ORIGINAL

APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning

Regarding Case Number: VTT-74131; ENV-2015-897-EIR; CPC-2015-896-GPA-VZC-HD-MCUP-ZV-DB-SPR

Project Address: 333 S. La Cienega Blvd., Los Angeles

Final Date to Appeal: 11/28/2016 and 12/5/16

Type of Appeal:
- ☐ Appeal by Applicant/Owner
- ☑ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
- ☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Beverly Wilshire Homes Association, Inc.

Company: _____

Mailing Address: 8443 West Fourth Street

City: Los Angeles State: CA Zip: 90048

Telephone: _____ E-mail: theBWHA2@aol.com

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

  ☑ Self ☐ Other: _____

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

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Sabrina D. Venskus, Esq.

Company: Venskus & Associates, A.P.C.

Mailing Address: 1055 Wilshire Blvd., Suite 1660

City: Los Angeles State: CA Zip: 90017

Telephone: (213) 482-4200 E-mail: venskus@lawsv.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☑ Entire ☐ Part

Are specific conditions of approval being appealed? ☑ Yes ☐ No

If Yes, list the condition number(s) here: The entirety of the Project

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: Rosalie Wayne Date: November 28, 2016

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: $89.00	Reviewed & Accepted by (DSC Planner): Brian Carr	Date: 11/28/16
Receipt No: 33384	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

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Attachment to Appeal to City Council

The Beverly-Wilshire Homes Association ("Association" or "Appellant" or "BWHA") hereby appeals the Planning Commission of the City of Los Angeles' (hereinafter "Commission") November 10, 2016, Decision (hereinafter the "Decision") approving all of CRM Property's (hereinafter "Applicant" or "landowner" or "developer") requested entitlements, and certifying the Environmental Impact Report and Statement of Overriding Considerations for the proposed project located at 333 S. La Cienega Boulevard (hereinafter "Proposed Project.")

I. Appellant is an Aggrieved Party

The Beverly Wilshire Homes Association (BWHA) is a non-profit, incorporated organization of property owners, residents and businesses within the area bounded by La Brea to La Cienega and Rosewood to the north side of Wilshire Boulevard. Since 1956, BWHA has been the voice of the community. Its mission is to improve the quality of life for BWHA's members and for the greater BWHA community. The Proposed Project is adjacent to the BWHA community's western border and will severely and negatively impact the BWHA community. The Project as currently proposed fails to comply with applicable State and City ordinances and plans, including the City Charter, the City's General Plan Framework Element, the Wilshire Community Plan, the California Environmental Quality Act, and the California Government Code, thereby permanently debasing the character, scale, and livability of the Wilshire Community Plan area, including the Beverly-Wilshire neighborhood.

Furthermore, the general plan amendment which is required to enable this community plan non-compliant Proposed Project, runs afoul of the City Charter and constitutes unconstitutional spot zoning. Allowing developers to deviate from community plans and long-established height maximums and design precedents only invites future landowners to request (and receive) additional deviations from existing ordinances and plans, further eroding the community character and quality of life of existing residents and businesses. Additionally, the Commission's approval of an Off-Menu incentive to increase the permitted Floor Area Ratio (FAR) of the Project under the guise of

two SB1818 density bonuses constitutes an unlawful circumvention of Proposition U, an Initiative passed by City voters (including Appellant's members) in November 1986.

For these reasons and more, Appellant is an aggrieved party for purposes of the instant appeal.

II. Reasons for Appeal.

A) The Commission's approval the Proposed Project violates Los Angeles City Charter Section 555

The Proposed Project does not comply with the existing General Plan. (See FEIR 4.2-13; DEIR 4.2-2; Wilshire Community Plan Objective 2.3-1; discussion Section III of this letter.) To skirt General Plan requirements, the developer requested a General Plan amendment to change the land use requirements for 333 La Cienega, (See FEIR 4.2-16, 4.2-13.) The Commission has violated the City Charter by amending the City's General Plan specially for this private property owner and developer.

