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October 21, 2016

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Los Angeles City Hall
200 N. Spring Street
Los Angeles, CA 90012

Re: City Planning Case Nos: VTT-72370-CN-2A, CPC-2013-2551-MCUP-DB-SPR-1A
EIR-2013-2552-EIR

Project Address: 8148-8182 West Sunset Boulevard; 1438-1486 North
Havenhurst Drive; 1435-1443 North Crescent Heights Boulevard

At its meeting on July 28, 2016, the City Planning Commission reviewed and considered the information contained in the EIR, confirmed the Deputy Advisory Agency's certification of the EIR, conditionally approved CPC-2013-2551-MCUP-DB-SPR, and granted in part/denied in part the appeal of Vesting Tentative Tract Map No. 72370-CN-1A, associated with the mixed-use development of 249 residential dwelling units and 65,000 square feet of commercial floor area. Appeals of the City Planning Commission's action relative to the first-level appeal of VTT-72370-CN-1A and of its actions of CPC-2013-2551-MCUP-DB-SPR, were filed by the City of West Hollywood on August 26, 2016.

**APPEAL ANALYSIS
VTT-72370-CN-2A
CPC-2013-2551-MCUP-DB-SPR-1A**

Appellant: City of West Hollywood

The Appellants' statements have been summarized in the following categories.

Appellant's Statements: Historic Resources

- The project should not be approved until a determination is made on the application for the Lytton Savings Building to become a Historic Cultural Monument.
- There should be a mitigation measure for the developer, not a third party, to relocate the bank building.
- The findings that historic preservation alternatives are infeasible are not supported by substantial evidence.

Staff Response

The Appellant argues that the project should not be approved until a determination is made on the application for the Bank Building to become a City of Los Angeles Historic Cultural Monument. On September 15, 2016 the City of Los Angeles Cultural Heritage Commission recommended that the Bank Building be designated a Historic Cultural Monument. However, the EIR and the findings adopted by the City Planning Commission acknowledged the Bank Building as a significant historic resource. The City Planning Commission adopted a Statement of Overriding Considerations with respect to this potential environmental impact. The bank building's potential designation as a Historic Cultural Monument does not invalidate or otherwise affect the action taken by the Planning Commission pursuant to CEQA. Further, the project would be required to comply with all regulations that govern Historic Cultural Monuments in the City of Los Angeles.

The Appellant argues that Mitigation Measure HIST-3, which requires the preparation of a feasibility study of the relocation of the bank building, should be completed prior to certification of the EIR and should be modified to require the developer to relocate the building instead of a third party in the event the study finds relocation to be feasible. Initially, it should be noted that generally relocation of an historical resource results in a substantial adverse change to the historical resource. (See CEQA Guidelines, section 15064.5(b)(1).) It is only under extremely limited circumstances when relocation of a historical resource can serve to mitigate significant impacts to a less than significant level. For these reasons, the City has not relied upon this mitigation measure to claim any reduction in the significant impacts to the Lytton Bank Building caused by this project and has determined that even with this mitigation measure imposed the impacts to the Lytton Bank Building remain significant and unavoidable. That being said, the City has included this mitigation measure to ensure that all reasonable steps are taken to try to preserve the Lytton Bank Building in some way.

Appellant's assertion that the feasibility study must be completed prior to certification of the EIR is incorrect. This does not constitute deferred mitigation for the following reasons: (1) the City is not relying upon this measure to actually mitigate impacts to the Lytton Bank Building for the reasons set forth above; (2) the measure establishes clear performance standards governing the contents of the feasibility study, and clear deadlines by which the feasibility study must be completed and for the steps following completion of the feasibility study should it determine that it is physically feasible to relocate the Lytton Bank Building.

Appellant's assertion that the City must require the applicant to relocate the Lytton Bank Building if it is determined to be physically feasible is also incorrect. Again, as stated above this mitigation measure is of limited value from a CEQA perspective as relocation of a historical resources generally results in causing a substantial adverse change to that resource. In addition, the applicant may not be in possession of a recipient site, nor can reasonably be required to come into possession of one. Further, there would be substantial uncertainties and potential legal restrictions related to the acquisition and permitted uses on an unknown site. Finally, the City has strong concerns that requiring the applicant to expend the significant resources to relocate the Lytton Bank Building may not meet the nexus and rough proportionality requirements of *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374 and *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854. In that case the mitigation measure proposed by Appellant would not be legally enforceable as required by CEQA Guidelines, section 15126.4(a)(2).

