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# LATHAM & WATKINS LLP

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## VIA EMAIL

April 16, 2018

Planning and Land Use Management Committee  
City of Los Angeles City Council  
200 North Spring Street, Room 430  
Los Angeles, CA 90012

Re: April 17, 2018, Agenda Items 9 & 10 – The 1860 Project (Council File Nos. 18-0193, 18-0193-S1)

Dear Chair Huizar, Vice Chair Harris-Dawson, and Honorable Councilmembers:

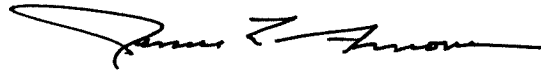
On behalf of Dynamic Development Company (Western & Franklin, LLC), the applicant for the above-referenced project, we request your approval of the City Planning Commission Determinations for the 1860 Project with one modification. As set forth in Attachment A, we respectfully request that condition no. 35 of the City Planning Commission's Determination in Case No. CPC-2016-1954-CU-MCUP-DB-SPP-SPR be modified to require 5% of all parking spaces to include electric vehicle chargers and 15% of all parking spaces to be capable of supporting future electric vehicle supply equipment.

In addition, we are providing for your consideration responses to comments raised in the appeals of the City Planning Commission's approval of the 1860 Project. We address the main issues raised in the comments in Attachment B to this letter. In sum, there is no substantial evidence in the record showing that the project may cause significant adverse impacts. The Project has been thoroughly analyzed in the MND and supporting technical studies, and there is substantial evidence supporting staff's recommendation and the City Planning Commission's unanimous decision.

LATHAM & WATKINS<sup>LLP</sup>

We respectfully request that you recommend approval to the City Council, consistent with the City Planning Commission's Determinations, with the one modification set forth in Attachment A, as well as adoption of the MND, determination that the Project is a Sustainable Communities Project eligible for a CEQA exemption, and the denial of the appeals.

Very truly yours,



James L. Arnone  
of LATHAM & WATKINS LLP

Attachments

cc: Mr. Damon Porter, Dynamic Development Company  
Mr. Steve Afriat, Afriat Consulting  
Mr. Aaron Green, Afriat Consulting

## ATTACHMENT A

### Requested Modification to Conditions of Approval

Condition No. 35 of CPC-2016-1954-CU-MCUP-DB-SPP-SPR

#### 35. **Electric Vehicle Parking**

- a. The project shall include at least ~~1520~~ percent of the total ~~provided~~required parking spaces capable of supporting future electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating ampacity. A label stating "EVCAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point.
- b. Five (5) percent of the total ~~provided~~required parking spaces shall be provided with EV chargers to immediately accommodate electric vehicles within the parking areas.
- c. When the application of either the required ~~1520~~ percent or five percent results in a fractional space, round up to the next whole number.
- d. ~~Any parking spaces provided in excess of that which is required pursuant to AB 744 or any other parking option allowed per LAMC Section 12.21A.25 or the Vermont/Western SNAP Specific Plan, shall be further provided with EV chargers to immediately accommodate charging of electric vehicles within the parking areas.~~

## ATTACHMENT B

### Responses to Comments in Appeals

#### Noise Analysis

The City's CEQA Thresholds Guide and noise regulations (and not the Federal Highway Administration Construction Noise Handbook) govern the noise analysis. As explained in the City's CEQA Thresholds Guide, Section I.1, Construction Noise, "noise impacts are commonly evaluated using time-averaged noise levels" (p. I.1-2). Consistent with the City's requirements, the MND's noise analysis discusses sound levels in terms of Community Noise Equivalent Level (CNEL) and Equivalent Noise Level ( $L_{eq}$ ) (p. 3-145). The City CEQA Thresholds Guide does not require or suggest the use of  $L_{max}$ .

The City's CEQA Thresholds Guide sets forth the methodology to determine the significance of a project's potential noise impacts, which includes the identification of noise sensitive land uses within 500 feet of the project site and quantification of ambient noise levels measured in CNEL, using one of three methodologies, including field measurements using a noise meter at and surrounding the project site (p. I.1-4).

As described in the MND (p. 3-148), the City's CEQA Thresholds Guide sets forth the following significance threshold for noise impacts:

- Construction activities lasting more than one day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise sensitive use;
- Construction activities lasting more than 10 days in a three-month period would exceed existing ambient exterior noise levels by 5 dBA or more at a noise sensitive use; or
- Construction activities would exceed the ambient noise level by 5 dBA at a noise sensitive use between the hours of 9:00 P.M. and 7:00 A.M. Monday through Friday, before 8:00 A.M. or after 6:00 P.M. on Saturday, or at any time on Sunday.