A Charter City must comply with all provisions of its City Charter, which, essentially serves as the City's Constitution. "In the case of a charter city [such as Los Angeles], 'the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state constitutions and to preemptive state law." (*San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees' Retirement System* (2012) 206 Cal.App.4th 594, 608 ["*San Diego*"].) A "charter city may not act in conflict with its charter… any act that is violative of or not in compliance with the charter is void." (*Ibid.*, citing (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.)

Los Angeles City Charter Section 555 ("Section 555") prohibits the City from proposing or approving a general plan amendment for a single parcel of land for a single developer. Charter Section 555 provides that the General Plan may only 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.*" (City Charter § 555(a).) Essentially, Section 555 provides that the City cannot make piecemeal amendments to the General Plan, which provides consistent, comprehensive land use planning for the City. The Applicant has not requested that the General Plan be amended in its entirety or by subject elements, such as housing, transportation, etc. (See FEIR 4.2-16, 4.2-13.) Nor has the Applicant requested that the General Plan be amended for a

specific geographic area that has significant social, economic, or physical identity. (*Ibid.*) 333 La Cienega cannot be said to possess its own significant social, economic, or physical identity. It is simply a parcel of commercial land within a broader neighborhood that shares geographic, social, economic, and physical qualities. (See FEIR 4.2-1 – 2.) A General Plan Amendment that solely applies to the Project site therefore violates Section 555.

Approval of the General Plan Amendment request would also violate City Charter section 558 ("Section 558") and Los Angeles Municipal Code ("LAMC") section 11.5.6. Section 558 prohibits a landowner or individual from requesting a General Plan amendment. Under Section 555(b), only "[t]he Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan." L.A.M.C., section 11.5.6 states "an amendment to the General Plan may be initiated by the Council, the City Planning Commission or the Director of Planning." Initiation of a General Plan amendment by anyone other than ["t]he Council, the City Planning Commission or the Director of Planning", including a landowner, is violative of the Charter, and therefore, void. (See City Charter § 555(b); *San Diego, supra,* 206 Cal.App.4th at 608.) Under Section 555(b) and LAMC section 11.5.6, a landowner may not request any amendment to the General Plan.

The Applicant's request for a General Plan Amendment is also unlawful because zone changes must be consistent with existing General Plan requirements. Under the Charter, though a landowner may apply for a zone change, the zone change must still be consistent with the existing General Plan. (*Id.* § 558.) The Charter states, "an ordinance, order or resolution [to change any zones or regarding zoning regulations] may be proposed by the Council, the City Planning Commission, or Director of Planning, *or by application of the owner of the affected property if authorized by ordinance.*" (*Id.* §§ 558(a)(1)(2), (b)(1), emphasis added.) If a landowner requests a zone change, the Planning Commission is required to ensure that a requested zone change is consistent with *existing* requirements imposed by the General Plan. (See *Id.* § 558(b)(2).) It must make a "recommendation regarding the relation of the proposed ordinance, order or resolution to the General Plan." (*Ibid.*) A landowner, therefore, may not request amendments to the General Plan in order to mold the General Plan to a requested zone change. (Compare City Charter §§ 558 and 555; see also L.A.M.C., Section 12.32.) That would be akin to changing the State Constitution so that otherwise unconstitutional legislation would be rendered constitutional.

As such, the City may not lawfully approve the Applicant's, or any other individual landowner's, request for a General Plan Amendment for a specific project site or parcel.

B) The Commission's Approval of the Proposed Project Constitutes Illegal Spot Zoning

The General Plan is the basic land use charter that embodies fundamental land use and planning decisions and governs the direction of future land use in a city's jurisdiction. The purpose of the General Plan is to inform citizens, developers, decision makers and other cities of the ground rules that guide development within the community. Any subordinate land use action, such as a zoning ordinance, that is not consistent with a city's current general plan, is invalid at the time it is passed. *Lesher Communications, Inc., v. City of Walnut Creek*, (1990) 52 Cal.3d 531.

The Proposed Development's application provides that the Property be rezoned from C2-IVL-O to C2-2-O, in order to change the Height District 1VL to Height District 2. (DEIR, 4.2-13.) This rezoning is not consistent with the General Plan because it is not consistent with the Wilshire Community Plan.

