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The Honorable Members of the Los Angeles City Council  
200 N. Spring Street  
Los Angeles, CA 90012

Re: 8150 Sunset Boulevard  
Council File Nos. 16-1011 and 16-1011-S1  
Response to appeals regarding case numbers CPC-2013-2551-MCUP-DB-SPR; VTT-72370-  
CN-1A; ENV-2013-2552-EIR

Dear Honorable Council Members:

On August 17, 2016, the Los Angeles City Planning Commission (“Planning Commission” or “CPC”) voted 6-0 to certify an environmental impact report (“EIR”) and approve a conditional use permit, density bonus, and site plan review (CPC-2013-2551-MCUP-DB-SPR, “CPC Approval”) for the redevelopment of a 2.56-acre property located at 8150 Sunset Boulevard (the “property” or “site”) with a mixed-use residential and retail project (the “Project”). The Planning Commission also affirmed the June 23, 2016 decision by the Deputy Advisory Agency and approved a Vesting Tentative Tract Map for the site (VTT-72370-CN-1A, “VTT Approval”, and together with the CPC Approval, the “Project Approvals”). The Project Approvals were subsequently appealed by five parties. On October 25, 2016, the City Council’s Planning and Land Use Management Committee (“PLUM”) voted unanimously to recommend that the City Council reject the appeals and uphold the Planning Commission’s approval of the Project Approvals.

The Project has been proposed by AG-SCH 8150 Sunset Boulevard Owner, L.P. (“Applicant”) for construction “within the western portion of the Hollywood Community of the City of Los Angeles (‘City’), at the foot of the Hollywood Hills, approximately seven miles northwest of Downtown Los Angeles.” (CEQA Findings of Fact, VTT Approval at p. 36; CPC Approval at F-18.) It would consist of 229 residential units, including 38 affordable housing units, and 65,000 square feet of commercial uses. The Project has been designed by world-renowned architect Frank Gehry and aims to provide a pedestrian-friendly, community-oriented development to replace a dilapidated strip mall. Notwithstanding these laudable goals and significant public benefits, a vocal opposition has assembled to challenge the decisions of the Planning Commission and the Deputy Advisory Agency. In response to the appeals lodged by individual and collective opponents, the Applicant has prepared this letter and presents it now to the City Council for reasoned consideration.

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I. LEGAL STANDARD

Five organizations and individuals (Laurel Canyon Association, Susanne Manners, JDR Crescent, LLC/IGI Crescent, LLC (“Crescent”), the City of West Hollywood (“West Hollywood”), and Fix the City, Inc.)<sup>1</sup> have filed appeals of both of the Planning Commission’s August 17th decisions. The two types of decisions being appealed are governed by different legal standards, which are set forth below.

A. Review of VTT-72370-CN-1A under the Subdivision Map Act

In cities with a population of more than 2,800,000 people, such as Los Angeles, decision makers must deny a tentative map if they find:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the legislative body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.

(Cal. Gov. Code, § 66474.61.) As evidenced by the detailed analysis in the Los Angeles City Planning Commission’s August 17, 2016 Letter of Determination for VTT-72370-CN-1A, the Project does not trigger any of these grounds for rejection.

B. Review of CPC-2013-2551-MCUP-DB-SPR under CEQA

The appeals of the conditional use permit (on- and off-site sales of alcoholic beverages) issued by the Planning Commission<sup>2</sup> are founded more generally on allegations that the CPC failed to comply with the

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<sup>1</sup> At the PLUM committee hearing, representatives of Laurel Canyon and the City of West Hollywood indicated that they were withdrawing their appeals as result of the project modifications adopted at the PLUM committee hearing, which are described below. The applicant has also agreed to pay a sewer service charge to West Hollywood and to provide funds for improvements to offset the unmitigated impact on the Fountain and Havenhurst intersection, and for pedestrian crosswalk and traffic signal upgrades.

<sup>2</sup> Although some appellants have purported to appeal the grant of a density bonus, such decisions are not open to appeals to the City Council. (See L.A. Muni. Code § 12.22.A.25(g)(3)(i)(b) (providing that “[t]he decision of the City Planning Commission shall be final.”). Fix the City seeks to avoid this limitation by claiming that its inability to appeal the grant of density bonuses constitutes a due process violation;

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California Environmental Quality Act (“CEQA”) and as a result prepared a legally inadequate EIR. To prevail on these claims, the project opponents must show that the EIR omitted “information that is both required by CEQA and necessary to informed discussion.” (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986 [“*Cal. Native Plant*”].) To the extent that they challenge “the amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology,” they must show that “the determination is not supported by substantial evidence.” (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546 (*Baykeeper*); Cal. Pub. Resources Code, § 21168.5.) Substantial evidence consists of “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,” and not merely “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly inaccurate or erroneous . . . .” (Cal. Pub. Resources Code, § 21082.2(c).) This deferential standard of review empowers the agency to resolve questions of fact and make policy decisions. (*Cal. Native Plant, supra*, 177 Cal.4th at pp. 984-985.) Furthermore, once certified by the lead agency, an EIR is presumed adequate and project opponents bear the burden to prove otherwise; demonstrating a mere difference of opinion among experts is not sufficient. (Cal. Evid. Code, § 664; Pub. Resources Code, § 21167.3; *Fort Mojave Indian Tribe v. Dept. of Health Servs.* (1995) 38 Cal. App. 4th 1574, 1600.) In this instance, the Project opponents have not met their burden to justify their appeals.

## II. PROJECT MODIFICATIONS IN RESPONSE TO CITY AND APPELLANTS’ CONCERNS

After the Planning Commission hearing, the Applicant continued to work diligently with the different stakeholders, including Councilman Ryu and his staff, who have expressed concerns about the project. As a result of these discussions, the following modifications to the Project to make it smaller and reduce its impacts were adopted at the PLUM Committee hearing.

1. An approximately 24% reduction in the height of the tallest building, from 234 feet to 178 feet. The floor of the west tower will be set back at least 10 feet from the south side of the building, so someone standing at the lowest point in elevation of the site will experience the height as no more than 166 feet. All mechanical equipment on the roof shall be screened from view, and will be set back such that it is not visible to immediately adjacent neighbors on Havenhurst Drive
2. A reduction in the total number of residential units included in the Project, from 249 to 229 units.
3. A simultaneous increase in the total number of affordable housing units in the Project. The Project will now include 12 units of workforce housing, in addition to the 26 units for very-low income households, for a total of 38 affordable units, or approximately 17% of the 229 units.
4. A reduction of more than 40% of the area of the commercial component of the Project, from 111,000 square feet to 65,000 square feet (this reduction was made prior to the CPC action). This reduction would also reduce the project’s traffic

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however, governments are not required to offer multiple layers of administrative appeals to satisfy due process obligations, if any exist regarding this matter.

