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ORIGINAL

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March 22, 2016

VIA HAND DELIVERY
Planning and Land Use Management Committee
Los Angeles City Council
City of Los Angeles
200 N. Spring Street, Room 375
Los Angeles, CA 90012

Re: Objections re Target Hollywood Project
CPC-2015-74-GPA-SP-CUB-SPP-SPR; ENV-2008-1421-EIR

Hon. City Council Members:

I. INTRODUCTION.

This firm and the undersigned represent the La Mirada Avenue Neighborhood Association of Hollywood ("La Mirada"). We submit further objections to the City's proposed actions regarding the Target Hollywood Project ("Project").

II. INCORPORATION BY REFERENCE OF ALL PROJECT OBJECTIONS.

La Mirada hereby adopts all project objections filed to all versions of the Project from its inception, including all appeals of the Project currently before the City Council. Additionally, La Mirada adopts by reference the full content and supporting exhibits attached to its Project objection letters addressed to the City Planning Commission dated November 3, 2015 and November 10, 2015.

III. TARGET PROPOSES THAT THE CITY'S LAWS BE MADE TO CONFORM WITH ITS PROJECT INSTEAD OF THE PROJECT CONFORMING WITH CITY LAWS.

Our prior objection letter, dated November 3, 2015, provided the City Planning Commission with the history of the development of the Target Hollywood Project. We reminded the Commission, and now the City Council, of two major points:

(1) Target initially proposed to then-Councilmember Garcetti's office a commercial-only project within the zoning plan's 35-foot height limit, and it was the City Council office that requested development of a Project that violated the Station Area Neighborhood Plan ("SNAP"); and

(2) To allow Target to begin construction of the Project before resolution of the requirement to provide a childcare center or in-lieu payment prior to issuance of building permits, Mr. Garcetti and the City Council postponed resolution of that requirement to prior to issuance of a certificate of occupancy. Thus, Target was allowed by City officials to commence construction in the midst of litigation, and it assumed all risk that it might lose the litigation and the Project entitlements. This risk came to pass with the Superior Court's decision issued on July 17, 2014. (**Exhibit 1**.)

Target asked the Court of Appeal and the California Supreme Court to allow it to continue to construct the unlawful building while it appealed the Superior Court decision.[1] In its brief to the appellate courts, Target stated:

> "Target discussed amending SNAP with the City Council office on June 17, 2014, before the trial court issued its tentative decision. Target initiated this discussion not in anticipation of losing at trial, but rather in the hope of avoiding more years of litigation and appeal. There have been several conference calls among Target, officials of the City Planning Department, and the City Attorney's office, during which the parties discussed amendments [to SNAP] that would be acceptable to the City's planning professionals." (Target Petition for Relief From Statutory Stay, pp. 12-13.) (**Exhibit 2**.)

Target also discussed environmental review of the proposed amendment of SNAP to authorize the Target Project:

> "The City retains full discretion over what environmental document to use for the [Specific Plan] amendment and whether to approve the amendment. However two facts and two conclusions are worth noting. First, with regard to environmental review, **the amendment Target has requested has been designed to fit within the certified and court-approved EIR**. Second, the Project, as opposed to a stand-alone Target store, **was the City's idea** and has been unanimously approved by the City Council three times. These facts lead to two conclusions: First, **approval in a form that will stand up in court is virtually certain**. Second, **the amendment will render the challenges to the exceptions moot** because the amendments will allow for plan compliance without needing exceptions." (Target Petition for Relief From Statutory Stay, pp. 13-14.) (**Exhibit 2**, emphasis added.)

In documents filed with the Court of Appeal, Target submitted a July 15, 2014 memorandum to City Planners that proposed the Specific Plan amendment to SNAP. The memo

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[1] Neither the Court of Appeal nor the California Supreme Court found Target's self-inflicted harm a valid basis to allow Target to continue building. Target's request was denied. The fact that the building is partially constructed and construction was ordered stopped by City officials is irrelevant to any decision of the City Planning Commission or the Los Angeles City Council.

stated the purpose of enactment of the SNAP amendment is "to allow the previously-approved store to be completed and opened." (**Exhibit 3.**) Attached were two color maps, Exhibit A showing the entire SNAP area where commercially zoned properties lie within 1500 feet from a subway portal, and Exhibit B showing the content of Exhibit A plus an overlay of areas within 1500 feet from freeway ramps. Id. This memo from Target to City Planners forms the basis of the Specific Plan amendment now before the City Council, however, **Figure 5** at page 9 of the Addendum fails to disclose any of the details of the quarter mile-radius from transit stations and freeway ramps found in the original proposal submitted by Target to City officials. Thus, court documents filed with the Court of Appeal establish Target is the source of the proposed amendment of the SNAP that seek to retrofit this City's laws to conform to the unlawful and partially-constructed Project. It also admits that the amendment was conceived and planned to supposedly "fit within" an Environmental Impact Report ("EIR") for construction of a Target store on a single project site. This evidence, and other accumulating evidence, demonstrates the City pre-judged the Project by only considering the option of changing the law to legalize the unlawful Target Project, although that was not the only discretionary option available to the City.

IV. THE CITY'S USE OF AN ADDENDUM IS IMPROPER.

A. Target Filed An Application For Three New Discretionary Decisions That Were Never Disclosed Or Discussed In The Original EIR.

In 2015, Target filed an application for a Revised Project (CPC-2015-74-GPA-SP-CUB-SPP-SPR), but significantly the application included three requests for new discretionary decisions of the Los Angeles City Council never before disclosed or analyzed in the original EIR:

- Amendment of the SNAP zoning ordinance to create a new Subarea F;
- Amendment of the SNAP map to change the Target Project site from Subarea C to Subarea F;
- General Plan amendments to change the City's Mobility Element street designations only in front of the Target Project location.

New discretionary decisions amending zoning ordinances and a City's General Plan constitute a new project under California law and regulations. "'Project' means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to . . . enactment and amendment of zoning ordinances, and the adoption or amendment of local General Plans or elements thereof . . . ." 14 Cal. Code Regs. § 15378.

CEQA's definition of a project makes clear that Target's new proposal to amend SNAP, a City zoning ordinance, and to amend the City's General Plan, are explicitly listed in the CEQA

Guidelines as activities of a public agency triggering new environmental review. As such, in the words of the leading CEQA treatise: "If it is treated as an application for a new project, the application must be evaluated fully under CEQA." 2 CEB Kostka and Zischke *Practice Under the California Environmental Quality Act, Second Edition*, § 19.33.

Such new actions may not be obscured by trying to weave them into an Addendum for the original project that was overturned by the Los Angeles County Superior Court, and for which the original EIR did not analyze the new discretionary decisions requested. Preparation of an Initial Study and an EIR is required to support these new discretionary decisions. Such decisions are a foreseeable prelude to being able to consider any attempt to reapprove the Project, or any other feasible alternative flowing from the new project.

Additionally, since the Revised Project includes new discretionary decisions that themselves are considered a new project, the public has a right to review and comment upon the changed baseline environmental conditions that may result in changed environmental analysis. Here, the Revised Project requiring CEQA review would be the predicted amendment to the specific plan. But "the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis." Communities For A Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 321-322. See also Riverwatch v. County of San Diego (1999) 76 Cal.App.4th 1428, 1453 ("environmental impacts should be examined in light of the environment as it exists when a project is approved"); Woodward Park Homeowners Ass'n, Inc. v. City of Fresno (2007) 150 Cal.App.4th 683, 710 (referring to "the usual rule requiring the baseline to be the existing physical environment").

B. The City's Attempt To Subsume The New Discretionary Actions Into An Addendum Focusing On The Original Project Is Improper.

"A leading treatise on property law explains: When there are changes in a project after the certification of a Final Report, the agency can prepare an Addendum to the Report if the changes do not substantially modify the analysis in the original Report. The Addendum is acceptable, rather than a new or Supplemental EIR, **when there are only minor technical changes or additions which do not raise important new issues about the significant effects on the environment**." (9 Miller & Starr, Cal. Real Estate (3d ed.2011), § 25A:19, p. 25A–107, fns. omitted.) Ventura Foothill Neighbors v. County of Ventura (2014) 232 Cal.App.4th 429, 435 (emphasis added) (Increase of building height from 75 feet to 90 feet was a substantial change requiring a new EIR or supplemental EIR).

The three major new discretionary decisions are not a "minor technical change or addition." In addition, they do "raise important new issues about the significant effects on the environment" as a result of creating a new Subarea F that allows multiple parcels in the SNAP area to seek Subarea F status. A City's plan change or zoning approval decision, in and of itself, might not result in immediate physical changes to the environment. Nevertheless, under CEQA, the agency must identify and analyze the impacts of the expected development that could occur

by virtue of setting in motion a new regulatory scheme, before approving the plan change or zoning approval decision. City of Carmel By-the-Sea v. Board of Supervisors (1986) 183 Cal.App.3d 229, 240-249 (decision to approve zoning amendment triggered obligation to prepare EIR analyzing impacts of development that would then be allowed or authorized by change in zoning); Bozung v. Local Agency Formation Commission (1975) 13 Cal.3d 263 (CEQA required preparation of EIR for proposed annexation analyzing impacts of ultimate development, even though project would require later rezoning and other approvals). That is exactly what is required here by way of an EIR. The City's attempted use of an Addendum makes a mockery of CEQA as to the Revised Project itself, but also as to the failure to analyze the direct and indirect changes to the environment that are reasonably foreseeable from adoption of the legislative amendments involved in this matter. The City's actions, on multiple levels, violate CEQA.

Target originally advanced a Project that violated SNAP. The City attempted to set a terrible planning precedent by granting at least eight exceptions (variances) to SNAP. Although Target could have easily designed the Project to comply with SNAP, numerous exceptions were granted on bogus grounds that established there was no hardship in complying. Target and Councilmember Garcetti simply chose not to comply with the law. The Superior Court agreed and overturned all project approvals and building permits for that Project. (**Exhibit 1**.)

The Draft and Final EIR for the original Project included an in-depth analysis of how the Target Project would not be consistent with the SNAP once the requested exceptions to the SNAP were granted by the City. (Draft EIR pages IV.G-69 to 77.) The recent court decision invalidating many of the SNAP exceptions granted by the City means that this entire major section of the EIR would need to be revised in order to analyze consistency issues with the SNAP after implementation of the new Revised Project of amending the SNAP ordinance to create new floating Subarea F, the reassignment of the Project site from Subarea C to new Subarea F, and the processing of never before requested General Plan amendments.

The original Project did not involve a proposed legislative change to "establish Land Use Regulations, Development Standards, and Design Guidelines for a new Subarea F, Large Scale Highway Oriented Commercial designation." (CPC Staff Report p. 2.) For instance, the Notice of Preparation for the original EIR and the Draft EIR did not include a proposed amendment of SNAP to create a new Subarea F for a certain class of commercial-only projects, nor did it include the legislative decision to change the SNAP specific plan rules applicable to the Project site from Subarea C to the proposed new Subarea F. It also did not include any proposed General Plan Amendments as it now does.[2]

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[2] In our November 3, 2015 objection letter, we provided the Commission detailed analysis on how Target's proposed general plan amendments violate Charter Section 555 and LAMC Section 11.5.6. Neither the Addendum nor Staff Report analyzed this fatal flaw to the Revised Project proposed by Target. The Addendum fails to disclose these applicable laws and analyze them. Of course, to do so would be to admit that the City's Charter prohibits the Project-based general plan amendment that the City is attempting to process. It goes without saying that proposing to process an unlawful general plan

The addition of proposed General Plan Amendments, a Specific Plan Amendment to create a new Subarea F, and the decision to reassign only the Project site from Subarea C to Subarea F, are all new discretionary decisions not previously analyzed in the Notice of Preparation, Draft EIR, or Final EIR for the Project (ENV-2008-1421-EIR). Contrary to the unrealistic and legally incorrect argument made by Target to the Court of Appeal, the changes to the Project in no way can be construed as fitting "within the certified and court-approved EIR." Indeed, how can these new discretionary actions be construed by anyone as fitting "within the certified and court-approved EIR" when the original EIR makes no mention of such significant new discretionary actions?

To ask the question is to answer it. No reasonable contention can be made that something as significant as amending a City specific zoning plan to create a new floating SNAP Subarea with a different set of development rules, the placement of at least one particular parcel of land in that new Subarea, and consideration of amendments to the City's General Plan, is a mere technical change to an EIR.

Target's proposal tries to "fit" these new discretionary actions "within the certified and court-approved EIR" for a prior and court-invalidated version of the Project. But Target ignores the fact that these actions constitute a new project under CEQA. As such, they trigger the obligation to prepare and circulate a new Draft EIR to obtain public input on the potential new impacts that directly and indirectly follow from, and are reasonably foreseeable from, creating a new floating Subarea F for which many parcels (or foreseeably assembled parcels) might qualify for Subarea F special treatment.[3]

C. The Record Irrefutably Establishes That The Request To Amend The SNAP Zoning Ordinance To Create New Subarea F Implicates New Projects Other Than Target.

The Addendum prepared for the "Revised Project" portrays the Specific Plan amendment as new legislation of general applicability to all projects that comply with its requirements:

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amendment would be a significant land use impact that, on this additional ground, bars use of an Addendum as the environmental clearance document.

[3] The California Supreme Court in Friends of the College of San Mateo Gardens v San Mateo Community College District (No. S214061) granted review on January 15, 2014 to decide what standard of review applies to a lead agency's determination whether a Revised Project triggers a new project under CEQA or an obligation to prepare an addendum or supplemental EIR. La Mirada contends that the determination of whether a Revised Project like Target, with completely new discretionary decisions that would by themselves trigger an obligation to conduct new environmental review, are reviewable de novo because the presence of the new discretionary decisions are undisputable facts in the record that meet the definition of a new project. We also believe the City and Target would be prudent to await the Supreme Court's decision in this pending matter.

> "The Project Applicant has submitted an application for new project approvals consisting of an amendment to the SNAP (the "proposed Specific Plan amendment") that would change development standards and certain requirements **for projects proposed for development within the SNAP area**, and an amendment to the adopted Hollywood Community Plan, and the Transportation Element of the City's General Plan (the "proposed General Plan Amendment"). If approved, these amendments would permit the development of the Project in accordance with the Original Project description. The proposed Specific Plan amendment, proposed General Plan Amendment, and the subsequent actions needed to complete construction of the Original Project comprise the Revised Project." (Addendum at p. 8; emphasis added.)

On pages 8-10 of the Addendum, the City repeatedly explains that the requested Specific Plan amendment would revise SNAP to create a different set of regulations for **Projects** that meet the requirements for the proposed Subarea F. (See City of Carmel By-the-Sea and Bozung, supra.) For instance, these new regulations will apply to "Commercial Only **Projects**. **Projects** comprised exclusively of commercial uses over 100,000 sf on existing sites of over 3.5 acres, and within a quarter-mile of a transit station, and within a quarter-mile of freeway on and off ramps, shall not exceed a maximum height of 75 feet and a maximum FAR of 1.5 . . . ." (Emphasis added.) The Specific Plan amendment would remove the free delivery requirement "for **projects** located within Subarea F." (Emphasis added.) The Specific Plan amendment would "establish development standards and design guidelines for **projects** located within Subarea F." (Emphasis added.) The Addendum prepared by the City clearly states that the Revised Project under consideration includes a discretionary legislative enactment that would apply to **projects**, only one of which is the Target Project originally analyzed by the City in the original EIR. If the legislation only applied to the Target Project, it would not purport to authorize projects throughout the SNAP area.

Since this fact was pointed out at the Hearing Officer hearing, the City Planning Commission Staff Recommendation Report asserts without a shred of supporting evidence that "The Specific Plan Amendment would only apply to the Target site." (Staff Report p. A-1.) The Addendum states the exact opposite and includes provisions that apply to other properties in the SNAP area and not the Target site. For instance, anyone who assembles 3.5 acres within a quarter mile of the transit station and freeway ramps is eligible to propose a commercial-only project of a minimum size that would qualify for Subarea F special treatment. Right now is the time to disclose all land eligible for the Subarea F benefits (including lots that could be assembled), and analyze and mitigate the reasonably foreseeable indirect impacts of such a legislative change that sets the stage for more Subarea F projects. (See City of Carmel By-the-Sea and Bozung, supra.)

Also, other requirements in the proposed amendment apply to other Subarea F projects proposed in the future, but do not apply to the Target site. Most telling is the Addendum's description of a transitional height requirement proposed for Subarea F projects: "Height Limits.

Notwithstanding any provisions of Section 12.21.1 A 10 of the Code to the contrary, portions of **buildings on a lot located with the Subarea** shall not exceed the height limits set forth below when located within the distances specified therein from a lot with the Subarea A [residential]." (Addendum p. 10, emphasis added.) The Target site is not affected by this portion of the legislative proposal because Target is not adjacent to any Subarea A parcels (Addendum p. 40), yet the City proposes the transitional height requirement be included in legislation of general applicability to **buildings** in Subarea F.

In the findings attached to the City Planning Commission's letter of determination, City staff concede that the creation of Subarea F is intended by the City to apply to more than just the Target Project (CPC Findings at p. F-11), but then contrary to this admission, the City persists in asserting over and over that the creation of Subarea F only applies to the Target Project. (See e.g., CPC Findings at pp. F-2, F-3, F-4, F-6, F-7, F-8, F-11, F-15.)