As stated in the MND, "[c]urrently no federal noise standards regulate environmental noise associated with short-term construction or the long-term operation of development projects" (p. 3-146). The analysis is not subject to the Federal Highway Administration ("FHWA") Construction Noise Handbook. However, the FHWA's information on maximum noise levels from specific pieces of construction equipment was used as part of the analysis.

The MND does not state that the Studio Awesome location (1838 Western Avenue) is 50 feet from the project site. Page 3-159 of the MND indicates that the building at 1836-1838 Western is located 10 feet away, which is the distance that was used for the vibration analysis. As shown in Table 3.12-7, Vibration Velocities at Off-Site Uses from Project Construction, the MND analyzed 1836-1838 Western Avenue at a distance of 10 feet and determined vibration impacts would be less than significant (p. 3-159). As stated in the MND, "vibration velocities of up to 0.223 inches per second PPV [peak particle velocity] are projected to occur at the nearest off-site

structure, a commercial building located at 1836-1838 Western Avenue. However, this vibration intensity is far below the 0.5 inches per second PPV threshold that is considered potentially harmful to commercial buildings” (p. 3-159).

As stated in the MND, the City of Los Angeles has not adopted any thresholds associated with building damage or land use disruption caused by ground-borne vibration (p. 3-158). However, as discussed above, the MND included a vibration analysis with regard to 1836-1838 Western Avenue, and determined that potential vibration impacts would be less than significant, as the projected vibration velocities would be well below the threshold considered potentially harmful to commercial buildings, based on Caltrans’ Transportation and Construction Vibration Guidance Manual (pp. 3-158 and 3-159).

Studio Awesome obtained approval from the City (effective October 2016) for a change of use from retail to voice over studio for 1,988 sf of leased space, along with plans for interior improvements. The City issued the MND for the Western & Franklin project in February 2017.

In any case, the studio/former retail site is not located in a residential zone and neither studio nor retail use are identified as a noise sensitive use in the City’s CEQA Thresholds Guide (“Noise sensitive uses include residences, transient lodgings, schools, libraries, churches, hospitals, nursing homes, auditoriums, concert halls, amphitheaters, playgrounds, and parks” p. I.1-3). As discussed above, the City’s significance thresholds for noise impacts address noise levels at noise sensitive uses. Therefore, potential noise impacts at either a studio or retail use would not be considered significant under the City’s CEQA Thresholds Guide, and the MND’s conclusions would not change.

With regard to studio-related lines located within the City sidewalk, the project is required to comply with all applicable City requirements related to construction work or required improvements that may affect the sidewalk.

### Project Design

The Project Site is located approximately 1,100 feet (0.2 miles) north of the Hollywood & Western Metro Red Line Station. The surrounding area is primarily developed with low- and medium-density development, and with a number of buildings which are comparable in size to the proposed Project, as described in the City Planning Commission’s findings. The Project Site is located on a prominent corner, which provides a unique opportunity to create an architectural marker for the neighborhood.

As noted in the City Planning Commission’s findings, the Project incorporated substantial design changes to enhance its compatibility with the existing neighborhood. The architecture and design of the Project were modified to have a stronger Spanish Revival influence, consistent with the architectural style prevalent in the surrounding area. The Project’s massing was broken up to create the feeling that the Project is multiple buildings, and the building was redesigned to re-orient its massing toward Western Avenue to maintain the 3-story height of buildings on Franklin Avenue. The main tenant pedestrian entrance was moved to Western Avenue, and the vehicular driveway on Franklin Avenue was eliminated in response to requests from the community. While the Project was originally designed to be five stories and 53 feet in height

along Franklin Avenue, the Project is now three stories and between approximately 30 to 35 feet as measured along Franklin Avenue. Additional revisions were incorporated into the project at the request of the Los Feliz Improvement Association and the Franklin & Western Neighborhood Association through an extended outreach process.

### General Plan and SNAP Consistency

The MND analyzes the Project's consistency with the General Plan, the Hollywood Community Plan, and the Vermont/Western Station Neighborhood Area Plan ("SNAP") Specific Plan (*see* Section 10, Land Use and Planning). As concluded in the MND, the Project is consistent with the goals, objectives, and policies of the applicable land use plans, and impacts related to land use would be less than significant. The Project Site is located in SNAP Subareas A and B, and the Project has been designed to accommodate the unique requirements and goals of both. The Project Site serves as a connection between the commercial corridor on Western Avenue and the residential neighborhood on Franklin Avenue. The Project includes requested approvals under the State and Local Density Bonus program, which allow increased flexibility in the height and bulk regulations to permit a mixed-use development that can accommodate 11 Very Low-Income units in addition to 76 market rate residential units in a five-story building.

