LUNA & GLUSHON
ATTORNEYS

16255 VENTURA BOULEVARD, SUITE 950
ENCINO, CALIFORNIA 91436
TEL: 818-907-8755
FAX: 818-907-8760

Century City Office
1801 Century Park East, Suite 2400
Los Angeles, CA 90067

October 19, 2016

VIA PERSONAL DELIVERY

Councilmember Jose Huizar, Chair
Councilmember Marqueece Harris-Dawson
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Councilmember Curren D. Price, Jr.
Los Angeles City Council
Planning and Land Use Management Committee
200 North Spring Street
Los Angeles, CA 90012

Re: VTT-72370-CN-2A/CPC-2013-2551-MCUP-DB-SPR-1A
ENV-2013-2552-EIR/8150 Sunset Boulevard Mixed Use Project

Honorable Councilmembers:

Our law firm represents JDR Crescent, LLC and IGI Crescent, LLC, the owners of the three-story apartment building at 1425 N. Crescent Heights Boulevard, immediately to the south of the proposed 16-story, 333,903 sq. foot mixed-use development at 8150 Sunset Boulevard ("Project") who are among the various Appellants in the within matter. Our clients and their tenants will be directly and negatively the most impacted if the Project, as proposed, is approved.[1]

Preliminarily, the Councilmembers should be aware that neither the City Planning Commission nor City staff have made any attempts whatsoever to respond to the very real issues and concerns raised by our clients, the other Appellants of this Project, and concerned residents. Indeed, all concerns fell on deaf ears at the City Planning Commission hearing, as if the Commission had

[1] Our client is not opposed to a *revised* Project that is more compatible with the surrounding neighborhood and which lessens the current negative impacts.

pre-determined that despite any challenges raised, it would approve the Project. **Such actions are the very type that have led and continue to lead to the deep divide and distrust between this City officials and residents**.

Additionally, and most shockingly, absolutely no mention or discussion took place regarding the Applicant's **illegal** "Off-Menu" Density Bonus request for a 3:1 Floor Area Ratio ("FAR") in lieu of the otherwise 1:1 FAR imposed by the "D" limitation on the Subject Property, and the Applicant's refusal to include the history of the "D" limitation, explicitly imposed as part of the City's General Plan Consistency Program and update of the Hollywood Community Plan, as part of the required information in the Environmental Impact Report ("EIR") for the Project.

For all the reasons set forth below, we ask that the City Council independently and with due care assess the issues raised by all Appellants, grant our appeal, and send the Project back for further review by the Advisory Agency and Planning Department staff to revise for compatibility, and for further environmental review.

I. The Unavoidable Impacts of the Project Outweigh Any Project Benefits

The Project presents severe, **un-mitigatable** impacts which, instead of revising the Project to alleviate, the Applicant has chosen to disregard, asking the City to instead adopt a **Statement of Overriding Considerations**, **leaving the surrounding community to live with the unmitigated impacts**. **From a public policy perspective, this is an appalling position for the City to adopt**.[2]

Simply stated, it is clear that the "unavoidable" impacts of the Project are, in fact, avoidable, if the Applicant scaled the Project down to an alternative that is consistent in density, height and compatibility with the surrounding neighborhood, including the zoning limitations on the site.

[2] The Applicant argues that the un-mitigatable impacts are "minor" and "temporary," but this is simply untrue. To the contrary, the EIR skews and misrepresents the impacts of the Project in an effort to find "no significant impact," especially with regard to traffic (one of the major issues impacting the neighborhood and greater community).

II. The "D" Limitation Cannot be Ignored as an "Off-Menu" Density Bonus Request, it Must be Fully Disclosed

The Applicant has taken the indifferent position that the history and reasoning behind the imposition of the "D" limitation on the Subject Property is ***irrelevant*** and that a 3:1 FAR can be permitted as an "Off-Menu" Density Bonus incentive. The Applicant's position is yet another example of the "smoke and mirrors" approach with which it hopes to push this Project through. Indeed, as the below set forth history of the "D" limitation reveals, this Project *cannot* be approved with a 3:1 FAR unless a General Plan Amendment is sought, and the EIR fully analyzes the inconsistencies of the 3:1 FAR with the General Plan.

In 1971, the Legislature required, by *Government Code* §65860(a), that all general law cities and counties make their zoning consistent with their adopted General Plans. In this way, the Legislature sought to ensure that **real planning** occurred for the future development of cities and counties, and that the **zoning actually implemented it**.