The Appellant claims that the decision of the City Planning Commission contradicts the analysis of historic preservation alternatives in the EIR. However, as discussed on CPC Letter of Determination (LOD) pages F-129 through F-134, the project decision makers may reject alternatives that were identified in the EIR as potentially feasible. As discussed on page F-130 of the CPC LOD, case law has established that notwithstanding the identification of an environmentally superior alternative in the EIR, a public agency may approve a project, even though its EIR identifies the project as having significant adverse environmental effects, if specific

economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR (see CEQA Guidelines 15091(a) and (b)). Project decision makers may balance such considerations as the ability to meet project objectives related to having an iconic, unified and cohesive site design, and for a gateway building in particular to have a signature architecture that is consistent and attractive at the street level as an entry to the city. In considering the balance of factors, the decision makers may reject a historic preservation alternative that will result in discordant architecture, constrain the project's benefits to the pedestrian environment, or reduce the social, environmental and economic benefits that are anticipated from the project. Contrary to the Appellant's assertions, there is indeed substantial evidence in the record to support the City Planning Commission's determination that Alternative 6 is infeasible, inclusive of the LOD findings cited above, the Statement of Overriding Considerations (CPC LOD pages F-153 through F-157), and numerous public comments and concerns received on the massing, height and design of the original project and alternatives considered in the Draft EIR.

Appellant's Statements: Mitigation Measure TR-1

- The City of Los Angeles has explored other mitigation measures for the intersection of Fountain Avenue and Havenhurst Drive, but only one mitigation was identified in the EIR
- Mitigation Measure TR-1 would result in cut-through traffic.
- The City of Los Angeles cannot "disclaim" responsibility for an impact that occurs in the City of West Hollywood.

Staff Response

The EIR, inclusive of the June 2016 Errata, makes clear that the intersection of Havenhurst Drive and Fountain Avenue is under the jurisdiction of the City of West Hollywood. Draft EIR page 4.J-66 concludes, "No other feasible improvements to the intersection of Fountain Avenue/Havenhurst Drive have been identified at this time, and should the City of West Hollywood determine that it does not wish to install a new traffic signal at this location, the project's impacts would remain significant and unavoidable" (see also Traffic Study Executive Summary page iv, and page 123, in Draft EIR Appendix H). The City of Los Angeles understands that the City of West Hollywood does not intend to implement the recommended Mitigation Measure TR-1, the installation of a traffic signal. The LOD and EIR therefore recognize that if the City of West Hollywood elects not to implement the recommended mitigation, impacts would remain significant and unavoidable (see CPC LOD pages C-24, F-109 through F-113), and the City Planning Commission appropriately found that this impact would remain significant and unavoidable and adopted a Statement of Overriding Considerations (CPC LOD pages F-153 through F-157).

The Appellant states the City has considered alternative mitigation measures to reduce this impact, but has not disclosed them in the EIR. The EIR fully evaluated potential traffic impacts and considered all feasible mitigation measures in order to reduce traffic impacts. Per the project's traffic consultant, due to the project location, mitigation options are generally limited to project-related trip reductions (e.g. transportation demand management, or TDM), roadway restriping, and/or a new traffic signal. As identified and fully discussed in both the project traffic study and various responses to comments, while the project will be required to implement a TDM program, reasonable estimates of the trip reductions associated with such a program would not be sufficient to mitigate the impact to less than significant levels. The TDM Program is still required, although no specific trip-reduction levels are proposed, but since it does not mitigate the impact, additional and/or supplemental measures were examined (See Draft EIR page 4.J-65, and Traffic Impact Analysis pages 119-123 in Draft EIR Appendix H).

The installation of new eastbound/westbound left-turn lanes on Fountain Avenue at Havenhurst Drive was initially considered as a potential mitigation measure, but the new left-turn lanes alone (or in conjunction with any trip reductions resulting from the required TDM Program) would not mitigate the impact, and additionally could result in potential secondary impacts due to the potential removal of existing on-street parking on the south side (eastbound side) of Fountain

Avenue. Please see Final EIR response to comment No. A9-10 and B1-45 for further discussion of restriping along Fountain Avenue.