D. The City's Bogus Split Impact Analysis For The Revised Project Is Improper.

The City's Addendum analysis compares the Original Project, as partially constructed, to the Revised Project – the construction remaining to be done plus the new discretionary amendments of City planning and zoning laws. The Revised Project picks up where the illegal partial construction left off and only analyzes the changes from the partially constructed building to the finish of the Project. The Addendum states:

> "In addition to the proposed Specific Plan amendment and proposed General Plan amendment, both of which would restore the standards applied to the original approvals, the Revised Project would encompass all construction activities needed to complete the existing structure and the operation of the proposed commercial uses in substantial conformance with the parameters set forth in the Original Project. Such activities may include, but are not limited to, completion of the building frame, walls and roof; construction of interior and exterior electrical, mechanical, plumbing and drainage systems; installation of interior finishes, equipment, and appliances; and installation of landscaping and signage. The Revised Project does not include demolition of previous uses, as this activity was completed prior to the suspension of construction of the proposed project. The Revised Project also does not include substantial excavation, grading, or site preparation earthwork, as this activity was substantially completed prior to the suspension of construction of the proposed project." (Addendum at p. 11.)

Thereafter, from pages 12 to 65, the City attempts to analyze each project impact area and purports to conclude that for each environmental issue, because the Revised Project does not include the impact of the unlawful work already performed, the Revised Project will have less

impact on the environment. On this "reverse-engineering" basis, the Addendum purports to conclude that the Revised Project would have less environmental impacts, and therefore no obligation to prepare and circulate a new EIR or Supplemental EIR is triggered.

The City's attempt to segment its unlawfully constructed partial building from the impacts associated with amendment of SNAP to create Subarea F and the General Plan amendments, and the construction work needed to complete the building, makes no sense. Common sense is an important consideration at all levels of CEQA review. See, e.g., Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 272; Martin v. City and County of San Francisco (2005) 135 Cal.App.4th 392, 402. "The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect." Citizens Association for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151.

The process adopted by the City of measuring the impact of the Revised Project by ignoring the environmental impacts of its illegally constructed building in conjunction with the environmental impacts of the work required to complete the project is a failure to follow common sense and CEQA's mandate to assess the whole of the action. By attempting to rig the environmental analysis in such an illogical way, the City has tipped its hat so in favor of the Project as to establish that it prejudged and skewed the outcome of the environmental review by suppressing disclosure of the impacts.

E. Even The Bogus Split Analysis Cannot Cure The Fatally Flawed Land Use Analysis In The Addendum.

There are also fatal flaws with individual sections of the Addendum analysis. The City's Land Use comparison for the Original Project compared to the Revised Project, found at pages 38-40 of the Addendum, is fatally flawed.

First, the City's description of the Original Project sets forth the same bogus assertions that formed the basis of the City granting numerous exceptions to the SNAP, without any acknowledgement that these findings were found by the Los Angeles County Superior Court to be legally invalid bases for granting of substantial exceptions (variances) from the SNAP. The Superior Court particularly concluded that the mere fact that the City found the proposed design of the Original Project to be attractive did not form a valid basis for the granting of the SNAP exceptions. On the basis of its review of the findings for the exceptions, many of which were grounded in claims made in the Draft EIR as justifying exceptions from the applicable law, the Superior Court found the exceptions unsupported by proper findings, and therefore unlawful.

Thus, although the City asserted that the exception from SNAP granted to the Project to allow a doubling of the height of the permitted height of a commercial only building "would not be substantially inconsistent with the objective of SNAP with respect to housing" (Addendum at p. 38), the Court's invalidation of the exception as to height establishes that the Original Project was unlawfully conceived from the outset. (**Exhibit 1.**) Additionally, the assertion in the

Original Project Draft EIR that granting the design "exceptions to the SNAP would not substantially conflict with the principles, intent, and goals of the SNAP" (Addendum at p. 39), the Court's invalidation of the design exceptions established that the Original Project's violations of design requirements of SNAP were also unlawfully conceived from the outset. (**Exhibit 1**.)

The City's Addendum evades any specific acknowledgement that the rationalizations articulated by the City for violating its own laws were mostly rejected by the Superior Court as a valid basis for the granting of numerous key exceptions to SNAP. Accordingly, the City's Addendum, based upon an evasive description of the invalidity of the City's land use analysis of the Original Project, is deficient as any basis to describe the baseline conditions of the Project.

1. **The Addendum's Summary Of The Original Project Fails To Disclose That The City's Preferred Project Alternative Was Not Permissible.**

CEQA explicitly authorizes a public agency to approve a project with significant, unmitigable impacts on the environment, but only if the agency finds there are overriding considerations, and only if "the project is otherwise permissible. . . ." Pub. Res. Code § 21002.1(c); City of Santee v. County of San Diego (1990) 214 Cal.App.3d 1438, 1450. By its approval of the Target Project as originally proposed, the City contravened this elemental requirement. The City chose an original project alternative that was not feasible, in violation of CEQA's requirement that all alternatives must be "feasible," i.e., capable of being carried out, including legally. Guidelines § 15126.6(a), (b); Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 566.

The Original Project, selected and approved by the City, violated Public Resources Code § 21002.1(c) because the granting of the SNAP exceptions on bogus findings rejected by the Superior Court was not permissible. The Original Project could not physically or legally be carried out because the purported findings in support of key exceptions to the SNAP were not lawful, something both the City and Target were fully aware might occur. Nonetheless, instead of refraining from commencement of construction of the Project before resolution of the litigation, the City Council removed all impediments to issuance of a building permit (including by changing the time for compliance with the child care requirement from prior to "building permit issuance" to prior to "issuance of the certificate of occupancy." "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." Pub. Res. Code § 21168, 21168.5; Laurel Heights Improvement Assn. v. Regents University of California (1988) 47 Cal.3d 376, 392, fn. 5. Such abuse of discretion facially occurred with the City's approval of the Original Project as the Project – because the selected alternative was an unlawful one.

The CEQA process is intended to protect the environment by compelling government "first to identify the environmental effects of projects, and then to mitigate those adverse effects through the imposition of feasible mitigation measures or through the selection of feasible alternatives." Sierra Club v. State Bd. of Forestry (1994) 7 Cal.4th 1215, 1233. Alternatives

must be "feasible." "Infeasibility" is a filter to eliminate proposed alternatives during the EIR's screening process. Guidelines § 15126.6(c). Yet the Original Project utterly failed in this regard. Approval of the Original Project was as absurd as would have been approval of infeasible mitigation measures. What would be the point? Native Sun/Lyon Communities v. City of Escondido (1993) 15 Cal.App.4th 892, 906 ("the thrust of section 21002 and the following section 21002.1, is a concern that approval of an EIR for a project should include an examination of *feasible* mitigation measures") (italics in original).

The City has made a mockery of "the integrity of the decisionmaking process required by CEQA" (Laurel Heights, 47 Cal.3d at 425); the City's action in approving the Original project that it knew violated SNAP "has the process exactly backward[.]" Berkeley Keep Jets Over the Bay (2001) 91 Cal.App.4th at 1344, 1371.

Accordingly, the City's Addendum summary of the Original Project and its lack of legal permissibility, as determined by the Superior Court, is not disclosed or discussed in the Land Use section of the Addendum. But such information is vital to the assessment of the adequacy of the Addendum, because omission of a truthful assessment of the status of the Original Project is a lack of any substantial evidence to support the conclusions of the Addendum.[4]

2. The Addendum's Claim That The Project Is "Compliant" To The Requirements Of Subarea F Is Demonstrably False.

The flaws in the Land Use section of the Addendum continue in the discussion of the land use impacts of the Revised Project at pages 39-40. As shown in **Exhibit 3**, it was Target that devised the proposed amendment of the SNAP zoning ordinance to create a new Subarea F. Not surprisingly, the required project characteristics Target proposed for new Subarea F projects would purport to legalize Target's half-finished building that City officials knew violated SNAP before they approved the Original Project. The statement that: "Accordingly, since the Revised Project has been designed to be compliant with the requirements contained in the proposed Specific Plan amendment, no exceptions to the Vermont/Western SNAP would be required to implement the Revised Project" (Addendum at p. 39) is a demonstrably false factual assertion.

The half-finished and unlawful building standing at twice the height legally permitted and violating design requirements of SNAP has not been designed to be compliant with the amendment of the SNAP zoning ordinance. Rather, the City's laws have been designed to be compliant to the unlawful building the City Council office asked Target to apply for with the

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[4] Target Corporation has appealed the Superior Court decision to the Court of Appeal. As set forth in **Exhibit 4**, Target has urged the Court of Appeal to refrain from deciding its appeal based upon its contention that preparation of the Addendum and new City discretionary amendments to its zoning laws will moot the case. The City may not legitimately assert in the Addendum that the Superior Court's ruling was incorrect. In the Addendum, the City must assume the that the Superior Court determination was correct. Indeed, this is even more true considering that the City did not appeal the Superior Court's judgment and writ.

requested exceptions to the SNAP, and that currently stands at the corner of Sunset Boulevard and Western Avenue as a testament to a culture of lawbreaking at Los Angeles City Hall. Once again, false factual assertions in the Addendum about the Revised Project do not constitute substantial evidence supporting the conclusion of the Addendum that no new environmental review in a new Draft EIR, or supplemental EIR, is required by law.

3. **The City's Suppression Of Target's Maps Used To Create The Subarea F Proposal Is Also Improper.**

The City's admission elsewhere and at page 40 in the Land Use section of the Addendum that the City is taking a legislative action to establish a new floating Subarea F in the SNAP, but refusing to disclose and analyze other existing parcels in the SNAP area that might qualify for expanded height, avoidance of free delivery, avoidance of child care center provisions, and other requirements of Subarea C otherwise applicable to such parcels is improper. (See also City of Carmel By-the-Sea and Bozung, supra.)

Target's own maps submitted to the City proposing the floating Subarea F rules draws circles around all parcels in the SNAP that could apply for, or if assembled, would be eligible to apply for Subarea F treatment. (**Exhibit 3**.) The existence of these maps and the refusal of the City to acknowledge their existence or disclose them to the public in a new EIR, or even the Addendum the City prepared, is substantial evidence demonstrating that it is not possible or lawful for the Revised Project to somehow "fit within the certified and court-approved EIR" for the Target project. The original EIR never disclosed or analyzed an option to amend the SNAP to comply with Target's Project.

If the SNAP amendment to create Subarea F truly applied only to the Target Project at issue now, the amendment language would not, for instance, include transitional height requirements for projects next to residential areas of SNAP. (Addendum, p. 10.) The City admits that the transitional height limits do not apply to the Target project. (Addendum, p. 40.) But they will apply to any other subarea projects that are determined for Subarea F treatment and that lie next to residential areas designated in SNAP as Subarea A. The existence of the transitional height requirements in the proposed SNAP amendment is additional evidence that the creation of new Subarea F is much more than just the application of Subarea F development rules to the Target Project site.

The City and Target know and acknowledge that other parcels and areas of the SNAP are within a quarter mile of both a subway portal and a freeway on or off ramp, and are large enough, or with parcel assembly, could be large enough, to qualify for Subarea F treatment. The City argues that in the future, any owners of parcels are required to apply to the City for a discretionary decision to change their parcel (or assembled parcels) to the Subarea F and its more liberal rules. In the Findings of the City Planning Commission, the City makes this statement:

> "If any other eligible sites wished to build a project similar to the Target project, Specific Plan Amendments and associated CEQA

> review would need to be requested and approved. Like the subject request, any proposal to change a site's subarea to Subarea F would go through the City Planning Commission as the initial decision maker." (CPC Findings at p. F-11.)

This claim by the City is like the fatal flaw discussed by the Courts in City of Carmel By-the-Sea and Bozung, supra. It is also another admission that the Subarea F is a floating subarea different from all other subareas because land is not initially zoned to be in Subarea F as it was when SNAP was first adopted for Subareas A, B, C, D and E.

Further subsequent projects would not require a SNAP amendment to create Subarea F. After the proposed legislative action under consideration here, Subarea F will be created by the amendment attached as Appendix A to the City's Addendum. That is why now is the time to fully disclose and analyze the potential impacts of creating Subarea F rules. (See City of Carmel By-the-Sea and Bozung, supra.)

A comparison of the SNAP maps contained in **Exhibit 3** that Target used to propose Subarea F and the Revised SNAP Map (**Figure 5** at page 9) of the City's Addendum clearly demonstrate Subarea F is a "floating" subarea different from Subareas A to E which are clearly marked on the Revised SNAP map. If Subarea F were created as a legislative enactment only applicable to the Target site shown on the Revised SNAP Map, the text of the Subarea F amendment (Addendum at Appendix A) would NOT include rules for transitional height. Thus, the text of the Subarea F amendment creates a floating subarea that many existing or assembled parcels in the overall SNAP area might later qualify for and seek, but none of those sites are shown on the Revised SNAP map in the City's Addendum as they are potentially shown within circles drawn on the maps in **Exhibit 3** when Target proposed Subarea F to City officials.

4. **Failure To Include The Target Station and Freeway Proximity Maps Proves The City Failed To Provide An Accurate Project Description For The Revised Project.**

The only valid conclusion is that the Target Project site is specifically identified on the Revised SNAP map (**Figure 5**) not because the amendment of the SNAP applies legally only to it, but because in a second entitlement request, Target asks that its site be reassigned from Subarea C to the newly created floating Subarea F. Nothing in the Revised SNAP map specifically states this but it is the only rational way to resolve the inherent conflict in the broad language of the proposed SNAP amendment applicable to many parcels and sites in the SNAP boundaries, yet the Revised SNAP map only shows the Target site as a Subarea F property.

This is yet another example of false or misleading information contained in the City's Addendum. The City was required to include in any environmental analysis a map showing the parcels that meet the Subarea F textual requirement of being both within a quarter mile of a subway portal and a freeway on and off ramp. Such a map would not (yet) assign the Target site to the Subarea F designation because it is a floating subarea. Then, in a second map, the City

should have shown what the Revised SNAP map would look like after creation of the floating Subarea F and grant of Target's request to assign the Target site to Subarea F. Having failed to do so in the City's Addendum, or in the legally required new EIR or Supplemental EIR, the City has failed to accurately provide a description of what the Revised Project is.

Just as the EIR "is the heart of CEQA" (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564), an "accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient" CEQA document. County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 193. Without an accurate, fixed, and stable project description, the decision makers and the public cannot know just what project is being approved, and without that knowledge, cannot know either what the environmental impacts of the project will be, or whether they will be adequately mitigated. That is why CEQA requires that "the defined project and not some different project must be the EIR's bona fide subject." Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991) 233 Cal.App.3d 577, 592.

The concepts applicable to a stable, finite, and accurate project description in an initial EIR applies with equal force to the project description for the Revised Project in evaluating whether or not it generates new significant impacts or more severe impacts not analyzed in the original EIR. An inaccurate description is a facially deficient one which is a failure to proceed in accordance with law. The City's evasion of setting forth in the Addendum an accurate Revised Project description appears to be a calculated decision. By refusing to acknowledge that many other parcels in SNAP could qualify for Subarea F treatment, the City avoids the reality that the original EIR for the Project **did not analyze any land use issues related to the parcels in the SNAP area that would qualify for Subarea F**. This fact is obvious, because the first choice of the City and Target was to try to approve the Project with a laundry list of exceptions to the SNAP. Those exceptions were discussed in the original EIR, but not the three new legislative decisions requested by Target.

F. The New Projects Authorized By The Creation Of Subarea F Have Not Been Disclosed Or Analyzed By The City For Potential Environmental Impacts.

The decision to amend the SNAP to conform to Target's half-finished illegal project did not arise until summer 2015 when Target proposed to the City the legislative creation of Subarea F. But to admit explicitly that many other parcels could qualify for Subarea F treatment would be to admit that a new EIR was required to analyze the potential significant new environmental impacts that would follow major expansions of building height in other areas of the SNAP allowed by Subarea F.

These impacts are reasonably foreseeable because they would follow and flow from the creation of Subarea F, even though they are not associated with any project other than Target at the present time. See Fullerton Joint Union High School District v. State Board of Education (1982) 32 Cal.3d 779, 794-797; Bozung v. LAFCO (1975) 13 Cal.3d 263, 277-285. As these cases show, the City has a legal duty to disclose and analyze the potential impacts of creating

Subarea F as a rule broadly applicable to many parcels in the SNAP boundaries. The creation of Subarea F is the first step that could trigger foreseeable environmental impacts that would flow from allowing more parcels in the SNAP to convert to large retail sites. Such a dramatic expansion of large retail sites within the SNAP could trigger a number of foreseeable impacts on the community and environment, including regarding as yet unanalyzed greenhouse gas emissions impacts, both direct and cumulative. See generally the Supreme Court's recent decision in Center for Biological Diversity v. Dept. of Fish and Wildlife regarding the need for proper greenhouse gas emissions analysis and use of proper baselines and methodology for doing so, incorporated herein. Such a proposal has many reasonably foreseeable significant impacts, some of which are growth inducing as well. In the absence of such environmental review, the City has failed to proceed in accordance with the law.