Although *Government Code* §65860(a) did not initially apply to charter cities, most voluntarily undertook steps to abide thereby anyway. Los Angeles did not. Instead, the Los Angeles City Council refused to downzone and make its zoning consistent with the density in its adopted community plans, and continued to allow developers to construct projects grossly inconsistent with the community plans of the City.

In 1979, responding to citizens' calls for intervention, the State Legislature, in Assembly Bill 283, then amended *Government Code* §65860 to add subdivision (d), which made the section directly applicable to the City of Los Angeles. Subdivision (d) required the City to make all of its zoning ordinances and zoning maps consistent with its adopted general plan. Again refusing to recognize its duty to downzone, the City of Los Angeles instead decided to sue the State, but, of course, lost both at the Court of Appeal and the Supreme Court levels.

Despite the lost legal challenges, the City still continued to drag its feet, forcing neighborhood groups to sue. In *Federation of Hillside and Canyon Associations et al. v. City of Los Angeles* (C 526616), the Superior Court dealt a final blow to the City, issuing a writ which ordered the City to make its zoning code

consistent with its general plans within 120 days (timing later changed by settlement agreement).

From spring of 1988 to early 1990, the City carried out the General Plan Consistency Program to bring itself in compliance with Government Code Section 65680(d) and the *Hillside Federation* determination/settlement. As part of this Consistency program, the City systematically initiated changes of zone and height districts to be consistent with the General Plan and, where appropriate, recommended Plan amendments as necessary to be consistent with the then-existing land uses. **To achieve consistency in Hollywood, the City amended the Hollywood Community Plan in City Plan Case Nos. CPC-86-831 and CPC-86-835, imposing permanent "D" Development and "Q" Qualified Conditions, including the within "D" limitation, as expressly required be a CEQA mitigation measure to avoid infrastructure failures and ensure aesthetic compatibility.**[3] [See Exhibits 1-3, CPC-86-831-GPC Staff Report; Draft EIR and Final EIR for Community Plan Update].

Thereafter, the "D" Limitation was approved as part of CPC-86-831-GPC and enacted through Ordinance No. 164, 714 with the explicit finding by the City Council that such was "necessary to protect the best interests of, and to ensure a development more compatible with, the surrounding property; to secure an appropriate development in harmony with the General Plan; and to mitigate the potential adverse environmental effects." [*See* Exhibits 4 and 5, CPC-86-831-GPC Council Action and Ordinance No. 164].

Thus, the proposed FAR is inherently inconsistent with the Hollywood Community Plan, including the adopted EIR for the Community Plan, which specifically requires the "D" limitation as a mitigation measure.

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[3] The City will be reminded of the comments made by the Court of Appeal against it in *Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261: The purpose of the CEQA requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded. (see also footnotes 4 and 5). Where, as here, the permanent "D" Development limitation was expressly required as a mitigation measure of the Hollywood Community Plan Revision EIR, the City must continue to require its continued implementation to protect the health, safety and environmental welfare of the community.

The City has no legal authority to grant an Off-Menu Density Bonus incentive which is inconsistent with the Hollywood Community Plan, the EIR for that Community Plan, and its own Zoning Code and which requires separate entitlements altogether. A decision to deviate from the "D" zoning limitation, made not just upon Court Orders, but explicit consistency findings made by the City, cannot be legally accomplished by ignoring its existence, and it must be formally voted upon and analyzed, in sufficient detail, in the EIR. Otherwise, as set forth below, the EIR fails as an informational document.

III. The Required Findings Pursuant to the Subdivision Map Act Cannot be Made with Substantial Supporting Evidence.

1. The Proposed Map and the design and improvement of the Proposed Subdivision are *not* consistent with the City's General Plan, Land Use Element or the Hollywood Community Plan.

The State of California *Government Code* §§ 66473.1, 66474.60, .61 and .63 (the Subdivision Map Act) require that all Proposed Maps, as well as the design and improvement of all proposed subdivisions be consistent with applicable general and specific plans.

Again, as set forth above, the Project is inherently inconsistent with the "D" zoning limitation on the Property, imposed as part of the City's General Plan Consistency Program and Hollywood Community Plan Revision, including the thereafter adopted Zoning Ordinance. Furthermore, the Proposed Map is explicitly *in*consistent with the following Residential Citywide Design Guidelines for Multi-Family Residential Projects[4] and the Hollywood Community Plan:

i. To *nurture neighborhood character* (Design Guidelines, p. 4);

[4] The City of Los Angeles's General Plan Framework Element and each of the City's 35 Community Plans promote architectural and design excellence in buildings, landscape, open space, and public space. They explicitly provide that *preservation of the City's character and scale*, including its traditional urban design form, shall be *emphasized* in consideration of future development. To this end, the Citywide Design Guidelines have been created to carry out the common design objectives that maintain neighborhood form and character while promoting design excellence and creative infill development solutions.

