AG-SCH 8150 Sunset Boulevard Owner, L.P.
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Re: 8150 Sunset Boulevard (Case No. VTT-72370-CN; CPC-2013-2551-CUB-DB-SPR; ENV-2013-2552-EIR)

Dear Ms. Ibarra and Mr. Lamborn:

AG-SCH 8150 Sunset Boulevard Owner, L.P. (the "**Applicant**") submits this letter to respond to arguments newly raised by project opponents since the Applicant's prior letter of June 7, 2016. In particular, the Applicant herein addresses the comment letters of Fix the City (dated June 6, 2016 and June 14, 2016), Allan E. Wilion, Esq. (dated June 7, 2016), and Robert L. Glushon (dated June 7, 2016) (collectively, the "**Letters**"). The Applicant also addresses the appeals filed by Fix the City (dated July 5, 2016), Robert L. Glushon (dated July 1, 2016), the City of West Hollywood (dated July 5, 2016) and Allan Wilion, Esq. (dated July 5, 2016) (collectively, the "**Appeals**"). None of the arguments raised in the Letters and Appeals identify significant new information, unexamined significant impacts, or any other circumstances that suggest the certification of the Environmental Impact Report ("**EIR**") and the approval of Vesting Tentative Tract No. 72370-CN for the proposal to redevelop 8150 Sunset Boulevard (the "**Project**") was improper. These arguments, many raised for the first time at this late stage in the permitting process, offer no legitimate reason to reject or further delay the Project. The Applicant has prepared the following counterarguments so that the City of Los Angeles ("**City**") can confidently grant the requested Project approvals.

The Letters and Appeals speculate about numerous alleged improprieties in the analysis of the Project under the California Environmental Quality Act ("**CEQA**") and the proposed Project approvals, but none of these arguments has any merit. Many of the rebuttals to the arguments, and answers to questions raised in the Letters and Appeals can be found in the plain text of the EIR. In addition, many of the duplicative assertions in the Appeals were already addressed by the Applicant in its June 7th correspondence with the City. This letter accordingly will not address every issue and question raised by the commenters/appellants, but will focus instead on the issues that have been raised for the first time in last minute comments on the final EIR and in the Appeals. In response to these arguments, the Applicant asserts that:

- The Project is not fatally inconsistent and/or incompatible with the City's General Plan, zoning laws, Citywide Design Guidelines, or any other applicable planning documents, and the EIR analyzes any and all inconsistencies.
- The Project is not incompatible with the mass and scale of surrounding developments.
- The analysis under the California Environmental Quality Act ("**CEQA**") of the Project's impacts on traffic, police services, water supply, and early morning commercial deliveries, the scope of Project alternatives, and the environmental baseline were all appropriate.
- The re-routing of a right-hand turn lane to close the gap between a City-owned traffic island and the Project does not require a street vacation proceeding with attendant public notices, payment by the Applicant to the City for the taking of city property for private purpose, payment to private easement holders within the Crescent Heights Tract, or a General Plan amendment.
- The Project does not require any of the numerous variances identified by the Project opponents.
- The City has the authority to modify the floor-area ratio ("**FAR**") for a site in Height District 1 with a "D" limitation, and any FAR increase under either the City or the State density bonus law is not capped at 35%.
- Alternative 9 remains eligible for streamlined judicial review under the Environmental Leadership Development Project ("**ELDP**") program.

The discussion below provides additional detail to support the Applicant's positions.

I. THE PROJECT IS NOT INCONSISTENT OR INCOMPATIBLE WITH APPLICABLE LAND USE LAWS

A. The Project is not inconsistent with the General Plan or the applicable Citywide Design Guidelines

In support of his argument that the Project is not consistent with the General Plan, Mr. Glushon relies, in his comment letter and his appeal, almost entirely on a false assertion that the Project is not consistent with the Residential Citywide Design Guidelines ("Residential Guidelines"). As an initial matter, although the Guidelines are intended to implement General Plan elements, they do not establish any requirements that the Project has failed to meet. Indeed, the Guidelines expressly recognize that "the use of the words 'shall' and 'must' [were] purposely avoided" in recognition of the fact that "not all [of the guidelines] will be appropriate in every case, as each project will require a unique approach."[1] As explained in the Residential Guidelines, "they are [only] performance goals, not zoning regulations or development standards and therefore do not supersede regulations in the municipal code." Given the land use hierarchy, whereby the General Plan supersedes zoning regulations, the suggestion that the Project is inconsistent with the General Plan because it violates aspirational guidelines that rank somewhere below zoning regulations is absurd.

Moreover, the Draft EIR (the "DEIR") included an analysis of the consistency of the original project with each of the objectives of the Commercial Citywide Design Guidelines for

[1] http://cityplanning.lacity.org/PolicyInitiatives/UrbanDesign/ResidentialDesignGuidelinesHighRes_6_23_2011.pdf at 5.

Pedestrian-Oriented/Commercial & Mixed-Use Projects[2] ("Mixed-Use Design Guidelines"), which include many of the same objectives found in the Residential Guidelines and are the appropriate guidelines to follow for a pedestrian-oriented mixed-use project, not the Residential Guidelines cited by Mr. Glushon. (*See* DEIR Table 4.A-2 at 4.A-55–62.) The Project, as embodied in Alternative 9, is even more consistent with the Mixed-Use Design Guidelines, as it increases the spacing between the tower elements and reduces the intensity of the commercial development. (Planning Staff Report at 72.) Among many aesthetic policies that the Project satisfies, it would create a walkable, high-density use, provide public open spaces, and sequester parking from public view. (*Id.*) Further, the Project would be consistent with goals of preserving existing low-density residential uses while offering new residential choices. (*Id.* at 73.) The Residential Guidelines, to the extent that they should be considered for the mixed-use and commercial Project site, embody these same principles and objectives and the Project is thus not inconsistent with their recommendations.