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generation by approximately 1,000 daily trips so that it would produce essentially the same number of trips as the existing uses.

5. An increase of the building setback along Sunset Boulevard in order to provide a minimum 15-foot wide sidewalk.
6. Provision of sufficient parking above the minimum code requirements to ensure that there will not be spillover parking impacts within the surrounding area. The CPC had capped the parking at no more than 10% above the minimum code requirement, but the Developer has agreed to provide parking that is approximately 17% higher than the minimum code requirement.
7. In response to concerns about the reconfigured intersection of Sunset Boulevard and Crescent Heights Boulevard, the Developer proposes to provide up to \$2 million for a Neighborhood Traffic Improvement Plan (the "NTIP"). Los Angeles may use these funds for traffic calming measures in the Project vicinity.

### III. RESPONSES TO EACH PENDING APPEAL<sup>3</sup>

#### A. Appeals of Susanne Manners, Represented by Allan E. Wilion, Esq.

Susanne Manners, the beneficiary of a trust that owns an apartment building on Havenhurst Drive, filed identical appeals challenging the VTT and CPC Approvals that were furthermore very similar to the appeal she filed with the Planning Commission.<sup>4</sup> Ms. Manners alleges that the Project interferes with a "private easement" held by her and others, that the CPC violated the Brown Act (Cal. Gov. Code, §§ 54950 *et seq.*), that the CPC failed to provide sufficient notice of its actions, that the Project no longer qualifies for the Environmental Leadership Development Project ("ELDP") program, that the Project includes a procedurally improper vacation of public streets, that a B-permit cannot support the development contemplated on the former traffic island, that the City has improperly gifted to the Project 9,134 square feet of property, that the City lacks authority to allow a 3:1 floor-area ratio ("FAR"), that the City engaged in illegal spot zoning, that the grant of a liquor license failed to consider material impacts on neighbors and further exceeds the maximum number of licenses for the Project site, that the Project is inconsistent with the general and other land use plans, and that EIR misrepresented certain facts, including the width of Havenhurst Drive, traffic impacts, noise impacts, fire department requirements, location of the Project relative to the Hollywood Fault, and cumulative impacts. Ms. Manners' stream of

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<sup>3</sup> Because Laurel Canyon and West Hollywood have withdrawn their appeals, this letter does not respond to them. However, the major issues raised in those appeals were also raised by the appeals to which this letter does respond.

<sup>4</sup> On October 10, 2016 Mr. Wilion submitted "supplemental and revised updated papers" supporting Ms. Manners' appeal. These papers amplify the points raised in the previous appeals and do not raise new substantive issues. The papers do raise several new procedural issues. First, Ms. Manners argues that the Council hearing should be delayed until after designation of the Lytton Savings building as a Historic-Cultural Monument ("HCM"). This issue is addressed below – at the end of this section. Ms. Manners also argues that the PLUM committee cannot legally hear the appeals, and that the City Attorneys' office has a conflict of interest; these issues are more appropriately addressed by the City Attorney.

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complaints are either not supported by substantial evidence or fail to discredit the substantial evidence – and law – on which the City relied in making its decisions.

As an initial matter, several of Ms. Manners' arguments simply repeat those raised in her earlier appeal to the Planning Commission. In letters dated June 7, 2016 (See Attachment A) and July 13, 2016 (See Attachment B), the Applicant already refuted most of these arguments by providing detailed analyses, backed by citations to the administrative record, which established that:

- The Project is not 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 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 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%.
- The Project remains eligible for streamlined judicial review under the ELDLP program.
- The Property is not too far from public transportation stops to justify a density bonus.
- The EIR considered and discloses the potential traffic impacts that might result if the West Hollywood does not upgrade a certain traffic light.
- The Applicant will not own and has not received a FAR determination based on the traffic island

Having already addressed these arguments at length, the Applicant incorporates these prior responses by reference to the appeals of Ms. Manners and all others who have filed. The remainder of this section will accordingly focus on Ms. Manners' other allegations.

1. The arguments put forth by Ms. Manners are not supported by substantial evidence

Several of the arguments championed by Ms. Manners simply lack any evidentiary support, making it impossible for the City to assess these arguments on their merits. Her allegations of Brown Act violations, for example, lack any evidence that the alleged communications involved a majority of the decision makers. Individual contacts between council or committee members and others not on the council or committee do not constitute serial meetings. (Cal. Gov. Code, § 54952.2, subd. (c)(1).) Her allegations of inadequate work performed by experts in the field of traffic modeling similarly cannot be refuted by the pictures of traffic included as exhibits to the appeal. The EIR recognizes that certain intersections currently experience grid-locked traffic and the photographs offered do not provide any new information that would require a different determination by the City.

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2. Even if Ms. Manners' allegations were substantial, the City is entitled to rely on other evidence

Other allegations are based on a difference of opinion about the significance of facts. The City is not required to adopt Ms. Manners' conclusions on these matters. For example, allegations that the Project is located in a fault zone do not contradict the findings in the EIR that the fault itself is located approximately 100 feet to the northwest of the Project. (Draft EIR at 4.D.) This is not evidence of an overlooked significant impact. Allegations that Havenhurst Drive, as measured from sidewalk edge to sidewalk edge, is 38 feet with 10 foot sidewalks on either side are similarly not inconsistent with representations in the EIR that the right-of-way for the road is 60 feet. Finally, representations that the *mitigated* noise from construction trucks will be 58 db are not inconsistent with allegations that unmitigated sound levels will be 90 db.

3. There are no private implied easements in the area included in the tract map

Ms. Manners claims that there are private implied easements in the area included within the tract map, and that the map therefore cannot be approved. However, this is simply factually incorrect. The tract map does not include the current traffic lane that will be closed, so even if there were a private implied easement for that traffic lane, it is not relevant to the approval of the tract map. Furthermore, even if such easements did exist within the area covered by the tract map, the City could determine that the realigned turn lane is equivalent to the existing right turn lane and approve the Project because the existing roadway is being reconfigured and will remain public right-of-way for sidewalk purposes. The Subdivision Map Act provides that a "legislative body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public." (Cal. Gov. Code, § 66474.61, subd. (g).

