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January 5, 2017

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Planning and Land Use Management Committee  
Los Angeles City Hall  
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**Re: City Planning Case Nos:** CPC-2015-896-GPA-VZC-HD-MCUP-ZV-DB-SPR,  
VTT-74131-2A and ENV-2015-897-EIR  
**Council File Nos:** 16-1368-S2, 16-1368

**Project Address:** 333 S. La Cienega Boulevard

On November 10, 2016, the City Planning Commission certified the EIR, approved CPC-2015-896-GPA-VZC-HD-MCUP-ZV-DB-SPR, and granted in part and denied in part an appeal of VTT-74131-1A, for the construction of a mixed-use development consisting of 145 residential units, with 5 percent of the permitted base density set aside for affordable housing (7 Very Low Income units), an additional 7 units for Moderate Income households (not Density Bonus), and 31,055 square feet of commercial uses consisting of a 27,685 square-foot grocery market and a 3,370 square-foot restaurant.

An appeal of the City Planning Commission's actions relative to the Master Conditional Use Permit, Variance, the On-Menu Density Bonus Incentive and Site Plan Review of CPC-2015-896-GPA-VZC-HD-MCUP-ZV-DB-SPR, VTT-74131-1A and ENV-2015-897-EIR was filed on December 1, 2016. The appeal was filed by the Beverly Wilshire Homes Association, Inc. (BWA).

## APPEAL ANALYSIS

The Appellant's statements are generally duplicative of their November 10, 2016 appeal letter to the City Planning Commission of the Advisory Agency's determination of VTT-74131. The Appellant does not provide any new information or substantial evidence to justify the recirculation of the EIR or to otherwise dispute the findings of the EIR and the associated entitlements; however, a response to each of the Appellant's statements is provided below.

Appellant's Statement: City Charter Section 555 (General Plan Amendment)

- The project is inconsistent with the General Plan and, therefore, the City Planning Commission's approval of the General Plan Amendment violates City Charter Section 555.

### Staff Response

The Appellant claims that the project is not consistent with the General Plan, citing page 4.2-2 of the Draft EIR, which only references the project site's land use designation and zoning and does not refute any specific point. The Appellant also incorrectly references page 4.2-13 of the Final EIR, as this page actually corresponds to the Draft EIR. Notwithstanding, the Appellant's references to the Draft EIR don't refute any specific points about the project's consistency with the General Plan. The Appellant also claims that the project does not comply with Wilshire Community Plan Objective 2.3-1, which states:

2-3.1: Improve streetscape identity and character through appropriate controls of signs, landscaping, and streetscape improvements; and require that new development be compatible with the scale of adjacent neighborhoods.

Contrary to the Appellant's statement, this is not an objective, but a policy under Objective 2.3. Notwithstanding, the project improves the streetscape by installing new parkways with street trees; new, enhanced crosswalks; and bicycle racks, among other improvements. In addition, the ground floor retail uses and the project's ground level publicly accessible open space activate the pedestrian realm and improve the streetscape by introducing trees, turf, seating areas, a water, abundant glazing and canopies. The project's architectural design features a tower that is stepped back on a podium and features chamfered corners and abundant glazing to articulate the façade and reduce the perceived bulk of the building. Therefore, the project complies with the overarching objective (Objective 2.3) to "enhance the visual appearance and appeal of commercial districts." Therefore, the Appellant is incorrect in stating the project is not consistent with the General Plan.

The Appellant also claims that the City Charter prohibits general plan amendments for a single parcel of land for a single developer because Section 555 only allows that the General Plan may be amended in its entirety or by subject elements. However, Section 555 clearly states (emphasis added):

The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that *the part or area involved has significant social, economic or physical identity.*