The Commission's approval of the zone change and height district change enables the landowner to construct a 240-foot tall building, when surrounding property owners are limited to building no more than 45 feet in height. (DEIR, 4.2-10, 4.2-13.) The zone change vests the developer with the right to a significant ncrease in height. (See *ibid.*) The Commission's approval of the Proposed Development in its current form, therefore, constitutes unlawful spot zoning.

"A spot zone results when a small parcel of land is subject to… *less* restrictive zoning than surrounding properties." (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1312, 1314 review denied (Apr. 30, 2014).) Discriminatory spot zoning that up-zones a specific property at the expense of the surrounding community is only proper where "a substantial public need exists." (*Ibid.*; *id.* at 1307.)

In *Foothill*, the court looked to whether the spot zoning was consistent with applicable General and Specific Plans to determine whether a substantial public need necessitated the change in zoning. (See *id.* at 1314-1319.) The applicant wished to create a senior living home in an area zoned for residential uses, that did not permit senior living facilities. (See generally, *id.*) The proposed senior living facility, however, was quite similar to the surrounding zoning. It "was residential in nature," "designed to be similar in scale to the surrounding residential units," and the project's "orientation, including… enhanced setbacks [and] building heights… visually maintain[ed] the area's residential character." (*Id.* at 1317.) In addition, the applicable General Plan identified senior housing as "an important concern" and provided that "Senior housing projects are a permitted use within

any residential zoning district… [t]he zoning ordinance is not considered to be a constraint to the development of senior housing." (*Id.* at 1315-1316.) Under these specific circumstances, the court found that there was a substantial public need for a senior home in this location. (*Ibid.*)

The Proposed Development here is not the result of a substantial public need. The General Plan does not prioritize a need for luxury housing, nor do such uses meet a public need that rises to the level of providing senior housing. In fact, the spot zoning requested for the Proposed Development is contrary to the public interest, and, unlike the development in *Foothill*, is contrary to the objectives of the General Plan.

The Proposed Development is governed by the Wilshire Community Plan ("Community Plan"), which is part of the Land Use Element of the City's General Plan. (DEIR, 4.2-2.) The Community Plan designated the site of the Proposed Development as Neighborhood Office Commercial. (*Ibid.*) Community Plan Objective 2.3-1 provides that in this designated area, the City must "require that new development be compatible with the scale of adjacent neighborhoods."

The Project, however, as proposed, is completely incompatible with the scale of adjacent and existing neighborhoods. For example, under existing zoning requirements, maximum height of any new development must be maintained at no higher than 45 feet, but if the Proposed Project contemplates a 240-foot structure. (DEIR, 4.2-10, 4.2-13.) The highest surrounding buildings, at Cedars-Sinai Hospital, are generally 8 stories tall, while this Proposed Project's height of translates into approximately 20 stories, which is more than twice the number of stories of buildings in the vicinity – in this case buildings that meet a clear public need – a large hospital. Furthermore, most buildings on La Cienega Boulevard, to the north, between Beverly Boulevard and West Hollywood, conform to the corridor's 45-foot height limit required by its C2-1VL zone. To the south, nearly all buildings between this site and Wilshire Boulevard also conform to the 45-foot height requirement.

In addition, the Wilshire Community Plan provides that development must "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." (Wilshire Community Plan Objective 1-2.) Though the Proposed Development claims that the project will reduce vehicular trips and congestion, however, evidence in the record indicates that the Project would serve higher-income residents who will not utilize public transit, and therefore, will increase traffic on already congested streets. (DEIR; See Wattenhoffer, *The Latest Look for the 19-Story Luxury Apartment Tower Set to Rise By the Beverly Center* (Oct. 14, 2015) Curbed LA

<http://la.curbed.com/2015/10/14/9911464/caruso-333-la-cienega-apartment-tower-renderings> ["*The Latest Look*"]; Vincent, *Rick Caruso Plans to Build Luxury Apartment Building Near Beverly Center* (Mar. 9, 2015) Los Angeles Times < http://www.latimes.com/business/la-fi-caruso-apartments-20150310-story.html> ["*Caruso Plans*"].) As such, it cannot be said that the Proposed Project meets a significant public interest, or that the spot zoning approved by the Commission is lawful. There is no demonstrated need for additional expensive luxury housing in Los Angeles, including this neighborhood, nor is there any demonstration that existing zoning in this neighborhood is not sufficient for the construction of extremely expensive luxury housing.