4. Alternative 9 was considered in full by all decision makers and expressly approved as the "Project"

Ms. Manners' allegation that the "Hearing Office of the PC" failed to analyze, consider, review or discuss Alternative 9 is puzzling. The CEQA findings, which compare all other alternatives to Alternative 9 (i.e., the Project) are over 130 pages long. Alternative 9 was furthermore considered in great detail in a recirculated draft EIR. Ms. Manners' suggestion that this Alternative was not sufficiently considered by the decision makers or the public simply has no basis.

5. The approvals for the proposed Alternative 9 will not result in illegal spot zoning

Contrary to Ms. Manners' allegations, the property has not been and will not be improperly spot zoned. In almost all cases, "spot zoning" refers to the discriminatory assignment of restrictive zoning rules to small, isolated parcels. The parcels around the spot-zoned "island" enjoy more permissive zoning, unfairly burdening the spot-zoned parcel. (*Foothill Communities Coal. v. County of Orange* (2014) 222 Cal.App.4th 1302, 1311 ["*Foothill Communities*".]) Spot zoning can, however, work in reverse, as the term also encompasses situations where a "small parcel is given greater rights than the surrounding property." (*Id.* at pp. 1311-1314.) In such cases, the proposed zoning may still be appropriate "where the 'spot' is not an island but is connected on some sides to a like zone . . . [Citation.]" (*Arcadia Dev. Co. v. City of Morgan Hill* (2011) 197 Cal.App.4th 1526, 1536 ["*Arcadia Dev. Co.*".])

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Ms. Manners' spot-zoning argument fails because the Project Approvals did not create an island of inconsistently zoned land. Neighboring properties, and even portions of the Project site, would be eligible for a 3:1 floor-area ratio ("FAR") in exchange for providing a prescribed amount of affordable housing. The Project qualified for this benefit by requesting it as an "off-menu" incentive under generally applicable rules for incentivizing affordable housing. This is not discriminatory spot zoning.

Moreover, even if the Project qualified as a "spot," not all spot-zoned parcels are impermissible. Courts have approved spot zoning in instances where it serves the public interest or a "substantial public need." [Citation]" (*Foothill Communities*, 222 Cal.App.4th at p. 1314; *Arcadia Dev. Co.*, 197 Cal.App.4th at p. 1536 [recognizing that "[e]ven where a small island is created in the midst of less restrictive zoning, the zoning may be upheld where rational reason in the public benefit exists for such a classification." (Citation.)"]). In *Foothill Communities*, for example, the court recognized that approving new zoning to place a senior housing community in the middle of a residential zone constituted spot zoning, but was nevertheless "in the public interest" and consequently appropriate. (*Foothill Communities*, 222 Cal.App.4th at p. 1319.)

The development of new affordable housing serves a critical public need, and courts must defer to the judgment of City legislators if the findings concerning the public interest are supported by substantial evidence. (*Foothill Communities*, *supra*, 222 Cal.App.4th at pp. 1318-1319.) As demonstrated by the Statement of Overriding Considerations, the City made specific legal findings, based on substantial evidence, that the Project serves important public interests, including providing new affordable housing and "significantly improving upon the architectural integrity of the project site by replacing an outdated commercial strip mall and surface parking lot with a cohesive, iconic, and distinctive design at the City's western gateway in Hollywood." (VTT Approval at p. 200.) The Commission also found that the Project will provide several publicly accessible amenities, discourage the use of cars, and provide approximately 200 construction jobs. (*Id.*) These findings are all the substantial evidence the City needed to determine that the Project would serve the public interest. Spot zoning, if any, was therefore proper.

6. Project approvals can proceed even if the Lytton Savings building is designated as a historic monument

In the October 10 supplemental papers, Ms. Manners argues that the Council hearing should be delayed until after designation of the Lytton Savings building as a Historic-Cultural Monument ("HCM"), asserting that such designation "kills the currently approved the project as a matter of law." This assertion is incorrect. A permanent preservation obligation does not accompany a HCM designation. The EIR furthermore already assumed that the bank would be eligible for designation, so the designation would not alter the prior analysis. HCM designation does not permanently preclude demolition; it simply imposes procedural requirements which the project would follow if the bank building were designated.

7. Bank preservation alternatives were thoroughly analyzed, and the City's ultimate finding that they are infeasible is supported by substantial evidence.

The EIR exhaustively analyzed the proposed demolition of the bank, its impacts, and feasible mitigation, and concluded that the impacts of demolition could not be mitigated to a level of insignificance through mitigation measures short of preservation (e.g., photo-documentation and selective salvage of building components would not suffice). To address this impact, the EIR considered three build alternatives that would have preserved the Lytton Savings building and avoided the significant impacts associated with

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demolition. Although the EIR further concluded that at least two of the preservation alternatives (Alternatives 5 and 6) would fully meet 12 of the 15 project objectives and would partially meet the remaining three objectives, in the findings of fact and statement of overriding considerations adopted by the Planning Department in support of its approval of the Project, the Planning Department, in its role as “Advisory Agency,” found that the preservation alternatives were not in fact feasible. Both the law and substantial evidence support the Planning Department’s determination in the CEQA findings that the preservation alternatives are not feasible. As explained by the court in *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957:

The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency’s later consideration of whether to approve the project. [Citation omitted.] But “differing factors come into play at each stage.” [Citation.] For the first phase—inclusion in the EIR—the standard is whether the alternative is potentially feasible. [Citation omitted.] By contrast, at the second phase—the final decision on project approval—the decision-making body evaluates whether the alternatives are actually feasible. [Citation omitted.] At that juncture, the decision-makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible. [Citation omitted.]

(*Id.* at p. 981; see also Cal. Code Regs. tit. 14 (“Guidelines”), § 15091, subd. (a); *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18; *Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489.) This approach is consistent with guidelines section 15091, subd. (a)(3), which provides that decision makers may approve a project with significant environmental impacts if “[s]pecific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the . . . project alternatives identified in the final EIR.” It was thus entirely appropriate for the Planning Department to determine that certain considerations made the preservation alternatives infeasible and to select Alternative 9 (a non-preservation alternative) as the approved Project.