B. The Project is not inconsistent with the Hollywood Community Plan ("HCP")

Mr. Glushon's attacks on the analysis of the Project's consistency with policies in the HCP are similarly frivolous, as they selectively cite only portions of the HCP, distorting the true meaning and intent of the provisions to argue that the Project would be inconsistent. For example, HCP Objective 3 directs the City to provide "the housing required to satisfy the varying needs and desires of all economic segments of the Community, maximizing the opportunity for individual choice" and "[t]o encourage the preservation and enhancement of the varied and distinctive residential character of the Community, and to protect lower density housing from the scattered intrusion of apartments." This Objective is not limited to "encourag[ing] the *preservation* and *enhancement* of the varied and distinctive *residential* character of the Community." (Glushon Letter at p. 6.) The City's consistency finding was furthermore much more detailed than represented the Glushon letter, and recognized that, on balance, the Project would meet both (potentially conflicting) aspects of Objective 3 by concentrating new and affordable residential development on top of commercial development in a commercial zone that abuts the residences the Plan seeks to conserve. (*See* DEIR at 4.F-28.) The Project will not remove residential development and will add residentially-oriented amenities to the site and the neighborhood. The commenter's selective citations are improper and wholly misleading on this point.

Mr. Glushon's attack on the analysis of Objective 4.a similarly fails to identify an unexamined inconsistency with the Plan or any "accepted planning principles and standards" with which the Project is allegedly inconsistent. CEQA only requires a discussion of inconsistencies. (*City of Long Beach v. L.A. Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 919; Guidelines § 15125(d).) There is no "consistency analysis" requirement under CEQA and the City was accordingly not obligated to demonstrate in the EIR that the Project was consistent with Objective 4 of the Hollywood Community Plan. Nevertheless, as demonstrated by the analysis of the Project's consistency with the Mixed-Use Design Guidelines, the Project is consistent with accepted planning principles and standards and the mix of uses included in the Project plans will certainly "promote economic well being and public convenience." (HCP Objective 4.)

Mr. Glushon's criticism of the Objective 7 analysis, like his criticism of the analysis regarding Objective 3, similarly attempts to impose a selective, inappropriately narrow reading of the

[2] http://planning.lacity.org/PolicyInitiatives/UrbanDesign/CommercialDesignGuidelinesHighRes6_23_2011.pdf.

Hollywood Community Plan. The relevant portion of Objective 7 expresses the City's intent "to promote the preservation of views, natural character and topography of mountainous parts of the Community for the enjoyment of *both* local residents and persons throughout the Los Angeles region." (HCP Objective 7, italics added). Mr. Glushon misreads this to require protection of private views, when in context it is clear that public views are the focus of this objective. Substantial evidence in the record supports the conclusion that "the Project would not result in significant adverse effects to existing views of scenic resources, including views of and from the Hollywood Hills to the north of the Project Site." (DEIR at 4.F-29.) This evidence also supports the conclusion that the Project is not inconsistent with the HCP.

Moreover, the Glushon letter's critique of the EIR for not providing a detailed analysis of the consistency of the Project with the HCP ignores the fact that CEQA only requires that an EIR "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans" and that this analysis need not be overly-detailed. (Cal. Code Regs. tit. 14, § 15125(d); *N. Coast Rivers Alliance v. Marin Municipal Water Dist.* (2013) 216 Cal.App.4th 614, 633.) Contrary to Glushon's arguments, the City was thus not required to demonstrate that the Project will "promote an arrangement of land use, circulation, and services which will encourage and contribute to the economic, social and physical health, safety, welfare, and convenience of the Community" or that it will "balance growth and stability," unless substantial evidence in the record suggested that the Project would obstruct these objectives. (DEIR at p. 4.F-5.) Mr. Glushon does not identify any evidence to support this theory, and there is substantial evidence in the record that demonstrates that the Project is not inconsistent with the HCP.

C. The Project is not inconsistent with Mobility Plan 2035

Regarding Mobility Plan 2035[3] ("MP 2035"), Mr. Glushon fails to explain how reconfiguring a portion of a public right of way will result in inconsistencies with the plan. Again, there is no requirement under CEQA to demonstrate that the Project is consistent with the plan, which the City did not adopt until January 20, 2016 – months after it prepared and circulated a revised DEIR. Nevertheless, as explained in the topical responses to comments (TR-4) and the Subdivision Map Act Findings, the Project is not inconsistent with MP 2035.

MP 2035 seeks to cut traffic collision fatalities by creating "road diets," which involve shrinking vehicle lanes and widening medians and sidewalks. This is the objective and stated purpose, among other things, for removing the lane that created a dangerous traffic island off the northeast corner of the Project property. The Project is furthermore consistent with MP 2035's overarching goal to create "complete streets" that "provide a space for people to recreate, exercise, conduct business, engage in community activities, interact with their neighbors, and beautify their surroundings." (MP 2035 at p. 14.) In fact, as explained in MP 2035, the only circumstance where a project might run afoul of the plan and require a General Plan amendment is when a project would change the established street designations. As explained in the Subdivision Map Act findings, the realignment of the right hand turn lane to go around the traffic island will not impact any street designations. Sunset Boulevard will remain an "Avenue I," Crescent Heights Boulevard will remain an "Avenue II," and Havenhurst Drive will remain a "Local Street." There were thus no inconsistencies with MP 2035 for the EIR to consider.

[3] https://losangeles2b.files.wordpress.com/2012/12/mobilityplan_web_jan_2016v61.pdf.

