Application:

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 (From 12-15-2015) ☑ City Council (To the) ☐ Director of Planning

Regarding Case Number: CPC-2015-74-GPA-SP-CUB-SPP-SPR

Project Address: 5500-5544 W. Sunset Blvd; 1417-1441 N Western Ave; 1414 St Andrews Blvd (Multiple Address)

Final Date to Appeal: 12/30/2015

Type of Appeal:

☐ Appeal by Applicant

☑ Appeal by a person, other than the applicant, claiming to be aggrieved

☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Citizen's Coalition Los Angeles (CCLA)

Company: c/o Richard MacNaughton, Atty for CCLA

Mailing Address: 1916 North Saint Andrews Place

City: Los Angeles State: CA Zip: 90068

Telephone: (323) 957-9588 E-mail: MacNaughtonEsq@gmail.com

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

  ☐ Self ☑ Other: Citizen's Coalition Los Angeles (CCLA)

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

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Richard MacNaughton, attorney at law

Company/Client/Appellant Citizen Coalition Los Angeles (CCLA)

Mailing Address: 1916 North Saint Andrews Place

City: Los Angeles State: CA Zip: 90068

Telephone: (323) 957-9588 E-mail: MacNaughtonEsq@Gmail.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: Joan in Lamirada's 12-28-2015 objections

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: Rich Mae Date: 12-30-2015

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).
- Original Applicants must pay mailing fees to BTC and submit a copy of 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.
- 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)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: $89.00	Reviewed & Accepted by (DSC Planner):	Date: 12/30/15
Receipt No: 2 7504	Deemed Complete by (Project Planner):	Date:
☑ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

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ORIGINAL

Wednesday, December 30, 2015

Appeal of the City Planning Commission's November 12, 2015 approval of the "Target at Sunset and Western" Project

Los Angeles City Council
c/o City of Los Angeles Planning Department
Department's Public Offices, Figueroa Plaza
201 N. Figueroa St., 4th Floor
Los Angeles, CA 90012

Re: PROJECT LOCATION: 5500, 5510, 5516, 5520, 5526, 5542, and 5544, W. SUNSET BOULEVARD; 1417, 1431, 1433, 1435, 1437, 1439, and 1441 N. WESTERN AVENUE; 1414 ST. ANDREWS PLACE; 5505 and 5525 W. DE LONGPRE AVENUE (legally described as Tract: Lemona; Block: BLK1; Lot: FR)

Case No.: CPC-2015-74-GPA-SP-CUB-SPP-SPR;
CEQA No.: ENV-2008-1421-EIR and Addendum

1. Brief History of HELP's and CCLA's Objections

Previously in August 2012, on October 1, 2015 and on November 8, 2015, this office submitted comments on the above referenced project on behalf of Hollywoodians Encouraging Logical Planning [HELP] and Citizens Coalition - Los Angeles [CCLA].

2. A Judge Goodman's 1-15-2014 Decision Requires a New Draft EIR

In August 2014, we advised The City that since 2008 when the EIR was written circumstances had changed, requiring a new Draft EIR. The US Census data from 2010 showed that the City was using false data. At that time we asserted that the EIR was based on fatally flawed data. On January 15, 2014, Judge Allan Goodman agreed with HELP that the City was using fatally flawed data and wishful thinking which was so far off based that it subverted the law and the public's right to make meaningful comments.

It bears emphasis that in January 2014, Judge Allan Goodman found that the data on which the Hollywood Community Plan Update was based, which is the same data on which the EIR for this project was based, was fatally flawed and wishful thinking. Thus, the data for this project's EIR has already been rejected by the courts. Rather than proceed any further, this Project should be referred back to have a Notice of Preparation [NOP] issued for a new Draft EIR.

The city needs to issue an new NOP and conduct a new EIR to study the impact which the excessive densification actually has rather than pretend that the pre-2010 information and assumptions are accurate. The City Planning Commission has turned a blind eye to the substantial change in the demographics of this area and the impact.

3. Amendment to SNAP requires an EIR:

An amendment adding an entirely new Subarea F to SNAP requires an EIR independent of the Draft EIR for this Project. SNAP is a carefully

balanced Specific Plan and it rejected the type of construction which Subarea F contemplates.

The idea that the City may approve the Target project as a Subarea F project highlights the degree to which The City is out of touch with the law. There is no Subarea F. That is a fiction. The City cannot alter a major Specific Plan in a significant manner without an EIR.

SNAP was expressly written to prohibit the type construction which Subarea contemplates. While the City points to large projects such as The Home Depot which existed before SNAP was adopted, it is a non sequitur to conclude that SNAP wanted additional Big Box construction in this area. In fact, the opposite conclusion is warranted. SNAP was designed to prevent any more Big Box construction.

Because the City was aware of the uses of this property back in the 1980's and the 1990s' when SNAP was drafted and adopted, the logical conclusion was that SNAP did not want more Big Box construction.

The City was aware of The Home Depot, and if the City had thought that additional Big Box stores were a good idea, it would have made a Subarea for them. Rather, the City designed SNAP to prevent any oversized stores. The Home Depot has one significant feature in its favor. There are no other Big Box stores nearby. The last thing which the Home Depot needs is additional traffic congestion so that people are deterred from coming to The Home Depot.