Specifically, the Planning Department took into account the community’s complaints about the visual impacts of the Project, noting that Alternative 6, like the originally proposed project, “would create a large and flat monolithic design that would not allow for views through the project site.” (p. 137.) The Department also concluded that Alternative 6, compared to the selected Alternative 9, would impair “project accessibility and would not be as visually appealing or pedestrian friendly . . .” (*Id.*) These conclusions can logically be drawn from a comparison of the project layouts (see Appendix A). In addition, a letter from the architect of Alternative 9, issued in response to advocacy for the preservation alternatives, documented conflicts between the Project objectives and the preservation alternatives. Specifically, the letter from architect Frank Gehry, submitted to the City on May 9, 2016 (Attachment E), opined that the Lytton Savings building:

does not provide street-front engagement along Sunset Boulevard, it turns its back to Havenhurst Drive, and it impedes pedestrian access to the project from Havenhurst and Sunset. The size and layout of the building limits the number and types of tenants that could occupy the space. We do not believe that this building has the flexibility to adapt to a new usage, which would severely limit the programming of that building to the detriment of the excitement that you are trying to create on the site. The bank consumes a sizeable

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portion of the available property, which if preserved, would leave insufficient space to design buildings with comparable function to the ones that we would have to abandon.

In a separate letter dated October 24 (Attachment F), Mr. Gehry explains:

My process on this project, as on my other projects, includes the use of models as a tool to explore a variety of options. We tried dozens of massing options for this project to arrive at the best solution. We looked at options using the bank building and without the bank building. I do not come to this recommendation lightly or without having done my homework, but I really do not believe that I can design a successful project while keeping the bank building on the site.

Based on this information, the Department concluded that the preservation alternatives would not meet several Project objectives, including objectives to: (1) provide an attractive retail face along street frontages; (2) redevelop and revitalize an aging, and underutilized commercial site; (3) build upon the existing vitality and diversity of uses in Hollywood by providing a vibrant urban living development along a major arterial and transit corridor; (4) provide high-quality commercial uses to serve residents of the westernmost area of Hollywood in a manner that contributes to a synergy of uses and enhances the character of the area; (5) create a development that complements and improves the visual character of the westernmost area of Hollywood and promotes quality living spaces that effectively connect with the surrounding urban environment through high quality architectural design and detail; and (6) enhance pedestrian activity and neighborhood commercial street life in the westernmost area of Hollywood.

Other substantial evidence in the record further supports the conclusion that the structure is not compatible with a pedestrian-oriented mixed use development that aims to provide a vibrant urban space for a synergy of uses. Indeed, as recognized in the draft EIR, the building design “responded to *car culture* with its ample parking lot, rear entrance, drive-up teller, and Zigzag folded plate concrete roof . . . created to draw drivers off the road and into the bank and accommodate patrons arriving by automobile.” (Draft EIR App. C at p. 20, italics added.) With a windowless second floor encased in concrete, the 28,561 square-foot Lytton Savings building stands as a sentry, walling off access to the Project site along more than half of the property that fronts Sunset Boulevard. The building can furthermore only accommodate banking and other office uses, which account for no more than 5,000 square feet under any of the Project alternatives. Consistent with its objectives, the Project places emphasis on pedestrian-accessible, high-quality residential, retail, and residential-serving commercial uses that, as noted by the Developer’s architect, will not work within the confines of the existing structure. The conclusion in the Department’s CEQA findings that the preservation alternatives were not feasible was thus supported by substantial evidence in the record and therefore entirely proper.

The Department acted well within its discretion when it determined that the preservation alternatives could not achieve the majority of project objectives and its findings, if challenged, will be afforded great deference. (*Town of Atherton v. Cal. High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 353 [infeasibility findings are entitled to great deference and presumed correct]; *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335 [an agency’s findings are presumed to be supported by substantial evidence]; *Topanaga Ass’n for a Scenic Cmty. v. County of L.A.* (1974) 11 Cal.3d 503, 514 [conflicts in evidence and reasonable doubts must be resolved in favor of the agency’s findings].)

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Furthermore, substantial evidence has been placed in the record that demonstrates that the bank preservation alternatives are not economically feasible. In advance of the July 28, 2016 Planning Commission meeting to consider Case No. CPC-2013-2551-MCUP-DB-SPR, the Applicant voluntarily submitted, and the Planning Department reviewed, pro formas and independent third-party financial analyses of the pro formas addressing the financial feasibility of the project as proposed, a project without affordable housing incentives (FAR of 1:1), and Alternative 9. (See pages F-6 to F-7 of the Department of City Planning Recommendation Report.) This evidence showed that while the proposed project and Alternative 9 can provide the necessary return on costs needed to attract investment capital (minimum 5.7%) and minimum developer profit margin (12.5%), a project that is limited to a FAR of 1:1 cannot. Similarly, the pro forma included in Attachment C demonstrates that Alternatives 5 and 6, in addition to their inability to meet several of the Project objectives, would have a return on costs of 5.1% and a developer profit margin of only 7.6%, which are both below the minimum amounts needed to make the project financially feasible. Furthermore, the difference in developer profits in absolute terms would be \$31,405,865 (meaning % of the profits expected under Alternative 9 would be lost).

The pro forma for Alternatives 5 & 6 shows that a preservation alternative, which would have a larger residential component compared to Alternative 9, would nevertheless have a lower net income advantage on both residential and commercial uses. This is largely due to the market for smaller residential units in a nondescript building as opposed to the variety of spaces offered in a building designed by a world-renowned architect. In addition, the commercial income would be significantly devalued by preserving 20,172 square feet of commercial space in the existing Chase bank building because the net retail income of businesses in this area will be significantly constrained by Proposition 13 considerations. This consideration, more than any other, is what sets the preservation option apart and pushes its financial feasibility below the established benchmarks.

As explained in *Sustainability, Parks, Recycling & Wildlife Legal Defense Fund v. S.F. Bay Conservation & Development Commission* (2014) 226 Cal.App.4th 905, 918 (*SPRAWLDEF*), “[t]he ‘feasibility of . . . alternatives must be evaluated within the context of the proposed project.’” Thus, when the cost of an alternative exceeds the cost of the proposed project, “it is the magnitude of the difference that will determine the feasibility of this alternative.”” (*Id.*, citing *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 883.) Courts have generally declined to specify a “particular economic analysis or any particular kind of economic data” required to demonstrate infeasibility.” (*Id.*) But it is well established that evidence of excessive additive costs of relocation, comparatively greater costs of one alternative compared to another, or evidence that “the cost of the proposed alternative is so great that the property owner could never expect to recover the investment on resale [Citation]” can be used to establish economic feasibility. (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 601 (*Woodside*)). “Ultimately, ‘the question is . . . whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent [person] would not proceed with the [altered project].’” (*SPRAWLDEF, supra*, 226 Cal.App.4th at p. 918, citing *Woodside, supra*, 147 Cal.App.4th at p. 600.)