II. THE PROJECT IS COMPATIBLE WITH THE NEIGHBORHOOD

The Letters and the Appeals contend that the Project is incompatible with the surrounding neighborhood and that it therefore should not receive Site Plan Review approval. This contention ignores the statement in the DEIR that "Site Plan Review should not be required for the Project." (DEIR 2-35.) As the DEIR explains, "Site Plan Review is normally required for the addition of 50,000 square feet or more of non-residential floor area and/or the addition of 50 or more residential units. In the case of the Project, fewer than 50,000 square feet of additional non-residential uses are proposed. The proposed 249 residential units, which would otherwise trigger Site Plan Review, would only be added as a result of the incentives requested pursuant to Government Code §65915 and LAMC §12.22-A,25 for the provision of affordable housing. Pursuant to California Government Code §65915(j), the granting of a concession or incentive shall not be interpreted, in and of itself, to require another discretionary approval, such as Site Plan Review." (*Id.)*

Although Site Plan review should not be required for the Project, there is substantial evidence to support the compatibility finding that would be required under Site Plan Review. The specific finding required under Site Plan Review is "that the project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties." (LAMC §16.05-F.2). The City has appropriately applied this language to allow for the evolution of neighborhoods in furtherance of the City's affordable housing goals through the use of on-menu or off-menu incentives that by their very nature allow a project to vary from other projects in the neighborhood.

For example, last year the City made this compatibility finding with respect to an affordable housing project in North Hollywood with an on-menu incentive of a 3:1 FAR in a light manufacturing area that allows only 1.5:1 and an off-menu incentive to waive the Transitional Height Requirement. The City found that, although that project would exceed the existing densities and heights in the neighborhood, "the development will set the tone for future development that will provide more attainable housing for the community." (Staff report dated May 28, 2015 for Case No. CPC-2015-926-DB-SPR, at F-7.) The developer of the North Hollywood project was granted an off-menu incentive to waive the Transitional Height Requirement; by contrast, the Project is in an area with no height limitation, so no such waiver was required. If there had been an applicable height restriction, the Applicant would have requested, and been entitled to, a waiver of that restriction as an off-menu incentive. It would subvert the intent of the City's affordable housing incentives to find a project incompatible because of height in an area with no height restrictions, when the Project would have been entitled to a waiver of a height restriction if there were one.

As we discussed in detail in our letter dated June 7, 2016, the Project's scale and massing is not incompatible with surrounding properties, and in fact is much more compatible than the North Hollywood project. By locating a large number of residential units on a commercial parcel fronting on a major thoroughfare, the Project will reduce pressure to site high-density apartments on low-density residential streets, consistent with the objectives of the Hollywood Community Plan. (*See* Planning Staff Report at 73.) Further, the Project's iconic design will contribute to the distinctive and varied residential character of the neighborhood. (*Id.*) The Project is also

similar in bulk to many other buildings in the vicinity, including the Sunset Tower (5.52:1 FAR) and the recently approved 7950 Sunset project (3.16:1 FAR)[4].

Moreover, if the Project were located in the City of West Hollywood ("WEHO"), which adjoins the Project site on two sides, it would very likely qualify as a "Target Site" under the Sunset Specific Plan, using the criteria included in the Sunset Specific Plan for the identification of Target Sites. Target Sites are properties that are suitable for increased density and height, and allow a FAR of up to 3.45:1, which is 15% greater than the Project's FAR; with a 35% density bonus, an FAR of more than 4.6:1 could be achieved. WEHO determined that the Sunset Doheny Hotel under construction at 9040 Sunset Boulevard, which has a 4.07 FAR, is 13 stories tall, and abuts low rise R4 and R2 developments, was consistent with WEHO General Plan Policy LU-2.2 ("Consider the scale and character of existing neighborhoods and whether new development improves and enhances the neighborhood when approving new infill development") and WEHO General Plan Policy LU-8.1 ("Consider the scale and character of existing residential neighborhoods during the approval of new development") and further supported its development because, like the Project, it would have an exemplary design and serve as a gateway to the city.

The Applicant has made substantial changes to the Project to ensure that it is compatible with other neighborhood uses. As a result of these efforts, the Project is less bulky and has greater setbacks than the original plans, largely because the Applicant, in deference to the community, has chosen to forego including additional commercial space. (*See* Planning Staff Report at 153.) The revised Project calls for several slender towers of varying heights, rather than a bulkier single building that would be more imposing in relation to neighboring low-rise buildings. The varying heights of the towers mimic the terrace-like features of the Hollywood Hills, as they transition in height from one to the other. Moreover, the Project as a whole scales up smoothly from the neighborhood and preserves view corridors, including south from the Hollywood Hills and north from WEHO.

This conclusion is even more true when one considers the Project uses. The Project will take an underutilized commercial site situated between the bustling Sunset Strip and a quieter, multi- and single- family residential neighborhood and replace it with a mix of residential, retail, and residential-oriented commercial uses. Nearby and on-site residents and employees will be able to take advantage of the neighborhood services (grocery, etc.) offered by the Project without driving, and on-site residents will in turn be able to walk to similar developments in the area that include a movie theater, gym, and other recreational services. The Project will have a complementary relationship with surrounding developments and will not introduce any new uses or operations that do not already exist in some form in the area.

III. THE EIR SATISFIES THE REQUIREMENTS OF CEQA

The commenters and appellants continue to assert that the EIR for the Project failed to adequately analyze environmental impacts in accordance with CEQA. To the contrary, the EIR's analysis of the particular topics noted by the commenters and appellants fully complies with applicable legal standards.

A. The analysis of the Project's impacts on traffic complies with CEQA

[4] Building area information from the Los Angeles County Assessor.

The analysis in the EIR, determining that the Project would not have a significant impact on traffic in most instances, relied not only on compliance with generally-applicable standards used to assess such impacts, but also on a detailed, site-specific Critical Movement Analysis and calculations of highway capacity. Substantial evidence in the record supports the conclusion that impacts on traffic will generally be insignificant. Indeed, as shown in Table 4.J-3, the Project would generate an estimated net increase of only 1,077 daily trips, including a reduction of 82 trips during the A.M. peak hour and an increase of 216 trips during the P.M. peak hour. The conclusion that impacts will not be significant is additionally bolstered by the requirement to prepare a detailed traffic demand management plan that will further reduce already less than significant impacts.