The Home Depot is not a transit oriented business. According to its web page, The Home Depot is "the world's largest home improvement

retailer." People do not carry lumber on the bus. People who live in crammed apartments don't come to The Home Depot each Spring to buy hundreds of dollars of flowers and fertilizer for their yards. The Home Depot has a vested interest in no additional traffic congestion.

4. There is No New Typology, But if There Were, Then The Target Store would Requires New EIR

The idea that the Target is some new type of Superstore is utter nonsense. If the City wants to set forth such a fiction in order to drastically alter SNAP, then a new EIR is required. The idea that the old EIR is appropriate to assess the Target under a Subarea F which did not even exist when the EIR was conduct is legally absurd.

The Department of Planning Report, which the City Planning Commission adopts in its December 15, 2015 Letter of Determination, presents the exact same type of fatally flawed data and wishful thinking which caused the Hollywood Community Plan to be rejected. It is the same type of arrogant belief that facts are whatever the city says the facts are – which results in its positions being rejected by the courts. There is no new Typology. There is no research on this new Tyology presented for the public to review; there is no study. There is not even an newspaper article to justify this nonsense. The City does not bother to explain the features of this alleged new Tyology. There is not a single fact provided to distinguish between the so-called new Superstores from an old Superstores.

This claim of a new Typology is so devoid of merit, that the alleged new Typology does not even have a name nor does it have any unique characteristics. Then, after claiming that the Target Store is some new breed of superstore, The Department of Planning claims:

> "[the] Target achieve almost the **same design criteria** as required for projects in other [SNAP[Subareas. A **few design criteria** would be modified in recognition of the unique development constraints of the Target Store, but the outcome of the project will be a transit and pedestrian friendly project that is convenient, well designed, and architecturally compatible." [**bold** added] Dept of Planning Report, page A-6

The Commission's 12-15-15 Determination Letter adopted this double talk. First, it pretends that there is a new Typology and it is the wave of the future, but then The Commissions asserts that it is really not significantly different than the old Typology. It is only a "few design criteria" being modified. Of course, Planning neglects to inform anyone which designed criteria are being modified and how they are being modified. The Commission's December 15, 2015 Letter of Determination is so disingenuous that it cannot be consistent with itself for even one paragraph – either it is some brand new Typology or it is the same old thing we had before with some tweaking. The legal fact is simple: adding a new SNAP Subarea requires an EIR.

5. The City has Boxed itself into a Corner

By claiming the need for a new Subarea F in order to accommodate this new Typology of a superstore for Target, the City is admitting that the store is inherently incompatible with the older ordinances and specific plan. That admission nullifies the claim that a new EIR is not required.

If one assumes *arguendo*, that there is a Subarea F, there is no factual or legal basis to claim that the Target store qualifies unless we have a new EIR. While claiming that the Target is something so new that it constitutes a new Typology, the Commission is also claiming that the old EIR is all the new Target project needs.

6. There is No Viable Hollywood Community Plan:

Judge Goodman's February 11, 2014 writ and judgment threw out the 2012 update to the Hollywood Community Plan and he reinstated the 1988 Hollywood Community Plan. At that time, Judge Goodman could have reinstated the expired Commerce Portion to the 1988 Hollywood Community Plan which by its terms had automatically expired in 2010, but he did not reinstate the Commerce Section. Thus, the Hollywood Community Plan has had no Commerce Section since 2010. Failure to have an operational Commerce Section places the City in violation of the Government Code for all projects with a commercial component, but it presents an extra serious legal nightmare for attempting to amending SNAP.

The SNAP amendment adding a Subarea F is dependent on there being an operant Hollywood Community Plan with a Commerce Section. Thus, the City needs to have a new Update of the Hollywood Community Plan before any amendments may be made to SNAP. Perhaps, Judge Goodman anticipated that The City would issue a new Update for the Hollywood Community Plan in a timely manner and he did not foresee that the absence of a Commerce Section would not be a real world problem. His reasons do not matter. The fact is that after February 11, 2014, there is no Commerce Section. It is now twenty-three (23) months later, and no Update has even been issued, let alone approved. The fault rests solely with The

City which has failed to update the Hollywood Community Plan. Furthermore, due to the City's dilatory behavior in not issuing an update to the Hollywood Community Plan, all Hollywood projects lack a legal foundation.

7. Fair Arguments Exist for both CEQA EIRs:

The Commission has no rational basis not to require an NOP for a new draft EIR for this project and basis not to issue an NOP for a major amendment to SNAP. The fact that the court already has thrown out the false data on which both this Project and on which the 2012 Update to the Hollywood Community are based constitutes more than a Fair Argument that both need an NOP for a new EIR.

8. The Old EIR was Illegally Adopted

The EIR for the Project was illegally adopted under a city council voting system which was based on an unlawful voting pact and City Council Rule 48 which counted non-votes as Yes Votes. Thus, this Project rests on an EIR whose data the courts have already rejected and on a council vote which was unlawful under both The Brown Act and Penal Code § 86.

Furthermore, the City has additional unlawful practices with projects including placing CEQA items on the consent calendar and non-votes are counted as Yes Votes without first ascertaining whether the majority of Votes were No or Yes votes. These unlawful practices have fatally tainted the prior votes on this Target Store and if repeated will fatally taint the present endeavors to approve the Target store.

9. Conclusion:

We hope that this time the City will heed our advice and follow the law rather than trying to steam roll over the public and the law.

Very truly yours,

Richard MacNaughton

RMN:ra
electronically signed
1916:Target:T-1003