The magnitude of the difference between preservation alternatives and Alternative 9, both in comparative and absolute terms, is significant; so much so that it renders the project infeasible.[1] Added to the inability of a preservation alternative to meet many of the objectives of the Project with regards to pedestrian accessibility, high quality retail and architecture, and cohesive design (among other things), this evidence supports the City’s conclusion that a preservation alternative is not feasible. (See *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1508 [assertions by developer that a reconfigured, smaller alternative would not meet the project objectives to consolidate other operations and reduce costs

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was sufficient, although with other physical infeasibility evidence, to justify finding of economic infeasibility].)

8. Requiring preservation would impose unsubstantiated and/or disproportionate mitigation on the applicant, in violation of state and federal law

Given the value of the particular historic resource at stake, the costs of preservation (including relocation) would impose a disproportionate – and thus unconstitutional – burden on the Applicant. Mitigation measures are constrained by the requirement that they be “roughly proportional” to the impacts of a project.” (Guidelines, § 15126.4; *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (*Nollan*); *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*).) More specifically, however, the mitigation imposed on a project must pass a three-part test.

First the court asks whether government imposition of the exaction would constitute a taking. Second is the “essential nexus” test, which asks whether the government has a legitimate purpose in demanding the exaction. Third is the “rough proportionality” test, which asks whether the exaction demanded is roughly proportional to the government’s legitimate interests.

*Garneau v. City of Seattle* (9th Cir. 1998) 147 F.3d 802, 809. The preservation alternatives, if required by the Planning Department in this case, would not survive this test.

Indeed, the first element, requiring that “an old, unwanted structure must remain indefinitely on one’s private (or public) property . . . arguably is a classic type of “invasive” occupation of property for the public purpose of historical preservation that would be a taking without compensation.” (Douglas B. Aikins, *Demolition of Historic Structures; CEQA Compliance and Tactics*, Cal. Real Prop. J. (vol. 30, No. 2) at p. 25.) The third element, even more so than the first, would clearly be violated by imposition of a preservation alternative, as the significant cost to the Applicant (landowner) is not justified by the City’s negligible interest in preserving a local historic resource that cannot meet state or federal significance criteria. Even if the preservation obligations were limited to relocation, as opposed to a prohibition on demolition, the cost of relocating a building of this size (even just securing an alternate location) could not be roughly proportional to the government’s interests in preservation.

As noted above, the analysis in the EIR conservatively concluded that the Lytton Savings building would be eligible for designation as a HCM under Los Angeles municipal law – notwithstanding the significant modifications to the building that have eroded its historical significance over time. As further recognized in the EIR, these changes might not be significant enough to impair the building’s performance under the HCM designation criteria, but they will preclude its designation as a state and/or federally listed historic or cultural resource. Specifically, the EIR analyzed the historical significance of the bank building and determined that it was not eligible for the National and California Registers because (i) it is not associated with events that have made a significant contribution to the broad patterns of California or national history in that Lytton Savings only played a minor role in the development of the savings and loan industry, having gone bankrupt within ten years of its founding; (ii) it is not associated with persons of significance in our past related to the savings and loan industry; (iii) it does not embody characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual or possess high artistic value due to alteration and removal of distinguishing architectural, design, art and landscaping features; and (iv) it is not likely to yield information important in prehistory or history. The

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evidence supporting these conclusions is discussed at great length in the EIR on pages 119-129 of Appendix C-3 (Historical Resources Assessment), pages 4.C.2-7 through 4.C.2-13 of the Draft EIR, and pages 2.A-14 through 2.A-19 of the Final EIR (TR-3 Historical Resources).

In particular, the EIR concluded that the Lytton Savings building has not retained “the majority of its seven aspects of integrity (location, design, setting, materials, workmanship, feeling, and association) from its period of significance so as to be recognizable as a historical resource and to convey the reasons for its significance.” (Final EIR at p. 2.A-17 [TR-3].) This impact is primarily the result of “substantial alterations” that “resulted in material changes” to building “such that it no longer conveys the original program and design concepts of [its architects].” (*Id.*)

Such alterations to original features, materials and finishes include:

- January 1960 addition (10 feet by 16 feet) built onto southwest corner of the Bank for Bart Lytton’s private patio access to his executive office.
- May 1961, interior partitions and ceilings added in the Bank (150 by 100 feet).
- December 1961, additional interior partitions and ceiling installed in the Bank valued at \$20,800.
- 1987 one - story electrical station (25 feet by 43 feet) built in front of west façade of Bank at southwest corner of Sunset Boulevard and Havenhurst Drive.
- 1987 removal of Plaza and grading for parking lot.
- 2002 Bank restrooms and staff room upgraded to comply with Title 24 requirements valued at \$55,000.
- 2010 Bank interior remodeled for approximately \$55,000
- 2013 Bank interior remodeled for approximately \$72,700.
- Construction of the 1972 office addition and 1987 retail building
- Replacement, alteration and infill of the Bank’s glazing and fenestration
- Removal of the auto teller, automobile driveway and original parking lot design
- Removal of the interior design including custom carpet, finishes, integrated artwork, light fixtures, banking counters and furniture and subsequent renovation of the interior
- Removal of the museum use, including entrance, lobby, galleries, and auditorium to allow for a health club and storage facility such that the Lytton Center is no longer an identifiable feature of the property
- Removal of the public Plaza with pavilion, reflecting pool and Modern landscaping and conversion of area into an asphalt parking lot
- Removal of Lytton’s private patio on west elevation, including decorative concrete blocks, metal gate and private parking area
- Unsympathetic replacement of travertine panels on east elevation
- Alteration of sculpture The Family by David Green
- Removal of Lytton Savings and Loan Pole Sign

(*Id.* at A.2-18 to A.2-19.) Beyond direct alterations of the building, the EIR also noted that “[o]ther factors related to changes in the setting” had reduced the significance of this resource, including “[s]ubstantial erosion and loss of the important related automobile - associated context on Sunset Boulevard from the 1960s.” (*Id.* at A.2-19.) Furthermore, there are better examples of Kurt Meyer’s work and Modern bank design in southern California. (*Id.*)

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Requiring the Applicant to preserve this marginally historic resource would effectively deny the use of roughly 20% of the property by the Applicant, requiring that it instead preserve that portion of its property and the building on it as a public benefit. This mitigation exceeds the cost of the impact. Requiring relocation similarly cannot be justified as the cost of securing a site for a 28,561 square-foot building in Los Angeles would be substantial. The administrative record does not support such costly mitigation and were the City to require it, it would constitute a taking.