Therefore, the only feasible and effective mitigation measure at the intersection of Fountain Avenue and Havenhurst Drive is the installation of the new traffic signal, which would fully mitigate the impacts of the project with or without any TDM trip reductions or the installation of new eastbound/westbound left-turn lanes on Fountain Avenue. Therefore, since neither the TDM trip reductions or left-turn lanes (either alone or in conjunction with each other) would reduce the impact at the intersection of Fountain Avenue/Havenhurst Drive to less-than-significant levels, they were not specifically identified as mitigation measures (although as noted above, the preparation of a TDM Program is a City requirement for a development of this size). It should be further noted that intersections in the City of West Hollywood were evaluated using that jurisdiction's methodology and significance criteria. Please see TIA pages 102-103 in Draft EIR Appendix H for further discussion in this regard.

The Appellant further argues that the City of Los Angeles cannot "disclaim" responsibility for an impact caused by a project within its jurisdiction. However, case law has made clear that a Lead Agency may determine that a mitigation measure that would have to be approved, enforced and/or implemented by another agency is not feasible. In *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 the Court ruled that even though the city identified significant impacts to two intersections located in the county (outside the city's jurisdiction) the City was not required to provide funding to install traffic signals at these intersections because the county had no existing plans to improve these impacted intersections. In this case, not only does the City of West Hollywood have no plans to improve the intersection of Fountain Avenue/Havenhurst Drive, it has now made it abundantly clear to the City that it will not authorize the mitigation measure for that intersection identified in the EIR. As such, the City of Los Angeles has no legal obligation under CEQA to provide funding to construct the mitigation measure identified in the EIR. That being said, the City has included as a mitigation measure the provision of funds to install the mitigation measure should the City of West Hollywood change its mind in the future.

The Appellant claims that the proposed installation of a traffic signal at Fountain Avenue and Havenhurst Drive would result in cut through traffic. Neighborhood street segments were analyzed in the EIR, and impacts on Havenhurst Drive between Sunset Boulevard and Fountain Avenue were found to be less than significant. As further discussed in the Final EIR (see Response to Comment A9-10), the proposed traffic signal primarily facilitates access to the project site for residents, and is not anticipated to induce further travel along Havenhurst Drive. Furthermore, Havenhurst Drive currently has speed bumps to discourage cut through traffic in this segment, and the two proposed signals would be mistimed to slow travel times and discourage cut through traffic. Per LADOT, these two measures are the most typical mechanisms considered to discourage cut-through traffic. The Appellant has not submitted substantial evidence to suggest that the installation of this mitigation measure (which the Appellant further states will never be implemented) would induce cut through traffic, and indeed the Appellant acknowledges that the speed humps and mis-timed signals "would only have the effect of slowing the traffic on Havenhurst," which is precisely the intended outcome when traffic engineers seek to discourage traffic on neighborhood streets. In summary, the City has proceeded in the manner required by CEQA with regard to the analysis of environmental impacts to the intersection of Fountain Avenue/Havenhurst Drive and the feasible mitigation measures to address the potentially significant impacts to that intersection.

Appellant's Statements: Traffic Study

- The traffic study overstates pass-by trips.
- The traffic study uses an improper baseline for existing uses.
- The greenhouse gas analysis is flawed due to incorrect assumptions in the traffic study.

Staff Response

The Appellant asserts that pass-by and internal capture traffic reductions are “overstated” and that rates are not based on substantial evidence. As discussed in Final EIR Topical Response TR-4 Traffic and Parking, and further documented in the traffic study (Appendix H to the Draft EIR and Appendix A to the RP-DEIR), pass-by traffic involves the “capture” of an existing trip passing by the project site. These existing trips are already on the area roadway network for other purposes, such as a trip to or from work, or perhaps to or from other shopping destinations. Such activity is considered to be an interim stop along a trip which existed without the development of the project, and therefore vehicles making these stops are not considered to be newly generated project-related traffic.

Per CEQA, the Lead Agency establishes the guidelines and procedures to be utilized for local traffic impact studies. Traffic studies in the City of Los Angeles are required to comply with DOT’s Traffic Study Guidelines. The Guidelines include a list of potential trip reduction credits that a project may be eligible for provided certain conditions are met. Traffic studies utilize trip generation rates from the latest Institute of Transportation Engineers (ITE) Trip Generation Handbook. According to the handbook, these trip generation rates are typically derived from surveys of similar land use developments but in areas with little to no transit service and with little to no nearby pedestrian amenities. The ITE Generation Handbook is also the source of the pass-by trip reduction rates identified in the LADOT guidelines.