ii. To *encourage projects **appropriate** to the context* of the City's climate and urban environment; facilitate safe, functional, and attractive development; and foster a sense of community and encourage pride of ownership (Design Guidelines, p. 4);

iii. To *establish height and massing transitions* from multi-family uses to commercial uses or less dense single-family residential (Design Guidelines, p. 7);

iv. To highlight the role that quality building design can play in creating visually interesting and attractive multi-family buildings by *contributing to existing neighborhood character* and creating a "sense of place" (Design Guidelines, p. 7);

v. To *consider neighborhood context* and linkages in building and site design (Design Guidelines, p. 8); and

vi. To *ensure that new buildings are compatible in scale, massing*, style, and/or architectural materials with existing structures in the surrounding neighborhood (Design Guidelines, p. 15);

vii. In older neighborhoods, to *respect the character of existing buildings with regards to height, scale*, style, and architectural materials (Design Guidelines, p. 15).

viii. To promote an arrangement of land use, circulation, and services which will encourage and contribute to the economic, social and physical health, safety, welfare, and convenience of the Community (Community Plan);

ix. To *balance growth and stability* (Community Plan);

x. To encourage the *preservation and enhancement* of the varied and distinctive *residential character* of the Community (Community Plan);

xi. To *promote economic well-being and public convenience* through allocating and distributing commercial lands for retail, service, and office

facilities in quantities and patterns *based on accepted planning principles and standards* (Community Plan); and

xii. To encourage the preservation of open space consistent with property rights when privately owned and to *promote the preservation of views* (Community Plan).

Clearly, the Proposed Map and the design and improvements of the Project consist of a maxed-out, over-height, and over-dense building inconsistent with all of the above. Moreover, the Project seeks to replace an 80,000 square foot, three-level structure with a 333,903 sq. foot, 16-story mega-plex all of which will be built directly adjacent to 2-3 story residential dwellings with which it will be completely inconsistent, again against the above policies and objectives. And again, the Project proposes, as an "Off-Menu" Density Bonus item, a 3:1 FAR in lieu of the otherwise 1:1 FAR imposed by the "D" limitation on the Subject Property which is inconsistent with the General Plan.

Simply put, the Project's mass, scale, height and density, along with location directly abutting 2-3 story residential dwellings, puts it at odds with all of the above stated General Plan purposes and objectives as well as the City's Residential Citywide Design Guidelines for Multi-Family Residential Projects, a part of the City's General Plan Framework Element. Accordingly, the required findings pursuant to the Subdivision Map Act cannot be made with substantial supporting evidence and the City must deny the Proposed Map and Project, as proposed.

2. **The Design of the Subdivision and Proposed Improvements are Likely to Cause Substantial Environmental Damage.**

The Subdivision Map Act further requires that a design of a subdivision and its proposed improvements be found not likely to cause substantial environmental damage. However, for all the reasons set forth below, the EIR for the Project is sorely deficient. Therefore, the design of the subdivision and proposed improvements are likely to cause substantial environmental damage.

IV. The Required Findings for Site Plan Review Cannot be Made with Substantial Supporting Evidence.

1. **The Project is *not* in substantial conformance with the purposes, intent and provisions of the General Plan and Hollywood Community Plan.**

As stated in detail above, the Project is inconsistent with the Hollywood Community Plan.

2. **The Project does *not* consist of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be *compatible* with existing and future development on adjacent properties and neighboring properties.**

The Proposed Project is 13 stories higher than the immediately adjacent, existing multi-family residential community and exceeds the otherwise planned density on the site three times.

In an attempt to appear compatible, the Applicant has provided a "spin" that the location of the Project is one that is "highly urbanized" and built out; in the more "active" regional center of Hollywood with a mixed-use blend of commercial, restaurant, bars, studio/production, office, and entertainment. **But the reality is that the entirety of the properties to the south of the proposed Project are *low-height multi-family residential*.** When taken in context with these low-height residential buildings, the Project completely fails with regard to consistency and compatibility and does not consist of an arrangement of buildings and structures that is or will be *compatible* with existing and future development on adjacent properties and neighboring properties.

V. The Required Findings for Conditional Use Cannot be Made with Substantial Supporting Evidence.[5]

1. **The Project *will not* enhance the built environment in the surrounding neighborhood, nor will perform a function or provide a service that is essential or beneficial to the community, city or region.**

[5] It is anticipated that the Applicant will argue that the Conditional Use for alcohol is unrelated to the size and scale of the Project. Nothing can be further from the truth. The scope of the Master Conditional Use is directly tied to the size and scale of the Project.

