

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: _____

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: By J. J. Dale Date: 08/29/2016

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: <u>\$89</u>	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No: <u>0202346873</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BJC receipt (if original applicant)

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**FIX THE CITY APPEAL
VTT-7230-CN-1A**

JUSTIFICATION FOR APPEAL

I. Fix the City Is Aggrieved by the Decision to Approve the Vesting Tentative Tract Map

Fix the City is aggrieved by the City Planning Commission's determination to approve a Vesting Tentative Tract Map for the project at 8150 Sunset Boulevard, because it will impact the quality of life and emergency services in the community, as well as set a precedent for the Hollywood Community Plan, which Fix the City successfully challenged in court. Fix the City continues to be concerned with the provision of adequate infrastructure to protect public safety and assure the quality of life for Angelenos.

II. Basis for Appeal

a. Approval of the Tentative Tract Map Was Abuse of Discretion

The Tentative Tract Map and the Project are Inconsistent with the General Plan

The density permitted for the site in the approved vesting tentative tract map is *inconsistent* with the site's designation in the Hollywood Community Plan. The Hollywood Community Plan specifies that, in areas like that project site that are located outside of the Redevelopment Area, a designation of Neighborhood Oriented Commercial would be limited to a FAR of 1:1. This limitation was imposed in recognition of the impacts of the increased area development permitted in the Hollywood Community Plan, in order to *limit* the impact of new commercial development in the area. By permitting a FAR of 3:1, the vesting tentative tract map allows a level of development far greater than that permitted by the General Plan.

The project also does not conform to a number of policies in the Hollywood Community Plan. These include the preservation of existing low density neighborhoods, to encourage development consistent with the ability of the circulation system to support increased traffic, and to "[p]rovide a standard of land use intensity and population density which will be compatible with street capacity, public service facilities and utilities, and topography and in coordination with development in the remainder of the City." By permitting massively increased density and heights in the tentative tract map, the proposed project is inconsistent with these objectives of the Hollywood Community Plan.

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In other respects, too, the proposed tract map is inconsistent with the General Plan. The Housing Element designates the City-owned property at 8118 Sunset for affordable housing. Developing a “plaza” on this site will eliminate the site as a potential location for affordable housing constructed by the City. Finally, the maps included in the Mobility Plan (MP 2035) include the full right turn lane on Crescent Heights and 15 foot sidewalks, which are no longer part of the project plan approved in the tentative tract map. The project plan therefore conflicts with MP 2035.

The Zoning for the Site Does not Support the Approved Density

A required finding for the approval of the tract map is that the site is physically suitable for the type and density of the proposed development. The findings ignore significant limitation on the site’s zoning and density that have been imposed because the site is not suitable for the type of dense development proposed in the tract map.

Critically, the site’s zoning is **C4-1D, with a FAR of 1:1**. This D Limitation was included as a mitigation measure in the certified Environmental Impact Report for the 1988 Hollywood Community Plan (See Ordinance 164, 714) in order to account for the impacts on infrastructure and traffic from the expansions permitted in the 1988 plan. Even in the most recent HCP update, the D Limitation remained in place, restricting the FAR to 1:1. There has been no disclosure of the attempt to remove the D Limitation as required by LAMC 17.15 D.

The site is ineligible for increased FAR to 3:1 as an incentive or otherwise, without a legislative process to change the site’s zoning that include findings that the infrastructure and traffic have improved since 1989 and the mitigation is therefore no longer required.

The municipal code explains the purpose of a D limitation (see 12.32 G 4):

“[P]rovisions may be made in an ordinance establishing or changing any Height District that a building or structure may be built to a specific maximum height or floor area ratio less than that ordinarily permitted in the particular Height District classification These limitations shall be known as D Development limitations.”

In order to impose a D limitation, Council must find that the limitation is necessary:

“(1) to protect the best interests of and assure a development more compatible with the surrounding property or neighborhood, and

(2) to secure an appropriate development in harmony with the objectives of the General Plan, or

(3) to prevent or mitigate potentially adverse environmental effects of the Height District establishment or change.”