The one exception to this conclusion is the significant impact at the unsignalized intersection of Fountain Avenue and Havenhurst Drive south of the Project site within WEHO. The only feasible mitigation measure that has been identified for this significant impact is the installation of a new traffic signal at this intersection; therefore, the FEIR requires the new traffic signal, subject to review and approval by WEHO. Commenters and appellants (including WEHO itself) make much of the fact that WEHO has indicated that it does not presently intend to approve the new traffic signal. Other than this statement of present intent by WEHO, no other basis has been provided for concluding that installing this new traffic signal is infeasible. Mitigation is infeasible if it is not "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." (CEQA Guidelines, § 15364.) It would not have been legally appropriate for the EIR to automatically dismiss the new signal as infeasible solely on the basis of WEHO's statement of present intent to refuse to consider the new signal – it may well be that within a reasonable period of time after the Project is constructed, WEHO will determine that the new signal is appropriate. The EIR did not identify any other feasible mitigation measure for this impact, and neither has WEHO nor any other commenter. The adopted CEQA Findings appropriately recognize that if WEHO does not approve the new intersection, the significant impact would not be mitigated and the CEQA Findings therefore include an appropriate statement of overriding considerations to account for the possibility that the impact will not be mitigated. (Planning Staff Report at 195 [Statement of Overriding Considerations].) There is nothing unusual about an EIR identifying a mitigation measure that is not certain to be implemented, and adopting a statement of overriding considerations to account for the contingency that the mitigation measure may not be implemented. There is nothing missing from, or misleading about, this analysis.

Additional comments on the traffic analysis are included in the Glushon letter and appeal, which argue that the analysis of the City of L.A. CEQA Thresholds Guide (Thresholds Guide) TR-6 criteria does not address the significant impacts resulting from the fact that "the intersection(s) nearest the primary site access is/are projected to operate at LOS E or F during the A.M. or P.M. peak hour, under cumulative plus project conditions." Although it is true that the intersection(s) nearest the primary site access is/are projected to operate at LOS E or F during the A.M. or P.M. peak hour, the Thresholds Guide only provides that such conditions *normally* have a significant project access impact. In this instance, however, as explained in detail in the DEIR discussion of TR-6 (pages 4.J-54 to -57), the access driveways for the site have sufficient capacity and will be operated in a manner that will avoid the potentially significant cumulative impacts (e.g., queuing) that TR-6 can be used to identify. The conclusion that the application of TR-6 did not identify a significant impact in this instance was therefore proper.

WEHO further raises a series of incorrect traffic impact allegations. In particular, WEHO alleges: that certain intersections were not analyzed; that traffic signal upgrades should be required at several intersections; that new signals will result in "cut-through" traffic in residential neighborhoods; and that crosswalks require upgrading. WEHO further asks that the Project be revised to prohibit commercial truck access on Havenhurst Drive. These issues have already been addressed in the responses to comments. (See A9-12 [response to Scott Lunceford letter of January 20, 2015, addressing unsignalized intersections and additional mitigation]; A9-10 [addressing cut-through traffic concerns and discussing the isolated impacts to Havenhurst Drive]; A9-11 [discussing improvement of the existing mid-block pedestrian crosswalk on Crescent Heights Boulevard].) For example, WEHO dismisses Response to Comment A9-11 by saying that the response does not recognize the increase in pedestrian traffic caused specifically by the Project. WEHO's characterization of the response is inaccurate; the response notes that, while some additional pedestrian traffic is anticipated due to the Proposed Project, such additional pedestrian traffic using the mid-block crosswalk is expected to be minimal, in that there are already two existing signal-controlled crosswalks that are provided for convenient use by potential Project-related pedestrians, at Fountain Avenue/Crescent Heights Boulevard, and at Sunset Boulevard/Crescent Heights Boulevard. The only potential new Project-related pedestrian activity that might use the mid-block crosswalk would come from the existing residential developments (eight or nine apartment buildings) located along the east side of Crescent Heights Boulevard, and even some of this population lives closer and would likely use the existing crosswalks. As such, the potential number of new Project-related pedestrians who might use the mid-block crosswalk would be limited. Therefore, as noted in Response to Comment A9-11, there is no nexus for conditioning the Project (alone) to improve the mid-block crosswalk. The other traffic improvements recommended by WEHO have similarly been determined to be ineffective or unnecessary in the responses to comments cited above.

B. The impacts of commercial deliveries on Havenhurst Drive were analyzed in the EIR

Commenters also question whether the EIR adequately analyzed the impacts of the use of Havenhurst Drive for commercial delivery purposes, particularly considering the residences elsewhere on Havenhurst. In fact, the EIR properly addresses these issues, and the Project is designed to minimize any detrimental effects from these activities.

Although the Project does provide for commercial truck access on Havenhurst, it is designed to minimize traffic and noise impacts on the street. Specifically, delivery trucks will only be permitted to enter the Project by turning left from southbound Havenhurst into the Project and to exit the Project onto northbound Havenhurst by turning right; therefore, delivery trucks will only traverse the northernmost portion of Havenhurst to and from Sunset. (Recirculated Portions of the DEIR (the "RP-DEIR") at 2-51; Planning Staff Report at 102.) Moreover, the installation of a traffic signal at the intersection of Sunset and Havenhurst as called for by the Project would facilitate movement of truck traffic to and from Sunset Boulevard and minimize the potential for congestion at this location, (RP-DEIR at 2-51), and overall traffic impacts on Havenhurst would be less than significant. (DEIR at 4.J-51.) Once a delivery truck has arrived at the Project, loading and unloading operations will take place at an internal loading dock, not on Havenhurst. (*See* DEIR at 4.J-28, 4.G-27.) Because these loading/unloading operations would take place in an enclosed space, noise impacts on neighboring land uses would be eliminated or minimized.

Noise from these deliveries would not exceed current ambient noise levels. (*Id.* at 4.G-27; Planning Staff Report at 93.)