9. The EIR appropriately analyzed sensitive uses.

Ms. Manners alleges that the “Senior Home of West Hollywood” on Havenhurst is a sensitive receptor not identified in the Planning Commission’s analysis of the Project. The appeal does not include an address or any other information that might specifically identify the cited use, but we assume that this comment refers to the West Hollywood-subsidized senior housing property located at 1435 N. Havenhurst, immediately south of the Andalusia Apartments. This property was also identified as a site of sensitive receptors in multiple letters submitted by Michael Grace (see, e.g., Letter C47 and Letter C692). As explained in response to those comments, the air quality standards used to evaluate the health risks associated with the Project are protective of sensitive populations, and, as determined in the Health Risk Assessment, the Project will not result in significant health risks to sensitive receptor populations given implementation of revised MM AQ-1. It is further worth noting that sensitive receptors are defined in the OEHHA Air Toxics Hot Spots Program Guidance Manual (2015) as locations such as a hospital, daycare center or convalescent home where the human occupants are considered to be more sensitive to pollutants than “average.” Implicit in the conclusion that the Project does not pose significant health risks to sensitive receptors is therefore a conclusion that it does not pose a significant health risk to an “average” adult – including average, non-convalescing seniors. The Project received one comment letter from the property presumably cited by the Appellant (1435 N. Havenhurst Apt. #202) and it was a letter of support.

B. Appeals of JDR Crescent, LLC; IGI Crescent, LLC

JDR Crescent, LLC and IGI Crescent, LLC (“Crescent”), the owners of the three-story apartment building located just south of the Project site at 1425 Crescent Heights Boulevard, likewise have appealed the VTT and the CPC. On October 19, 2016, Crescent submitted additional comments in support of its appeals. Similarly to West Hollywood, Crescent has raised many of its arguments before in appeals and comments opposing the Project, and the Applicant already has responded to many of Crescent’s arguments in its letters of June 7 and July 13, as well as earlier in this letter. Crescent’s complaints include: (1) that the Project is inconsistent with the Citywide Design Guidelines; (2) that the Project is not “compatible” with neighboring developments, such as Crescent’s apartment building; (3) that the Project is inconsistent with various elements of the Hollywood Community Plan; (4) that street vacation proceedings are required to approve the Project; (5) that the findings for a Conditional Use cannot be made, (6) a series of bare allegations that the EIR is inadequate; and (7) that the City has no authority to deviate from the “D” limitation in order to grant a density bonus. The following analysis supplements the Applicant’s prior responses where necessary and addresses Crescent’s new allegations.

1. The Project is consistent with the Citywide Design Guidelines

Crescent first claims that the Project is inconsistent with various elements of the City’s *Residential Citywide Guidelines for Multi-Family Residential Projects & Commercial Mixed-Use Projects*. As a

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threshold matter, the Guidelines are just that—recommendations, not requirements—for developments like the Project that necessarily yield to mandatory provisions of law and project-specific site characteristics and objectives. “Each of the Citywide Design Guidelines should be *considered* in a proposed project, although not all will be appropriate in every case, as each project will require a unique approach.” (Citywide Guidelines at 5 (emphasis added).) Even if the Project failed to abide by the Guidelines, no consequences would flow. In fact, however, the Project follows the Guidelines in most respects.

Crescent alleges that the Project would not “nurture neighborhood character,” “consider neighborhood context,” or “respect the character of existing buildings with regards to height, scale, style, and architectural materials,” among other charges. To the contrary, the Project’s design promotes each of these values. Several other buildings along Sunset Boulevard are similar in height and mass to the Project, and in the immediate vicinity of the site, buildings like the Chateau Marmont, the Colonial House, and the Granville Towers are comparable in height to the shorter tower. Considering the low-rise podium elements, The Project skillfully demonstrates a stepped transition from the low-rise Crescent apartments to the mid-rise tower and ultimately the tallest tower. Crescent’s compatibility arguments might carry more weight if this assembly of buildings were proposed to rise in the middle of a quiet residential street in a single-family neighborhood or a low-density, multi-family neighborhood. But the fact is that the site instead occupies a corner at the intersection of two of the most important thoroughfares in this region of the City, Sunset and Crescent Heights. Considering all of the dynamics at this unique location—simultaneously adjacent to a mid-density residential neighborhood and at a commercial gateway—the varied heights of the Project’s structures are entirely appropriate.

Crescent’s argument assumes that because the Project benefits from a significant FAR increase—awarded to the Project because of its substantial provision of affordable housing—it will overwhelm the adjacent neighborhood and loom over neighbors and pedestrians. But in keeping with the Guidelines, the Project is designed with neighbors and pedestrians in mind. The ample public spaces, including the street-level courtyard and paseos and the terraces atop some of the low-rise structures, amplified by the new plaza at the northeast corner, will create an attractive destination for pedestrians. Replacing the current commercial uses that cater to passing motorists, such as the fast-food drive-thru, with uses accessible to pedestrians, like the grocery store, will benefit the Project’s neighbors substantially. The new retail businesses and open spaces will create new walkable, accessible opportunities for nearby residents, significantly enhancing the experience of living in this neighborhood.

2. The Project is consistent with the Hollywood Community Plan

Contrary to Crescent’s claims, the Project *promotes* the objectives of the Hollywood Community Plan. Crescent first objects that the Project will not “encourage and contribute to the economic, social and physical health, safety, welfare, and convenience of the Community” because it will “exacerbate. . . existing problems.” Presumably, Crescent is referring to problems like traffic, but substantial evidence in the record shows that the Project will not significantly impact traffic. Commercial uses generate more traffic than residential uses, and *less* commercial space will be available on-site once the Project is constructed. Further, particular commercial uses that induce substantial traffic, such as drive-thru fast-food restaurant, will no longer operate on-site. The incredulous responses of Crescent and other critics who expect the Project to increase traffic are unsupported.

Crescent likewise claims that the Project’s introduction of a “large over-massed high-rise” will fail to “balance growth and stability,” as called for by the Hollywood Community Plan. Not so. For one, the

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design of the Project responded to comments from the community and was designed to alleviate the impression of mass and height. Further, the Project does “balance growth and stability” by providing more space for a resource in increasingly short supply in Los Angeles—new housing—while preserving roughly the existing amount of commercial space.