G. The Addendum Improperly Seeks To Avoid New Environmental Review Including A New Alternative Analysis.

The City also appears to avoid disclosing the creation of the floating Subarea F as a means of attempting to avoid having to disclose and expose to public comment a reasonable range of alternatives to the proposal to create Subarea F. Such alternatives would include a project alternative in which there would be no project: the City would not create Subarea F, would not assign the Target site to Subarea F, and would not allow Target to further maintain the partially-completed building as a nuisance. Another feasible alternative would involve an underground project: the City would not create Subarea F, would not assign the Target site to Subarea F, and would authorize Target to remove the illegal portions of the Target building and construct underground in a manner to comply with the SNAP Subarea C regulations.

> "The applicant's reasons for deciding upon the project as proposed are merely a part of the evidence to be considered when it comes to alternatives analysis. The current circumstances must also be a part of the feasibility equation. 'The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.' (County of Inyo v. City of Los Angeles [(1977) 71 Cal.App.3d 185, 199].) Otherwise, CEQA's mandate to consider alternatives would be meaningless.
>
> "At the time the lead agency engages in the review process, the applicant presumably has not begun construction or development. The applicant must anticipate, in the course of the review process, the lead agency may determine an environmentally superior alternative is more desirable or mitigation measures must be adopted. **An applicant who proceeds with the project prior to the completion of the environmental review process in the**

> **expectation of certain approval runs the risk of incurring financial losses. Likewise, an applicant's choice to proceed in the face of pending review and the possibility the environmental review process will be found inadequate cannot render an alternative infeasible.** (Laurel Heights Improvement Assn. v. Regents of University of California [(1988) 47 Cal.3d 376,425, parallel citation omitted].)" Kings Cty. Farm Bureau v. City of Hanford (1990) 221 Cal. App. 3d 692, 736-737, reh'g denied and opinion modified (July 20, 1990).

The Kings County case affirms that no project applicant may foreclose the disclosure of and analysis of project alternatives by proceeding with the project prior to the end of the environmental review process, or in the midst of review by the courts. Target proceeded with the Original Project prior to the end of judicial review. It did so at its own risk, and it admitted this fact in its filings in the Superior Court. The Superior Court overturned the project approvals on the basis of violations of the SNAP. While the former EIR was not overturned by the Superior Court, that does not relieve the City from its obligation to fully disclose the Revised Project, including the new discretionary decisions including proposed action of amending SNAP to create new Subarea F and proposing General Plan amendments.

The City's use of an Addendum to try to patch over its legal obligation to conduct new environmental review is a failure to proceed in accordance with law. Use of the City's fatally flawed Addendum to try to reapprove the Target Project will result in a judicial invalidation of the City's improper environmental review of the new discretionary decisions amending the City's general plan and zoning ordinance.

V. IF THE SPECIFIC PLAN AMENDMENT REALLY APPLIES ONLY TO THE TARGET SITE, THEN THE CITY IMPROPERLY DISCRIMINATES AGAINST SIMILARLY SITUATED PROPERTY OWNERS VIA AN UNLAWFUL SPOT ZONING.

Should the City modify the Specific Plan amendment to apply solely to the land bounded by Sunset Boulevard, Western Avenue, DeLongpre Avenue, and St. Andrews Place, it will make clear its intent to elevate the land use rights of Target over all other property owners in the vicinity.

If the proposed Specific Plan amendment only applies to Target as claimed by staff, why does the proposal include regulations that have no application to the Target site? The answer seems apparent: The City, at Target's suggestion, is trying to write legislation of general applicability to avoid a discriminatory spot zoning violation (creation of a new zoning law that only benefits Target and retains the original SNAP regulations on any of its big box competitors interested in developing a store in the SNAP.) Discriminatory spot zoning that benefits the property owner to the detriment of the surrounding community is not permissible if the

discriminatory treatment cannot be justified by the public agency. Foothill Communities Coalition v. County of Orange (2014) 222 Cal.App.4th 1302, 1314 ("We hold the creation of an island of property with less restrictive zoning in the middle of properties with more restrictive zoning is spot zoning"). See also Cal. Constitution, Article 1, Section 7(b), which prohibits special privileges to persons.

VI. THE FINDINGS IN SUPPORT OF THE SNAP AMENDMENT AND GENERAL PLAN AMENDMENTS ARE DEFICIENT.

The City purports to make findings in support to the SNAP amendment and the general plan amendments. They are deficient. As worded, the findings acknowledge tangentially that the entire purpose of SNAP was to enhance the Red Line Metro stations that run through the middle of the SNAP area. At the time SNAP was adopted, the City made numerous findings that the transit oriented purposes of SNAP would be supported by the density, height, parking caps, and other limits on development. Attached at **Exhibit 5** is a compilation of the staff reports and findings of the City adopted at the time of enactment of SNAP that constitutes substantial evidence that SNAP's very purpose was to deemphasize use of the automobile.

The City's *post hoc* rationalization for the half-built Target store is to now reverse course and make findings that contradict the original findings justifying adoption of SNAP. For instance, the creation of Subarea F removes the very parking caps found necessary to avoid enhancement of automobile use. Subarea F's creation is rationalized on the basis of access to and from the freeway which itself is a criterion contrary to SNAP's focus on emphasizing transit.

Additionally, the findings for the Target Project continuously state that the Project will enhance transit due to the location of a mystical "Mobility Hub" at the Project location. However, examination of the project conditions shows that the main feature of the Mobility Hub is a kiosk with bus and subway information. The conditions also are illusory as to other mobility enhancements. For instance, they request that Target make an inquiry with Metro about Next Bus technology. Without requiring it, this project will not provide it. There are also claims that the Mobility Hub is a location where bike racks and other transit enhancements might happen in the future, but none of it is conditioned on project approval.

Along with the removal of the former parking cap, the Target Project will not provide some kind of "unique" transit/car miracle as claimed in the findings. It will attract thousands of automobiles, it will not provide free neighborhood delivery, it will not have a child care center for employees, it will tower over the community out of scale, and it will "enhance" transit with a kiosk for bus brochures. The findings do not support the Target project approval, or the creation of a Subarea that undermines all of the transit enhancement goals of the SNAP.

VII. CONCLUSION.

The Project as proposed must be rejected with direction to staff to conduct proper environmental review of the new project.

Very truly yours,

DANIEL WRIGHT
FOR
THE SILVERSTEIN LAW FIRM

Exhibit 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14			DEPT. 15
HONORABLE RICHARD FRUIN	JUDGE	E. GARCIA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
P. BARRERAS, C.A.	Deputy Sheriff	NONE	Reporter

BS140889

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD
VS
CITY OF LOS ANGELES ET AL
['CEQA' CASE ASSIGNED TO SE, NORWALK, DEPT G, JUDGE TORRIBIO

Plaintiff Counsel

NO APPEARANCES

Defendant Counsel

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW;

The Court having reviewed the case file, and having considered the oral arguments presented by all sides, now issues the following ruling:

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

Clerk to give notice, and provide a copy to all sides of the said ruling.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and order dated 7/17/14 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/14

MINUTES ENTERED
07/17/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14			DEPT. 15
HONORABLE RICHARD FRUIN	JUDGE	E. GARCIA	DEPUTY CLERK
HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
P. BARRERAS, C.A.	Deputy Sheriff	NONE	Reporter

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Plaintiff Counsel

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Defendant Counsel

NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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P. BARRERAS, C.A.	Deputy Sheriff	NONE	Reporter

BS140930

CITIZENS COALITION LOS ANGELES
VS
CITY OF LOS ANGELES ET AL

['CEQA' CASE TRANSFERRED TO SE, NORWALK, DEPT G-JUDGE TORRIBIO]

Plaintiff Counsel: NO APPEARANCES

Defendant Counsel:

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW;

The Court having reviewed the case file, and having considered the oral arguments presented by all sides, now issues the following ruling:

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

Clerk to give notice, and provide a copy to all sides of the said ruling.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and order dated 7/17/14 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/14

MINUTES ENTERED
07/17/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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HONORABLE	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
P. BARRERAS, C.A.	Deputy Sheriff	NONE	Reporter

BS140930

CITIZENS COALITION LOS ANGELES
VS
CITY OF LOS ANGELES ET AL

['CEQA' CASE TRANSFERRED TO SE, NORWALK, DEPT G-JUDGE TORRIBIO]

Plaintiff Counsel: NO APPEARANCES

Defendant Counsel:

NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

By: _____
E. GARCIA, DEPUTY CLERK

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['CEQA' CASE TRANSFERRED TO SE, NORWALK, DEPT G-JUDGE TORRIBIO]

Plaintiff Counsel

NO APPEARANCES

Defendant Counsel

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MINUTES ENTERED
07/17/14
COUNTY CLERK

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD v. CITY OF LOS ANGELES, CITY OF LOS ANGELES CITY COUNCIL (ex. rel. TARGET CORPORATION), Case No. BS140889.

CITIZENS COALITION LOS ANGELES V. CITY OF LOS ANGELES, et al, Case No. BS140930.

Petitioners challenge the actions of the Los Angeles City Council in approving exceptions to a Specific Plan, the Vermont/Western Station Neighborhood Plan (abbreviated as "SNAP"), to permit the construction of a three-level structure to contain a 163,862 sq. ft. Target store on the southwest corner of Sunset Boulevard and Western Avenue (the "Project"). The real party in interest is Target Corporation.

The Project, as approved, is a three-level structure with the Target store as the top floor, two levels of parking (458 spaces) below the store, with about 30,887 sq. ft. of retail and restaurant space on the ground level fronting on Sunset and Western. There is a 11,000 sq. ft. landscaped entry space (called a "plaza") on Sunset at the corner with Western. The Project is sited on block-size parcel of approximately 168,869 sq. ft. The three level structure, plus the ground level retail/restaurant space, will cover 97.5% of the parcel. (See, EIR, 55/AR 01767-01779; for floor plans and elevations, see 607/AR 16436-16450 and 55/AR 01771-01773.)

The City Council approved eight exceptions to SNAP to permit the Project. The exception that has excited the most controversy was the Council's approval of a height exception. The Project will stand 74 feet, 4 inches above grade, while SNAP limits the height of commercial structures to 35 feet above grade.

Petitioners contend that the City Council's findings, required by the Municipal Code section 11.5.7 F.2, do not support the exceptions and are without substantial evidence.

Petitioners further argue that the Environment Impact Report (EIR) for the Project does not contain the information required by the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA").

THE PARTIES:

Petitioners are La Mirada Avenue Neighborhood Association and the Citizens Coalition Los Angeles. La Mirada and Citizens Coalition are both unincorporated community associations whose members, according to the petitions, advocate for residential quality of life issues in Hollywood. They filed separate verified petitions in December, 2012 and amended petitions in May 2013. Both amended petitions allege these causes of action: (1) that the manner of the preparation of the EIR violates CEQA and CEQA Guidelines; (2) that the findings in the EIR violate CEQA and CEQA Guidelines; and (3) that exceptions to the specific plan approved by the City Council do not comply with Los Angeles Municipal Code section 11.5.7 F.2. La Mirada's amended petition additionally alleges: (4) deprivation of a fair hearing relating to the City Council's action April 3, 2013; and (5) a sham cure and correction of a Brown Act violation.[1]

The City of Los Angeles and City Council and the Real Party in Interest filed answers to the amended petitions and denied the charging allegations in December, 2013

The Writ Trial for both actions was conducted on February 27, 2014, with a transcript of the trial provided to the court on March 21. Robert Silverstein argued the variance issues and Brad Trogan the CEQA issues for petitioners. Richard A. Schulman argued for respondent City of Los Angeles and Real Party in Interest Target Corporation. Deputy City Attorneys Mary S. Decker and Kenneth T. Fong appeared for respondent City of Los Angeles.

COURT CONCLUSIONS RE SUFFICIENCY OF THE CITY COUNCIL'S FINDINGS IN APPROVING EXCEPTIONS TO THE SPECIFIC PLAN:

SNAP is the specific plan for the Vermont/Western Station Neighborhood Area.

---

[1] The court understands that La Mirada is no longer pursuing any claim under the Brown Act (Government Code section 54950 et seq.) After the City and Target argued that any Brown Act violation was not prejudicial and, in any event, was time-barred, La Mirada did not respond in its reply brief. Brown Act violations were not mentioned in the Writ Trial. The court does not discuss further any Brown Act issue.

The Project is within its boundaries. (See 464/AR 14635-14694 for relevant parts of SNAP and its Guidelines.)

SNAP identifies 20 purposes of the specific plan (AR 14638-39), among them to:

> C. Establish a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in ....;
>
> E. Guide all development, including use, location, height and density, to assure compatibility of uses...;
>
> H. Promote increased flexibility in the regulation of the height and bulk of buildings ... in order to ensure a well-planned combination of commercial and residential uses with adequate open space.

SNAP imposes height and floor area restrictions on new commercial developments. "Projects comprised exclusively of commercial uses (not Hospital and Medical Uses) shall not exceed a maximum building height of 35 feet and a maximum FAR of 1.5." AR14660. Greater height is allowed for a hospital (100 feet) or a mixed-use project (75 feet). AR 14661. A mixed-use project is "any project which combines a commercial use with a residential use, either in the same building or in separate buildings on the same lot or lots in a unified development." AR 14641.

If a new development requires exceptions from the SNAP design specifications, such exceptions must be applied for from the Planning and Land Use Management Committee (PLUM). PLUM must consider and decide the application in a noticed public hearing. A disappointed applicant or objector may appeal to the City Council, and the City Council must then consider and decide the appeal in a noticed public hearing.

There is a governing ordinance for exceptions (also called variances) to a specific plan. The Los Angeles Municipal Code section 11.5.7 F.2 (464/AR14744-45) provides that the Area Planning Commission "may permit an exception from a specific plan if it makes all the following findings:

> (a) That strict application of the regulations of the specific plan would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;
>
> (b) That there are exceptional circumstances or conditions applicable to the subject property that do not apply generally to other property in the

specific plan area;

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;

(d) That the granting of an exception will not be materially detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and

(e) That the granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan."

The edited findings that were prepared after PLUM approval and then approved by the City Council (5/AR 00136-00138) are found in the Administrative Record at Tab 22/AR00596-00712.[2] The court, in discharge of its responsibility to review vigorously any exceptions to the specific plan, has examined those findings against the requirements imposed by LAMC section 11.5.7.F.2. The findings must demonstrate the "exceptional circumstances" and must be supported by substantial evidence to justify a variance to the specific plan. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.

I. EXCEPTION APPROVED FOR PROJECT HEIGHT:

1. The City's evidence and findings (22/AR 00607) do not provide substantial evidence to support a conclusion that enforcement of the specific plan "will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan's] general purpose and intent" for Target. The finding does not satisfy subdivision (a) of LAMC 11.5.7 F.2.

The height variance is the principal exception that the applicant was required to justify under the LAMC. The structure stands 74 feet, 4 inches above grade in a zone imposing 35 foot maximum for commercial structures. The Project thus is more than

---

[2] The parties in their briefs usually refer to the PLUM findings that are contained in the Administrative Record at 23/AR732-747, 820-837.

twice the permitted height maximum.

The City's findings re "practical difficulties or unnecessary hardships" consists of three paragraphs. Paragraph 1 states that "[o]ne of the goals of the SNAP is to promote flexibility in the regulation of height and massing in order to achieve a balanced mix of uses within the SNAP." The finding notes that the Project includes "a variety of smaller neighborhood serving ground level floor retail establishments. There are a variety of uses proposed at the site." And Paragraph 2 states "in addition, ... to promote the SNAP goal of providing for lively pedestrian uses and a walkable environment, the mix of retail and service spaces, the pedestrian plaza, open areas and other amenities would be concentrated along Sunset Boulevard and Western Avenue on the ground level."

The finding does not identify any "practical difficulties or unnecessary hardships" to which the applicant Target would be subject. The broader record indicates that such "practical difficulties or unnecessary hardships" refer to the expense to which the applicant would be put to comply with the height limit by constructing underground parking in order to reduce Project height by eliminating two levels of above ground parking. The parties concede that the applicant may develop the property for a full-sized Target store within near compliance with SNAP if it constructs underground parking. The applicant, moreover, originally suggested (to the council member's office) a different design that complied with the specific plan. The applicant's former counsel in a November 1, 2012 letter to the PLUM Committee said: "The Applicant initially planned a stand-alone Target store ....The initial concept would have complied with the SNAP height requirements and many other SNAP requirements." A.R. 11813. The applicant, thus, is seeking a variance to avoid a zoning restriction that would increase the cost of the development. (It is conceded that undergrounding the parking would increase the development costs by at least $5 million.) That additional cost is self-imposed by the applicant's present development plan. The LAMC does not permit the justification for a structural exception to a specific plan to depend upon an additional expense that is imposed by an applicant's design choice. "An exception from a specific plan shall not be used to grant a special privilege, nor to grant relief from self-imposed hardships." LAMC 11.5.7 F.3(a). The City's finding provides no substantial evidence to support an exception for greater height because of "practical difficulties or unnecessary hardships" due to the features of the property. See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 926.

The City's overall finding may be characterized, not unfairly, as deciding that in order to achieve one of the purposes of the specific plan--a lively shopping area--the Target development should be excepted from the SNAP height limitation. The City's finding that the design will provide a lively shopping area does not constitute substantial

evidence that a height exception is needed to overcome "practical difficulties or unnecessary hardships." Our appellate courts tell us:

> [D]ata focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Orinda Association v. Board of Supervisors of Contra Costa (1986) 182 Cal.App.3d 1145, 1166.