The General Plan Amendment represents an Amendment in Part of the Wilshire Community Plan, representing a change to the social, physical and economic identity of project site, which is currently designated as Neighborhood Office Commercial and zoned C2-1VL-O. The General Plan Amendment to General Commercial is consistent with the General Commercial land use designation of other properties fronting La Cienega Boulevard to the east, southeast and south. Specifically, the properties to the east of the project site along La Cienega Boulevard between 3rd Street and 4th Street have a General Commercial land use designation. The properties to the southeast along San Vicente Boulevard and La Cienega Boulevard south of 4th Street also have a General Commercial land use designation. Finally, the property at 8500 Burton Way directly south of the project site also has a General Commercial land use designation. The change from Neighborhood Office Commercial to General Commercial would eliminate the last portion of Neighborhood Office Commercial from the La Cienega Boulevard corridor from 3rd Street to the Beverly Hills City limits at Colgate Avenue. The portion of the Wilshire Community Plan from Beverly Boulevard to the south is characterized by larger Regional Center and General Commercial uses such the Cedars-Sinai Medical Complex, the Beverly Center and the Beverly Connection shopping centers. This forms both a physical and economic identity to this area for larger commercial, residential and institutional uses in a transit rich area while being set back from nearby Medium and Low Medium density areas to the east by the major streets constituting La

Cienega and San Vicente Boulevards. Therefore, contrary to the Appellant's statement, the requested General Plan Amendment is for a specific geographic area that has significant social, economic or physical identity.

The Appellant also states that the City Planning Commission's approval of the General Plan Amendment violates City Charter Section 558, claiming a landowner or individual is prohibited from requesting a General Plan Amendment. However, the landowner did not initiate the General Plan Amendment. The Director of Planning initiated the proposed General Plan Amendment on February 24, 2015 in accordance with City Charter Section 555(B), which states that "[t]he Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan."

The Appellant also contends that the General Plan Amendment is unlawful because the General Plan Amendment is attempting to "mold the General Plan to a requested zone change." The subject property is located within the Wilshire Community Plan area (effective September 19, 2001), which designates the property as Neighborhood Office Commercial with the corresponding zones of C1, C1.5, C2, C4, P, CR, RAS3, and RAS4. The project includes a Zone and Height District Change for the entire project site from C2-1VL-O to (T)(Q)C2-2D-O. The land use designation of General Commercial has corresponding zones of C1.5, C2, C4, RAS3 and RAS4. The proposed Zone Change allows the construction of 125 residential units in conjunction with commercial uses under the corresponding C2 Zone. While the Zone Change will change the project site's height district from Height District No. 1VL to Height District No. 2D, with approval of the General Plan Amendment from Neighborhood Office to General Commercial and modification of Footnote No. 5.1, the project will be consistent with the land use designation.

In addition, approval of the Zone and Height District Change will create a project site that is consistent and compatible with the nearby commercially zoned properties. Specifically, the proposed (T)(Q)C2-2D-O zone is consistent with, and conforms to, the zoning pattern of properties in the immediate vicinity, where properties immediately to the east and southeast are designated as General Commercial with corresponding zones. The Beverly Connection and Beverly Center are located across 3rd Street to the northeast and north, and are in the [T][Q]C2-1VL-O, C2-1 and C2-1-O Zones. Pet Smart, Coffee Bean, a bridal shop, cell phone stores and a flower shop are located across La Cienega Boulevard to the east and are in the C2-1VL-O Zone. A mixed-use residential/retail building, 8500 Burton Way, lies directly to the south across Burton Way and is in the (Q)C2-2D-O Zone. Approval of the Zone and Height District Change will provide consistency between the land use designation and the zoning of the project site.

#### Appellant's Statement: Spot Zoning

- The City Planning Commission's approval constitutes illegal spot zoning.

#### Staff Response

While the project's entitlement requests include a Zone Change and Height District Change to modify the land use designation and zoning on the project site, none of these requests are illegal. As explained in detail above, Section 555 of the City Charter permits the project's General Plan Amendment to General Commercial, which is consistent with the General Commercial land use designation of other properties fronting La Cienega Boulevard to the east, southeast and south. The change from Neighborhood Office Commercial to General Commercial would eliminate the last portion of Neighborhood Office Commercial from the La Cienega Boulevard corridor from 3<sup>rd</sup> Street to the Beverly Hills City limits at Colgate Avenue. The portion of the Wilshire Community Plan from Beverly Boulevard to the south is characterized by larger Regional Center and General Commercial uses such the Cedars-Sinai Medical Complex, the Beverly Center and the Beverly Connection shopping centers. This forms both a physical and economic identity to this area for

larger commercial, residential and institutional uses in a transit rich area while being set back from nearby Medium and Low Medium density areas to the east by the major wide streets constituting La Cienega and San Vicente Boulevards. Therefore, the Appellant is incorrect in their assertion about the project constituting spot zoning.