For all of the reasons set forth above, the Project, as proposed, will not enhance the built environment, but will, instead overshadow and make unlivable the low-height multi-family residential buildings immediately adjacent thereto. It will further degrade the traffic at the site in in its immediate surroundings where per the very traffic study relied upon in the EIR, *almost all* of the intersections are at an existing LOS of D or lower, including 10 which are *already* at an LOS of E of F (the very reason the EIR for the Community Plan included the "D" limitation as a mitigation measure!).

2. **The Project's location, height, operations and other significant features will not be compatible with and will adversely affect or further degrade adjacent properties, the surrounding neighborhood, and the public health, welfare and safety.**

Again, as explained above, the Project is 13 stories higher than the immediately adjacent, existing multi-family residential community and exceeds the otherwise planned density on the site three times. It will overshadow and make unlivable the low-height multi-family residential buildings immediately adjacent thereto and will further degrade the traffic (and inevitably impact emergency response times) at the site in its immediate surroundings, putting the health, welfare and safety of the public in danger.

3. **The Project *does not* substantially conform with the purpose, intent and provisions of the General Plan and Hollywood Community Plan.**

As stated in detail above, the Project is inconsistent with the Hollywood Community Plan.

4. **The Project *will* adversely affect the welfare of the pertinent community.**

As set forth above, the Project's location, scale and mass will overshadow and make unlivable the low-height multi-family residential buildings immediately adjacent thereto and will degrade the traffic at the site in its immediate surroundings, putting the health, welfare and safety of the public in danger. Therefore, it will adversely affect the welfare of the pertinent community.

VI. The EIR is Deficient.

An EIR must provide the decision-makers, and the public, with *all* relevant information regarding the environmental impacts of a project. If a final EIR does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and a final EIR is inadequate as a matter of law. In summary of the more detailed analysis hereinbelow, the EIR is deficient for the following reasons:

1. **It fails to provide information/context regarding the imposition of the "D" limitation on the Property Site;**

2. **It *misrepresents* and *fails to address* that a discretionary Street Vacation process will be necessary for the Project;**

3. **It *skews* and *ignores* the plain words of thresholds, including traffic thresholds (see Threshold TR-6) in order to find less than significant impact;**

4. **It *fails to analyze compatibility with respect to the entire multi-residential community immediately to the south* of the Proposed Project Site;**

5. It fails to analyze inconsistencies with applicable land use and environmental plans/policies in violation of *CEQA Guidelines Section 15125(d);*

6. It fails to analyze consistency with the land use policy/plan impacts it identifies, instead it provides conclusory statements with no evidence to substantiate them;

7. It fails to analyze consistency with the City's Mobility Plan 2035;

8. It fails to provide why/how the use of general traffic thresholds, where traffic at all nearby intersections is already at LOS of D or lower, is an appropriate measure of transportation impacts for the Proposed Project;

9. It fails to analyze at the existing environment (including the "D" Limitation) as the applicable baseline when evaluating land use impacts;

10. It relies on a January 8, 2014 Preliminary Alquist-Priolo Earthquake Fault Zone Map which is outdated, the December 4, 2015 update shows that the Project site is located on the active Hollywood Fault, a substantial impact which must be evaluated;

11. It proposes illusory Mitigation Measures which do not actually mitigate the impact they are intended to mitigate, including Mitigation Measures TR-1 and TR-2 and the Project's TDM Program, which are supposed to mitigate the potential impacts to inadequate emergency vehicle response times, but all which have to do with traffic circulation on-site and along Havenhurst;

12. It proposes unenforceable mitigation measures including Mitigation Measure TR-1, the installation of a traffic signal at Fountain Avenue/Havenhurst, which intersection is entirely in the City of West Hollywood; and "phantom" Mitigation Measures TR-3 and TR-4 which are nowhere to be found in the EIR or Mitigation Monitoring Plan;

13. It requires adoption of mitigation measures from a *future* studies (see, for example, Mitigation Measure GS-1), improperly deferring environmental assessment; and

14. It fails to provide why and how the use of general noise thresholds is an appropriate measure of noise impacts for a Proposed Project of this scale.