The City's final paragraph in support of the finding advises that while the structure is 74 feet, 4 inches from the lowest grade (along De Longpre Avenue), the building height is 61 feet, 6 inches along Sunset Boulevard; and that the Target store on the third level will be set back 16 feet from the face of the building at ground level. "Thus, from the Sunset Boulevard street level view, the impact of the additional building height would be minimized." It notes too that "[t]he project incorporates facade treatments on all four sides consisting of varying elements such as display windows, balconies, overhangs, landscaping and vine treatments and the use of colors and material to provide a pleasing and varied design." This paragraph also does not identify any "practical difficulties or unnecessary hardships" that can support an exception to SNAP. This paragraph suggests only that the appearance of the nonconforming height and bulk of the structure can be mitigated by architectural features

2. The City's evidence and findings (22/AR 00608) do not contain substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does not satisfy subdivision (b) of LAMC 11.5.7 F.2.

Paragraph 1 of this finding provides in part:

> Although this type of use is allowed per the SNAP, and is encouraged in a major commercial corridor, the unique characteristics and area limitations of the site create exceptional circumstances, which necessitate the height

exception, that do not apply to other properties which can accommodate large structures in the SNAP area. Larger commercial-only projects in the SNAP consist of large, big-box type of design that do not meet SNAP goals and were constructed prior to the adoption of the SNAP ....

This City finding appears to assert that new construction "big box stores" such as a Target store cannot be accommodated within the limitations imposed by the specific plan, at least on a parcel of the size owned by Target, and for that reason an exception must be made to the specific plan. This argument may support a legislative change to the specific plan but it does not provide evidence, let alone substantial evidence, for an exception to the specific plan based on a finding of "exceptional circumstances or conditions ... that do not apply to other properties within the specific plan area."

Paragraphs 2 for this finding points out that, if this project was a mixed-use project, that is, including residential use, its maximum height could be 75 feet. This statement does not support an exception because for this "commercial only" Project SNAP imposes a 35 foot height maximum.

Paragraph 3 discusses whether it would be feasible to put the parking underground. The finding concludes that subterranean parking would still require a lesser height exception, would require a "loud and expensive ventilation system," would impose "approximately 22,000 cubic yards of soil export, thereby causing ... air quality impacts" and would "eliminate the ability for any green space to meet landscape requirements by removing the community gathering areas." This Council finding suggests that the proposed project may not be suitable for the site, if the requirements of the specific plan are applied, but it does not support a conclusion that there are "exceptional circumstances" that would **not** apply to other sites of similar size within the SNAP boundaries.

The exception for Target's 74 foot, 4 inch design, if allowed, will become a precedent used by other applicants throughout SNAP to apply for height and bulk exceptions (variances) for commercial developments.

3. The City's evidence and findings (22/AR 00609) do not contain substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding fails to satisfy subdivision (c) of LAMC 11.5.7 F.2.

The key finding made by the City reads as follows: "For a Target or other similar

type retail use to be developed within the SNAP without a height limitation would require a larger lot ...." This assertion does not support a height exception because it concedes that **every** property owner within SNAP would require exceptions to build out the Project on a similarly dimensioned lot. The sentence continues: "and would not provide a mix of retail types and uses envisioned by the SNAP." The benefits to the public do not provide substantial evidence to override the height restrictions that are imposed by SNAP for commercial developments. See, *Orinda Association v. Board of Supervisors of Contra Costa* quoted above. There is no provision in the SNAP which provides that if the decision-makers decide that a development has sufficient public amenities they may grant an exception to the SNAP zoning requirements for that reason alone.

4. The City's evidence and findings (AR 00609) do not contain substantial evidence to support a conclusion that "the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property." The finding does not satisfy subdivision (d) of LAMC 11.5.7 F.2.[3]

The finding advises that "the proposed project would be buffered from low-rise commercial land uses by the intervening streets. The setbacks created by the intervening streets and the transitional heights created by the project's design would reduce the effects of the contrasting building heights created by the project's design between the proposed building and existing off-site buildings." The evidence which is offered for the finding suggests that the appearance of the Project's height and bulk will be mitigated by the "transitional heights" of nearby buildings. But such evidence offers no support for a finding that the building of a nearly 75 foot building will not be detrimental to the public welfare and/or injurious to nearby properties. The height restriction codified in the SNAP presumably expressed the community's standard for "public welfare" with respect to commercial building height at the time when SNAP was adopted. Nothing in the evidence that is identified to support the finding suggests that a building height that exceeds by double the SNAP height standard is in furtherance of public welfare or is not injurious to nearby properties. There is no substantial evidence to support the finding.

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[3] La Mirada rather than Citizens Coalition provides the more extensive briefing for the argument that the City's findings do not satisfy LAMC 11.5.7 F 2. Yet La Mirada does not discuss the findings required for the Project exceptions under subsections 11.5.7 F.2(d) and (e). The court nonetheless has addressed the findings required under these subsections.

5. The City's evidence and findings do not contain substantial evidence "the granting of the exception is consistent with the principles, intent and goals of the specific plan." AR 00610. The finding does not satisfy subdivision (e) of LAMC 11.5.7 F.2.

The City's findings (AR 00610) provides in part:

> The proposed project was designed to be consistent with the goals of the SNAP. The SNAP was "implemented to make the neighborhood more livable, economically viable, as well as pedestrian and transit friendly ... and achieves a maximum benefit from the subway stations."... As recommended for approval, the project proposes a height similar in scale and massing to that envisioned by the SNAP. The SNAP promotes flexibility in the regulation of the height and buildings in order to ensure a well-planned mix of uses. The proposed project would provide a mix of different retail use, including ground floor neighborhood serving retail and a larger Target that would be accessible from public transit opportunities along Sunset Boulevard.

This finding states that an exception from the specific plan--an exception that permits a doubling of the height restriction--has substantial evidence if the project has amenities ("a well planned mix of uses") wanted by the City's decision-makers. The reasoning is ad hoc and circular: the City is reciting the goals of the specific plan to overthrow the limitations of the specific plan. SNAP itself does not contain a provision that authorizes exceptions from its limitations because the decision-makers believe that a particular project is consistent with or in furtherance of its goals. The benefits of a development cannot justify a substantial deviation from the specific plan absent such authorization in the specific plan itself.

II. DESIGN EXCEPTIONS RELATING THE PROJECT'S SIZE AND PROPORTIONS:

The SNAP Guidelines provide other building restrictions for which the City approved exceptions. These exceptions all relate to the Project's appearance--the exceptions are for setbacks, stepbacks, roof lines and the percentage of ground level wall space that is used for windows and doors or constructed of transparent elements (22/AR 14693)--and the court refers to these exceptions as "facade exceptions."

The facade exceptions are intended to mitigate the appearance of bulk in the Project. The facade exceptions, thus, are derivative of the height exception that the City

Council approved for the Project.

The City made findings to justify these facade exceptions from the SNAP Guidelines as a group (and combined them with a discussion of another exception for hours of operation). 22/AR 00611-00616. That is, the City did not apply the five-part test of LAMC section 11.5.7 F.2 to each facade exception. Petitioners object to the failure of the City to make findings that are individual to each of the facade exceptions. This objection has merit: the court cannot review the City's findings made under LAMC section 11.5.7 F.2 if the City did not provide individual findings for each exception. The court determines the findings are without substantial evidence for that reason.

The City refers to the facade exceptions from SNAP as "Building Design" because they are all design-related. The City justifies the Building Design by referring to the Project's amenities or by making other generalizations.

Under the "practical difficulties or unnecessary hardships" test, the City notes that the Guidelines seek "to ensure that a project avoids large blank expanses of building walls," harmonizes "with the surrounding neighborhood, and contributes to a lively pedestrian atmosphere." Having said that, the City finds, in another example of result-oriented reasoning, that "[a]lthough the proposed project requests deviations from the building design standards it meets the intent of them." AR 00612. Referring to design features that require an exception, the City's finding explains that the features are required by the applicant's design: "Such features do not exist in other projects in the area and are unique to this project." This finding demonstrates that any difficulty or hardship is imposed by the applicant's chosen design. The City's finding does not provide substantial evidence to support an exception under the "practical difficulties or unnecessary hardships" test for the Building Design (or facade) exceptions.

Under the "exceptional circumstances or conditions" test, the City's finding highlights the amenities the Project will provide, saying, for instance, "[t]he project will incorporate landscaping and architectural design that will promote an attractive streetscape and transit friendly development." 22/AR 00614. Such findings are irrelevant to the legal justification for a zoning exception. *Orinda Association, supra.* The City's finding does not provide substantial evidence to support an exception under the "exceptional circumstances or conditions" test for the building design (or facade) exception.

Under the "preservation and enjoyment of a substantial property right or use generally possessed by other property owners" test, the City's finding is that "[o]ther properties in this area are either commercial only projects built prior to the adoption of

the SNAP or contain smaller scale retail or mixed use projects that do not have the similar building and parking structure constraints." The City further states: "The Exception is necessary to address changing design vernaculars that were not anticipated at the time the SNAP was adopted." 22/AR 00615. Nothing in this finding supports a conclusion that the facade exceptions are necessary because other properties that are limited by SNAP already have similar design features.

The City's findings do support a conclusion that the facade exceptions will not be detrimental to the public welfare. The facade exceptions raise only aesthetic considerations. The City's finding, in this regard, does comply with LAMC 11.5.7 F.2(d).

The City's findings do provide substantial evidence that, if a project of the size and proportions of the Target Project is approved to proceed, the granting of exceptions for the facade elements to mitigate its bulk "is consistent with the principles, intent and goals of the specific plan." The finding does satisfy LAMC 11.5.7 F.2(e).

III. THREE REMAINING EXCEPTIONS APPROVED FOR THE PROJECT:

Petitioners, particularly La Mirada, attack the three remaining SNAP exceptions approved for the Project by the City Council, to wit. (1) an exception to eliminate free home delivery to local residents; (2) an exception to increase parking authorized for the Project from 390 to 468 spaces; and (3) an exception for the hours of operation for deliveries to the service bays. La Mirada's challenge to these exceptions, however, was largely saved for its 32-page reply, so that respondents did not have an opportunity to respond.

The court, therefore, issued its initial decision as a tentative decision under Code of Civil Procedure section 632. The parties argued their respective positions as to these remaining exceptions to the SNAP at a hearing on June 30, 2014. The court has placed its rulings as to whether these three remaining exceptions comply with LAMC 11.5.7 F.2 in the Appendix to this Final Decision.

COURT CONCLUSIONS RE SUFFICIENCY OF THE THE ENVIRONMENTAL IMPACT REPORT:

Petitions challenge the EIR (55/AR 01691-02245) on three grounds: (1) that the cumulative impacts section is deficient because the EIR does not analyze the potential impacts of an envisioned Hollywood CAP Park; (2) that the range of alternatives section is deficient in failing to include a single store possibility; and (3) that its baseline analysis

is deficient because the EIR did not include a newly inaugurated charter school across De Longpre Avenue from the site.

(1) Hollywood Central ("CAP") Park.

CEQA requires an EIR to discuss significant cumulative impacts to which a project contributes an incremental amount. 14 Cal. Code Regs ("CEQA Guidelines") section 15130(a). A cumulative impact consists of an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. Guidelines 15130(a)(1). "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects." Guidelines 15355(b).

The List of Related Projects in Target's EIR does not include Hollywood CAP Park. See, DEIR 55/AR01790-01794. Hollywood CAP Park is a proposal that envisions a structure being built over a one mile segment of the 101 Freeway that would provide a surface for a greenbelt and park uses. The most recent cost estimate is $725 million, none of which has been committed or raised. The City has allocated $2 million for initial design studies and the preparation of an EIR; the court is unaware of what portion of that amount has been expended.

Whether Hollywood CAP Park should be included as a "related project" in the EIR depends on three issues: whether CAP Park is a "reasonably foreseeable" project, and a "related" project and a project that would produce impacts that would combine with those of the project under review. The court finds that on all of these issues there is substantial evidence to support the City's decision.

The City published its Notice of EIR Preparation on December 6, 2010, setting the date for the City to evaluate the Project's impacts. See, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270. The Hollywood CAP Park as of that date (and now) had no design, no start date, no governmental approvals and, decisively under the reasonably foreseeable test, no funding source. The Park is a dream, and, while it has community supporters, public funds would be required to realize the project. There is, given the State's still weak economic recovery, substantial evidence to support the City's conclusion that the Park is not a project that can come to fruition in the reasonably foreseeable future.

(2) Sufficient Alternatives.

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects ..." Guidelines 15126.6(a)

Citizens Coalition argues that the EIR is deficient because it did not consider a smaller Target store, one purportedly similar in size to other nearby Target stores, while retaining adjacent retail/restaurant space. Citizens' brief, p. 13, identifies three other existing Target stores, one being approximately 150,000 sq. ft. and two others being approximately 104,000 sq. ft., although they are tenants in previously built shopping malls with an existing customer base and parking. (The proposed Target store has 163,862 sq. ft. with additional retail/restaurant space at street level).

The EIR did consider a range of alternatives including a 149,400 square foot Target store "with two levels of underground parking." This Reduced Project Alternative was deemed not to eliminate the view obstruction and to have the disadvantage of not providing "retail shopping and dining opportunities." 55/AR 02244. The EIR analyzed other SNAP-compliant alternatives. 55/AR 2232 et seq. The issue is whether the EIR considered a reasonable range of alternatives to permit the decision-makers an ability to evaluate the proposed project. *Jones v. Regents of the University of California* (2010) 183 Cal.App.4th 818, 826-828. The court finds the EIR was not deficient in this respect.

(3) New School Use.

La Mirada argues, independently of co-petitioner Citizens Coalition, that the signing of a lease agreement for the operation of a 390-student Charter Elementary School, the playing fields (and parking facilities) of which are across DeLongpre Avenue from the Project, require a recirculation of the EIR. Re-circulation is required only when "significant new information" is available after the public comment period begins but before an agency decision on an EIR. Public Resources Code section 21092.1. Re-circulation is not necessary if the new information would make "insignificant modifications" to an EIR. An agency's decision not to re-circulate the draft EIR must be supported by substantial evidence.

The City makes a persuasive argument that the siting of a charter school as a new tenant in the DeLongpre property is not information that requires further analysis in the EIR. The charter school will replace a "children's club and daycare facility in a building having a maximum capacity of 974 persons." 298/AR 10773. The existence of a "learning center" in the location was noted in the EIR (AR 55/1784) and its impacts were studied (55/AR 2089 for air quality) and found to be insignificant (55/2091-2094) or

mitigated (AR 55/2064, IV.H 7 - IV.H.10).

Citizens Coalition argues, independently of La Mirada, that the City committed to the project before the completion of environmental review. Target and the City refuted his argument with record-based evidence (Opp. Br., pp. 11-12), to which Citizens Coalition did not respond in its reply brief. The court regards the issue as abandoned.

COURT'S CONCLUSIONS ON THE RIGHT TO FAIR HEARING ISSUE:

La Mirada asks the court to vacate the action of the City Council in approving the Project on April 3, 2013 on the ground that its representative, Douglas Haines, was given inadequate notice of an amendment to Condition 133 to the Project before the City Council voted to approve the Project.

Condition 133 was imposed as a condition to the Project approval. It required Target to provide space for child care in the Project or pay an in lieu fee instead. Condition 133 originally required Target to pay the in lieu fee before the City issued building permits. The amendment to Condition 133 permitted Target to pay the in lieu fee before the issuance of the Certificate of Occupancy. The amendment was significant because it permitted Target, once the City issued building permits, to commence construction even before the amount of the in lieu fee was determined by the Parks & Recreation Committee and, thus, before Target was obliged to make the in lieu payment. The amendment, if adopted (and it was adopted), removed an obstacle to Target obtaining building permits and beginning construction.

The issue is whether the amendment to Condition 133 was publicly posted in a manner that allowed sufficient time for La Mirada to learn of and comment about the amendment before the City Council voted on the Project. Douglas Haines, La Mirada's representative, testified that he attended the April 3, 2013 City Council hearing for the purpose of offering public comment in opposition to the Target Project and that he first learned of the amendment when then Council Member Eric Garcetti introduced the agenda item and stated: "there's an amendment correcting Condition 133 to reflect the intent of the SNAP." Haines decl., para. 17.[4] Each speaker was allowed only one minute to make comments, and there were 10 speakers. [Pet. Ob., 4/3/13 Transcript, p. 29.] Haines was called as the first speaker, and, as he walked to the podium, he saw a staff

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[4] The Haines declaration was submitted as an attachment to La Mirada's Petitioner's Memorandum filed on December 20, 2013. The court will receive the Haines declaration into evidence.

person "pinning a paper to the posting board." He introduced his remarks by saying he would like to read the amendment "before I speak" and asking the City Attorney "do I have the opportunity to do that?" The City Attorney "stated for the record that the amendment 'should have been posted.'" Id., paras 18-19. Haines said "it wasn't posted when I checked." [Trans., p. 30.] The Council President said "[T]hen go and talk to them. But don't give up your time." Haines gave brief comments, and he then walked to the posting board and "for the first time read the amended Childcare Facility requirement."