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The site here has a D limitation that specifically limits the FAR to 1:1. Ordinance 164714, enacted in 1989, after the adoption of the Hollywood Community Plan, provided the following D Limitation applicable to the subject property: “The total floor area of all buildings on a lot shall not exceed one (1) times the buildable area of the lot.”

The City’s density bonus law does not allow for the City to ignore the express restrictions in the D limitation. Municipal code section 12.22 A 25 (f)(4) explains that a 3:1 floor area ratio is available as an incentive for commercially zoned properties “in Height District 1 (including 1VL, 1L, and 1XL),” if the project is located within 1,500 feet of a transit stop. Because the project is not within 1,500 feet of a transit stop, the developer is seeking an “off menu” incentive to get this same incentive that it does not qualify for.¹ However, the project is not in Height District 1, 1VL, 1L or 1XL. Those districts all have an applicable FAR of 1.5:1 (see LAMC 12.21.1 A 1.), and thus the 3:1 FAR is effectively a doubling of the density. This site is zoned in Height District **1D**, and the permanent D limitation on the site imposes a 1:1 FAR limit in order to mitigate the specific, adverse impacts of denser development in the area. In order for this site to legally house a project with a 3:1 FAR, the project must obtain a height district change and remove the D limitation, which has not been done or applied for, and the zoning inconsistency is not noted on the tract map as required by LAMC 17.15 D. Indeed, LADBS condition 8b on the vesting tentative tract map acknowledges the applicability of the D limitation and the 1:1 FAR to this site.

The Subdivision Interferes with the Public and Private Vehicular Easements on Crescent Heights Because the Tract Map Eliminates Vehicular Use of Crescent Heights Boulevard Without a Street Vacation and Proper Notice or Process

The approval of the tract map is contrary to law, because it permits the loss of both public and private vehicular easements without following appropriate procedures for the vacation of a street. The tract map permits the entire removal of a lane of traffic on N. Crescent Heights Boulevard between the project’s parcels and the City-owned parcel at 8118 Sunset Boulevard. The public has an easement over this street for vehicular access. Moreover, all private property owners owning property created in the subdivision on which this portion of Crescent Heights appears have a private easement in the street that is created by the recording of the 1905 subdivision map. It is not reasonably disputed that removing this portion of Crescent Heights from vehicular use in order to create a plaza will eliminate the ability of vehicles to use this portion of the roadway.

State law establishes a number of mandatory procedures prior to the vacation of a public street, none of which have been followed here. The City Engineer is required to make a finding that the roadway is “unnecessary for present or prospective public use.” (Streets and Highways Code, § 8324, subd. (b).) And of course, the public is notified of the request, hearings are held, and a determination is made. Not one of those steps has been taken here; instead, Planning staff

¹ “Off menu” incentives, per the code, are meant to be incentives that are not included on the list of “menu” incentives, which the 3:1 FAR already is. Fix the City objects to this use of the “off menu” incentive.

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deny that removing the lane of the street and turning it into a plaza has any effect on the street. Planning staff contend that the issue can be resolved with an encroachment permit or “B permit.” None of those permits would appropriately apply to the removal of the lane of traffic that is part of the proposed project. There are two separate actions proposed: one is a street vacation and the other is a so-called intersection “improvement” to round off the eastern tip of the traffic island triangle (8118 Sunset Boulevard). A “B Permit” would suffice for the intersection improvement, but it cannot be substituted for the process required as part of a street vacation.

The Tract Map Permits a Private Developer to Control City Land Without Following Procedures for Disposal of Surplus Land

The City owns the land at 8118 Sunset Boulevard. The proposed project will allow that land to be occupied by a private developer, ostensibly for the purpose of creating a public plaza. Indeed, the applicant relies upon the “public” space created by its use of City-owned land to satisfy its open space requirements under the municipal code. The use of the City’s land is an improper gift to the developer. The City has procedures for the disposition of surplus lands and should utilize those processes if it intends to dispose of public property. The tract map should not be approved because the project improperly relies upon City-owned land to satisfy open space requirements.