Crescent next alleges that the Project contravenes the Hollywood Community Plan’s goal of the “preservation and enhancement of the varied and distinctive residential character” of the community. But in every respect, the Project satisfies this goal. Housing will not be removed to clear the site for the new development. Rather, an existing commercial-only site will become a mixed-use site, providing much-needed new housing and commercial space that better serve the neighborhood. This change “enhances” the “residential character” of the neighborhood by adding new neighborhood-serving businesses and, especially, new residents. Further, Frank Gehry’s design for the Project is assuredly “varied and distinctive” and will complement neighboring residential buildings on Crescent Heights and Havenhurst.

Citing a provision in the Hollywood Community Plan referring to developments based on “accepted planning principles and standards,” Crescent implies that the Project is somehow inconsistent with such principles. Not so. State and City policy has evolved to encourage many of the features of this Project, including mixed-use developments and density bonuses, both directed at alleviating state and local housing costs. Further, the reconfiguration of the traffic island to promote pedestrian mobility and the Project’s accommodations for bicycles promote “Complete Streets” principles recently added to State and City law, including Mobility Plan 2035. Finally, the Project’s qualification as an elite green building—it has been certified as a Governor’s ELDP Project—demonstrates that it satisfies state-of-the-art contemporary planning standards.

Crescent finally asserts that the Project is inconsistent with an element of the Hollywood Community Plan intended to “encourage the preservation of open space consistent with property rights when privately owned and to promote the preservation of views.” Crescent ignores the first prong of this goal, undoubtedly because the Project provides both ample open space on the Applicant’s property in the form of the courtyard and rooftop terraces and the corner plaza. Crescent also ignores how the Project was designed to respond to comments from the community by preserving existing view corridors both from and of the Hollywood Hills.

Further, Crescent’s comments based on the Hollywood Community Plan ignore its many objectives that are consistent with the Project. The first objective, for example, is to “coordinate the development of Hollywood” with other parts of the City and region. The project, an in-fill development with good transit connections, fits the bill. Likewise, the third objective supports the development of “the housing required to satisfy the varying needs and desires of all economic segments,” to which the Project’s mix of for-sale condos, market-rate apartments, and affordable apartments responds.

3. Most of Crescent’s challenges to the EIR are unsupported by evidence.

Separately, Crescent unfurls a litany of complaints against the adequacy of the Project’s EIR. None of these objections should detain the Project. Both of Crescent’s appeals allege the same fourteen separate purported inadequacies in the EIR, but only a few of these offer anything more than a bare allegation. Considering the high evidentiary threshold in a challenge to an EIR, (*see supra* section I.B), these claims (claims “A” through “I,” “M,” and “N”), may be dismissed out of hand. Crescent’s remaining claims about the adequacy of the EIR fare no better. Claim “K” tells only half the story, asserting that the EIR proposes “illusory” traffic mitigation measures that do not “mitigate the potential impacts to inadequate emergency

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vehicle response times.” This allegation ignores the substantial evidence in the record demonstrating the emergency service to the Project will be adequate, even without mitigation. (See June 7 Letter at section VII (Appendix A); July 13 Letter at section III.C (Appendix B)). Finally, Claim “L” repeats a baseless argument that that the Project relies on an outdated Alquist-Priolo earthquake map and lies over a fault. To the contrary, Crescent’s appeal refers to an outdated Alquist-Priolo map, and no evidence in the record indicates that the Project lies over or within 50 feet of the fault. (See July 13 Letter at section III.D (Appendix B)). Claim “J” about the the intersection of Fountain and Havenhurst is addressed immediately below.

4. The EIR considered all feasible mitigation for the traffic impacts associated with the Fountain/Havenhurst intersection

With regard to the intersection of Fountain and Havenhurst, the EIR considered all feasible, alternative mitigation measures and determined that only a traffic light would have the necessary, mitigating effect. Because the City cannot control implementation of this measure, the EIR assumed the light will not be installed and addressed this issue as a significant impact. The appeal does not identify any feasible mitigation measures that the City failed to consider. This is because there are none.

Hirsch Green Transportation Consulting, which performed the traffic impact analysis for the project, confirmed in a letter to the Los Angeles Department of Transportation dated October 18, 2016 (see Attachment D) that it did consider the installation of new left-turn lanes in both directions on Fountain Avenue at Havenhurst Drive but “determined that the new left-turn lanes (either alone or in conjunction with any TDM Program-related trip reductions) would not reduce the Project’s impact at this location to less-than-significant levels.” Therefore, they conclude that “the only feasible mitigation measure to reduce the Project’s impact at the intersection of Fountain Avenue and Havenhurst Drive to less-than-significant levels is the installation of a new traffic signal.” Additionally, this measure could create secondary impacts in the project vicinity due to the removal of some existing on-street parking along the south (eastbound) side of Fountain Avenue. Therefore, this measure is not a feasible mitigation measure for the impact on the Fountain Avenue and Havenhurst intersection.

Furthermore, the significant and unavoidable impacts of the Project on traffic conditions due to congestion at the unsignalized intersection of Fountain Avenue/Havenhurst Drive must be kept in perspective. This is just one intersection, out of 15 major intersections studied for impacts, which would have significant and unavoidable impacts if West Hollywood does not, or cannot, implement the recommended mitigation measure. The specific effect of leaving the intersection unsignalized would be that Project-generated vehicular delays at the intersection would be expected to increase by 54.6 seconds per vehicle during the P.M. peak hour compared to existing conditions. (RD-EIR at 2-44.) This increase would expand to 90.4 seconds under future (2018) conditions. (*Id.*) But this is an intersection where current and future wait times are already at, or expected to be, almost 215 and 365 seconds, respectively, and “a change in the LOS would not occur . . . .” (Draft EIR at 4.J - 44.) The significance of this impact, located at the epicenter of the traffic study (see *id.* at 4.J-42 [fig. 4.J-7, as renumbered by the RP-DEIR at 3-25]), would not radiate out to cause significant impacts at other intersections (e.g., “the Fountain Avenue/Sweetzer Avenue intersection . . . would be reduced from its Future (Year 2018) Without Project LOS A conditions to still - acceptable LOS B,” which does not exceed applicable thresholds for significant impacts). (Draft

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EIR at 4.J - 44.) This isolated impact, even if unmitigated, also will not cause significant impacts on other, intertwined environmental conditions (e.g., emergency response times [see Draft EIR at 4.I.1-14 to -15.]).<sup>5</sup>

The City appropriately took the fact that the City of West Hollywood may not authorize the installation of this traffic signal into account, and prepared a statement of overriding considerations for a highly localized impact. CEQA does not require more.