The court views the situation as analogous to facts in *BreakZone Billards v. City of Torrance* (2000) 81 Cal.App.4th 1205. The appellate court in *BreakZone* rejected appellant's argument that it was denied a fair hearing because matters had been raised at the hearing that had not been disclosed earlier. *Id.* at 1242-1243. La Mirada argues *BreakZone* may be distinguished because the appellant was offered an opportunity for a hearing continuance but declined that opportunity. Haines was La Mirada's designated speaker to oppose the Target Project--his declaration states that he had spoken at other public hearings on the subject-- and he was sufficiently experienced to know that he could have asked the presiding officer to reserve part of his allocated time for later comment to allow him to review the amendment that he had seen being posted on the notice board. The Council President did not refuse Haines an opportunity to read the posting before he spoke (as Haines did not specifically make that request), he merely told Haines "But don't give up your time." If Haines had made a request to view the posted amendment before concluding his turn to speak, and it had been refused, the court could decide that an opportunity to rebut new information was denied to La Mirada. Without having made such request, La Mirada's argument is not persuasive.

PREPARATION OF JUDGMENT:

The court served and filed its Tentative Decision on Petitions for Writ of Mandamus on June 23, 2014, permitting the parties to file objections or requests for modification. CCP section 632 and CRC 3.1590. Petitioners filed Objections to Ambiguities and Omissions on July 1. Real Party filed Objections on July 10. This Final Statement has been revised to accommodate certain of the parties' objections.

On the First Amended Petition for Writ of Mandamus filed by petitioner La Mirada Avenue Neighborhood Association of Hollywood the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first, second, fourth and fifth causes of action on La Mirada's amended petition.

On the First Amended Petition for Writ of Mandamus filed by petitioner Citizens Coalition Los Angeles the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first and second causes of action on Citizens' amended petition.

The court in its Tentative Decision requested petitioners to submit a form of judgment. Petitioners lodged and served a (proposed) Joint Judgment Granting Peremptory Writ of Mandate and a (proposed) Peremptory Writ of Mandamus. Real Party in its Objections, filed July 10, urged the court to defer the entry of judgment as the Project is under construction and Real Party is seeking an amendment of the Specific Plan so as to "render the exceptions unnecessary." Real Party also advised "Target (and probably the City) would be certain to appeal the Judgment, at which point Code of Civil Procedure section 916 would automatically stay both this Court's Judgment and Writ, and Code of Civil Procedure section 1094.5(g) would stay the City's decision granting the exceptions."

The court nonetheless intends to enter judgment forthwith. The court, however, is not satisfied with the proposed Judgment and proposed Peremptory Writ suggested by petitioners.

The court requests petitioners to submit a simplified Judgment reciting that for reasons stated in the court's Final Decision, petitioners shall have judgment against respondents and Real Party in Interest; that judgment is entered in favor of petitioners on their causes of action to vacate and set aside the actions approving six of the Specific Plan exceptions for the Project (specifying which particular City Council actions are set aside); that a Peremptory Writ of Mandate shall issue under the seal of the court in a form that is attached to the Judgment as Exhibit A; that the court enters judgment for respondents on the other causes of action (specifying them) pled in the amended petitions; that petitioners upon motion may seek their costs and reasonable legal fees; and that the court shall retain jurisdiction to enter injunctive relief and until such time as respondents file a return evidencing compliance with the Peremptory Writ of Mandate.

Petitioners are also to submit a proposed Peremptory Writ of Mandate (a copy of which is to be attached to the Judgment).

The court asks that the proposed Judgment and proposed Peremptory Writ of Mandate be lodged (and served) within five calendar days. The parties are directed to retrieve the administrative record exhibits and exhibit binders that have been retained by the Clerk promptly after the court signs and enters the Judgment.

The Clerk is directed to serve this FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS on the parties by U.S. Mail this date..

Dated: July 17, 2014

Richard L. Fruin Jr.

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

APPENDIX TO STATEMENT OF FINAL DECISION

I. EXCEPTION APPROVED TO ELIMINATE FREE HOME DELIVERIES FOR PROJECTS OVER 40,000 SQUARE FEET TO LOCAL RESIDENTS:

1. The City's evidence and findings (22/AR 606) do not provide substantial evidence to support a conclusion that enforcement of the specific plan "will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan's] general purpose and intent" for Target. The finding does not satisfy subdivision (a) of LAMC 11.5.7 F.2.

The SNAP, section 6.N, requires projects containing 40,000 square feet or more of retail commercial floor area to provide free delivery of purchases made at the site by residents living in the Specific Plan Area. (22/AR 606). The City approved an exception for the proposed Target store. The City's findings for this exception include a sequence of overlapping rationales. (22/AR 606-607):

> One of the goals of the SNAP is to create more livable residential neighborhoods. The requirement for stores to provide free delivery of purchases made at the site by residents living in the SNAP boundaries would be inconsistent with this goal, and would create difficulties and hardships inconsistent with the purpose and intent of the SNAP. A free delivery program for Target could significantly increase the number of truck trips from the store that would deliver purchased goods to adjacent residential neighborhoods. The anticipated high volume of purchases made by nearby residents would result in large trucks traveling many times a day through residential neighborhoods. These neighborhoods lack adequate unloading areas and trucks delivering goods would likely temporarily park within public right-of-ways of neighborhood streets. A free delivery program would have the unintended consequence of making local neighborhoods less safe with numerous daily trucks coming from Target into the neighborhood.

This finding does not identify any "practical difficulties or unnecessary hardships" to which the Target store would be uniquely subject from the free delivery mandate. The assertion there would be a high volume of trucks traveling through neighborhoods that lack adequate unloading areas and the reference to "unintended consequences" relating to neighborhood safety would apply to all stores that are required to make free home deliveries within the SNAP. No data is provided as to the number of retail stores within SNAP that are presently providing free home delivery (or any home delivery) nor the number of home delivery trips that are made as a result. The City's findings, in the

absence of a comparative baseline analysis, do not constitute substantial evidence to support the City's findings.

The City's findings also include a letter by Target consultant Greenberg Farrow ("Farrow letter") (300/AR 10948):

> Target already offers free delivery through its online service. Using this service, ... free delivery of online items is available two ways. Shipping is free to holders of "'REDcards," which can be a Target Credit Card, Target branded Visa card, or a Debit Card linked to a standalone checking account.... In addition, most purchases of $50 or more ... are eligible for free shipping.
>
> Using the advantages of central warehousing and an advanced logistical network provided by common carriers such as the United States Postal Service (USPS), the United Parcel Service (UPS), and Federal Express (FedEx), Target is able to quickly and efficiently distribute packages to those who might otherwise shop at the proposed Target Sunset Project. Taking advantage of these common carriers reduces costs for customers while also reducing traffic impacts through planned distribution by experts instead of local delivery drivers. Further, such direct delivery is superior to a system where goods are first delivered to the store and then delivered to the customers.

This finding too does not identify any "practical difficulties or unnecessary hardships" that should exempt Target from a requirement imposed on other retailers (having 40,000 or more square feet). Target may be arguing that, as its internet purchases can be delivered efficiently by private carriers, it is an "unnecessary hardship" for Target to make home deliveries for store purchases, but, if so, the Farrell letter does not cite to any evidence that the use of private carriers would reduce traffic into the neighborhoods or reduce costs to customers. Target's online purchase delivery options, moreover, do not satisfy the requirement of SNAP section 6.N: the Target internet program only applies to purchases of $50 or more or purchases using specific credit cards, while SNAP requires free delivery for all purchases made at the store site by SNAP residents.

The City further makes a finding at 23/AR 00824 that a deviation from Target's national distribution business model on an ad-hoc basis to provide free delivery would be a practical difficulty or unnecessary hardship. There is no substantial evidence supporting this contention such as by reference to any impact on Target's revenues, logistics, etc.

2. The City's evidence and finding (22/AR 606) do not provide substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does not satisfy subdivision (b) of LAMC 11.5.7 F.2.

The City's finding provides (22/AR 606):

> The proposed project is unique in that most of the properties in the SNAP are small lots owned individually that would be developed with smaller retail uses that would not require free delivery. The proposed Target would be unique in that it would attract patrons from the immediate area as well as the larger community. The site could be developed with a large number of smaller stores that would not require the free delivery program. Target is a discount department store, and no other retail use recently developed in the SNAP offers the diverse amount of goods and services that Target would offer. The store would provide residents within the SNAP a unique one-stop experience rather than traveling to a number of stores and thereby increasing trips.

The City finds the property to be "unique" only because there are no other retail properties of its size that would be subject to the free delivery requirement. Target did not become subject to SNAP's provisions because of the size of the proposed store; Target became subject to SNAP because of the location it selected to build its store, namely within the SNAP, and that resulted in the application of SNAP's zoning laws. In any event, the City's findings that the Target store will attract customers from the larger community, will decrease shopping trips for area residents or will be a more diverse development than other properties do not provide substantial evidence for "exceptional circumstances or conditions" that justify an exception from the free delivery requirement imposed by the specific plan.

The City's evidence also includes the Farrow letter (300/AR 10948):

> [N]o other local retailer offers free local delivery. Many retailers offer local delivery, however, through common carriers.... Local grocery stores, such as Vons, also provide delivery services using individual delivery service vehicles. However, Vons charges for this service and requires a minimum delivery of $50.00.

The statement that no other local retailer offers free delivery suggests that there is no retailer within the SNAP is large enough to be subject to the free delivery requirement. That fact would not provide substantial evidence to support an exception for a retail store of sufficient size to be subject to the SNAP-imposed obligation.

3. The City's evidence and finding (22/AR 607) do provide substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City's finding includes citation to the nearby Home Depot and Food 4 Less, which are not required to provide free delivery and are over 40,000 feet. It is irrelevant that those stores were built before SNAP. The City's finding at 23/AR 00825 states that the "substantial property right" test refers to "existing uses." Although this interpretation may be disputed, deference must be given to the inference made by the City. *Steve P. Rados v. California Occupational Safety & Health App. Bd.* (1979) 89 C.A.3d 590, 594. There is, therefore, substantial evidence that other properties in the SNAP area possess a substantial property right (not having a free delivery obligation) that Target would not possess.

4. The City's evidence and finding (22/AR 607) do not provide substantial evidence to support a conclusion that "the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property." The finding does not satisfy subdivision (d) of LAMC 11.5.7 F.2.

The City's finding provides (22/AR 607):

> Residents living within the SNAP would have the option to either drive to the store for convenience to purchase larger merchandise, or to utilize public transit opportunities to purchase smaller items that do not require delivery. Patrons could also use the Target website to purchase items and have them delivered at a low cost. Moreover, granting the exception would have the benefit of not generating unnecessary additional truck trips that would not only use major commercial arteries but local streets as well.

This finding is not supported by substantial evidence. The finding asserts that the elimination of free home delivery will not be detrimental to public welfare. The City does not define "public welfare." Presumably that all customers living in SNAP may obtain free home delivery for their store purchases is in furtherance of public welfare because the community included that requirement in SNAP. The elimination of this free service available to all area shoppers, therefore, would not result in a gain in public welfare. There is no factual support for the contention that because area customers can instead use the website to purchase items or take public transit or drive to the store to obtain their purchases--an alternate they would have anyway—that public welfare is not decreased by the elimination of the free service required in the Area Specific Plan.

5. The City's evidence and finding (22/AR 607) do not provide substantial evidence to support a conclusion that "the granting of the exception is consistent with the principles, intent and goals of the specific plan." The finding does not comply with subdivision (e) of LAMC 11.5.7 F.2.

The finding for the exception (exemption from the free delivery requirement)

rests upon this single sentence: "Granting the exception would lessen potential impacts of traffic (truck trips), noise, air quality, and safety from a large number of trucks delivering goods daily throughout residential neighborhoods in the SNAP area." This is a curious finding because there cannot be a free delivery program without delivery trucks traveling into residential neighborhoods. The community in adopting this provision in SNAP made a value judgment that free delivery justified the impacts that were imposed on its neighborhoods. The City, to overturn this SNAP provision, has made the opposite value judgment. Various arguments perhaps could be made to justify the exception but on this record the City has not shown substantial evidence to support the variance under subdivision (e) of LAMC 11.5.7 F. 2.

II. EXCEPTION APPROVED TO PERMIT 458 PARKING SPACES INSTEAD OF THE MAXIMUM PERMITTED 390 SPACES:

1. The City's finding (22/AR 610) does provide substantial evidence to support a conclusion that enforcement of the specific plan "will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan's] general purpose and intent" for Target. The finding does comply with subdivision (a) of LAMC 11.5.7 F.2.

The City to support an increase in the number of parking spaces to 458 (from the 390 parking spaces required by SNAP, section 9.E), makes the following finding (22/AR 610):

> Per the SNAP, the maximum number of off-street parking spaces that may be provided for non-residential uses is limited to two parking spaces for each 1,000 square feet of combined floor area of non-residential uses contained within all buildings on a lot. Given the projects total floor area of 197,149 square feet, a maximum of 390 parking spaces are allowed. The applicant proposes to provide 458 parking spaces in a two level structure, which are 68 more spaces than allowed. One of the goals of the SNAP is to guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space, and the economic and social well-being of area residents. The major tenant of this project would be the Target store, which typically requires a higher parking percentage to meet demand compared to smaller retailers. A typical Target project elsewhere would provide a higher parking ratio, but due to the site's proximity to transit facilities and various constraints related to urban design and site planning, a significantly lowered parking ratio is proposed in order to promote pedestrian uses compared to a typical Target store. The requested increase in parking is necessary to provide convenience for patrons using the site. The strict application of this requirement

would reduce shopping convenience and would therefore not meet a major goal of the SNAP to provide for viable and successful retail uses.

The City further cites to the EIR at 26/AR 1016-1017 that peak parking demand on a typical shopping Saturday would be 531 spaces. If Target was required to adhere to the 390 parking spot limit, then spillover would inevitably occur. Although the 531-space estimate does not factor in decreased demand from nearby public transit, the reduction to 458 spaces was found to be reasonable by the EIR and is entitled to deference. *Steve P. Rados*, 89 Cal.App.3d 590, 594.

There is substantial evidence that there would likely be "practical difficulties or unnecessary hardships" on Target and the surrounding area to meet the projected demand of patrons.

2. The City's finding (22/AR 610) does provide substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does comply with subdivision (b) of LAMC 11.5.7 F.2.

The City cites findings to the same EIR section at 26/AR 1016-1017 that demonstrate the increased parking demand, which indicate substantial evidence of exceptional circumstances of parking spillover. The City also cites to the Property Detail Report at 332/AR 11640 that gives the square footage of Home Depot as 231,188 sq. ft. with 530 parking spaces for a parking ratio of 2.29 parking stalls per 1,000 sq. ft. This demonstrates that the exceptional circumstance of parking spillover (which would occur if there were only 390 spaces) do not apply to Home Depot which has a parking ratio over the SNAP limit. Although there is conflicting evidence as to the exact size of Home Depot, the court "must resolve all conflicts in the evidence" in the light most favorable to the City. *Steve P. Rados*, 89 Cal.App.3d 590, 594. There is substantial evidence present for this finding.

3. The City's finding (22/AR 611) does provide substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City cites to the same Property Detail Report at 332/AR 11640 that gives the square footage of Home Depot as 231,188 sq. ft. with 530 parking spaces for a parking ratio of 2.29 parking stalls per 1,000 sq. ft. This demonstrates that Home Depot has a substantial property right of a parking ratio over the SNAP limit. Although there is conflicting evidence as to the exact size of Home Depot, again the court "must resolve all

conflicts in the evidence" in the light most favorable to the City. *Steve P. Rados*, 89 C.A.3d 590, 594. There is substantial evidence present for this finding.

4. The City's finding (22/AR 611) does provide substantial evidence to support a conclusion that "the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property." The finding does comply with subdivision (d) of LAMC 11.5.7 F.2.

The City cites findings to the same EIR section at 26/ AR 1016-1017 to demonstrate the benefits of decreased spillover if the exception in question were granted. As mentioned previously, this record reflects substantial evidence.

5. The City's finding (22/AR 611) does provide substantial evidence to support a conclusion that "the granting of the exception is consistent with the principles, intent and goals of the specific plan." The finding does comply with subdivision (e) of LAMC 11.5.7 F.2.

The City cites findings to the same documents previously mentioned, and it is for that reason that there is substantial evidence to support the findings. The project has reduced the number of parking spaces to remain consistent with one of the SNAP goals of maintaining a transit friendly area. Although Petitioner argues that there is in fact an increase in parking, this misses the point because there is a decrease commensurate with the actual projected demand.

III. EXCEPTION APPROVED TO PERMIT DELIVERY OF MERCHANDISE BETWEEN 5 AM AND MIDNIGHT DAILY, INSTEAD OF LIMITING DELIVERIES BETWEEN 7 AM AND 8 PM WEEKDAYS AND 10 AM AND 4 PM ON WEEKENDS:

1. The City's finding (23/AR 739) does provide substantial evidence to support a conclusion that enforcement of the specific plan "will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan's] general purpose and intent" for Target. The finding does comply with subdivision (a) of LAMC 11.5.7 F.2.