Among the stated purposes of the SNAP are: to "[i]mprove the quality of housing stock in the neighborhood through the construction of affordable housing units available for home ownership, in Mixed Use buildings along transit corridors"; "[c]reate a transit friendly area by requiring conformance to pedestrian oriented design guidelines that establish building facade treatments, landscape standards, criteria for shade-producing building overhangs and awnings, street lighting and security lighting for streets, alleys, sidewalks and other pedestrian areas that adjoin new development"; and "[p]romote increased flexibility in the regulation of the height and bulk of buildings as well as the design of sites and public streets in order to ensure a well-planned combination of commercial and residential uses with adequate open space."

The Project is consistent with the SNAP, as the Project would provide new housing opportunities to a wide range of economic groups and neighborhood-serving uses near mass transit. The Project would introduce uses consistent with the character of the surrounding area and eliminate a traffic-heavy gas station use that creates a void of visual interest. The Project Site is located proximate to transit, including the Hollywood & Western Metro Station, and is situated along corridors characterized by medium density residential and mixed-use commercial development. The ongoing housing shortage has underscored continued demand for utilizing commercial corridors as infill sites for new housing, especially in a mixed-use design located near public transit. The SNAP encourages locating housing near transportation and also encourages a pedestrian-oriented community. The addition of transit oriented development at the Project Site would promote pedestrian activity along Western Avenue to the Hollywood & Western Metro Station, consistent with the SNAP.

Further, the City Planning Commission's Determination in Case no. CPC-2016-1954-CU-MCUP-DB-SPP-SPR includes detailed findings and analysis regarding the Project's substantial compliance with the applicable regulations, findings, standards, and provisions of the SNAP, as set forth in pages F-1 to F-18 of the Determination.

### Density Bonus

The Project's density bonus and related requests are consistent with City and State law and procedures. The City Planning Commission's Determination in Case no. CPC-2016-1954-CU-MCUP-DB-SPP-SPR sets forth findings and analysis regarding the density bonus/affordable housing program and incentives (pp. F-18-26). As explained therein, the FAR, density, parking and open space averaging permits the total allowable development requirements for the two zones and subareas of the Project Site to be allocated across the entire Project Site, allowing for efficiency in construction and design and accommodating the construction of the restricted affordable units. The City Planning Commission found that the waiver of development standards related to height and combined lot area allow the development of the proposed 87 residential units with affordable housing, which would otherwise be physically precluded under the development standards. In addition, the City Planning Commission found that there is no evidence that the incentives will have a specific adverse impact.

### Geotechnical Issues

The geotechnical issues raised in the appeals simply expand upon speculative comments previously submitted and addressed, and they do not raise any new issues or substantive information.

The project has been subject to extensive geotechnical analysis, including an Evaluation of Potential Faulting prepared by Feffer Geological Consulting, dated November 6, 2014, which found that no faults traverse the project site or occur within 50 feet of the northern site boundary (the Hollywood Fault Zone is mapped to the north of the project site). An Addendum prepared by Feffer Geological Consulting, dated February 25, 2015, provided additional exploration south of the property lines and found no active faults. These analyses were reviewed and approved by the City of Los Angeles Department of Building and Safety Grading Division (the "LADBS Grading Division") pursuant to a Geology Report Approval Letter dated March 15, 2015. The technical reports and the LADBS Grading Division correspondence and approval letter are included as appendices to the MND for the project, along with a Geotechnical Investigation for the project prepared by Feffer Geological Consulting dated April 14, 2016.

Feffer Geological Consulting also prepared a letter dated April 12, 2017, responding to comments raised in the tract map appeal regarding the geotechnical analysis. As explained in the Planning staff report to the City Planning Commission, the LADBS Grading Division reviewed the appeals and the Feffer Geological Consulting response and concurred with the Feffer Geological Consulting response. As reported by Planning staff in their report to the City Planning Commission, the LADBS Grading Division "further advised that they stand by their approval letter dated March 16, 2015."

We note also, as does Planning staff in their report to the City Planning Commission, that the conditions of approval for the project's tract map include the following requirements: a soil engineering report must be submitted to the LADBS Grading Division for design recommendations prior to issuance of any permit; the project engineering geologist must verify the fault investigation's conclusions during excavation activities when natural alluvial soils are exposed (with such observation and documentation to be verified by the LADBS Grading

Division prior to the placement of fill or lagging); and a supplemental report must be submitted to the LADBS Grading Division upon completion of excavations.