C) The Commission Abused its Discretion by Certifying a Legally Deficient EIR

1. Failure to properly analyze and adopt proposed feasible alternatives violates CEQA.

The DEIR presents several environmentally superior alternatives to the Proposed Project, including a "No Project" Alternative, (DEIR 6-9-6-11), two permutations of an Alternative 2, which would both comply with existing zoning requirements, (*Id.* at 6-11-6-17), and Alternative 3, which would reduce the overall mass and scale of the Proposed Project, but would still require a General Plan Amendment to spot zone the parcel (*Id.* at 6-17-6-21). Each of these options would reduce the environmental impact of the Proposed Project, yet the City failed to adopt any of these feasible alternatives. (See *Id.* at 6.0 *et seq.*)

CEQA provides a "*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures" that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code, § 21081 emphasis added.) It "compels government… to mitigate… adverse effects through… the selection of feasible alternatives." (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233, see also Pub. Resources Code, § 21002.) Under the CEQA Guidelines, lead agencies may not approve a project as proposed if there are feasible alternatives available that would substantially lessen the project's significant environmental impacts. (Cal. Code Regs., tit. 14, § 15091 ["CEQA Guidelines"].)

In this case, several proposed alternatives would substantially lessen the project's significant environmental impacts, but the City failed to adopt any of the alternatives. (See DEIR.) The No Project Alternative would substantially lessen the project's environmental impacts, though it would not meet project objectives. (*Id.* at 6-8 – 6-11.) Alternative 2, Options 1 and 2 would meet Project

objectives and would substantially lessen significant environmental impacts associated with the Proposed Development. (*Id.* at 6.0 *et seq.*, Table 6-1.) Alternative 2, Option 1, includes the development of a three-story, 45-foot tall building for medical office use. (*Id.* at 6-4.) Alternative 2, Option 2, includes the development of a three-story, 45-foot tall buildings with ground floor medical offices and two stories of residential units above, totaling 40 units. (*Ibid.*) According to the City, Option 1 and Option 2 would reduce environmental impacts, including aesthetic impacts, such as light and glare as well as shade and shadow, noise, and transportation and circulation impacts. (*Id.* at 6-8.) They are also consistent with existing zoning requirements for building height and building use. (See *id.* at 6-3, 6-11.) These alternatives are consistent with the Wilshire Community Plan. In addition, according to the City, Option 2 meets the vast majority of the project objectives articulated by the City. (See *id.* at 6-17.) Alternative 3 somewhat lessens the significant environmental impacts of the Proposed Project, (*Id.* at 6-8, 6-17-6-21), and meets the majority of project objectives. (*Id.* at 6-21.) Despite the benefits and lessened impact of these alternatives, the agency failed to adopt any alternative. (*Id.* at 5-3, 6-16, 6-17, 6-21.)

Where, as here, an agency approves a project that has significant environment impacts and fails to adopt a feasible alternative, it must articulate specific findings that make a proposed alternative infeasible. (Pub. Resources Code, § 21002.1(b); CEQA Guidelines § 15092.) Findings that an alternative is infeasible must be supported by substantial evidence in the record. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 997, as modified (Oct. 2009) ["We thus review the City's infeasibility findings for substantial evidence"]; see also *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 559 [agency decision "to reject the alternatives as infeasible was supported by substantial and tenable evidence"].) The agency must also articulate its analysis and how the agency reached its determination. (*See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App. 4th 173, 203.)