Furthermore, while the Appellant argues that “spot zoning” occurs when a small parcel of land is subject to less restrictive zoning than surrounding properties, the project’s proposed (T)(Q)C2-2D-O zone maintains the commercial land use designation and adheres to the corresponding zones. In addition, while the Zone Change will change the project site’s height district from Height District No. 1VL to Height District No. 2D, Height District No. 2 does not have a height limit in the C Zones. Therefore, the project’s proposed height of 240 feet would be allowed with the height district change. As such, the Appellant’s claim that the project’s proposed Zone Change constitutes illegal spot zoning is wrong.

In addition, while the Appellant uses the case *Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302 to argue that the project does not provide a public benefit like the senior housing proposed in that case, the project provides much needed housing near public transit options. The Appellant claims that the project is an example of “luxury housing,” whose tenants will not use public transit. However, such speculation about rents and transit usage is not only not considered a significant impact under CEQA, but it also fails to acknowledge that the project is providing 7 units for Very Low Income Households and 7 units for Moderate Income units (not Density Bonus) and that the project is serviced by several transit lines that collectively achieved 30,019,890 transit rides in 2015. In addition, the project is substantially consistent with several key goals of the Wilshire Community Plan, including the following:

- |                       |   |
|-----------------------|---|
| <i>Objective 1-2:</i> | <i>Reduce vehicular trips and congestion by developing new housing in close proximity to regional and community commercial centers, subway stations, and existing bus route stops.</i>                          |
| <i>Policy 1-2.1:</i>  | <i>Encourage higher density residential uses near major public transportation centers.</i>  |
| <i>Objective 1-4:</i> | <i>Provide affordable housing and increased accessibility to more population segments, especially students, the handicapped and senior citizens.</i>  |
| <i>Policy 2-2.1:</i>  | <i>Encourage pedestrian-oriented design in designated areas and in new development.</i>   |
| <i>Policy 2-2.3:</i>  | <i>Encourage the incorporation of retail, restaurant, and other neighborhood serving uses in the first floor street frontage of structures, including mixed-use projects located in Neighborhood Districts.</i> |

Therefore, the Appellant’s claims about the project being an example of spot zoning are factually incorrect.

#### Appellant’s Statements: Statement of Overriding Considerations and Alternatives

- The Statement of Overriding Considerations is defective and unlawful.
- Failure to properly analyze and adopt proposed feasible alternatives violates CEQA.

## Staff Response

The Appellant cites CEQA Guidelines Section 15091 (Findings) to argue that lead agencies cannot approve projects with significant environmental impacts for which there are feasible alternatives. However, Section 21081(B) of the California Environmental Quality Act (No Approval if Significant Effect Unless Findings) clearly states that a public agency may approve a project with one or more significant environmental effects if “the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.” The City Planning Commission’s Letter of Determination (LOD) dated November 18, 2016 in the Statement of Overriding Considerations beginning on page F-61 states that despite the unavoidable noise impact caused by the construction of the project, the City approves the project based on the following contributions of the project to the community:

- Develop an infill site with a high-density, mixed-use development with much needed rental housing, including 7 units for Very Low Income Households and 7 units for Moderate Income Households, near employment centers like the Cedars-Sinai Medical Center and Beverly Center, and next to the mixed-use boulevard and district identified in the Wilshire Community Plan along 3rd Street between La Cienega Boulevard and Fairfax Avenue.
- Provide new retail with goods and services needed in the community, specifically a 27,685 square-foot grocery market and a 3,370 square-foot restaurant, that complements the commercial uses in the surrounding vicinity, including the Beverly Center, Beverly Connection, commercial/retail shops along 3rd Street and the ground floor retail located at 8500 Burton Way. These new retail uses will also generate 84 new jobs.
- Reinforce the City’s commitment to facilitating a reduction in air quality, greenhouse gas and traffic impacts by locating employment-generating land uses and residences in an area well served by public transportation, including, but not limited to, the Metro Purple Line station at Wilshire Boulevard and La Cienega Boulevard (expected 2023) and existing Metro local bus lines, a Los Angeles Department of Transportation DASH route, and an Antelope Valley bus line, thereby reducing vehicles miles traveled and associated air quality and greenhouse gas emissions impacts.
- Support the City’s policies related to encouraging multimodal transit by providing 299 bicycle parking spaces throughout the project site, including in a fully-covered and secured “bike lounge” with direct access to the bicycle lane on San Vicente Boulevard. In addition, the project improves bicyclist safety by adding green painted bicycle lanes with conflict markings along San Vicente Boulevard and Burton Way, and adding a bicycle signal request light on the west side of the project site along San Vicente Boulevard. The project further supports other modes of transit by adding a new bus shelter for the Metro Local Route 105 bus line along La Cienega Boulevard, north of San Vicente Boulevard.
- Add new open space by replacing an underutilized building currently used as a parking structure with a new, ground level 6,910 square-foot plaza with landscaping and a water feature with sitting areas at the corner of La Cienega Boulevard and San Vicente Boulevard that enhances the visual character of the neighborhood and creates a pedestrian-friendly environment within and around the project site. This new open space at this location also establishes a primary entry to the Cedars Sinai-Beverly Center as recommended by the Wilshire Community Plan.
- Activate the public realm and improve the pedestrian experience by enhancing the existing streetscape with improvements, such as new trees and sidewalk parkways. In addition, the project further supports pedestrian safety by adding the following: enhanced crosswalks from the project site across La Cienega Boulevard, San Vicente Boulevard and on Burton Way; a widened crosswalk in front of 8500 Burton Way; a new controlled right-turn light along the southbound lane of La Cienega Boulevard, north of San Vicente

Boulevard; a new landscaped median with a pedestrian refuge island along La Cienega Boulevard, north of San Vicente Boulevard; and a new pedestrian signalized crossing with enhanced crosswalks at La Cienega Boulevard and Blackburn Avenue.

- Create a 1,650 square-foot community room with a small meeting room and preparation kitchen for the use of residents and other community members.

As such, pursuant to Section 21081 of the California Public Resources Code and Section 15093(B) of the CEQA Guidelines, the lead agency may adopt a Statement of Overriding Considerations for the project stating the reasons to support its action based on the Final EIR and/or other information in the record. These findings and the Statement of Overriding Considerations are based on substantial evidence in the record, including but not limited to the Final EIR, the source references in the Final EIR, and other documents and material that constitute the record of proceedings. The Appellant does not provide evidence to the contrary.

Furthermore, contrary to the Appellant's statement, CEQA does not require that feasible project alternatives that are less impactful be adopted. Rather, CEQA requires that a range of feasible alternatives be analyzed and, among those, that an Environmentally Superior Alternative be identified (CEQA Guidelines Section 15126.6(e)(2)). In addition, an important consideration in the analysis of alternatives is the degree to which the alternative achieves the project objectives. Contrary to the Appellant's assertion that there is no evidence as to why the alternatives were determined to be infeasible, the LOD, beginning on page F-52 in the "Alternatives to the Project" section, fully analyzed three alternatives: the No Project Alternative, the Existing Zoning Alternative (Option 1, Medical Office building + 2, Medical Office/Residential building) and a Reduced Density Alternative. In addition to analyzing these three alternatives, an All Commercial Alternative and an Off-site Location Alternative were rejected as infeasible due to their failure to meet most of the basic project objectives, the alternative's infeasibility, or the alternative's inability to avoid significant environmental impacts. Notwithstanding, the LOD discloses on page F-52 that none of the alternatives substantially lessen or avoid the significant effect from construction noise from the project. Therefore, the Appellant's assertion that an alternative should have been adopted is incorrect because none of the alternatives avoid the project's significant impact and do not meet the project objectives to the same extent as the project.

#### Appellant's Statement: Fire Services

- There is a significant impact to fire protection because the project exceeds the response distance.