SNAP, section V.19, limits the hours during which deliveries may be made to a retail store. The City's findings to support an exception to this limitation may be found in specific paragraphs at 23/AR 739-743. The City's findings to justify the exception under LAMC 11.5.7 F.2 include:

> A majority of deliveries would occur during the hours of 6:00 a.m. to 10:00 p.m., Monday through Sunday, which is beyond the SNAP requirements of 7:00 a.m. to 8:00 p.m. Monday through Friday and 10:00 a.m. to 4:00 p.m. on Saturdays

and Sundays. Some deliveries could occur after 10:00 p.m. Due to site constraints, some flexibility is necessary to ensure smooth operation and success of the retail uses, ensure that the store has products available to serve the community needs, and that certain deliveries could occur after hours to reduce conflicts with customers and traffic using the center. The flexibility would allow certain after hour deliveries for retail uses to occur within the parking structures. Such deliveries would not necessarily pose an immediate impact to adjacent properties because it would be within an enclosed structure and would allow restocking when customers are not on the site.

The City's findings further cite to the Farrow letter at 300/AR 10949:

Targets deliveries arrive into the City from their distribution center in the Inland Empire and Target's distribution system needs the flexibility to avoid or work around peak freeway rush hours, therefore requiring a larger window for deliveries.

SNAP Guideline V.19 provides that parking lot cleaning and sweeping, trash collections and deliveries to or from a building should occur no earlier than 7:00 a.m. and no later than 8:00 p.m., Monday through Friday, and no earlier than 10:00 a.m., and no later than 4:00 p.m. on Saturdays and Sundays. Strict compliance with SNAP Guideline V.19 would require that Target all deliveries when customers are present, and would also result in Target delivery trucks contributing to surrounding traffic conditions.

As set forth in the Target Sunset Project's EIR, peak traffic hours are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The SNAP's limitation on deliveries to the hours of 7:00 a.m. to 8:00 p.m. on weekdays would force deliveries to occur during peak traffic periods. The delivery hours proposed by Target would enable Target to schedule deliveries in the early morning or at night when traffic is light.

The City's findings to allow an exception to permit longer delivery hours than permitted by SNAP, section V.9, are supported by substantial evidence. The exception is specific to the site and specific to a retail enterprise having the store size and carrying the variety and volume of merchandise envisioned for the Target store.

The City's findings note the existence of "site constraints" that impose "practical difficulties" that are not found at other locations. The site constraints include that Target's delivery bays are accessed from DeLongpre Avenue, a small street, and that will require that delivery trucks to queue to access the delivery bays. Across DeLongpre there is a charter school. Extending the delivery hours will permit Target to schedule the deliveries into the evening hours and to spread out any congestion and reduce any

interference with the operation of the charter school (particularly at times when children are picked up or dropped off). As there are no residences on DeLongpre opposite the Target site, longer delivery hours will not cause disturbances in a residential area. DeLongpre is accessed directly from Sunset Blvd., so Target's delivery trucks will not be traveling through residential areas to reach Target. The second practical difficulty arises from the fact that Target receives deliveries of store merchandise from distribution centers in the Inland Empire. If all deliveries must be made between 7 a.m. in the morning and 8 p.m. in the evening it will increase road congestion. The City, therefore, has permitted Target to schedule its deliveries within a longer time window to reduce road congestion along the route and at the DeLongpre destination.

2. The City's finding (23/AR 740) does provide substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does comply with subdivision (b) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 740):

> There are exceptional circumstances and conditions applicable that do not apply to other property in the Specific Plan Area. The project is unique in nature to the Specific Plan area as it is the largest national retail use proposed since SNAP was adopted. Most of the properties in the SNAP are smaller lots owned individually and would likely be developed with smaller retail uses that would not require free delivery [sic]. The proposed Target would be a larger store that would attract patrons from the immediate area as well as from the broader community, making it unique to the area.

The City's finding, quoted above, although it refers to "free delivery" when discussing extended delivery hours, is supported in the whole record by substantial evidence. The City has extended the delivery hours because otherwise the volume of merchandise coming to Target's delivery bays would impose unnecessary burdens on Target and, thus, on the streets over which the Target deliver trucks must traverse. This is an exceptional circumstance that would not apply to other commercial locations within the SNAP.

3. The City's finding (23/AR 741) does provide substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 741):

The City's finding provides (23/AR 743):

A major goal of the SNAP is to establish a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in and use the public community services in the neighborhood. Allowing some deliveries to occur outside the permitted hours per the SNAP could help reduce truck trips to the store during peak traffic times and also create a safer environment.

The City's findings are supported by substantial evidence, as discussed above.

Exhibit 2

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD, Respondent (on appeal)/ Plaintiff (at trial) Real Party In Interest (this Petition) v. CITY OF LOS ANGELES, et al., Respondent (on appeal) Defendant (at trial) Real Party In Interest (this Petition) TARGET CORPORATION, Appellant (on appeal) Real Party in Interest (at trial) Petitioner (this Petition).	CIVIL CASE NO. B258033 LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BS 140889 [Related Case No. BS 140930] Hon. Richard C. Fruin, Jr. Dept. 15 (Stanley Mosk Courthouse) Telephone: (213) 974-5606

PETITION FOR RELIEF FROM STATUTORY STAY AND/OR FOR WRIT OF SUPERSEDEAS AND/OR MANDATE, WITH MEMORANDUM OF POINTS AND AUTHORITIES

STAY OF APPEAL REQUESTED

Richard A. Schulman (SBN 118577)
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& Bagley LLP
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San Diego, California 92101
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Attorneys for Petitioner
TARGET CORPORATION

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, Second APPELLATE DISTRICT, DIVISION	Court of Appeal Case Number: B258033
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard A. Schulman (118577) Hecht Solberg Robinson Goldberg & Bagley LLP 600 West Broadway, Suite 800 San Diego, CA 92101 TELEPHONE NO.: 619-239-3444 FAX NO. (Optional): 619-232-6828 E-MAIL ADDRESS (Optional): rschulman@hechtsolberg.com ATTORNEY FOR (Name): Target Corporation	Superior Court Case Number: BS140889
	FOR COURT USE ONLY
APPELLANT/PETITIONER: Target Corporation RESPONDENT/REAL PARTY IN INTEREST: La Mirada Avenue Neighborhood etc.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Target Corporation

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	Nature of interest (*Explain*):
(1)		Target Corporation is publicly traded (NYSE: TGT).
(2)		According to recent information, no one person owns 10%
(3)		or more of it, the largest single owner being State Street
(4)		Corporation, with approximately 9.3%.
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 13, 2014

Richard A. Schulman
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-008 [Rev. January 1, 2009]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Cal. Rules of Court, rules 8.208, 8.488
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD, **Respondent (on appeal)/ Plaintiff (at trial) Real Party In Interest (this Petition)** **v.** **CITY OF LOS ANGELES, et al.,** **Respondent (on appeal). Defendant (at trial) Real Party In Interest (this Petition)** **TARGET CORPORATION,** **Appellant (on appeal) Real Party in Interest (at trial) Petitioner (this Petition).**	**CIVIL CASE NO. B258033** **LOS ANGELES SUPERIOR COURT CASE NO. BS 140889 [Related Case No. BS 140930]** **PETITION FOR RELIEF FROM STATUTORY STAY AND/OR FOR WRIT OF SUPERSEDEAS AND/OR MANDATE; STAY OF APPEAL REQUESTED; WITH SUPPORTING POINTS AND AUTHORITIES**

Petitioner TARGET CORPORATION ("Target") respectfully petitions this Court for relief from a statutory stay under Code of Civil Procedure §1094.5(g), and/or for a writ of supersedeas and/or mandate directed to Respondent SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES, and by this verified Petition alleges:

INTRODUCTION

1. This Petition seeks to avoid waste and the unnecessary loss of jobs. The Los Angeles City Council unanimously approved a development project of Target three different times. Target had only wanted to build a store, but at the

City's request it instead applied for a larger project with amenities such as a pedestrian plaza, separate street-level shops and restaurants, and a pedestrian throughway. The larger project required "exceptions," essentially variances, from a local land use plan. After two community groups sued, the trial court upheld the project's environmental impact report ("EIR") and found no defect in the City's processes. However, the trial court invalidated the exceptions. Target has appealed. Target began construction before trial in good faith reliance on the City's three unanimous approvals. **Target has now applied to the City to amend the plan in question, which will render the exceptions unnecessary and the trial court's adverse decision moot.** No one can guarantee the result of a plan amendment process, but City Council approval is nearly certain given that it had requested the project in this form and approved it unanimously three times, *and* given the trial court's approval of the EIR.

2. Ordinarily, an appeal stays the trial court's judgment issuing a writ of mandate, CODE OF CIVIL PROCEDURE §916, which would leave the exceptions in place. However, if the judgment grants a writ of administrative mandate, as here, an appeal also stays the City's decision, CODE OF CIVIL PROCEDURE §1094.5(g), which leaves the project without necessary permits to continue construction. Section 1094.5(g) allows a party to ask the reviewing court for relief from the stay of the agency decision. Target is therefore asking this Court to issue such orders as are necessary to allow construction to proceed.

3. If the Court rejects this request, construction will have to stop. This will throw dozens of largely union workers out of work – there are typically about seventy-five workers on site each day; it could lead to unknowable security problems on site; and it will waste huge amounts of money. It will put on hold an investment in Los Angeles of tens of millions of dollars in construction costs, and it will prevent a couple of hundred people from being hired for the completed Project. This will establish that no one can begin construction until after years of unnecessary litigation end. *It will cause all this harm for nothing,* as approval of a plan amendment allowing the project to proceed is almost certain.

STATEMENT OF FACTS: THE PROJECT

4. Documents in the exhibits filed herewith are cited as "(Exhs. Vol. #, tab:page)." Because of their unusual source, Target will cite documents from the administrative record as "(Exhs. Vol. 1, 3:page [AR page])." The administrative record consisted of two overlapping parts, one containing 16,481 pages and the other 11,861 pages. Although the entire record will be provided for the appeal pursuant to Rules of Court, because of the size of the record only those items cited in this Petition are included in the exhibits. Conformed copies of trial court filings are included when available, but all exhibits are true and accurate copies of trial court filings, excerpts from the administrative record, construction documents, photographs and applications dated as shown.

5. The site in question is located at the southwestern corner of Sunset Boulevard and North Western Avenue in Hollywood. (Exhs. Vol. 1, 3:78-79 [AR 1767, 1769]) The site contained underutilized buildings and a surface parking area separating the street frontage from the retail uses. (Exhs. Vol. 1, 3:78-79, 84 [AR 1767, 1769, 1783])

6. The site is subject to a City specific plan called the "Vermont/Western Transit Oriented District (Station Neighborhood Area Plan)," commonly called "SNAP"; the site is in a corner of the SNAP area, far away from most of the area governed by SNAP. (E.g., Exhs. Vol. 1, 3:80, 88 [AR 1770, 4828]) SNAP designates the site as "Community Center" (e.g., Exhs. Vol. 1, 3:80 [AR 1770]), which allows a variety of commercial uses (e.g., Exhs. Vol. 1, 3:57, 88 [AR 588, 4828]). The purposes of SNAP include "establish[ing] a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in and use the public community services in the neighborhood." (Exhs. Vol. 1, 3:55 [AR 566])

7. Target had initially wanted to build only a Target store, but it never submitted such a limited application. (Exhs. Vol. 1, 3:95 [AR 10951]) The local City Councilmember, in a preliminary meeting, expressed concerns that building only a Target store would not fulfill important neighborhood goals such as pedestrian-friendly access. (Exhs. Vol. 1, 3:100-101 [AR 11813-11814]) Consequently, Target submitted an application on July 2, 2008 for a

retail center that would include a (roughly) 163,000 sq.ft. Target store, 26,000 sq.ft. of other retail uses, and a parking structure containing 458 stalls (the "Project"). (Exhs. Vol. 1, 3:89-90 [AR 8460, 8462]) The City approved the Project with a negative declaration (under the California Environmental Quality Act, "CEQA") in 2010; when LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD ("LA MIRADA") filed a lawsuit, though, Target surrendered its approvals and asked the City to prepare a full EIR rather than fight the litigation (Exhs. Vol. 1, 3:104 [AR 14255]) and the City rescinded its approvals (Exhs. Vol. 1, 3:53 [AR 455]). LA MIRADA then lost its case at trial and in this Court. (Exhs. Vol. 1, 6:209-212)

8. The City published notice on December 6, 2010, that it was going to prepare an EIR for the Project. (Exhs. Vol. 1, 3:103 [AR 13956]) LA MIRADA submitted forty-nine pages of comments just on the notice of preparation. (Exhs. Vol. 1, 3:87 [AR 3795 *et seq.*]) When the City made the draft EIR available for public comment, LA MIRADA filed another fifty-one pages of comments and objections. (Exhs. Vol. 1, 3:77 [AR 1569 *et seq.*])

9. The Project, with an EIR, went through several layers of hearings beginning with a hearing officer. (E.g., Exhs. Vol. 1, 3:102 [AR 13459]) The City's Central Area Planning Commission ("CAPC") approved the Project 3-0 on August 14, 2012. (Exhs. Vol. 1, 3:51-52 [AR 176-177]) The City Council's Planning and Land Use Management committee ("PLUM") approved the

Project 2-0 on November 13, 2012. (Exhs. Vol. 1, 3:48-50 [AR 172-174]) The full City Council followed suit on November 20, 2012. (Exhs. Vol. 1, 3:35 [AR 145]) The City then began issuing demolition permits and Target began removing debris and an old electrical transformer from the site. (Exhs. Vol. 1, 3:93 [AR 10686])

10. LA MIRADA then sent the City a letter claiming that, although the exceptions had been listed in previous notices and had been the object of LA MIRADA's appeals, the failure to mention the exceptions separately in the agenda for the final City Council meeting violated the open meeting law for local agencies, the "Brown Act." (Exhs. Vol. 1, 3:99 [AR 11237]) The City Attorney's office wrote back on December 31, 2012, saying that, although the City "does not concede" a violation had occurred, it would schedule another Council hearing "out of an abundance of caution." (Exhs. Vol. 1, 3:98 [AR 11200]) The Council's PLUM committee voted 3-0 for the Project on March 19, 2013 (Exhs. Vol. 1, 3:32-34 [AR 141-143]), and the full City Council approved the Project again on April 3, 2013 by a vote of 12-0 (Exhs. Vol. 1, 3:30-31, 92 [AR 138-139, 9772]).

11. As approved, the Project will consist of a Target store containing about 163,862 sq.ft. on the top of a three-level structure, with two stories of parking under the Target store; about 30,887 sq.ft. of (non-Target) ground floor neighborhood-serving retail, including restaurants; and a ground-level

pedestrian plaza of about 11,000 sq.ft. with distinctive landscaping, lighting, and a transit kiosk. (E.g., Exhs. Vol. 1, 3:46, 80-83, 108, 110 [AR 168 #125, 1770-1773, 16428, 16430) The resulting Project is, in a word, attractive; it features pleasant, pedestrian-friendly design and premium architecture for a retail store in an urban area. (E.g., Exhs. Vol. 1, 3:121-123 [AR 16441-16443]) The City imposed 145 (often lengthy) conditions on the Project. These include such matters as conducting bird surveys (Exhs. Vol. 1, 3:37 [AR 151 #7]), directing lighting and specifying glass so as to limit light and glare going off-site (Exhs. Vol. 1, 3:38 [AR 152 #21-#23]), protecting pedestrian access (Exhs. Vol. 1, 3:39 [AR 153 #26]), providing transportation improvements that range from road widening to signals to speed humps to parking for ride-sharing employees (Exhs. Vol. 1, 3:39-43 [AR 153-156 #27-#35, 163 #88), building a pedestrian passageway (Exhs. Vol. 1, 3:44 [AR 166 #109]), providing bike racks (Exhs. Vol. 1, 3:44-45 [AR 166-167 #112]), and providing public street benches (Exhs. Vol. 1, 3:45 [AR 167 #114]).

12. The City Council found that the Project is consistent with the City's long-range plans. (Exhs. Vol. 1, 3:74-76 [AR 757-759]) The City approved eight exceptions from SNAP:

a. Allowing the Project to reach 74' 4" in height. SNAP limits commercial-only projects such as this one to 35', but allows projects containing both commercial and residential components to reach 75'.