More specifically:

Land Use and Planning - Consistency:

CEQA requires **strict compliance** with the procedures and mandates of the statute. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118. In the context of "land use and planning," in order to be legally adequate, the EIR must identify and discuss, as part of its substantive disclosure requirements, any *in*consistencies between the Project and applicable general plans and regional plans, including relevant environmental

policies in other applicable plans. *See CEQA Guidelines Section 15125(d); L.A. CEQA Thresholds Guide.*[6]

Here, in order to get around the requirements set forth in the CEQA Guidelines, the EIR: (1) assumes land use consistency based upon the projected approval of the Project; and (2) concludes that it could not "identify any plan elements or policies with which the Project is inconsistent."

On their face, both of these approaches are not only incorrect, they obscure the language and intent of the CEQA statute. It is inherently against the CEQA mandates to simply state that once the density bonus is granted, the Project will be consistent with the zoning on-site, and therefore with all applicable land use regulations and policies. If such were the standard, any and all zone changes, general plan amendments, and variances would be inherently "consistent" with applicable land use plans. If such argument were accepted, the entirety of the "conformance with applicable land use plans" findings, both under the CEQA and the LAMC, would be eviscerated.

In reality, under CEQA, the threshold question that must always be answered is what environmental effects the project will have on the **existing** environment. Projected, future, conditions may only be used as the baseline for impact analysis if their use in place of measured existing conditions, a departure from the norm, is justified by some unusual aspects of the project or the surrounding conditions. However, even in such unusual circumstances, an agency still does not have the discretion to completely omit an analysis of impacts on existing conditions, unless inclusion of such an analysis would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public. *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 508-09.

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[6] The L.A. CEQA Threshold Guide with respect to "land use consistency" states: The determination of significance shall be made on a case-by-case basis, considering:

- Whether the proposal is **inconsistent** with the adopted land use/density designation in the Community Plan, redevelopment plan or specific plan for the site; and
- Whether the proposal is **inconsistent** with the General Plan or adopted environmental goals or policies contained in other applicable plans.

Here, there are simply no "unusual" circumstances which would in any way render the "existing" conditions baseline required inapplicable. And, again, even if there were, there is still a burden on the City to include the impacts on the existing land use policies, including the existing "D" limitation, and, if appropriate, present the facts warranting the use of the projected future conditions as the baseline.

In fact, the EIR's conclusion that it need not provide the history/explanation of the existence of the "D" limitation on the property is also inconsistent with CEQA. Again, an EIR must provide the decision-makers, and the public, with all relevant information regarding the environmental impacts of a project and may not ignore or assume solutions to problems identified in that EIR. As noted above, the "D" limitation was imposed on this Property as part of the City's General Plan Consistency Program and Community Plan Update, as an EIR mitigation measure to avoid infrastructure failures and to create cohesive neighborhoods, ordered by a Superior Court and State Law. Ordinance No. 164, 714 was approved upon the explicit finding that it was "necessary to protect the best interests of, and to ensure a development more compatible with, the surrounding property; to secure an appropriate development in harmony with the General Plan; and to mitigate the potential adverse environmental effects." [*See* Exhibits 1-5].

A decision to deviate from the "D" zoning limitation now cannot be legally accomplished by ignoring its existence, and it must be analyzed, in sufficient detail revealing its true land use impacts, including with regard to the City's General Plan Consistency Program and Community Plan Update which instituted the "D" limitation as a mitigation measure, in the EIR, including the requirement for a General Plan Amendment and Zone Change.

What's more, for the EIR to conclude that it could not "identify any plan elements or policies with which the Project is inconsistent" is nothing if not willfully ignorant. Not only are the comments to the EIR full of factual testimony about the land use policies within which the Project is inconsistent, **the Project flatly asks for a *deviation* from its zoning FAR limitation imposed by the General Plan. By definition, that is an *inconsistency* with the applicable General Plan.** And again, the Project is ***inconsistent*** with all of the purposes and the City's Residential Citywide Design Guidelines for Multi-Family Residential Projects and Hollywood Community Plan listed above.

It must be also noted that the EIR, in order to find "consistency" also ignores the plain words of the applicable plans' objectives and goals:

1. The Hollywood Community Plan states, as Objective 3.b, that it is meant to encourage the *preservation* and *enhancement* of the varied and distinctive *residential* character of the Community.

Here, in its analysis of consistency, all the EIR provides is that the "Project would preserve and enhance the residential community by limiting development to the Project site and providing residential uses on a commercially zoned property." But that, in no way, shows consistency with Objective 3.a, which requires *preservation* of the residential character of the Community.

2. The Hollywood Community Plan states, as Objective 4.a, that it is meant to *promote* economic well-being and *public convenience* through allocating and distributing commercial lands for retail, service, and office facilities in quantities and patterns *based on accepted planning principles and standards*.