The agency's determination that Alternative 2, Options 1 and 2 are not feasible is not supported by substantial evidence in the record. The agency did not articulate specific findings as to why the proposed alternatives are infeasible. (See generally DEIR, DEIR 5-3, 6-16- 6-17, 6-21; CPC Determination Letter.) Nor did it provide an analysis of why it is not feasible for these Options to meet the Project's objectives, (DEIR 5-3, 6-16- 6-17), or explain how it concluded that it should adopt the Proposed Project, rather than Alternative 2, Options 1 and 2, (see generally DEIR 5-3, 6.0), or Alternative 3 (DEIR 6-17-6-20). (Planning Determination Letter, pp. 69-75.) The DEIR

simply states: "All three alternatives would not meet project objectives, as discussed in further detail in Chapter 6.0, *Alternatives,* of this Draft EIR." (*Id.* at 5-3.) However, in Chapter 6.0, rather than discuss *how* the proposed Alternatives do not meet the project objectives, the agency simply asserts *that* the Alternatives do not meet the Proposed Development's objectives. (*Id.* at 6-16, 6-17.) For example, the DEIR explains:

> Option 1 would not … meet the project objective to create open space and recreational opportunities for residents, nor would it provide new ground level open space and water features that would enhance the visual character of the neighborhood. Furthermore, this alternative would not encourage pedestrian activity with walkability [sic] and safety improvements, landscaping, and high quality architecture. (*Id.* at 6-16; see Determination Letter, pp. 69-70.)

The agency, however, fails to explain how it is infeasible for Option 1 to meet these objectives. For example, why is it the Applicant cannot design these alternative projects with ground level open space, walkability, safety improvements, landscaping, and high quality architecture as it did for its desired proposed project? Likewise, the DEIR asserts, without analysis, that Option 2 "would not provide high-density housing, which is one of the key components of the project objectives," without explaining what constitutes high density housing, or how Option 2 fails to meet these standards. (DEIR at 6-17.) The DEIR continues:

> In addition, Option 2 would not open space and recreational opportunities for residents, nor would it provide new ground level open space and water features that would enhance the aesthetic of the neighborhood. Furthermore, this alternative would not encourage pedestrian activity with walkability [sic] and safety improvements, landscaping, and visually stimulating architecture. (*Id.* at 6-17; see Planning Determination Letter, pp. 71-72.)

The record does not elaborate on or expand this analysis to provide data or information that supports these conclusory statements. (See generally EIR, EIR 3-26-3-33, Planning Determination Letter, pp. 69-75.) Furthermore, there is no proposed design for Alternative 2, so there is no reason why a project conforming to existing zoning and plan designations could not be aesthetically pleasing, have a mix of uses, contain landscaping, encourage pedestrian activity, and complement existing community character. These project goals could be equally achieved by this environmentally superior alternative, as demonstrated by many new by-right projects on adjacent commercial corridors that are pedestrian oriented and esthetically pleasing.

The EIR, therefore, violates the mandates of Public Resources Code sections § 21081, 21002.1(b) and CEQA Guidelines sections 15091 and 15092.

2. The Statement of Overriding Considerations is not supported by substantial evidence and therefore adoption of it constitutes an abuse of discretion

In the EIR and Notice of Determination, the City found that the Project will result in unavoidable and unmitigatable significant noise impacts, but nonetheless decided to approve the Project. (Planning Determination Letter, pp. 67-68, 81; DEIR 4.3.)[1]

CEQA provides that an agency may adopt a project with unavoidable adverse environmental impacts, "[i]f the specific economic, legal, social, technological, or other benefits… of a proposal project outweigh the unavoidable adverse environmental effects." (Pub. Resources Code, § 21002; CEQA Guidelines, § 15093(a).) Under CEQA, if an "agency approves a project which will result in the occurrence of significant effects [that] are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record." (CEQA Guidelines, § 15093(b).) The agency must provide specific overriding legal, economic, social, technological, or other considerations that outweigh the environmental impacts of a project. (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093.) A "statement of overriding considerations shall be supported by substantial evidence in the record." (CEQA Guidelines, § 15093(b); see *Sierra Club v. County of Contra Costa* (1992) Cal.App. 4th 1212, 1223 [disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499] ["*Sierra Club*"].)