(Exhs Vol. 1, 3:57-58 [AR 588-589]) The primary basis for granting this exception was the need to accommodate the other SNAP-compliant components such as parking and a pedestrian- and transit-friendly Project. Other commercial projects in the area also exceed the 35' maximum. (Exhs. Vol. 1, 3:63-66 [AR 733-736])

b. Not requiring free local delivery. (Exhs. Vol. 1, 3:62 [AR 732]) SNAP imposes an unusual obligation on large retail stores to provide free delivery for local residents. The City found that having to provide free local delivery would be an unnecessary burden on a discount use and self-defeating because it would increase local truck traffic. In addition, similar stores in the area were not providing it. (Exhs. Vol. 1, 3:62-63 [AR 732-733]) The City did require that Target post signs informing customers that free delivery could be available through Target's website. (Exhs. Vol. 1, 3:36 [AR 149 #2])

c. Allowing more parking than would normally be provided. (Exhs. Vol. 1, 3:66 [AR 736]) The City set parking between what a discount retail use usually requires and what SNAP usually allows; this balanced need with the desire to encourage the use of public transit. (Exhs. Vol. 1, 3:66-67, 85, 94 [AR 736-737, 1981, 10949]) Other nearby "large box" retailers have even higher parking ratios. (Exhs. Vol. 1, 3:94, 96-97 [AR 10949, 10994-10995]) One local resident asked that

the Project provide extra parking to replace what had recently been lost in the community. (Exhs. Vol. 1, 3:105 [AR 15944])

d. Finally, the City combined five exceptions from SNAP's subsidiary Design Guidelines because of the way they are treated in SNAP. These included allowing the entrance canopy and balconies near the street to be taller than normal, allowing the second floor of the structure to be closer to the street than normal, allowing less transparency along the ground floor facing St. Andrews Place, not using gables or similar features to break up the roof line, and allowing deliveries outside normal hours. (Exhs. Vol. 1, 3:68-73 [AR 738-743]) SNAP's design regulations provide that "valid reasons" for requesting relief "include aesthetics or architectural intent; practical or logistical concerns that emerge as a consequence of physical limitations of a site; or other design related issues that develop over time and were not anticipated." (Exhs. Vol. 1, 3:54 [AR 556]) The City found that these exceptions were necessary, especially as conditioned, to satisfy the pedestrian- and transit-friendly purposes of SNAP. (E.g., Exhs. Vol. 1, 3:47, 86 [AR 169 #129, 2025])

13. The City rejected Target's request for an exception to allow a taller sign. (Exhs. Vol. 1, 3:59-62 [AR 729-732]) Target did not contest that decision and it will not be at issue in the appeal.

STATEMENT OF THE CASE

14. The Project has a slightly complicated litigation history. As noted above, the City Council first approved the Project with a negative declaration in 2010. After LA MIRADA filed suit, Target and the City voluntarily elected to prepare an EIR and this Court rejected the remainder of LA MIRADA's lawsuit.

15. The City Council then approved the Project unanimously with an EIR in November 2012. The next month, LA MIRADA filed a second lawsuit. In addition, a group named CITIZENS COALITION LOS ANGELES ("CITIZENS") filed its own lawsuit as well, Los Angeles Superior Court Case No. BS140930.

16. Trial in the two cases was delayed by several factors beyond Target's control. First, as explained above, the City Council re-heard the Project "out of an abundance of caution" after a procedural claim was raised. (AR 316/11200) LA MIRADA and CITIZENS then each filed amended petitions, which became the operative pleadings for trial. (Exhs. Vol. 1, 1:1-18 and 2:19-29) In addition, there was a dispute between LA MIRADA and the City regarding the contents of the administrative record. Finally, LA MIRADA and CITIZENS each filed peremptory challenges; as the cases had been consolidated for trial (but not consolidated generally), this tactic caused additional delays.

17. The LA MIRADA and CITIZENS lawsuits were tried together but were never completely or formally consolidated. Trial briefs were finally filed

in December 2013 (Exhs. Vol. 1, 4:124-158 and 5:159-178), January 2014 (Exhs. Vol. 1, 6:179-212 and 7:213-230), and February 2014 (Exhs. Vol. 1, 8:231-267 and Vol. 2, 9:268-278). The writ trial took place on February 27, 2014. (Exhs. Vol. 2, 10:279-311 and 11:312-358) The trial court issued a tentative statement of decision on June 23, 2014 (Exhs. Vol. 2, 12:359-373); heard argument (Exhs. Vol. 2, 13:374-396); and considered objections (Exhs. Vol. 2, 14:397-409, 15:410-481, 16:482-495, and 17:496-532). On July 17, 2014 the trial court issued a final decision that included an appendix addressing some previously omitted issues (Exhs. Vol. 3, 18:533-560) (together, the "Decision"). (Another Target submittal, Exhs. Vol. 3, 19:561-562, was filed without knowing that the Decision, which had been served by regular mail, had already been filed.) After La Mirada submitted another proposed Judgment and Writ, Target objected (Exhs. Vol. 3, 23:579-580), and La Mirada responded (Exhs. Vol. 3, 24:581-582), the trial court entered Judgment (Exhs. Vol. 3, 25:583-593) and issued a Peremptory Writ of Mandamus (Exhs. Vol. 3, 26:594-597). The caption of the Judgment and Writ lists both cases, but despite Target's objection that this would lead to confusion (Exhs. Vol. 3, 23:580 lines 9-13) and LA MIRADA's assurance that the Judgment could simply be entered in the trial court files for both cases (Exhs. Vol. 3, 24:582 line 9), as of this writing both documents had been entered only in the Superior Court's file for the LA MIRADA case. The Superior Court had not entered either document in

its file for the CITIZENS case, which it has been maintaining separately from the LA MIRADA case.

18. The Decision and Judgment invalidate the exception for height; invalidate the design exceptions, largely on the grounds that they had been combined; and invalidate the exception that exempted the store from providing free delivery to local residents. The Decision and Judgment upheld the exceptions for additional parking and longer delivery hours. The Decision and Judgment rejected the CEQA challenges – validating the certified EIR – and rejected the fair hearing/Brown Act challenges.

19. Target filed a Notice of Appeal in the LA MIRADA case on August 5, 2014. Target will file a Notice of Appeal in the CITIZENS case (and then move to consolidate the appeals) when Judgment is entered in the CITIZENS case, or within sixty days of notice of entry based on the dual-captioned Judgment filed in the LA MIRADA case. The Writ was apparently served on the City on August 12, 2014 (Exhs. Vol. 3, 26:594 upper right), despite the filing of the appeal having automatically stayed the Judgment.

STATEMENT OF FACTS: SNAP AMENDMENT AND CONSTRUCTION

20. Target discussed amending SNAP with the City Council office on June 17, 2014, before the trial court issued its tentative decision. Target initiated this discussion not in anticipation of losing at trial, but rather in the hope of avoiding more years of litigation and appeal. There have been several

conference calls among Target, officials of the City's Planning Department, and the City Attorney's office, during which the parties discussed amendments that would be acceptable to the City's planning professionals.

21. Sections 11.5.7G and 12.32 of the City's Municipal Code together address the initiation of amendments to specific plans. The City's Director of Planning supplemented this in a memorandum providing for private parties to begin the process with a "request." (Exhs. Vol. 3, 21:573-574) Target submitted such a written request on July 15, 2014. (Exhs. Vol. 3, 22:575-578) Staff then evaluates the request and makes suggestion for a more formal submittal. Staff has informally estimated that the amendment process will take about a year.

22. The City retains full discretion over what environmental document to use for the amendment and whether to approve the amendment. However, two facts and two conclusions are worth noting. First, with regard to environmental review, the amendment Target has requested has been designed to fit within the certified and *court-approved* EIR. (Exhs. Vol. 3, 22:575-576) Second, the Project, as opposed to a stand-alone Target store, was the City's idea and has been unanimously approved by the City Council three times. These facts lead to two conclusions: First, approval in a form that will stand up in court is virtually certain. Second, the amendment will render the challenges to the

exceptions moot because the amendments will allow for plan compliance without needing exceptions.

23. Target began construction in good faith, relying on the City Council's three unanimous approvals and a very thorough EIR. The draft EIR Target has been citing (Tab 55 of the administrative record) contains 578 pages without the technical appendices; the final EIR Target has been citing (Tab 26 of the administrative record) contains 85 pages of additions to the draft. The foundation has been poured and vertical walls put up. The roof has been completed at its ultimate height and design except for signs. Currently, workers are putting up exterior framing and sheeting, and tying the roof to the perimeter and parapet; a sign company is surveying the site. Workers are also installing heating, ventilation and air conditioning, plumbing, fire sprinklers and overhead refrigeration; framing the interior office areas and stockroom demising wall; putting rough electrical into the offices and store entryway; installing masonry at stairwells; pouring concrete at stairwells and at the top of the generator room; performing preparation work for the concrete slab at the access driveway at DeLongpre Avenue; installing waterproofing at the perimeter of the second floor garage; and installing fireproofing of the stockroom deck. The Exhibits include a set of photographs showing the state of construction in mid-July. (Exhs. Vol. 3, 20:563-572)

24. The following breaks down recent on-site employment:

	Company	Trade	# of Workers	Union Yes / No
1	Target	OSR	2	No
2	Whiting-Turner	Management	8	No
3	Whiting-Turner	Laborers	2	No
4	Securitech	Security	2	No
4	Koury	Deputy Inspectors	2	No
5	Qualtec	Concrete	14	Yes
6	Superior	Framing	64	Yes
7	JD 2	Steel	5	Yes
8	Christain Brothers	HVAC	11	No
9	Sundance	Plumbing	7	No
10	GBC	Masonry	3	No
11	Emmons	Roofing	5	No
12	Source	Refrigeration	4	No
13	Swain	Signs	1	No
14	Cabrillo Hoist	Lift Operator	1	Yes
15	Neptune	Fire Sprinklers	11	No
16	PM Electric	Electrical	15	No
17	System	Waterproofing	3	No
18	Aztec	Fire/ Burg Alarms	2	No

25. Some workers are not needed on some days, resulting in roughly seventy-five workers being present – and deriving income for themselves and their families – at some point in a typical day.

26. Construction requires many tens of millions of dollars in construction costs, invested in the City of Los Angeles. Target anticipated that the store would be ready to open in March 2015. Any delays will postpone (or worse) the employment of roughly 100-200 jobs in the store and more in the other retail uses in the Project; it will cost Target millions of dollars per month in revenue; and it will cost the City millions in sales tax revenue alone.

27. If the Court does not grant relief from the statutory stay, Target will have to suspend or cancel the construction contracts, resulting in a large cost to Target and the loss of about a hundred jobs. (Seventy-five workers are on site in a typical day, but as the chart above shows, the number relying on this Project for their livelihoods – in an already difficult economy – is higher.) The attached photos (Exhs. 20) show unsafe projections and the like. (Although the issued Writ requires the City "to immediately and safely secure the Project site" Exhs. Vol. 3, 26:597 line 12), safety problems that could arise on a non-working site are unpredictable.) The result will establish that no permit – even one approved unanimously three times during six years after the application was made – is secure until after years of litigation, even when the supposed permit flaw will be remedied.

28. Relief from the statutory stay, whether by "order" or writ of supersedeas, is necessary to preserve the status quo, preserve the effectiveness of a judgment subsequently to be entered, and otherwise in aid of the Court's jurisdiction. The "status quo" is continuation of construction – the ongoing employment of dozens of workers and union members – not simply what is currently there. Target is beneficially interested as the Project's developer.

29. In the alternative, a writ of mandate is necessary. Target has no plain, speedy, and adequate remedy in the ordinary course of law because of the irreparable harm that would occur while an appeal is decided.

PRAYERS

30. Target therefore requests that this Court, pending determination of this appeal and/or approval of the SNAP amendments:

a. Grant relief from the statutory stay of the exceptions. This could be by an order and/or writ of supersedeas to the trial court, and/or an order and/or writ of mandate to the City, requiring that the City maintain the effectiveness of existing construction permits and issue such additional permits as are necessary to allow Target to complete construction and begin operations of the Project. Target is not asking the Court to restrict the City's customary authority to place conditions on and provide inspections relating to those permits, only that the permits be honored and issued without regard to the statutory stay, i.e., as if no judgment or writ had been issued nullifying the exceptions;

b. Stay the appeal pending a City Council decision on the SNAP amendment, on such terms as the Court deems appropriate;

c. Award Target its costs for this Petition from any party opposing it; and

d. Grant such other and further relief as this Court believes appropriate.

DATED: 8/13/19 **HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP**

By: _____
RICHARD A. SCHULMAN, Attorneys for
Petitioner TARGET CORPORATION

VERIFICATION

I am the Senior Director, Construction for Petitioner TARGET CORPORATION in this matter and am authorized to make this Verification on its behalf. I have read the foregoing **PETITION FOR RELIEF FROM STATUTORY STAY AND/OR FOR WRIT OF SUPERSEDEAS AND/OR MANDATE; STAY OF APPEAL REQUESTED** and know the contents thereof. I certify that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on 8/13/14, 2014, at Minneapolis, Minnesota.

STEVE MAKREDES

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD, **Respondent (on appeal)/ Plaintiff (at trial) Real Party In Interest (this Petition)** **v.** **CITY OF LOS ANGELES, et al.,** **Respondent (on appeal). Defendant (at trial) Real Party In Interest (this Petition)** **TARGET CORPORATION,** **Appellant (on appeal) Real Party in Interest (at trial) Petitioner (this Petition).**	**CIVIL CASE NO. B258033** **LOS ANGELES SUPERIOR COURT CASE NO. BS 140889 [Related Case No. BS 140930]** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

Petitioner TARGET CORPORATION respectfully submits these points and authorities in support of the accompanying Petition.

I

RELIEF IS NECESSARY TO AVOID UNNECESSARY HARM, WASTE, AND INTERFERENCE WITH THE CITY'S PROCESS

Target's appeal automatically stayed the trial court's Judgment and Writ. CODE OF CIVIL PROCEDURE §916. However, CODE OF CIVIL PROCEDURE §1094.5(g), applicable because the Writ was one of administrative mandate, also stays the City's decision that is the subject of the Writ, i.e., granting the

exceptions. Staying the exceptions creates a problem because it leaves further construction unauthorized. Fortunately, CODE OF CIVIL PROCEDURE §1094.5(g) allows "the court to which the appeal is taken" to "otherwise order."

A. Relief Is Necessary And Appropriate To Avoid Harm, Waste, And Interference With The City's Process And Authority.

No authority provides a comprehensive list of factors for the Court to consider in this situation, but the balancing of hardships, benefits, and other practical matters all appear to be relevant. *Building Code Action v. Energy Resources Conservation & Development Commission* (1979) 88 Cal.App.3d 913, 922. The primary basis of this Petition is practical: Not granting relief would throw people out of work, cost a lot of money, and interfere with the City's process – all for nothing, given the high probability that a SNAP amendment will avoid the defects found by the trial court.

The enactment of SNAP amendments rendering the exceptions unnecessary is very likely. Target has already begun the amendment process and has plenty of incentives to pursue it to completion. The Project requiring the exceptions was the City's idea, and the City Council unanimously approved the Project three times. One councilmember even offered praise for perseverance in the face of litigious opposition. (Exhs. Vol. 1, 3:91 [AR 9766:9-10] ["you've done the right thing here. You've stuck with it"]) As the findings state, the Project is much better than the lone store without the

exceptions. (E.g., Exhs. Vol. 1, 3:64 [AR 734] [will "promote the SNAP goal of providing for lively pedestrian uses and a walkable environment"] The trial court did not disagree with this conclusion, only with the narrower issue of whether it justified an exception. (E.g., Exhs. Vol. 3, 18:537] This is not like anticipating a change in a statewide law, such as a rewriting of CEQA; rather, it is a carefully directed change that is very likely to be approved because the decision-making agency has already, and repeatedly, supported the underlying concept.

Similarly, the Court can expect that the amendments will be valid. The adoption of an amendment to a city's general plan and to any specific plan, such as SNAP, is a "legislative act," e.g., *Chandis Securities Co. v. City of Dana Point* (1996) 52 Cal.App.4th 475, 481, whose substance is only reviewable for being "arbitrary, capricious, [or] entirely lacking in evidentiary support," e.g., *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1619. The Project's EIR was certified recently and the trial court upheld it. The SNAP amendment will affect few or no other properties, so none of the circumstances requiring major new environmental analysis are likely to occur. PUBLIC RESOURCES CODE §21166.

Target has acted in good faith. Target applied for the Project in 2008. (Exhs. Vol. 1, 3:89-90 [AR 8460, 8462]) It revised its plans to accommodate the City and stakeholder requests. (Exhs. Vol. 1, 3:100 [AR 11813]) The City

Council unanimously approved the Project with a mitigated negative declaration in 2010 and with an EIR in 2012. Target began demolition of the existing structures on the site in good faith reliance on those approvals. (Exhs. Vol. 1, 3:93 [AR 10686]) Target did not begin vertical construction until after the *third unanimous* approval of the Project occurred in 2013, again with an EIR. Beginning then was reasonable, given that it was five years after the application had been submitted and three years after the project had first been approved.

Mills v. County of Trinity (1979) 98 Cal.App.3d 859, illustrates the balancing of harms. There, the trial court issued a writ of mandate barring the enforcement of a new fee. The Court of Appeal issued a writ of supersedeas after balancing interim harms, without even attempting to evaluate the merits:

> We have fully considered the respective rights of the litigants in this appeal and conclude that stay of the judgment is necessary to protect the appellants from the irreparable injury they will necessarily sustain in the event their appeal is deemed meritorious. A stay will not result in disproportionate injury to respondent in the event of an affirmance, since excessive fees may easily be refunded. *Id.* at 861.

Similarly, here, not only Target but dozens of workers and their families will suffer. Millions of dollars in investment will be stopped, and any delays will postpone, or worse, the hiring of a couple hundred people and millions of dollars in sales tax revenue for the City. Although LA MIRADA and CITIZENS can claim that the public is being harmed by relying on invalid exceptions, that argument would miss the point because the City can and presumably will render the exceptions unnecessary. Furthermore, the building has already reached its planned height, which was the subject of the primary exception; the ongoing construction work will not increase that height.