Here, in its analysis of consistency on this point, the EIR completely fails to analyze how the Project promotes public convenience and how it is in any way based on accepted planning principles and standards. Presumably, this is because the Project fails to promote public convenience and, with regard to massing, scale, and height is inconsistent with accepted planning principles and standards. But, the EIR cannot ignore such inconsistencies, it must analyze them.

3. The Hollywood Community Plan states, as Objective 7, that it is meant to encourage the preservation of open space consistent with property rights when privately owned and to *promote the preservation of views*.

Here, in its analysis of consistency, all the EIR provides is that it "would no result in significant adverse effects to existing views of scenic resources." But, again, that is not what Objective 7 says. Objective 7 requires an analysis as to how the Project promotes *preservation* of views. Whether or not the Project meets the threshold for "significant effect to existing view" under the CEQA Thresholds has absolutely nothing to do with this finding.

Simply put, selective statements of "consistency" are not enough. The EIR must analyze *in*consistencies with Objectives 3.b, 4.a and 7 to be legally adequate.

Finally, the EIR fails to analyze (or even acknowledge) the Project's consistency with the City's Mobility Plan 2035 ("MB 2035"). This is a fatal error in the EIR as the Project, by eliminating a portion of a public right of way, is inconsistent with MB 2035. This information must be disclosed and analyzed to provide for informed decisionmaking.

Land Use and Planning – Compatibility:

In finding that the Project would have a less than significant impact on land use compatibility, the EIR completely fails to analyze compatibility with respect to the entire multi-residential community immediately to the south of the Subject Site. Focusing on the development along Sunset Boulevard, the EIR intentionally distorts the land use patterns in the area in order to conclude that there is a less than significant impact.

However, it is not enough to provide the conclusory statement that the characteristic land use patter in the area is the "juxtaposition" of higher intensity commercial uses with lower density residential uses. Specificity and use of detail in EIR's must be used since conclusory statements that are unsupported by empirical or experimental data, scientific authorities, or explanatory information afford no basis for comparison of the problems involved with a proposed project and the difficulties involved in the alternatives. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411.

The Project seeks to replace an 80,000 square foot, three-level structure with a 333,903 sq. foot, 16-story megaplex which will be built directly adjacent to 2-3 story residential dwellings. Its compatibility to such lower density residential uses is therefore completely different from the existing use, and must be analyzed, in tangible, factual detail.

Traffic

With regard to traffic impacts, it must preliminary be noted that per the very traffic study relied upon in the EIR, *almost all* of the intersections in the

vicinity of the Project are at an existing LOS of D or lower, including 10 which are *already* at an LOS of E of F. LOS E represents a traffic volume that is at capacity, which results in stoppages and unstable traffic flow, while LOS F represents volumes which are overloaded and characterized by stop-and-go traffic with stoppages of long duration (otherwise commonly referred to as "bursting at the seams").

Where traffic is already at LOS of D or lower, it is unacceptable to add any extra traffic impacts. Failing infrastructure cannot accommodate development that will only aggravate its already failing condition (**notably this is also one of the explicit reasons the "D" limitation was placed on the property**, see Exhibits 1-5). Nevertheless, hiding behind significance thresholds, the EIR disingenuously concludes that, except with regard to construction related traffic, the Project will cause a less than significant impact on traffic/transportation. This is incomprehensible and not in accordance with law.

The fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant, and the use of the Guidelines' thresholds does not necessarily equate to compliance with CEQA. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108-09. Therefore, in order to provide the requisite detail/information necessary for informed decisionmaking, the EIR must address why and how the thresholds being used for this particular Project, where traffic at all nearby intersections is already at LOS of D or lower, and where the very "D" limitation the Project seeks to avoid was imposed in part to avoid infrastructure failure, is an appropriate measure of its transportation impacts. If it cannot, ***it must disclose that the impacts on traffic are significant and unavoidable***.

Moreover, it is clear that the EIR, in order to make findings of "less than significant," skews the plain words of the thresholds. For instance, the EIR acknowledges that "Threshold TR-6," provides that a significant access impact would occur "if the intersection(s) nearest to the primary site access are projected to operate at LOS E or F during the a.m. or p.m. peak hour, under cumulative plus conditions." Completely ignoring the language of the threshold, however, the EIR instead concludes that the "operational characteristics, expected minimum driveway capacities, and the projected peak hour driveway traffic volumes of the Project would provide adequate capacity to accommodate the

anticipated maximum vehicular demands for both entering and existing traffic at each of the driveways. In addition, the driveways would provide sufficient queuing. Therefore, the Project would result in less than significant impact with regard to access."