As noted by a recent study and research project commissioned by Caltrans (“Trip Generation Rates for Urban Infill Land Uses in California”), the ITE rates do not reflect variations in development density, land use mix, site design, and the multi-modal transportation systems in large metropolitan areas - all critical factors in travel demand. For example, according to the Caltrans study, the weighted average trip generation rate for surveyed mid-rise apartments in the p.m. peak hour was 28% lower than the published ITE trip generation rate for mid-rise apartment. For these reasons, DOT’s traffic study guidelines allow projects to reduce their total trip generation to realistically account for transit usage to and from the site, and for the internal-trip making opportunities that are afforded by mixed-use projects.

LADOT has developed a series of recommended pass-by trip reduction factors for a variety of development types and sizes (Attachment I of LADOT’s Traffic Study Policies and Procedures, June 2013). Based on these recommendations, it is assumed that the retail components of the existing site development experience an approximately 50 percent pass-by trip reduction, while the proposed Project’s retail and supermarket uses will each exhibit an approximately 40 percent pass-by reduction. The existing and proposed bank uses, proposed health/fitness (yoga/dance studio) facilities, and existing restaurant uses (including the ice cream parlor) are each assumed to exhibit an approximately 20 percent pass-by trip reduction factor, while the proposed “quality” restaurant facilities experience an approximately 10 percent pass-by factor. LADOT identifies an approximately 50 percent pass-by adjustment factor for most fast food uses. As such, the trip generation estimates for the existing McDonald’s restaurant incorporate that assumption, although due to their less visible locations in the interior of the site, the other existing fast food uses are assumed to exhibit a somewhat reduced pass-by factor of approximately 35 percent. No pass-by adjustments are applicable for the site’s existing dental office, martial arts studio, or art storage facility, which are assumed to be “destination” uses with little pass-by activity. Therefore, the pass-by trip generation factors used in the Project TIA are consistent with, or more conservative than, those recommended by LADOT for similar uses. The Appellant suggests that this reduction of pass-by trips is not merited nor supported by substantial evidence. However, as noted above, such pass-by percentages and the internal capture rates cited and objected to by the Appellant are consistent with LADOT’s established Traffic Study Policies and Procedures, and are based on accepted national standards. The traffic study has been reviewed and approved by LADOT.

The Appellant further asserts that the “unique” nature and architecture of the project would warrant a reduction in pass-by trips and would cause additional trips that are unaccounted for in

the traffic study. However, there is not substantial evidence in the record to conclude that trips generated would be materially different from established traffic engineering standards for the mix of commercial land uses proposed by the project due to its architecture, nor are there methodologies employed or accepted by LADOT or the City of West Hollywood to do so. The Appellant's assertion is speculative and is not supported by evidence nor by established traffic engineering standards.

The Appellant takes exception to both the existing on-site occupancy assumed as the baseline in the traffic study. As further discussed in Final EIR Topical Response TR-4, LADOT has reasonably established a methodology for how to determine existing conditions. The methodology uses site-specific counts at the time of the NOP under certain circumstances involving unique uses, but it uses ITE's methodology based on broad-based data for more common uses. The applicant has further informed the City that while the project site has been fully occupied in recent years, some tenants did not renew their leases in anticipation of the proposed project. The appellant has not provided substantial evidence to suggest that the project site has historically not been occupied. Courts have recognized that where, as here, the baseline conditions have been artificially and temporarily altered, site-specific empirical data might not accurately describe the existing environment for purposes of establishing the baseline for CEQA analysis. More pointedly, the California Court of Appeals recently held that lead agencies may, in their discretion when backed by evidence of historic uses, establish a traffic baseline that assumes a fully occupied existing site. (*N. County Advocates v. City of Carlsbad* (2015) 241 Cal. App. 4th 94, 106.)

Furthermore, even if the estimation of existing traffic generation were required to account for temporary vacancies at the project site (which, as indicated above, is not required), the changes in impacts would be nominal. Additional analysis assumed that approximately 4,637 square feet of general retail use was vacant at the time the NOP was published and the Project TIA was prepared. The results indicate that the total net Project traffic would increase by approximately 99 trips per day, the Project's net AM peak hour trips would only increase by two (inbound) trips, and its net PM peak hour trips would only increase by nine trips (four inbound, five outbound). The results of the analyses indicate that there would be only nominal changes in the impacts at a few of the study intersections, but no changes in the conclusions of the overall study, since only one intersection impact (Fountain Avenue/Havenhurst Drive) during the PM peak hour would occur. Further, this analysis was conducted purely for informational purposes, as the project baseline was appropriately established, as discussed above.