In *Sierra Club, supra,* Cal.App. 4th 1212, the agency adopted a statement of overriding considerations that listed twelve project benefits that the agency claimed overcame the project's environmental impacts. The court found that three of the twelve asserted benefits were not supported by substantial evidence, and, thus determined that the statement of overriding considerations was defective. (*Id.* at 1224.)

Here, substantial evidence does not support the agency's statement of overriding considerations. (See Planning Determination Letter 80-83; see generally, EIR.) The Statement of Overriding Considerations says that the Project confers seven benefits, including: (1) providing "much needed rental housing… near employment centers;" (2) helping in a reduction of "air quality, greenhouse gas and traffic impacts; and (3) "supporting multimodal transit" with bike shelters and

[1] Noise impacts are not the only significant impacts that have not been mitigated to a level of insignificance, and the EIR is faulty on this basis also.

adding a new bus shelter. (Planning Determination Letter, pp. 81-82.) However, the record does not contain substantial evidence to support the City's conclusion that the Project will actually, in fact, confer these benefits.

The City claims that this Project will provide the benefit of rental housing near employment centers "such as Cedars-Sinai Medical Center and Beverly Center." (*Id.* at p. 81.) But, the record demonstrates that the vast majority of tenants in the proposed building would not work at local employment centers. (See *ibid.*, EIR 1-2, DEIR 2-1.) The Project is a luxury housing development, with penthouses, an on-site spa, pool, lounge, fitness club, and valet entry for residents. (DEIR 2-1, 2-6, see EIR 1-2.) Of the Project's 145 units, only 7 units are designated low-income. (See *ibid.*, EIR 1-2, DEIR 2-1.) The Proposed Development is slated to mirror the 8500 Burton Way residences, which are rented at an average of $12,000 per month for one and two bedroom apartments. (See *The Latest Look, supra*; *Caruso Plans, supra.*) The Proposed Development is touted as the "newer, bigger counterpart" to the existing 8500 Burton Way development, which includes "mix of fashion designers, entertainment industry executives, doctors, celebrities and "heads of state from different parts of the world," according to the Applicant. (*Caruso Plans, supra.*) At meetings with the Beverly Wilshire Homes Association on Wednesday, February 11, 2015, and March 17, 2016, the Applicant indicated that the Proposed Development would have all of the amenities of a five-star hotel, including a concierge service to do shopping for tenants, as well as chauffeur-driven luxury cars that would be on-call for residents. The vast majority of the residents who would live at the project site would not work at, or benefit from the proximity to, local employment centers. (See generally *Caruso Plans, supra.*) In addition, though the Statement of Overriding Considerations states that the Proposed Project would provide "much needed rental housing," the record lacks substantial evidence demonstrating that the residential units in this luxury facility would meet the community's need for affordable rental or work force housing. (See generally DEIR 2.0, EIR 1.0, Planning Determination Letter.) In fact, the evidence, including the developer's comments to community organizations and media, suggests otherwise. (See DEIR 2-1, 2-6; EIR 1-2; *The Latest Look, supra*; *Caruso Plans, supra.*)

The City also claims that this Project would assist the City in reducing:

> air quality, greenhouse gas and traffic impacts by providing employment-generating land uses and residences in an area… served by public transportation, including… the Metro Purple Line station…Metro local bus lines… DASH route, and an Antelope Valley bus line, thereby reducing vehicles miles traveled and associated air quality and greenhouse gas emissions impacts. (Planning Determination Letter pp. 81-82.)

It posits that this development will "support multimodal transit" with bike shelters and by adding a new bus shelter. Evidence in the record does not support these assertions. In fact, the record demonstrates that the majority of individuals who would visit the Project would not utilize bikes or public transportation options. The record demonstrates that retail spaces associated with the Project are only projected to support 84 jobs, so the vast majority of individuals who would visit the Project would be residents and their guests.[2] (See Determination Letter, p. 81.) According to the developer:

> A key factor in the building's appeal is hotel-like service… [t]here is a driver and car to help tenants run errands or get to the airport. A concierge will secure concert tickets or see to it that tenants' grocery lists are fulfilled and the food is stocked in their pantries. (*Caruso Plans, supra.*)