C. The Project will not significantly impact the provision of police services

The Letters also claim that, contrary to the CEQA Findings, impacts on police services will be significant. These comments are based on unfounded assumptions that the increased demand for services created by the Project, along with increased traffic congestion, will negatively impact emergency services throughout the community.

As noted in the EIR, average police response times in Hollywood Community service area, where the Project is located, already are below the average response times across the City as a whole. (DEIR at 4.I.2-5.) However, based on the average incidence of crime among the City's population, the EIR calculated an expected crime-generation rate of only 35 crimes per year for the Project. To mitigate any incremental demand from new residents and businesses, the Project will include several security features on-site, such as 24-hour surveillance and security personnel. Such measures offer adequate and appropriate mitigation given that the EIR threshold focuses on impacts that would trigger the need to construct or expand police facilities. To the extent special events on-site generate above-average demand for police services, the EIR explains that the Hollywood Community station can call for assistance from other LAPD police stations or from other police departments in Los Angeles County, per the State-mandated Mutual Aid Operations Plan. (*See* DEIR at 4.I.2-7–8.) It is appropriate to rely on these measures for the temporary impacts of such events.

Regarding incremental increases in response times due to traffic, the Project's Traffic Demand Management Program will reduce the overall transportation impacts of the Project to less-than-significant. For special events, the Special Event Traffic and Parking Management Plan, adopted as a project design feature for transportation, would minimize any incremental traffic delays that might impact emergency responders. (*See* Planning Staff Report at 32-33.) The Letters do not offer any evidence that the analysis and calculations based on these measures is inaccurate; consequently there is no basis for questioning the analysis in the EIR.

D. The EIR adequately analyzed the potential impacts of natural hazards

The Letters and Appeals incorrectly assert that the Project is located on the active Hollywood Fault based on the revised (as of December 4, 2015) Maps of Alquist-Priolo Earthquake Fault Zones. Of the five new maps released on December 4, 2015, none addressed the Hollywood Fault or remapped its location. According to the most recent final map, dated November 6, 2014, the fault lies some 100 feet to the northwest of the Project. (DEIR at 4.D.) No substantial evidence in the record supports the opposition's claims. In fact, there is substantial evidence in the record that the EIR adequately analyzed the potential impacts of natural hazards.

E. The water supply is adequate to support the Project

Commenters on the Final EIR additionally alleged that water (supplied by the Los Angeles Department of Water and Power) would not be adequate to support the Project. To the contrary, substantial evidence in the administrative record supports the conclusion that the water supplies will be adequate.

Fix the City asserts that "discretionary increases in density cannot be approved until the city or state declares the water emergency is over," yet cites no authority for this proposition. While it is true that at least one city that failed to meet its state-mandated Urban Water Supplier Conservation Standard adopted a moratorium on new construction to help it comply with its obligations, LADWP has performed better under the State's mandates and has not adopted such measures. Moreover, LADWP's most recent conservation standard (effective 3/1/2016) was reduced from 16% to 14%.

Recent challenges associated with drought-restricted water supplies were discussed in the DEIR starting at page 4.K.1-4 and on page 4.K.1-14. Moreover, the EIR also explains how LADWP proactively and preemptively planned for drought contingencies long before the current conditions reached their peak in 2016. Specifically, the City's Water Supply Action Plan entitled "Securing L.A.'s Water Supply" (dated May 2008) and LADWP's Urban Water Management Plan ("UWMP") established conservation practices and policies that have been critical in the City's efforts to comply with State limitations. (DEIR at 4.K.1-19 to 4.K.1-20.) The EIR's reliance on these plans was not improper. Indeed, although the City very recently (on June 7, 2016) adopted a revised UWMP, the commenters failed to identify any significant differences between the 2010 UWMP and the 2015 UWMP that might trigger recirculation of the EIR. Therefore, there is substantial evidence in the record that the water supply is adequate to support the Project.

F. The EIR considered a reasonable range of alternatives

In its comment letter, Fix the City proposed that the City select an all-residential alternative with a 35% density bonus. Neither this proposed alternative, nor any other all-residential alternative, were analyzed in the EIR because they would not sufficiently meet the Project objectives. Although such an alternative would "[i]ncrease the number of affordable rental housing units in the westernmost area of Hollywood," that is the only Project objective it would satisfy (and clearly it would not provide near the number of affordable housing units that the proposed Project aims to create). Absent a significant mixed use component, the alternative would not even "[p]rovide housing to satisfy the varying needs and desires of all economic segments of the community, including very low income households, maximizing the opportunity for individual choices, and contributing to Hollywood's housing stock." Such an alternative furthermore would not achieve any of the other Project goals and objectives designed to leverage the location of the Project revitalize commercial activities and encourage pedestrian exploration of the vibrant Sunset Strip.

It is furthermore important to recognize that a 1.35:1 FAR residential-only project would not reduce the only significant impacts of the Project, which are limited to impacts to historic resources, on-site construction noise, and traffic during the excavation and shoring stage of construction (cumulative traffic impacts during operations are mitigatable, but have been presumed to be unavoidable because the City cannot control the City of West Hollywood's

decision to allow the installation of additional traffic signals in impacted areas). Accordingly, an all-residential alternative with a 35% density bonus was appropriately excluded from the detailed analysis of alternatives. As discussed in detail in Response to Comment B1-3, the EIR included a broad range of alternatives (a total of nine), and CEQA does not require an evaluation of every conceivable alternative scenario.