The Appellant argues that the project would induce traffic due to overparking in an area with high demand due to existing commercial land uses in the project vicinity. The estimation of traffic patterns, as is standard and established practice in the City of Los Angeles, is based on traffic generated by land uses, not by parking spaces. The City of Los Angeles does not have an established methodology to address "induced" extra trips to off-site land uses based upon extra parking provided on-site, and per LADOT, the appellant's claims are not supported by traffic analysis or studies, nor established traffic engineering practice. Further, West Hollywood has failed to provide any substantial evidence that supports its assertion that the project's extra parking would induce additional trips. The Appellant further argues that architectural tourism due to the unique design of the site, are unaccounted for in the traffic study. The project's trip generation rates are based on nationally accepted standards (e.g. Institute of Traffic Engineers) and there is no substantial evidence to suggest that the unique architecture of this building would induce trips to any extent, and certainly not to the extent that they would materially affect the intersection analysis which is based on standard accepted traffic engineering practices.

The Appellant further argues that the greenhouse gas analysis in the EIR is flawed due to the aforementioned problems with the traffic study. As discussed above, the Appellant's points do not demonstrate any inadequacies of the traffic study that would invalidate the assumptions or analysis of greenhouse gases contained in the EIR.

Appellant's Statements: Sewer Infrastructure

- The project would cause maintenance impacts to City of West Hollywood Sewers.
- If the City of West Hollywood refuses sewer service to the project site, the City of Los Angeles would have to build a new sewer line, the construction of which could lead to environmental impacts that have not been analyzed.
- The applicant should be required to pay a fair-share fee as determined by the City of West Hollywood.

Staff Response:

Wastewater travels from the project to the City of Los Angeles mainline before entering sewer lines in the jurisdictions of the City of West Hollywood and the County of Los Angeles, and is ultimately treated in the City of Los Angeles' Hyperion Treatment plant. A Project Design Feature PDF-WW-1 was previously included in response to the City of West Hollywood's assertion that the project would result in impacts to sewer infrastructure within that jurisdiction. In a letter dated May 23, 2016 the City of West Hollywood provided their standard methodology for assessing fees for projects located entirely within their jurisdiction. In a letter dated June 21, 2016, the City of Los Angeles noted the Project Design Feature that had been proposed in response to the City of West Hollywood's claims relative to the project's incremental impact to affected facilities. In a conference call on Monday July 25, 2016, the City of West Hollywood conceded that they have no methodology for determining impacts associated with ongoing maintenance for pass-through usage of their mainline from properties outside their jurisdiction. The project site currently includes lateral connections to City of Los Angeles sewer main lines and existing sewer connections from the project site are entirely within the City of Los Angeles.

The EIR adequately determined the project's wastewater contribution would be approximately 2% of the remaining 46% capacity of downstream sewers in the City of West Hollywood, and impacts would be less than significant. The City of West Hollywood did not dispute the findings of the EIR, but rather requested that the project pay a fee as if the project were located entirely within the City of West Hollywood, which it is not. Moreover, the project site, which is currently improved, does not pay this fee to the City of West Hollywood and currently pays the City of Los Angeles' Sewer Service Charge, which is Los Angeles' regulatory mechanism to capture ongoing usage and maintenance of Los Angeles's sewer infrastructure. The City of West Hollywood was also not able to demonstrate that other properties in the immediate vicinity pay a similar fee, despite also passing through West Hollywood's mainline. Therefore, absent evidence of a significant impact or a master contract agreement with the City of West Hollywood, the City of Los Angeles cannot require the applicant to pay the fee to the City of West Hollywood.

The EIR appropriately evaluated sewer capacity, and existing regulatory measures ensure that impacts to ongoing sewer maintenance would be less than significant without the need for mitigation. The City of Los Angeles Sewer Facilities Charge provides for a one-time fee that occurs with new construction or a change of use that would increase flow and therefore potentially effect capacity. The fee is used for physical improvements and physical connections. The City of Los Angeles Sewer Service Charge provides for an ongoing fee for use of the mainline, and is used for ongoing system maintenance.