Proposed all-inclusive amenities that cater to residents' every need demonstrates that residents and their guests will not utilize METRO bus lines, the Los Angeles DASH, an Antelope Valley bus line, bikes, or the Metro system for their transportation needs. (See DEIR 2-1, 2-6, see EIR 1-2.) A demographic profile of METRO passengers derived from on-board surveys, indicates that METRO riders average income is $16,377 per year. (Kridler, *Results for Metro's Biannual Survey* (May 6, 2014) <http://thesource.metro.net/2014/05/06/results-for-metros-biannual-onboard-survey/> ["*Metro*"].) Individuals who utilize METRO, therefore, are unlikely to rent units at 333 S. La Cienega, where units will likely cost an average of $12,000 per month. (*Caruso Plans, supra.*) Based on this information, there is no evidence that this transit-adjacent project is actually a transit-oriented project. The evidence instead supports a conclusion that Project residents and visitors would likely travel by car to the Project site, as the Proposed Project provides for valet services on multiple sides of the building (DEIR 2-6, 2-24), an on call driver and car (*Caruso Plans, supra*), and five levels of underground parking, (*Id.* at 2-25). (See generally DEIR 4.4.)

As the record does not contain substantial evidence that supports the asserted benefits set forth in the Statement of Overriding Considerations, under CEQA Guidelines, § 15093(b), the City's Statement of Overriding Considerations is defective and unlawful.

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[2] Alternatives 1 and 2,which are extensions of the medical-hospital center, would employ far more people, most of whom would have higher incomes than the maids, janitors, errand-runners, and drivers for the Alternative 4.

3. The Final EIR's Conclusion That There is no Significant Impact to Fire Protection is not Supported by the Evidence.

In Los Angeles, a project would have a significant impact on fire protection if it requires the addition of a new fire station or the expansion, consolidation or relocation of an existing facility to maintain safe response times and proper fire service. (See Los Angeles CEQA Thresholds Guide ["CEQA Thresholds Guide"], K.2-3.) To determine whether a project would require a new fire station or the expansion or relocation of an existing facility, a responsible agency must:

> Consider… whether the project site meets the recommended *response time and distance requirements*… [to] [s]pecifically evaluate the need for a new fire station or expansion, relocation, or consolidation of an existing facility to accommodate increased demand. (*Id.* at K.2-4.)

The EIR concludes that the Project would not require a new fire station (FEIR 2-55), and thus the Project would have no significant impact on Fire Protection (DEIR Appendix A-1 Initial Study, B-84). This conclusion is not supported by the evidence.

The City concluded that the Proposed Project would be outside of the maximum response distance from the closest fire station:

> The proposed project would be served by Fire Station No. 61, located at 5821 West 3rd Street. The station has a current response time of approximately five minutes, and is located approximately 1.7 miles west of the project site. *This distance is outside of the 1.5 mile maximum response distance from Station 61.* Given the distance and the building's height which exceeds the 75 foot threshold, automatic fire suppression sprinklers would be required by the Fire Code." (DEIR Appendix A-1 Initial Study, B-85, emphasis added.)

Under the City's CEQA Thresholds Guide, the location of the Proposed Project from the closest fire station suggests that the Proposed Project would require a new fire station or the expansion or relocation of an existing facility.

In addition, the City incorrectly suggests that the response time from Station 61 would be adequate, based on the phone call with Craig Nelson, Captain of Los Angeles Fire Department's Station 61. (FEIR 2-55, fn. 12.) This suggestion is not supported by the evidence. The EIR asserts that Station 61 would have a response time of five minutes. (FEIR 2-55 – 56; DEIR Appendix A-1 Initial Study, B-85.) The City does not provide any evidence, data, or analysis that directly supports the conclusion that Station 61 could respond to an emergency call within five minutes, other than a