G. CEQA requires consideration of physical environmental conditions, not regulatory conditions, when establishing the Project "Baseline"

Commenters have additionally suggested that the City's analysis of General Plan inconsistency is improper because it evaluates the Project against the backdrop of the General Plan as it would be amended by the proposed Project actions, not as it currently reads. Essentially, they argue that the existing plans are part of the existing environment, and the City has compared the Project to the wrong baseline. This argument is based on a fundamental misunderstanding of both the concept of the environmental baseline in CEQA, and of the purpose of general plan consistency analysis in CEQA. The baseline for environmental analysis under CEQA is the actual, existing physical conditions that will be changed by the Project; courts have rejected the notion that the environmental baseline is found in the contents of a plan or permit. (*Communities for a Better Env't v. S. Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320-322, 323 ["[T]he impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework."].) Analyzing whether the Project is inconsistent with land use policies "adopted for the purpose of avoiding or mitigating an environmental effect" is one of the analytical methods the CEQA Guidelines require an EIR to include in determining whether a project would change the existing physical conditions in a manner creating a significant impact. (CEQA Guidelines App. G [identifying conflict with an applicable land policy "adopted for the purpose of avoiding or mitigating an environmental effect" as a factor in analyzing significant impacts].)

Under the commenters' tortured interpretation, every project that involved an amendment to a zoning regulation, a specific plan, or a general plan would have a significant, unmitigatable impact because it would be inconsistent with the current zoning regulation, specific plan, or general plan. Courts have made it very clear that this not the law. "[I]nconsistency between a project and other land use controls does not in itself mandate a finding of significance. It is merely a factor to be considered in deciding whether a particular project may cause a significant environmental effect." (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1207). In this case, the EIR analyzed the impacts of the Project, including changes to applicable land use plans, on the existing physical environment and determined there would not be a significant land use impact. (DEIR at 4.F-59; RP-DEIR at 2-35.) The commenters offer no evidence to the contrary.

IV. THE RE-ROUTING OF THE RIGHT-HAND TURN LANE IS NOT A VACATION OR A TAKING

The Letters and Appeals also allege that the Project's proposal to reconfigure the southwest corner of the intersection of Sunset Boulevard and Crescent Heights Boulevard to eliminate an existing traffic island necessitates "street vacation" proceedings. Such proceedings are required when a local government proposes to completely or partially abandon or terminate "the public right to use a street, highway, or public service easement." (Cal. Sts. & Hwys. Code § 8309.)

The arguments that the Project requires a vacation proceeding stem from the mistaken presumption that the City is transferring, gifting, or otherwise assigning some property right associated with the island to the Applicant. That is not true.[5] The changes proposed by the Project will not "abandon" or "terminate" the public's right to use the right-of-way or in any way impact the City's property rights.

The Project proposes to reconfigure and improve the intersection for both motorists and pedestrians. As the EIR discusses, reconfiguring the corner of the Project to replace the traffic island and right turn lane with a conventional dedicated right-turn lane will accomplish two objectives. First, it will make traffic patterns and the intersection safer, without sacrificing efficiency. Vehicles turning right onto Crescent Heights from Sunset will have unobstructed views of traffic approaching southbound on Crescent Heights. Further, the dedicated right-turn lane on Sunset will have the same capacity as the current turn lane. Second, the right-turn only lane will be merged with the existing triangular median to create a public plaza. Pedestrians crossing the plaza will enjoy safer passage from the new retail uses and open spaces of the Project to the crosswalks at the intersection.

California Streets and Highways Code § 8309 limits the transfer of public rights-of-way to private uses, not the conversion of one public use to another (here, vehicular use to pedestrian use). As discussed above, vehicles will enjoy a safer, equally capacious turn lane, while pedestrian access will be improved. Most important, the City is not relinquishing its right to the Property; it will continue to own the traffic island turned public open space and the area will continue to be used as a public right-of-way by pedestrians. (77 Ops. Cal. Atty. Gen. 94 (1994) ["For an abandonment of a public thoroughfare to occur (*i.e.* 'vacation'), the public's right to use the thoroughfare must be terminated."].) These actions do not trigger the need for a vacation proceeding, and the public right-of-way improvements will be handled instead through the application for a B-Permit.

The assertion that the rerouting of the turn lane constitutes an illegal taking of a "private easement" is an even more specious argument. Commenters appear to claim that all unspecified "owners within the Crescent Heights Tract" have a private easement that requires a particular configuration of public streets. Substantial evidence in the record does not support this claim. "It is a well-settled rule in this state that the recordation of a tract map delineating streets followed by the conveyance of lots by reference to the map presumptively conveys to the grantee fee title to one- half of the street on which the property abuts and a private easement to use the streets shown on the map. [Citations.]" (*Norcross v. Adams* (1968) 263 Cal.App.2d 362.) In addition to requiring that a particular property abut the public streets, an implied grant of a public easement also "presupposes ownership of the street by the one who recorded the tract map. Where the abutting street is not a part of the recorded subdivision, the doctrine of implied grant can have no application. ([Citations.]" (*Id.*) Here, however, the Project opponents have not demonstrated that the street was owned by the person who recorded the subdivision. Moreover, there is no case law to support the proposition that a vacation is required where the street used for vehicular purposes will be replaced and the local government will maintain a public right-of-way and rights connected therewith on the property. (Cal. Sts. & Hwys. Code § 8308.) In reusing the

[5] The Applicant has requested that it be able to count, for purposes of calculating the Project FAR, two strips of the Project property that will be dedicated to the City for public right-of-way purposes as a condition of the Project approval; this request applies to strips of land leading up to and away from the traffic island that are part of the 8150 property, and does not apply to the land currently used as a right turn cut-through.

property as a pedestrian plaza, the City is not abandoning the public right-of-way. Finally, it is important to remember that a takings claim requires only just compensation, which the in-kind replacement road certainly offers in the event that it is even necessary. Therefore, there is no basis for condemnation proceedings associated with the turn lane realignment.

V. THE CITY HAS AUTHORITY UNDER THE STATE DENSITY BONUS LAW TO MODIFY THE FAR FOR A SITE ZONED IN HEIGHT DISTRICT 1 WITH A "D" LIMITATION AND THE FAR INCREASE IS NOT CAPPED

Commenters continue to challenge the density of the Project, particularly the 3:1 FAR. They correctly note that this represents three times the FAR of 1:1 allowed for the Project site, which has been zoned with a "D" Development Limitation (imposed as a result of Ordinance No. 164,714). But commenters continue to ignore the effects of the state and City density bonus laws, which allow the City to increase allowable density above otherwise applicable limits, including the limits associated with the "D" limitation. The FAR for a project qualifying for density bonuses on this site can be 3:1, as explained in the Applicant's letter of June 7.