The Site is Not Physically Suitable for the Proposed Development because the Tract Map Permits Construction of Structures for Human Occupancy Within a Fault Zone Without Evidence that the Project is More than Fifty Feet from the Fault Line

Fault zone mapping has recently demonstrated that the Hollywood fault runs in extremely close proximity to the site. The November 2014 California Geologic Survey map of the earthquake fault zones in the Hollywood Quadrangle places the fault zone directly under the proposed project site. To the best of the public’s knowledge, the applicant has only done boring to search for evidence of faulting under the southwest corner and north east corner of the site. (see Figure 2, “Borehole Location Map,” Golder and Associates, March 25, 2014). It is unknown whether there is an active fault directly under the proposed project, nor whether the fault or traces of the fault may be located under Sunset Boulevard just feet from the site’s border. Because no geologic study whatsoever has been conducted under Sunset Boulevard, the City requires the presumption that the fault exists in this area. Yet the City has failed to prohibit construction for human occupancy within 50 feet of the presumed fault. The applicant has proposed to shift the residential towers 50 feet further from the potential fault, but the entire structure is prohibited by State law within 50 feet of the fault and may not be placed over the trace of the fault. It is not only the residential components which are of concern under Alquist Priolo, but *any structure for human occupancy*. The Applicant’s consultant has incorrectly stated that the City’s requirement is for structures used for habitation, not structures used for human *occupancy* as the law provides. The risk to future human occupants of the structures at the site is a basis to deny the vesting tentative tract map until complete analysis demonstrates that the site is not within 50 feet of an active fault or fault trace.

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There has not been an adequate fault study performed, and the record before the City contains inadequate information to support the conclusion that this site is physically suitable for the proposed development. The tract map findings do not even mention that the property is located in the Hollywood fault zone. Moreover, the findings erroneously state that the project complies with required fault zone setbacks for “habitable structures.” This is an incorrect statement regarding the required setbacks: all structures for human occupancy, not just for habitation, must be setback from any potential fault. The Alquist Priolo Act imposes a duty on the City not to approve development or division of land without a proper assessment of the presence of fault within the Earthquake Fault zone. This tract map should be denied until such a geologic study is complete and it is known whether a fault runs beneath the proposed development or within fifty feet from the property line.

The Design of the Project Will Cause a Significant Adverse Impact to an Historic Resource

The Cultural Heritage Commission on August 4th agreed to consider the Lytton Savings/ Chase Bank building as a Historic-Cultural Monument. The Los Angeles Conservancy calls the bank building “a significant example of postwar-era bank design in Los Angeles,” and notes that it is one of the earliest remaining examples of such architecture in the City.

Under Government Code, section 66474.01, a government may only approve a tentative map if mitigation of specific adverse impacts is *infeasible*. As shown in the EIR, Alternatives 5 and 6, which provide for full preservation of the Lytton Savings building, are *not infeasible*. These alternatives fulfill nearly every project objective, and the objective that they partially fulfill is also only partially fulfilled by Alternative 9, the preferred alternative and the subject of the tract map approval process. The record does not support the finding that mitigation of the significant impact to the historic resource is infeasible and therefore the tract map should not be approved.

b. The Certification of the EIR Failed to Satisfy the California Environmental Quality Act

The Environmental Impact Report for the project does not satisfy the mandates of CEQA. For both procedural and substantive deficiencies, the EIR does not adequately inform the public or decision makers about the impacts of the proposed project approved in the tract map.

The EIR Must be Recirculated

The recent Errata to the EIR disclosed a significant, unmitigable impact that was not disclosed in the Draft EIR or the Recirculated Draft EIR. The Draft EIR noted a “potential” impact to traffic at the unsignalized intersection of Fountain and Havenhurst due to project-generated traffic, but asserted that a mitigation measure requiring the installation of a traffic signal at the intersection would mitigate that impact. The DEIR therefore concluded that there would be no significant impacts to traffic. In the Errata, which was released just days before the City Planning Commission hearing, the City acknowledged that it had no control whether a traffic signal could be installed at that location, because the intersection is entirely within the

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jurisdiction of the City of West Hollywood. The Errata added to the EIRs list of significant and unavoidable impacts the fact that there would be a significant and unavoidable impact to traffic if the City of West Hollywood did not chose to install a traffic signal at Fountain and Havenhurst. In addition, failure to install the signal would have an adverse impact on emergency response times, as acknowledged in the project's EIR.