But this "explanation" does not in any way address the actual threshold question about whether the intersection(s) nearest to the primary site access are projected to operate at LOS E or F during the a.m. or p.m. peak hour, under cumulative plus conditions. Again, this is because, in fact, if the threshold were applied correctly, this question would have to be answered in the affirmative and traffic impacts would be rendered significant and unavoidable. The EIR must disclose this.

Similarly, the EIR acknowledges that "a significant impact related to consistency with plans would result if the project would conflict with the implementation of adopted transportation programs, plans, and policies," but flatly concludes, without analyzing the requisite *in*consistencies, including MB 2035 and the City's findings which imposed the "D" limitation, that the Project would support the Community Plan in that the Project would not hinder the City's efforts to provide a circulation system coordinated with land uses and densities and adequate to accommodate traffic.

But that is not the threshold, the threshold requires a finding of whether or not the Project "conflicts," not whether or not it "hinders." Clearly, any project which increases density and/or number of residents in this already traffic-plagued area conflicts with the Community Plan to provide a circulation system coordinated with land uses and densities and *adequate* to accommodate traffic. At LOS of D or lower, the traffic surrounding the Project Site is already inadequate and therefore conflicts with the Community Plan. The EIR must disclose and analyze this impact.

Finally, as noted by the City of West Hollywood, the major impact (and therefore "problem") the EIR recognizes is that the Project will result in a significant traffic impact at the un-signalized intersection of Fountain Avenue and Havenhurst Drive, where the City of West Hollywood will not agree to allow the installation of a traffic signal, resulting in, yet another, un-mitigatable impact. Simply put, it is a shame that the City is considering a Project that not

only causes significant un-mitigatable impacts on its own residents, but also forces the residents of adjacent Cities to deal with the same.

Public Services – Fire and Police Protection

Compounding the detrimental impacts caused by the existing and projected traffic for residents and anticipated visitors to the Project, the EIR admits that the traffic in the area could significantly affect emergency vehicle response times (both fire and police) by further increasing traffic, thus further delaying such emergency response times. However, the EIR concludes that these impacts will be rendered less than significant by the imposition of Mitigation Measures TR-1 through TR-4, the Project's TDM Program, as well as improvements planned by the Los Angeles Fire Department ("LAFD") to improve their systems, processes and practices with regard to Fire Protection.

First, there are no proposed Mitigation Measures TR-3 or TR-4, the only traffic related mitigation measures are TR-1 (a traffic signal at Fountain Avenue/Havenhurst) and TR-2 (restrict the drop-off, turnout lane on Crescent to a right-turn only).

Second, it is completely unclear how Mitigation Measures TR-1 and TR-2, the Project's TDM Program, all of which have to do with traffic circulation on-site and along Havenhurst (including the fact that TR-1 is unenforceable) are in any way going to alleviate the significant impacts on emergency vehicle response times for LAFD vehicles which must travel *at least* 0.9 miles to get to the Project Site (the closest station, which only a "Single Engine Company" station, is 0.9 miles east of the Project, the other two, actual "Task Force Truck Company" stations are over 2 miles away) and police vehicles which must travel two miles from the 1358 North Wilcox Avenue police station. In other words, there is no nexus between the mitigation measures and the actual impact. *See CEQA Guidelines, §15126.4(a)(4)(A); Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)(there must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest).

Similarly, it is uncontested that the Applicant has absolutely no control over LAFD, or any of its plans to improve systems, processes and practices. Accordingly, there is no way to assure or enforce such implementation and

reliance on this "mitigation measure" is plainly inappropriate. *CEQA Guidelines*, § 15126.4 (a)(2) (mitigation measures must be "fully enforceable").

The City should take note that the LAFD itself expressed these concerns about the Project, **noting both that the required fire-flow requirements cannot currently be met for the Subject Property** and that **emergency medical response from the Truck Company station would be inadequate**. LAFD recommended that definitive plans and specifications be submitted to guarantee that all safety standards are met. But the EIR does not include any such mitigation efforts.

In order to be legally adequate, the EIR must analyze the specific impacts on fire and police protection the entirety of the way from their respective station(s), in detail, and provide, if possible, mitigation measures accordingly. It cannot simply state that Mitigation Measures which have nothing to do with the actual impact render the impacts "less than significant."