hearsay statement allegedly from a Fire Capitan Nelson. (FEIR 2-55 – 56; DEIR Appendix A-1 Initial Study, B-85; see generally DEIR, FEIR.) The City does not provide a transcript of the call with Captain Nelson or an explanation of what was discussed. (See FEIR 2-55, fn. 12.) In fact, objective, reliable evidence suggests that it would take more than five minutes for Station 61 to respond to an emergency incident at the Project. The response time for fire personnel with Emergency Medical Services ("EMS") to locations within the 1.5 mile maximum response distance is five minutes and forty-two seconds for turn out time and travel time. (See Los Angeles Fire Department Response Metrics for Station 61 (Nov. 23, 2016) <http://www.lafd.org/fsla/stations-map?st=581&year=2016>.) EMS responses comprise 85% of all Fire Department responses. (Fire Chief Ralph M. Terrazas April 22, 2016 Memorandum Re: Implementation of the EMS Bureau.) This data suggests that the response time would take more than five minutes for an EMS and fire response, as the Proposed Project is outside the maximum response range. (See *ibid.*) Even if the evidence demonstrated that Station 61 could respond within five minutes, the EIR fails to analyze whether this is an adequate response time, given the size and height of the building. The EIR fails to disclose the standards for required response times for a Project of this size and scope where there Wilshire Community Plan provides that development in this area should be limited in height and density. (*Ibid.*) Nor did the EIR explain how Station 61's response time would meet standards for station responsiveness. (*Ibid.*) Without such analysis and disclosure, the City cannot reasonably draw conclusions regarding the adequacy of the response times and any conclusions drawn at this time are unsupported by the evidence for that reason.

4. The Final EIR Fails to Adequately Respond to Comments

BWHA submitted comments on the Draft EIR. The Final EIR's responses to these comments are in many respects inadequate because they are nonresponsive.

For example, BHWA submitted a comment which discussed concerns about the Draft EIR's failure to adequately analyze the Proposed Project's impacts on fire safety, and clarify whether fire protection response times were sufficient to avoid a significant impact. (FEIR 2-55.) The response to this comment did not provide any factual data clarifying the record or providing support for asserted fire protection response times. (*Ibid.*) The response simply represented that a phone conversation with the Fire Station Captain indicated that "there would be no need to require the expansion of Fire Station No. 61, nor would it require the acquisition of new equipment, facilities or

staff to serve the new employees and residents generated by the proposed project." (*Ibid.*) This is not a sufficient response.

As another example, BWHA's comments regarding the Project's lack of consistency with scale and character of the surrounding community, and comments about Alternative 2, received responses that merely contain conclusory assertions, rather than good-faith, reasoned and detailed responses. We hereby incorporate by reference Mr. Richard Platkin's appeal addendum regarding the EIR's failure to respond to comments authored by him on behalf of BWHA.

D) **The City has abused its discretion in permitting the On-Menu Incentive to allow a 20 percent increase in permitted Floor Area Ratio (FAR), and in permitting the Off-Menu Incentive to allow additional increase in FAR to 6:1 using a height district change and waiver of development standards.**

Increasing FAR under the auspices of SB1818-driven "on and off menu" incentives to promote the inclusion of affordable housing units constitutes an ad hoc height district change. Only legislative action can lawfully effectuate a height district change. Yet the City here is treating the granting of these "on and off menu incentives" as a de facto ministerial act and a variance, respectively. Cloaking land use legislative acts in SB1818-driven "incentives" is a perversion of SB1818 and is unlawful.

The City has failed to comply with City Charter Section 556, which states: "When approving any matter listed in [City Charter] Section 558, the City Planning Commission and the Council shall make findings showing that any action is in substantial conformance with the purposes, intent and provisions of the General Plan." Section 558 includes height district changes. The City Planning Commission made no express findings showing that the increases in FAR from 4.1 to 4.8 and then from 4.8 to 6:1 are in substantial conformance with the General Plan. To the extent that any such findings were in fact made, the evidence does not support those findings because the new ad hoc height district is not consistent with the scale and character of the community, as otherwise required by the Wilshire Community Plan.

Finally, the "on and off-menu" "incentives" in this case are effectively a way for the Applicant to "nickel and dime" his way to a FAR of 6:1, as a means to circumvent Proposition U, an initiative passed by Los Angeles voters in November 1986. This too is unlawful since the intent and result of this voter-adopted initiative was to reduce the permitted Floor Area Ratio in Height District 1 by 50 percent.