The City's density bonus law offers certain "on-menu" incentives for projects meeting specified criteria. One such on-menu incentive authorizes a FAR of 3:1 for projects reserving specified percentages of affordable units, fronting on a major highway, and sited in Height District 1 within 1,500 feet of a qualifying transit stop. (LAMC § 12.22.A.25(f)(4)(ii)[6].) Applicants also may request "off-menu" incentives necessary for projects to proceed, and the City "shall" grant the incentives unless it makes findings that the incentive is not necessary to provide affordable housing or will have certain adverse effects on public health, safety, or the environment. (*Id.* § 12.22.A.25(g)(2)(i)(c).) Here, the Applicant has requested two off-menu incentives, which it is entitled to by virtue of dedicating more than 10% of its units to affordable housing for very low-income households. First, the Applicant seeks the 3:1 FAR that would apply as an on-menu incentive if the Project were just 60 feet closer to the transit stop. Second, the Applicant has requested that the area of its property that it is dedicating for public right-of-way purposes—strips of land two feet wide on both Crescent Heights and Sunset, pursuant to conditions imposed by the City's Bureau of Engineering—count towards its lot area for purposes of calculating the maximum allowable floor area.

Under the state law, California Government Code §§ 65915 *et seq.*, reserving 11% of units for very low-income residents entitles the Project to a 35% density bonus and to such incentives or concessions, or waivers or reductions of development standards, as necessary for the Project to proceed. (*Id.* § 65915(d)(1), (e)(1).) Absent specified findings by the City, it must grant the requested incentive, concession, or waiver. (*Id.* § 65915(d)(1), (e)(1); see generally *Wollmer v. City of Berkeley* (2011), 193 Cal. App. 4th 1329, 1346-47.)

The Letters suggest that the Project is not entitled to an off-menu incentive (or rather, a waiver or modification of a Development Standard not on the menu) under the City's law because waivers and modifications are only available if the Project is not "subject to other discretionary applications." (LAMC § 12.22.A.25(g)(3).) The commenters contend that the "D" Development

[6] The Appeals contend that the "D" limitation changes the Height District to something other than Height District 1. However, that is incorrect. The "D" limitation merely modifies what is otherwise allowed in Height District 1, and the Project site continues to be designated in Height District 1, even with the "D" limitation.

Limitation must be removed in the City's discretion, and this process cannot be circumvented by the procedures of the City's Affordable Housing law.

The proposition set forth in the Letters is precisely the kind of obstacle that the State and the City, density bonus laws are designed to remove. The City imposed the "D" Development Limitation on the property through a March 22, 1989 (Ordinance No. 164,714), adopted as part of a larger program to reconcile discrepancies between the potential population capacity permitted by the Citywide Zoning Ordinance of 1946, as amended (approximately 10,000,000 people), and the ultimate population capacity predicted in the City's General Plan, including the 35 Community and District Plans (approximately 4,000,000 people). (See Interim General Plan Consistency Ordinance No. 159,748.) Ordinance No. 164,714 was one of many efforts to make the changes necessary to bring they City's zoning into consistency with its General Plan, which is currently undergoing a long-overdue and delayed update. The limitations imposed by the decades-old General Plan will undoubtedly be adjusted upwards. In any event, however, because State law, specifically California Government Code § 65915(j)(1), expressly provides that "[t]he granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval," the requested incentive to change the FAR for the property cannot be subjected to "discretionary applications."

Even if the change in FAR did require some other discretionary proceeding, the opponents' contention that it would, as a result, be unauthorized under any circumstances is based on a mistaken reading of the code. LAMC § 12.22.A.25(g)(3) simply establishes two alternative procedures – one for projects that require multiple discretionary decisions and one for projects that do not. The end result of the proceedings is the same: the Project is entitled to the requested incentive/waiver unless the decision maker finds, based on substantial evidence, that the incentive/waiver either (i) "is not required in order to provide for affordable housing costs"; or (ii) will have an unavoidable, "Specific Adverse Impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources . . . ." (*Id.* § 12.22.A.25(g)(2).) The decision to modify or waive the FAR imposed by the "D" Development Limitation is not discretionary and the Applicant's request can only be rejected for the reasons provided in LAMC § 12.22.A.25(g)(2), which do not include the fact that the property has a site-specific ordinance.

The Letters also argue that the lot area has been exaggerated by including property not owned by the Applicant. This is not correct. As explained in the Applicant's June 7th letter, the "FAR requested for the Project is based solely on the 111,339 square feet of the Property." In other words, the reconfigured intersection and traffic island, which remain the property of the City, do not count towards the Project's FAR. The off-menu incentive to adjust the FAR by including the Applicant's dedication of its own lot for public right-of-way purposes likewise does not use City-owned property to increase the Applicant's development rights. This portion of the request refers to property that is currently part of the Applicant's lot, but will not be developed by the Applicant so that it can be used instead to widen the sidewalks along Crescent Heights and Sunset, pursuant to conditions from the City's Bureau of Engineering.

The Letters contend that the FAR cannot increase from a 1:1 FAR to a 3:1 FAR through an incentive. This is also incorrect. Rather, there is no limit the FAR an applicant might request. The only check on a FAR increase/waiver is the City's authority to reject the request because the

incentive/waiver either (i) is not required in order to provide for affordable housing costs; or (ii) will have specific unavoidable, adverse impacts on public health and safety or the environment. The on-menu incentives in the City code suggest that a 35% increase will generally be appropriate, except for properties in a commercial zone in Height District 1 that front a Major Highway and meet other criteria, which are entitled to a 3:1 FAR. (LAMC § 12.22.A-25(f)(4).) But modifications and waivers to provide different standards are always a possibility. (*Id.* § 12.22.A.25(g)(3).) Here, a modified FAR, modeled on the on-menu incentive for which the Project *almost* qualifies for in its own right is appropriate.