Geology and Soils

The January 8, 2014 Preliminary Alquist-Priolo Earthquake Fault Zone Map on which the EIR relies to evaluate geology and soils, particularly with regard to the Hollywood Fault, and which it concludes is located about 100 feet northwest of the Project site and not within it, is outdated. The Revised Official Maps of Alquist-Priolo Earthquake Fault Zones, released on December 4, 2015, show that the Project site is located on the active Hollywood Fault. This is a substantial change from the circumstances under which the original EIR was evaluated, and constitutes a danger to the community. To allow for complete, informed decisionmaking, the EIR must be updated to analyze this impact.

Further, in order to mitigate the impacts on geology and soils, the EIR imposes Mitigation Measure GS-1 requiring a qualified geotechnical engineer to prepare a report with recommendations, and that those recommendations be included into the Project. But it is well settled law that under CEQA requiring adoption of mitigation measures from a *future* study is impermissible. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07 (requiring applicant to submit a future hydrology study and soils study subject to review by County found deficient for improperly deferring environmental assessment to a later date); *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 (deferral is impermissible when agency "simply requires a project applicant to obtain a

biological report and then comply with recommendations that may be made in the report"). Therefore, any review and recommendation by a geotechnical engineer must be completed **before** the Project is approved.

Noise

Similar to traffic, in order to avoid a detailed analysis of noise impacts, the EIR simply concludes that because Project-related noise would not exceed established thresholds, impacts are less than significant. But, as discussed above, the use of the Guideline's thresholds does not necessarily equate to compliance with CEQA. In order to provide the requisite detail/information necessary for informed decisionmaking, the EIR must address why and how the thresholds being used for this particular Project, where the Project seeks to introduce an FAR that is triple what is otherwise allowed by the zoning limitations on the site and 249 residential units where no residential units currently exist, is an appropriate measure of its operational noise impacts.

VII. The Project, and EIR, Fail to Discuss the Need for a Street Vacation.

In connection with the Project, the Applicant proposes removal of the existing independent right turn lane off of Sunset Boulevard and to connect the existing triangular island at the southwest corner of the intersection to the Project site to create a plaza area adjacent to the northeast corner of the site. The EIR takes the incomprehensible position that such "connection" will not require any easements/dedications, but would, somehow, be "improved and maintained as public by the project applicant." **There is no process under the law for such a result**.

In fact, there are two legal options available to the Applicant. If the Applicant chooses to build a part of the Project on the existing, currently-public independent right turn lane, Street Vacation proceedings must be initiated on that portion of Crescent Heights Boulevard on which the Project will be situated, a process[7] (which includes Street Vacation findings which cannot be made here) that must be disclosed within the scope of the Project in the EIR and analyzed

[7] The hearing notice for the Tract Map, Conditional Use, Density Bonus and Spite Plan Review have failed to include a street vacation proceeding or the need for a street vacation.

(including a requisite report from the City Engineer). A private applicant cannot just decide to build upon an otherwise-public right of way by promising to "maintain" it.

Alternatively, if the Applicant does not want to go through a Street Vacation process, he must keep the Project within the boundaries of the private property which it owns. In that case, he must re-do the Project plans and update the traffic study, and floor area ratio calculations to analyze this change.

In any case, as it currently stands, **the Applicant is *misrepresenting* that a B-permit is all that is required for the construction of the Project onto Crescent Heights Blvd., a public right of way**. A street vacation is required and the impacts of a street vacation, including the process involved, must be disclosed and analyzed as part of the Project.

VIII. Alternative 9 is NOT an Adequate Solution

Alternative 9, the alternative which is supposed to alleviate view and parking concerns fails on both accounts. The projected Alternative 9 simulations clearly show that the alternative in no way improves the view concerns of the surrounding neighborhood. In fact, Alternative 9 is nothing more than a superficially "scaled down" version which does not alleviate the one impact of the Project which is causing all other problems: its density. **Alternative 9 retains the same *triple* FAR as the Original Project**.

Simply, no amount of creative findings drafting can take away the inherently overwhelming and inappropriate impacts of this Project, as proposed. The only way to reduce the impacts of the Project and to make the Project compatible with the surrounding neighborhood would be to scale the Project down to the FAR otherwise allowed on the Site.

The Councilmembers should also be aware that the recirculated EIR for Alternative 9, which eliminates access to the Project from Sunset Blvd. in no way explains how this alternative will alleviate congestion along Sunset Boulevard, which the EIR conclusively states will occur. In order to be adequate under CEQA, the EIR cannot simply assume a solution to an identified environmental impact, it must, with detail and specificity explain its impacts and the proposed mitigation measures/solutions.

For all of these reasons, the City should grant our appeal, deny the Project, as proposed, and send the Project and EIR back for further review by the Advisory Agency and Planning Department.

Very truly yours,

LUNA & GLUSHON

ROBERT L. GLUSHON