Recirculation of an EIR is required when, *inter alia*, new information discloses that a new significant impact would result from the project. The traffic impacts were not properly disclosed in the Draft EIR (hence the need for the Errata). Worse, the EIR relies on several other instances upon the traffic light mitigation measure (TR-1) to mitigate the impacts of the project, including public services such as fire, emergency medical response, and police. The CPC determination on the VTT likewise relies upon mitigation measure TR-1 to mitigate these impacts. The reliance upon a mitigation that is entirely out of the control of the City or the applicant in the Draft EIR, and the Errata's partial but incomplete resolution of this issue require recirculation of the EIR for the public to evaluate and comment upon the project's impacts connected with the Fountain/Havenhurst signal.

The Land Use Impacts of the Proposed Project Are Not Adequately Disclosed

The EIR contends that the approval of the project will not have an adverse impact on land use. This conclusion is based on the assumption that the project's entitlements will be approved. The disclosure is inadequate.

The EIR states that the threshold of significance for a potentially significant land use impact is "if it substantially conflicts with the adopted Community Plan or with relevant environmental policies in the General Plan or other regional and local plans adopted for the purpose of avoiding or mitigating an environmental effect." By failing to discuss the D Limitation imposed on the site in 1989 in connection with the adoption of the Hollywood Community Plan, the EIR fails to disclose an environmental policy applicable to the site that was adopted to mitigate the impacts of the adoption of the Hollywood Community Plan itself. By failing to disclose and discuss the inconsistency, the EIR does not meet the disclosure mandates of CEQA. Moreover, as set forth above, there are other General Plan policies with which the project is inconsistent, so the determination that the project will not have a significant impact on land use is not adequately supported.

The Geologic Impacts are Not Adequately Documented

The project has not complied with the Alquist-Priolo Act requirements for projects located within mapped earthquake fault zones. The FEIR insists that, despite the most recent maps, "The Project Site is not located within the Hollywood Fault earthquake fault zone." As discussed above, there has been no study of faulting just off site or in many areas on the site. The City specifically requested a study fifty feet from the site's boundary, but the applicant did not produce such a study and explained that it could not "unequivocally" determine that the fault is not present within fifty feet of the site. The EIR's conclusion that there will be no seismic impacts from the construction of the project is not based on substantial evidence.

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Impacts to Public Service Are Not Adequately Discussed or Acknowledged

Both the Draft and Final EIRs ignore the clear statements from the Los Angeles Fire Department (LAFD) that the construction of the project could have a significant impact on fire and emergency medical services. The LAFD's initial response to requests for an assessment of its service capacity in the area was that fire service to the proposed project would be "inadequate." After the Draft EIR — stating no impact to fire services — was circulated, the Final EIR presented further response from the LAFD as an effort to justify the Draft EIR's conclusion of no significant impact to fire services. The LAFD's second letter specifies a number of design features that must be incorporated into the project in order to prevent a significant impact to emergency response. However, that letter does not state that there is not likely to be significant impact to fire services from the construction of the project. Indeed, the letter states: "The development of this project, along with other approved and planned projects in the immediate area, may result in the need for the following: (1) Increased staffing for existing facilities; (2) Additional fire protection facilities; (3) Relocation of present fire protection facilities." These comments track almost precisely the City's threshold of significance for impacts to fire services. Yet the Final EIR blithely concludes that the project will have no impact on fire services.

This conclusion is even less tenable due to the Final EIR's reliance on mitigation measure TR-1, which, as discussed above, is outside of the control of the City or applicant. The EIR does not adequately disclose the potential impacts to fire services from the development of this and related projects. The EIR likewise relies upon the ability to mitigate traffic impacts to conclude that police response access to the site will be adequate. These determinations must be revisited and the public and decision makers must be properly informed about the impacts to public services.