The City of Los Angeles has "Universal Terms" agreements with several other neighboring jurisdictions, such as the City of Beverly Hills and the Los Angeles County Sanitation District (CSD) No. 4, that establish payment terms for trunk sewers and treatment, but allow flows from other jurisdictions to pass through smaller Local System collection sewers (generally less than 30 inches in diameter) without charge. For example, the County Agreement covers instances when the City of Los Angeles connects to a County-owned trunk line, whereby the City of Los Angeles charges additional surcharge fees on top of the regular fee depending on where the wastewater ultimately is conveyed and treated. All sewer lines operated by the City of West Hollywood are local collection sewers. Trunk sewers within the City of West Hollywood are operated by CSD No.

4. Individual customers are charged a fee by the CSD, which captures trunk line costs for trunk sewers passing through the City of Los Angeles.

The City of Los Angeles does not have a Universal Terms agreement with the City of West Hollywood. The City of Los Angeles does not charge the City of West Hollywood for its current use of downstream City of Los Angeles local collection sewers. Likewise, the City of West Hollywood has not historically demanded payment for the pass-by use of West Hollywood local system sewers, including flows from the existing 80,000 square feet of retail space on the project site. There is no precedent or nexus for the City of West Hollywood to close local sewer connections that currently serve the project site and surrounding upstream area, nor to expect the EIR to evaluate potential impacts related to constructing a replacement sewer line. As noted in multiple responses to the City of West Hollywood's insistence that the project pay a "fair share" contribution, the appropriate mechanism would be a master contract similar to those currently in place with other neighboring jurisdictions that also use City of Los Angeles wastewater infrastructure. Absent a master contract agreement between the City of Los Angeles and the City of West Hollywood, there is no mechanism or nexus to project-related impacts to impose a maintenance fee on the project alone, nor would it be consistent with established practice in both cities.

Appellant's Statements: Scale and compatibility with surrounding area

- The projects is not compatible with the surrounding residential areas.
- The EIR should evaluate alternative locations.
- The project is inconsistent with Hollywood Community Plan policies.
- The project would result in shading impacts along Sunset Boulevard.

Staff Response

The Appellant states that the EIR should have evaluated alternative locations. However, it is well established that in contrast to public infrastructure projects, private development projects generally do not need to evaluate alternative locations as part of their alternative analysis, as it is reasonably assumed that the developer owns or controls the project site, but not multiple other sites in different locations. The Appellant states as justification that there are several unmitigable impacts that are caused specifically by the project's location. Contrary to the Appellant's assertions, with the exception of impacts to historic resources and to one intersection, the project's impacts are primarily temporary construction impacts which would likely occur with any comparable project in an infill area near existing residential and commercial land uses. Aesthetics and land use compatibility impacts were adequately evaluated in the EIR and were determined to be less than significant. A comparison of site specific conditions or potential impacts at unknown or non-existent sites is speculative and not supported by evidence, and would not be appropriate. There is no reason under CEQA to compel a private development such as the proposed project to consider alternative locations.

The Appellant claims that the project would be inconsistent with Hollywood Community Plan provisions requiring that the density and intensity of projects be limited in accordance with the ability of local streets and highways to accommodate them, citing pages HO-2 and HO-4, due to a significant intersection impact in the City of West Hollywood. Community Plan page HO-2 more specifically states that the "intensity of residential land use in this Plan and the density of the population which can be accommodated thereon, shall be limited in accordance with the adequacy of the existing and assured circulation and public transportation systems within the area." The project proposes 249 dwelling units, which is below the total allowable density of 278 units allowed by-right in the underlying C4 zone. Further, the project is located on an established commercial corridor that is well served by public transportation, including bus lines that serve over 11 million passengers annually per Metro's 2015 ridership data. As discussed above, the City of Los Angeles has identified a mitigation measure that would reduce impacts to the intersection of Havenhurst Drive and Fountain Avenue to below significant. However, if the City of West Hollywood elects not to implement the recommended mitigation, as they have stated their

intention to be, impacts would remain significant and unavoidable. The project has identified mitigation for its one intersection impact, which is recognized as significant due to its location in the City of West Hollywood. The refusal of the City of West Hollywood to implement recommended mitigation does not constitute an inconsistency of the project with the Hollywood Community Plan.