Downtown Palo Alto Committee for Fair Assessment v. City Council (1986) 180 Cal.App.3d 384, illustrates appellate mootness resulting from a change of law. There, the plaintiffs sought a writ of mandate invalidating an improvement district. Although the trial court denied the writ, the city later dissolved the district anyway. The appellate court addressed the underlying legal issues, but only because they were "likely to recur"; the dispute itself was moot and no relief could be granted:

> As a threshold matter, the dissolution of the improvement district by the City subsequent to the judgment has rendered moot the issues presented on appeal. The validity of the ordinance is no longer of consequence to the parties before this court. Any ruling by this court can have no

practical impact or provide appellants effectual relief. *Id.* at 391.

Similarly, here, if the City Council enacts the requested SNAP amendments, the exceptions go away. This Court has seen a similar situation and itself has suggested a legislative solution that would render the dispute academic. *Horwitz v. City of Los Angeles* (2004) 124 Cal.App.4th 1344, 1356 ("Under these circumstances, there is only one more thing to be said—that it is time for the City to amend the relevant portions of the Municipal Code").

The City still (or again) has jurisdiction over the Project, which will be subject to the City's final, effective legislation. This would be true even if the City had not finalized its findings because the City retains an "'unexercised power to proceed within its jurisdiction.'" *Moss v. Board of Zoning Adjustment* (1968) 262 Cal.App.2d 1, 8. By prohibiting any act "in furtherance of construction of the Project," (Exhs. Vol. 3, 26:597 lines 8-9), the trial court's writ interferes with the City's authority and process; it is up to the City to use its administrative processes to "mitigate[] damages," exercise its "expertise," and "unearth[] the relevant evidence." *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311, 321-322 (exhaustion of administrative remedies).

Indeed, construction to the height and with the features allowed by the exceptions suggests that the exception issue – the only issue on which LA

MIRADA or CITIZENS prevailed – is already moot. E.g., *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573-1579. At the trial court's hearing on its tentative decision, LA MIRADA cited *Woodward Park Homeowners Association v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, to argue that relief was still possible even after construction had been completed. (Exhs. Vol. 2, 13:394) As *Wilson & Wilson* noted, though, construction in *Woodward Park* had proceeded "in violation of a court order," *Wilson & Wilson, supra*, 191 Cal.App.4th at 1579-1580, which is not true here. Moreover, *Woodward Park* was a CEQA case in which mitigation was still possible, *Wilson & Wilson, supra*, 191 Cal.App.4th at 1580, while here the trial court upheld the EIR and the matter at issue is height, which has already been reached. Even if the exceptions are not already moot, though, stopping construction while they are being rendered moot would be pointless. Halting the Project now would send a message that no one can build – not only until after years of litigation have passed, but not even when the litigation was about to be rendered irrelevant.

For that matter, even CEQA cases allow operations to continue when appropriate. For example, in *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, the county began operating a jail under an EIR that the trial court upheld but which the appellate court later found to be inadequate. The appellate court allowed operation of the jail to continue because the county had

the "good faith and ability" to correct the problem. The appellate court presumed the opposition and trial court would "closely monitor the County's progress" and deferred to the trial court what action to take if the county began "dragging its feet." *Id.* at 1456.

Target cannot guarantee that the City will approve the SNAP amendments, but conversely Target is not relying on a purely speculative rewriting of CEQA, case law, or land use law. The history of this Project makes it very, very likely that SNAP will be amended – certainly, likely enough to allow the exceptions to remain in effect for now.

B. <u>This Court Has Several Procedural And Mechanical Means Available To Grant Relief.</u>

The Court's authority to act is not in question. CODE OF CIVIL PROCEDURE §1094.5(g) expressly allows this Court to order "otherwise" than the automatic stay of the City's decision. In addition, CODE OF CIVIL PROCEDURE §923 allows this Court "to stay proceedings during the pendency of an appeal or to issue a writ of supersedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction."[1]

[1] CODE OF CIVIL PROCEDURE §1110b is inapplicable, as it would concern a request by LA MIRADA or CITIZENS.

Writs raise unusual technical issues, so Target will briefly address possible writs. There is a distinction between writs "'on the merits,' such as mandamus, certiorari, and prohibition, which themselves grant the substantive or procedural relief sought by the petitioner; and purely auxiliary writs such as supersedeas, which have the sole function of preserving the court's jurisdiction while it prepares, usually in the context of an appeal, to rule on those merits." *People ex rel. San Francisco Bay Conservation Commission v. Town of Emeryville* (1968) 69 Cal.2d 533, 538.

A writ of supersedeas would be appropriate to nullify the automatic stay engendered by the trial court's Judgment. Irreparable harm might or might not be required. *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1967) 255 Cal.App.2d 51, 53. The writ would be directed at the lower court to ensure "maintenance of the status quo while an appeal is pending." *In re Karla C.* (2010) 186 Cal.App.4th 1236, 1261n17. "Its purpose is to preserve to an appellant the fruits of a meritorious appeal, where they might otherwise be lost to him." *West Coast Home Improvement Company, Inc. v. Contractors' State License Board* (1945) 68 Cal.App.2d 1, 5. "Supersedeas is available in a corrective capacity where there is a stautory [sic] stay." *Estate of Hultin* (1947) 29 Cal.2d 825, 833. Supersedeas is thus highly appropriate to maintain the status quo and to preserve the fruits of a meritorious appeal; the

possibility of a job at some point in the future is almost meaningless to a construction worker thrown out of work for nothing.

It is important to realize that the status quo here is not an unfinished building, but rather the effectiveness of the exceptions and the construction and employment the exceptions authorize. Stopping that ongoing process is what would cause the economic harm and the hardship for the workers. Viewing the "status quo" as merely today's state of construction would throw dozens of people out of work. Freezing construction is a change to the status quo.

In the alternative, mandate would be appropriate to compel the City to honor and issue permits without regard to the automatic stay, as if the exceptions were still in effect. Target is beneficially interested as the developer of the Project. CODE OF CIVIL PROCEDURE §1086. It lacks an adequate legal remedy because of the time needed for an appeal to be resolved. CODE OF CIVIL PROCEDURE §1086. The Petition was verified. CODE OF CIVIL PROCEDURE §446, §1086.

A stay of the appeal is appropriate to avoid a waste of the Court's and parties' resources arguing over something – the exceptions – that will be rendered moot. When a governing law changes, judicial review must ordinarily be under the amended law. E.g., *Building Industry Association v. City of Oxnard* (1985) 40 Cal.3d 1, 3. This Court would be unable to grant LA MIRADA or CITIZENS any relief regarding them, because the exceptions

would be "no longer of consequence." Even if the exceptions are not already moot, they will be if and when the Council approves the SNAP amendments, so this Court should stay Target's appeal pending action on the SNAP amendment. *Neman v. Commercial Capital Bank* (2009) 173 Cal.App.4th 645, 653-654.

This Court has the authority to choose the appropriate mechanism. E.g., *Westly v. California Public Employees' Retirement System Board of Administration* (2003) 105 Cal.App.4th 1095, 1104n9 (petition for writ of supersedeas "treated as" request for stay). Stopping construction or destroying existing work is unjustifiable and pointless when the problem is almost certain to be rendered moot.

CONCLUSION

Target acted in good faith based on the City's repeated approval of a Project that the City itself had requested. Construction contractors hired workers in similar good faith reliance on the City's approvals. The job site provides employment for dozens of workers each day, many of whom are union members. Allowing construction to stop because the exceptions were stayed would throw people out of work, cause extreme hardship to many families, and cause waste, only for the issue to be rendered moot by Council action. It will needlessly delay operational employment. Target proceeded under what it reasonably believed were validly-issued permits. If the Court chose not to grant relief, the effect would be that nobody could build anything in California until

after years of challenges and appeals had been exhausted, even if the issues could be rendered moot.

Petitioners respectfully request that this Court issue an order or writ to the trial court and/or City granting relief from the statutory stay of the exceptions so as to allow the exceptions to remain in effect pending the SNAP amendment and appeal. The City would thus honor existing construction permits and issue such additional permits as are necessary to allow Target to complete construction of the Project and open the store. The City would reserve its customary issuance and inspection authority. Otherwise, no permit would be safe until after years of utterly pointless litigation, litigation that will be rendered academic.

Target also requests a stay of its appeal, on such terms as the Court deems appropriate, to avoid wasting the Court's and the parties' resources arguing over exceptions that are almost certain to be rendered moot.

Dated: 8/10/17 **HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP**

By: _____

RICHARD A. SCHULMAN
Attorneys for Petitioner TARGET CORPORATION

CERTIFICATE RE LENGTH OF BRIEF

I am the lead attorney for Petitioner TARGET CORPORATION. According to my computer's word count (using Word 2010, which counts each numerical citation separated by a space as a word), this document contains a grand total of 7,403 words. This figure includes everything – cover page, tables, text, and this certificate.

Dated: 8/10/19

HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

By: _____

RICHARD A. SCHULMAN
Attorneys for Petitioner TARGET CORPORATION

Exhibit 3

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WISCONSIN
BENTONVILLE
SHANGHAI
MEXICO CITY

Memorandum

July 15, 2014

To	Blake Lamb/Monique Acosta City of Los Angeles Department of City Planning 200 N Spring Street, Room 621 Los Angeles, CA	
	Project	Target Sunset Los Angeles, CA -
	Project #	20070266.2
	From	Doug Couper
	Re	Proposed Specific Plan Amendment
	Copies	Kenneth Fong, City of Los Angeles Kareem Ali, Target Corporation Richard Schulman, Hecht Solberg Robinson Goldberg & Bagley LLP

Project Description

The Target project is located at 5520 W Sunset Boulevard and is an approximately 194,749 square foot, multi-tenant commercial structure, approximately 74' 4" high, that includes an 163,862 square foot retail store and 30,887 square feet of other smaller retail and food uses.

The project was approved by Case Number APCC-2008-2703-SPE-CUB-SPP-SPR.

The project is a single lot of approximately 3.69 net acres and encompasses an entire block.

The project is bounded by West Sunset Boulevard to the north, Western Avenue to the east, De Longpre Avenue to the south, and St. Andrews Place to the west.

Requested Action

Target Corporation is requesting a Specific Plan Amendment to the Vermont/Western Transit Oriented District Specific Plan Station Neighborhood Area Plan (SNAP) and its associated Development Standards and Design Guidelines (Guidelines) to allow the previously-approved store to be completed and opened. We anticipate that this would include:

1. SNAP, Section 6 (N): Delete the requirement that an Applicant for any project containing 40,000 square feet or more of retail commercial floor area provide free delivery of purchases made at the site by residents living within the Specific Plan Area. It is difficult to justify this requirement as a land use regulation, particularly given that such large uses are likely to offer some form of free delivery through their websites.
2. SNAP, Section 9 (B)(1) or Section 9 (B)(2): Amend either of these paragraphs to allow large commercial uses over 100,000 sf on existing sites over 3.5 acres and within a quarter-mile of a transit station not to exceed a maximum building height of 75 feet. Either Section 9(B)(1) could allow this type of commercial project to reach this greater height, or this type of commercial project could be added to projects qualifying for the greater height under Section 9(B)(2).
3. SNAP, Section 9 (E) (3): Amend the requirement that the maximum number of parking spaces which may be provided shall be limited to two parking spaces for each 1,000 square feet of combined floor area of commercial uses contained within all buildings on a lot. Instead, large commercial uses with nationally recognized commercial tenants over 100,000 sf shall be limited to two and six-tenths parking spaces for each 1,000 square feet of combined floor area of commercial uses contained within all buildings on a lot as these types of uses require more parking than most commercial uses.
4. SNAP, Section 9(I), as it incorporates the Guidelines:

a. Guidelines, Section V. Subarea B-Mixed Use Boulevards and Subarea C- Community Center, Subsection 6. Building Design: Amend to encourage ("should") rather than mandate ("shall") design matters so as to allow the Director of Planning to approve projects without an "exception" if, as a whole, the building design avoids large blank expanses, of building walls, is designed in harmony with the surrounding neighborhood, and contributes to a lively pedestrian friendly atmosphere. In the alternative, amend for each of the following items individually:
    i. Step Backs. Amend to allow the Director of Planning to approve, without requiring an exception, if, as a whole, the building design avoids large blank expanses, of building walls, is designed in harmony with the surrounding neighborhood, and contributes to a lively pedestrian friendly atmosphere.
    ii. Transparent Building Elements. Amend to allow the Director of Planning to approve, without requiring an exception, either (a) if, as a whole, the building design avoids large blank expanses, of building walls, is designed in harmony with the surrounding neighborhood, and contributes to a lively pedestrian friendly atmosphere, or (b) supports a large retail store of over 100,000 square feet.
    iii. Roof Lines. Amend to allow the Director of Planning to approve, without requiring an exception, if, as a whole, the building design avoids large blank expanses, of building walls, is designed in harmony with the surrounding neighborhood, and contributes to a lively pedestrian friendly atmosphere.

b. Guidelines, Subsection 19. Hours of Operation. Amend to allow deliveries between the hours of 5:00 a.m. to 12:00 a.m., without requiring an exception, to retail uses over 100,000 square feet that are customarily open more than twelve hours per day.

End of Memorandum

EXHIBIT A
Vermont/Western Transit Oriented District Specific Plan
Station Neighborhood Area Plan (SNAP)

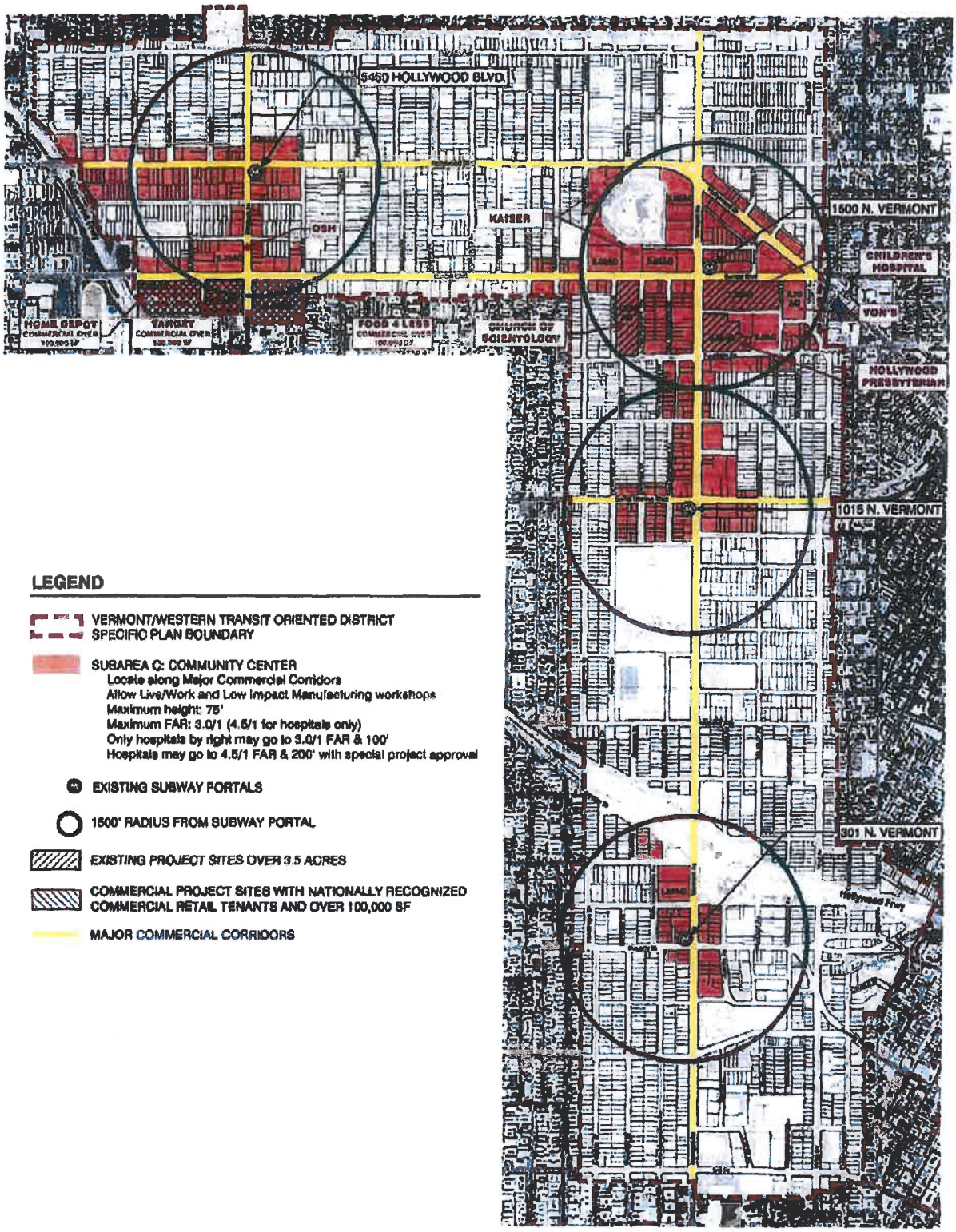

EXHIBIT B
Vermont/Western Transit Oriented District Specific Plan
Station Neighborhood Area Plan (SNAP)