VI. THE PROJECT IS ELIGIBLE FOR CERTAIN CEQA EXEMPTIONS AND STREAMLINED REVIEW

Commenters further contend that the Project is not eligible for certain modifications in how CEQA should be applied to projects meeting the criteria set forth in SB 743 and AB 900, although this has no bearing on the City's preparation of the EIR and consideration of the Project. The commenters are mistaken on both counts.

First, regarding compliance with SB 743, which relaxes CEQA's requirements for qualifying urban infill projects, the threshold criteria demands that a project be located in a "transit priority area," which encompasses the area located within ½ mile of an existing major transit stop. Commenters cite the Project's failure to qualify for an on-menu incentive under the Los Angeles Municipal Code as evidence that the Project does not meet the requirements of SB 743. The ½ mile requirement (2,640 feet) in SB 743 is entirely separate from the City's unrelated 1,500-foot requirement. As noted throughout the EIR, the majority of the Project is within 1,560 feet of a major transit stop, and is far less than ½ mile from an existing major transit stop, thereby qualifying the Project for the benefits of SB 743. The EIR nevertheless analyzed the Project's exempt impacts on aesthetics and concluded that the Project would not have a significant effect on such resources.

Second, regarding the Project's continuing eligibility for the benefits of streamlined judicial review under CEQA, pursuant to AB 900, the commenters misrepresent the relevant considerations weighed by the Governor when he decided to include the Project in the program. Specifically, the Governor wrote in his certification letter that the Project qualified for the program because: (1) It is a. A mixed use residential/commercial project; b. Designed to be eligible for LEED Silver certification; c. Designed to achieve a 10-percent greater standard for transportation efficiency than for comparable projects; and d. Located on an in-fill site, (2) It is consistent with the Sustainable Communities Strategy for the Southern California region, (3) It entails a minimum investment of $100 million in California, (4) The prevailing and living wage requirements of Public Resources Code section 21183(b) will be satisfied, (5) The Project will not result in any net additional greenhouse gas emissions, and (6) It will meet the requirements set forth in Public Resources Code sections 21183(d), (e), and (f). The move from the proposed Project to Alternative 9 did not change the Project in any way relevant to these considerations and consequently, there is no reason to question the ongoing validity of the Governor's certification.

VII. THE PROJECT DOES NOT REQUIRE ADDITIONAL VARIANCES

Commenters additionally suggest that several uses (e.g., live entertainment, a health club, and outdoor dining on the traffic island) would require a variance. None of these activities are

proposed as part of the Applicant's preferred alternative, Alternative 9. No live bands, public address (PA) system use, or loud amplified music shall be permitted. Additionally, Alternative 9 does not include a health club or public fitness center, and outdoor dining is permitted in the C4 zone and does not require a variance. Although the traffic island will be joined with the Project site as part of a redesign of an existing, hazardous right turn lane, the island is not part of the Project for purposes of calculating the FAR, hosting commercial or residential development, or calculating the open space offered by the Project. The Applicant is responsible for landscaping the area as a public benefit, but the island will remain a separate, City-owned property.

VIII. THE PROJECT MITIGATION MEASURES ARE NOT ILLUSORY OR IMPROPERLY DEFERRED

Allegations that the mitigation measures for the Project are illusory or improperly deferred ignore both the law and the facts. "Deferring the formulation of the details of a mitigation measure [is authorized] where another regulatory agency will issue a permit for the project and is expected to impose mitigation requirements independent of the CEQA process so long as the EIR included performance criteria and the lead agency committed itself to mitigation." (*Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237.) The example cited by the commenters as violating this standard, GS-1, requires preparation of a final Geotechnical Report that addresses construction site stability issues in accordance with all applicable regulations prior to the issuance of a grading permit. As further explained in the CEQA Findings at page 126, "This design specific-report would identify seismic considerations to be addressed in the site design and include recommendations for foundations, retaining walls/shoring, and excavation. Mitigation Measure GS-1 would assure proper implementation of the regulatory protections for public safety and compliance with the California Building Code and Los Angeles Municipal Code, as applicable." These provisions are more than sufficient to comply with CEQA's requirements.

As to allegations that the mitigation is illusory, these arguments are addressed in the discussion of traffic mitigation measures in section III.A.

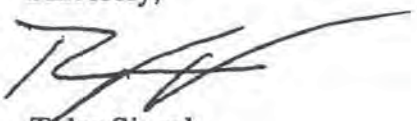
IX. ARGUMENTS ADDRESSED ELSEWHERE

In its June 7, 2016, letter to the City, the Applicant addressed additional arguments made in the Letters and Appeals and pointed to substantial evidence in the record demonstrating that (1) it is not obligated to preserve the Lytton Savings Bank; (2) the Project's massing and scale are compatible with the surrounding community and would not have a significant effect on views; (3) the EIR adequately analyzed transportation and parking impacts; (4) the Applicant will not own or receive mitigation credit for improvements to the former traffic island; (5) with mitigation, as needed, the Los Angeles Fire Department can meet the specific and cumulative needs of the Project; (6) although no impacts to the West Hollywood sewers were identified, the sewers can accommodate the specific and cumulative needs of the Project, and although the Project is not within the City of West Hollywood and therefore would not normally be required to pay a sewer service charge to West Hollywood, the Project will pay a fair-share contribution commensurate with the Project's incremental sewage generation; and (7) the analysis of air quality and greenhouse gas impacts was adequate. Arguments in the Letters and Appeals to the contrary have no merit.

X. CONCLUSION

As the discussion establishes, the Project complies with all applicable laws, and the EIR is adequate. The Applicant appreciates the opportunity to provide further comment and thanks City staff for their attention to this matter. The Applicant also respectfully requests that the City incorporate this letter into the Project's administrative record.

Sincerely,



Tyler Siegel