#### Staff Response

Contrary to the Appellant's assumption that if a project exceeds response distance there is a significant impact on fire protection services, the 2006 *City of Los Angeles CEQA Thresholds Guide* lists this screening criterion to determine if further environmental analysis is warranted and as a consideration in the analysis. Because the project site is approximately 1.7 miles from the Fire Station No. 61, which is slightly farther than the screening criterion for LAFD response distance of 1.5 miles, the potential impact was analyzed in the Initial Study, which concluded that the project has a less-than-significant impact on fire protection services. The project does not result in any substantial impacts to any of the 25 signalized intersections around the project site, such as the intersections at 3<sup>rd</sup> Street and La Cienega and 3<sup>rd</sup> Street and Crescent Heights Boulevard, which could provide access to the project site. Specifically, the intersection at 3<sup>rd</sup> Street and La Cienega would operate at LOS D in the AM peak hour and LOS C in the PM peak hour under the Future with Project conditions. The intersection at 3<sup>rd</sup> Street and Crescent Heights Boulevard would operate at LOS C in the AM peak hour and LOS B in the PM peak hour under the Future with Project conditions. In addition, the Draft EIR beginning on page 4.4-34, shows

that the project would not disrupt emergency access routes. Therefore, even though the project site is beyond the 1.5 mile distance, the project would not impair the access route.

In addition, the project site is not located in a brush fire hazard area, or wildfire hazard area. The project would not result in the use, manufacture or storage of toxic, readily combustible, or otherwise hazardous materials. Also, the Fire Service Pressure Flow Report dated November 18, 2015 for the project was approved, indicating that the project meets the overall fire flow requirement. Therefore, the project would not have a significant impact by impeding the access route, and would not have an impact from being located in a fire hazard area, or result in a deficient fire flow.

Regarding the Appellant's assertion that the project would exceed the maximum response time, the 2006 City of Los Angeles CEQA Thresholds Guide does not prescribe what those times are. In the absence of such metrics, the Initial Study relied on an analysis of the aforementioned factors and consultation with the LAFD pursuant to the 2006 City of Los Angeles CEQA Thresholds Guide to ascertain whether the project would exceed the significance threshold, which is if the project requires the addition of a new fire station or the expansion, consolidation or relocation of an existing facility to maintain service. The Appellant fails to provide evidence that "it would take more than five minutes for Station 61 to respond." In fact, FireStatLA states that the EMS average travel response metric was 4 minutes and 43 seconds for January to November 2016. Consultation with the LAFD confirmed that the response time to the project site would be 5 minutes. The Appellant erroneously cites a 5 minute and 42 second response time by adding the average turn out time of 59 seconds to the average travel time of 4 minutes and 43 seconds. Notwithstanding, as stipulated in the LAMC, when response distances exceed any of these recommendations, all structures must be equipped with automatic fire sprinkler systems and any other fire protection devices deemed necessary by the Fire Chief (e.g., fire signaling systems, fire extinguishers, smoke removal systems). Therefore, the project is required to comply with the Fire Code, California Health and Safety Code and other Los Angeles Fire Department (LAFD) requirements, specifically to install automatic fire sprinkler systems and smoke alarms, fire extinguishers, building access, and emergency response notification systems. Therefore, the Initial Study determined that compliance with the regulations reduces potential impacts on fire protection services to less-than-significant levels. Furthermore, the captain of the Fire Station No. 61 confirmed that, based on the employee and resident generation and project details, that there would no need to build a new fire station or expand the existing station. Therefore, contrary to the Appellant's statements, the project has a less-than-significant impact on fire protection services.

#### Appellant's Statement: Adequacy of the Final EIR

- The Final EIR does not adequately respond to comments in violation of CEQA.

#### Staff Response

The Appellant claims that the Final EIR did not adequately respond to concerns about fire protection services. However, the Final EIR did respond, beginning on page 2-55, and the Appellant's statements about fire protection services are further addressed in the previous response above. In addition, the Final EIR, released on September 12, 2016, adequately responded to all of the comments that were received on the Draft EIR. The Appellant presents no evidence to the contrary.