Community Plan page HO-4 states that no increase in density shall be effectuated by a zone change or subdivision unless the local transportation system can serve the traffic generated. Again, the project's proposed 249 units are fewer than the 278 allowed by the underlying C4 zone. Moreover, the project is not effectuating an increase in density by a zone change or by a subdivision. Rather, as noted above, the project is utilizing the State Density Bonus program, to fulfil the statewide policy objectives of providing affordable housing. Therefore, this cited Hollywood Community Plan section is not applicable for the approvals requested by the project. Moreover, the Hollywood Community Plan states that "Additional low and moderate-income housing is needed in all parts of this Community. Density bonuses for provision of such housing through Government Code 65915 may be granted in the Low-Medium I or less restrictive residential categories."

The Appellant argues that the scale of the project is incompatible with the surrounding area and is inconsistent with applicable policies, but fails to provide substantial evidence to substantiate these assertions. The Deputy Advisory Agency and City Planning Commission have correctly found, based on substantial evidence and as discussed beginning on page CPC LOD F-10 through F-13 and the VTT LOD pages 201-203 that the project is consistent with applicable general and specific plans. Land use consistency, including consistency with the Hollywood Community Plan, was fully addressed in the Draft EIR Section F., RP-DEIR Section 2.B.6, and in FEIR Topical Response TR-2, "Land Use and Planning." The compatibility of the project with its surroundings in relation to height and scale is further discussed in Draft EIR Section 4.A, RP-DEIR Section 2.B.1, and FEIR Topical Response TR-1 (Aesthetics / Visual Resources).

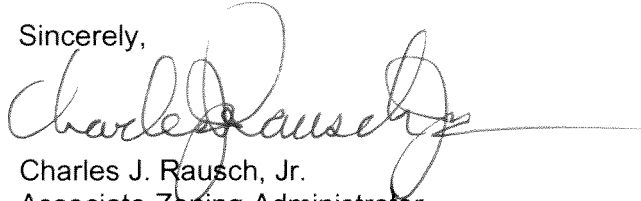
The Appellant notes that tower elements along Sunset Boulevard in the project vicinity are generally 10 stories at the highest, and that other tower elements are interspersed among low-rise elements. Indeed, as discussed in the EIR, the project massing and design are responsive to and consistent with the surrounding neighborhood context, massing and scale. The project massing is consistent with the existing land use pattern that contrasts higher intensity uses along the commercial areas on Sunset Boulevard with low-rise multi-family uses to the south and single-family residential areas demonstrating hillside topography to the north of Sunset Boulevard. This land use pattern applies to the project vicinity in both the Cities of Los Angeles and West Hollywood. As discussed throughout the CPC and VTT LODs and EIR, while the overall mass and scale of the east and west building components will be taller than surrounding structures, the setbacks and breaks in massing greatly limit the broad, large and flat building surfaces, in order to be responsive to the neighborhood character and the views of residences to the north and south of the project site. The project further incorporates a stepped back design and breaks in massing to respond to the scale of the lower intensity multi-family residential uses to the south and to the west of the project site. The residential portion of the west tower provides a variable 14- to 40-foot -foot setback along Havenhurst Drive, and the residential portion of the east tower will be setback from 4 to 28 feet from the property line. Rear setbacks for the residential portions of the east and west towers range from 15 to 30 feet from the property line. The massing and orientation of the taller building elements will open up an approximately 150-foot wide view corridor through the center of the project site, thereby softening the scale and appearance of the project as it relates to surrounding single- and multi-family residential areas.

The Appellant has misconstrued the shade-shadow provisions of the City of Los Angeles CEQA Thresholds Guide (2006). The Appellant argues that a significant shade shadow impact would occur because Sunset Boulevard would be under shadow for "most of the day." This interpretation is mistaken. The City's CEQA Thresholds guide identifies shade-sensitive uses as "routinely useable outdoor spaces associated with residential, recreational, or institutional (.e.g. schools,

convalescent homes) land uses; commercial uses such as pedestrian-oriented outdoor spaces or restaurants with outdoor seating areas, nurseries; and existing solar collectors.” (page A.301) A public sidewalk and/or public street is not a shade-sensitive use nor should be interpreted as such. The EIR correctly determined that shade/shadow impacts would be less than significant.

As the appellant has failed to adequately disclose how the City erred in its actions relative to the EIR and the associated entitlements, Planning staff respectfully recommends that the City of West Hollywood appeals, VTT-72370-CN-2A and CPC-2013-2551-MCUP-DB-SPR-1A, be denied.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles J. Rausch, Jr.", with a long horizontal line extending to the right.

Charles J. Rausch, Jr.
Associate Zoning Administrator
Department of City Planning