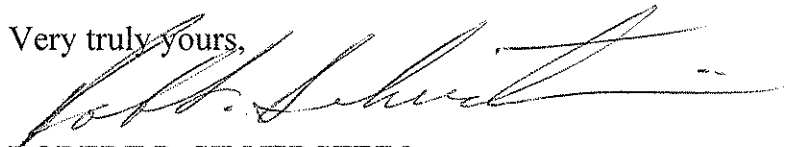
The Planning Commission erred and abused its discretion in making findings that are not supported by substantial evidence in the record. Moreover, the conclusions of the Project MND on which the Planning Commission relied are themselves not supported by substantial evidence in the record, including but not limited to the impacts identified above and others that may be presented at the hearing of this matter.

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Appellant is aggrieved by the decision of the Planning Commission in that Appellant and the adjoining community will be adversely affected by the negative impacts of the Project. Appellant is also aggrieved when decisions are made as to the Project that are not in compliance with applicable statutes and ordinances.

As required by the Master Appeal Form, an original and seven (7) additional copies of the form, this correspondence, and the Determination Letter are enclosed. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert P. Silverstein", written over a horizontal line.

ROBERT P. SILVERSTEIN

FOR

THE SILVERSTEIN LAW FIRM

RPS:aa