The geotechnical analysis for the project concludes that the project would not result in any significant seismic safety risks. There is no substantial evidence in the record showing otherwise. Unsubstantiated opinions, speculation, and argument do not constitute substantial evidence.

Further, while the project management, building codes, and the City's strict requirements will ensure seismic safety for the project's future occupants, this is not a matter that implicates CEQA. The California Supreme Court has confirmed that "CEQA generally does not require an analysis of how existing environmental conditions will impact a project's future users or residents."<sup>1</sup> In fact, the Supreme Court specifically invalidated language in the statewide CEQA Guidelines that had suggested a significant seismic hazard to future occupants of a project located on an active fault line would be a significant CEQA impact,<sup>2</sup> and the Governor's Office of Planning and Research has proposed to delete this language in its November 2017 update to the CEQA Guidelines.

### Traffic and Parking

As explained in the MND Second Errata, and the Addendum Traffic Impact Analysis, none of the study intersections would be significantly impacted by the Project under existing or future conditions. The Project's traffic impact level is less than significant and smaller than the 2015 traffic impact analysis included in the MND.

In addition, the trip generation for the refined Project will be lower than analyzed in the 2015 traffic impact analysis. Under both the existing and future conditions, the refined Project traffic impact values remain negative or lower than the traffic impact analysis for the originally proposed project. As concluded in the 2015 traffic impact analysis, the proposed Project would not cause significant traffic impacts at any of the study locations.

As concluded in the MND, impacts related to emergency access would be less than significant (p. 3-190).

Parking for the residential portion of the project is calculated pursuant to State Density Bonus Law, which, pursuant to Assembly Bill No. 744 (AB 744), prohibits local jurisdictions from imposing vehicular parking requirements greater than those established by the legislation where the project includes a certain percentage of affordable housing and is located near designated public transit. As explained in the City's guidance memo regarding implementation of AB 744, for mixed income projects within ½ mile of a major transit stop to which the project has unobstructed access, the City may not impose a requirement in excess of 0.5 spaces per bedroom. Parking for the project's commercial uses is provided per the maximum SNAP requirements of 2 parking spaces per 1,000 square feet of floor area.

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<sup>1</sup> *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4<sup>th</sup> 369, 386 (2015).

<sup>2</sup> *Id.* at 390.



As explained in the MND Second Errata, the Project is therefore required to provide 52 residential parking spaces and 12 spaces for the ground-floor commercial use, for a total of 64 required parking spaces. The proposed parking would exceed the required amounts. The Project proposes to provide 100 residential parking spaces and 12 commercial parking spaces, for a total of 112 parking spaces.

The project site is located less than 1,500 feet from the Hollywood & Western Metro station, DASH, and Metro Bus services. The project is a mixed-use residential project on an infill site in a transit priority area, and therefore parking impacts are not considered significant under CEQA.

#### Merger of 7 Feet Along Franklin Avenue

The Project's tract map to merge and re-subdivide the Project Site into a single ground lot initially included a request to merge seven (7) feet of previously dedicated land along Franklin Avenue back into the Project Site. In order to comply with the 10-foot sidewalk width requirement of the Modified Avenue II designation on Franklin Avenue, Planning staff recommended a reduced merger area of 4.5 feet. This reduced merger area is shown on the revised map submitted to the City in December 2017. The Bureau of Engineering and Department of Transportation have reviewed the request and advised that the merger would be acceptable. As required pursuant to the conditions of approval in connection with the tract map, the applicant is required to dedicate two-feet along Western Avenue and a new 20-foot radius property line return at the intersection with Franklin Avenue after the proposed street merger along Franklin Avenue. The requested merger is consistent with the City Planning Commission's Subdivision Map Act findings.

The requested merger is not related to a curb cut or passenger drop-off area as suggested in a comment. The Franklin & Western Neighborhood Association has requested a passenger drop-off area on Western Avenue.

#### Economic Effects

The threat of economic impact or effect on an individual business is not an environmental CEQA concern. CEQA is generally concerned with effects on the environment, not with effects on particular persons or particular businesses.

#### Existing Residential Units

With regard to issues raised by occupants of the existing residential units on the Project Site, Dynamic Development Company is neither the property owner nor the landlord. Dynamic Development Company is under contract to purchase the property (contingent on obtaining the necessary entitlements for the Project), and therefore has no legal relationship or responsibility as it relates to matters regarding tenants or sub-tenants of the property. In the event Dynamic Development Company acquires the Project Site, it will comply with all applicable legal requirements related to the existing residential units.