#### Appellant's Statements: On-Menu and Off-Menu Incentives

- The City abused its discretion in permitting the On-Menu Incentive to allow a 20 percent in FAR, and the Off-Menu Incentive to allow a 6:1 FAR using a height district change and waiver of development standards.

## Staff Response

The Appellant has incorrectly conflated the project's requested height district change with the density bonus and associated on-menu and off-menu incentives. Specifically, the Appellant claims that the project's FAR increase pursuant to LAMC Section 12.22-A,25 (Density Bonus) constitutes an "ad hoc" height district change. However, the LOD on the cover page under No. 3 clearly states that the project includes a Vesting Zone and Height District Change from C2-1VL-O to (T)(Q)C2-2D-O. This requested approval is the mechanism for the height district change, not the density bonus as the Appellant erroneously claims. The density bonus and incentives are separate, as clearly stated under Nos. 6-8 of the LOD cover page. The Appellant also erroneously claims that there are no findings relative to the height district change. However, the LOD beginning on page F-11, clearly contains the "Zone and Height District Change Findings." Therefore, the City did not violate Section 556 because findings were made relative to the height district change.

The Appellant also erroneously claims that the City treats the on-menu incentive as a "de facto ministerial act" and the off-menu incentive as a "variance." However, the on-menu incentive is clearly not a ministerial act as it was presented as a requested discretionary action to the City Planning Commission. The on-menu incentive was requested pursuant to LAMC Section 12.22-A,25(F)(4)(i) relative to a menu of incentives for housing development projects that qualify for a density bonus. Similarly, the Appellant confuses the off-menu incentive with a variance, which is another entitlement in and of itself. The off-menu incentive is not a variance – it is an incentive pursuant to LAMC Section 12.22-A,25(G)(3) relative to requests for waiver or modification of any development standards not on the menu for housing development projects that qualify for a density bonus. The requested incentives are allowable pursuant to LAMC Section 12.22-A,25 relative to Affordable Housing Incentives – Density Bonus, which establishes procedures for implementing State Density Bonus requirements (SB 1818). Therefore, the Appellant is clearly wrong in stating that the incentives are a "perversion of SB 1818 and...unlawful." Finally, the Appellant claims that there are no findings relative to the FAR increases. However, the LOD beginning on page F-21, contains the "Density Bonus/Affordable Housing Incentives Compliance Findings." Contrary to the Appellant's statement, the Density Bonus findings do not include a finding on whether the density bonus or incentives are consistent with the "scale and character of the community, as otherwise required by the Wilshire Community Plan." The Appellant makes a blanket statement that the Wilshire Community Plan requires consistency with scale and character without providing any details. Notwithstanding, the project is consistent with several objectives, goals and policies of the Wilshire Community Plan, including Objective 1-2 and Policy 1-2.1, which state:

Objective 1-2: Reduce vehicular trips and congestion by developing new housing in close proximity to regional and community commercial centers, subway stations and existing bus route stops.

Policy 1-2.1: Encourage higher density residential uses near major public transportation centers.

In addition, the Zone and Height District Change Findings conclude that the recommended action is consistent with the General Plan, specifically that the infill development will further the objectives, policies and programs of the Wilshire Community Plan by reducing vehicular trips via the development of new housing in close proximity to regional and community commercial centers; encouraging higher density residential uses near major public transportation centers; preserving and strengthening viable commercial development; and promoting distinctive commercial districts and pedestrian-oriented areas.

Finally, the Appellant claims that the Density Bonus off-menu incentive is a "means to circumvent Proposition U" and unlawful. While Proposition U limited the permitted Floor Area Ratio to a FAR



of 1.5:1 in certain areas, the recommended approvals for the project utilize a Density Bonus and an on-menu and off-menu incentive pursuant to the aforementioned State Density Bonus law. Therefore, utilizing these density bonus provisions is not unlawful. The Appellant provides no evidence to the contrary.

### Conclusion

The Appellant has failed to provide substantial evidence to dispute the City's analysis of the project in the EIR and does not adequately disclose how the City erred in its actions relative to the certification of the EIR and the approval of the associated entitlements. As such, Planning staff respectfully recommends that the appeal be denied.

Sincerely,



Alejandro A. Huerta  
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