5. The evidence is sufficient to support the findings for a conditional use

Separately, Crescent argues that the criteria for the issuance of a conditional use cannot be satisfied, but its evidence for this claim largely rehashes arguments that have been addressed elsewhere.

First, Crescent claims the Project will not “enhance the built environment in the surrounding neighborhood” or “perform a function or provide” an essential service. Crescent complains that the Project will “overshadow and make unlivable” its building and contribute to nearby traffic congestion. The many changes to the Project to accommodate neighbors’ concerns about the massing and density of the Project have been addressed at length elsewhere, (June 7 Letter at section III), and the Applicant similarly has discussed the EIR’s conclusion that traffic impacts will largely be less-than-significant. (July 13 Letter at section III.A; see also *supra* section II.B.2.)

Crescent’s second argument against the conditional use permit likewise complains about the height and massing of the Project and argues that it is not “compatible” with the neighborhood. Crescent offers no additional evidence that the Project is incompatible with the neighborhood. Moreover, the Applicant has repeatedly defended the compatibility of the Project with the neighborhood—which includes not just multi-family residences to the south, but diverse commercial uses and high-rise towers along Sunset—and incorporates those arguments here. (See June 7 Letter at section III.A; July 13 Letter at section II.)

Third, Crescent claims the conditional use findings are not viable because the Project does not conform to the City’s General Plan and the Hollywood Community Plan. Substantial evidence supports the findings of consistency with the City’s plans, as documented in this letter and the Applicant’s prior submissions. (See July 13 Letter section I.A-B).

Finally, Crescent claims that the Project’s mass, height, and alleged traffic impacts “will adversely affect the welfare of the pertinent community.” This is an unsubstantiated opinion. Ample evidence in the administrative record shows that the Project will enhance the neighborhood experience by providing new

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<sup>5</sup> TR-6 (Public Services and Utilities) did conclude that “with implementation of the traffic-related Mitigation Measure TR-1 and the Project’s TDM program, along with the multiple steps being taken by the Los Angeles Fire Department (“LAFD”) to improve response times, Project impacts on emergency response times are considered less than significant.” (Final EIR at 2.A-52.) However, LAFD did not identify traffic conditions as a contributing factor to its determination that the distance from the Project to the nearest truck company (2.4 miles instead of the recommended 1.5) would result in inadequate service, if left unmitigated. (See Final EIR App. C.) Furthermore, LAFD recommended measures that would raise the service to adequate (specifically, implementation of the “Firefighting Personnel Access” and “Firefighting Apparatus Access” recommendations, and the payment of any fees to address staffing issues, which the Applicant will undertake). (*Id.*) The EIR did not fail to discuss the impacts of the Project on emergency services.

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commercial spaces and pedestrian-friendly open spaces and by improving the traffic flow at the Sunset and Crescent Heights intersection.

C. Appeals of Fix the City

Fix the City appeals both the VTT Approval and the CPC Approval, raising some individualized arguments about each approval and some supposed issues with the EIR common to both approvals.<sup>6</sup> In many respects, Fix the City echoes the complaints of other appellants, as well as Fix the City's own prior comment letters and appeals. As a result, the Applicant's prior letters and the Planning Commission's prior decisions have already demonstrated that (1) reconfiguring the traffic island neither interferes with public and private easements to use the existing right-turn lane nor requires street vacation proceedings; (2) the Project does not require that the City cede its land to private ownership or control; (3) the preservation alternatives are not feasible; (4) the EIR adequately discusses the consistency of the Project with applicable plans; (5) the EIR adequately addresses geologic hazards; and (6) there is no evidence of Brown Act violations in the very public process that led to the approval of the Project. The novel arguments raised in Fix the City's appeal similarly have no merit.

1. The VTT and the Project are consistent with all applicable plans

Fix the City first contends that the VTT approves a density for the Project site that is inconsistent with the Hollywood Community Plan. Fix the City asserts, without citation, that the Hollywood Community Plan specifically limits the site's FAR to 1:1. But the Hollywood Community Plan is not nearly so precise. While it does mention FARs of as high as 4.5:1 or 6:1 in the Redevelopment Area, it does not state that the FAR in areas outside the Redevelopment Area or in Neighborhood Commercial zones must be limited to FAR of 1:1. To the contrary, the authority for a 1:1 FAR at the Project site derives from a zoning ordinance, and for reasons explained previously and incorporated herein, the City and State Density Bonus Laws compel the waiver of this limit in this case. (See July 13 Letter at section V.)

Fix the City also claims the VTT is inconsistent with several other Hollywood Community Plan policies—such as the preservation of residential neighborhoods and responsiveness to increased traffic—that other appellants have raised as well. These arguments have been refuted elsewhere. (See July 13 Letter at section I.)

Fix the City also opposes the reconfiguration of the traffic island on the ground that it is identified in the Housing Element of the General Plan “as a potential location for affordable housing.” Fix the City does not supply any evidence to support this assertion, which is at odds with the zoning for the property. The allegations furthermore, even if assumed to be true, do not foreclose the possibility of developing the area as public open space.

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<sup>6</sup> On the day of the PLUM committee hearing, October 25, 2016, Fix the City's counsel submitted a letter expanding on issues it had previously raised regarding earthquake faults, the “D” limitation on FAR, and emergency response impacts.

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2. The Site is physically suitable for the Project, and when the City and State density bonus laws are applied, the Project is authorized by the existing zoning

Fix the City correctly notes that 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.” But the appellant then proceeds to avoid any discussion of the *physical* suitability of the site, focusing instead on a limit in the existing zoning. Appellant ignores the substantial evidence cited in the VTT demonstrating the physical suitability of the site for the development—*e.g.*, the site is geologically suitable, and the Project’s uses will complement existing uses in the neighborhood—and instead attacks the effects of the State and City density bonus laws. As explained at length elsewhere, these laws facilitate the provision of affordable housing by superseding exactly the sort of development limits on which Fix the City relies. (See June 7 Letter at section I; July 13 Letter at section V.)

3. The EIR adequately analyzed geologic hazards, and the project complies with the Alquist-Priolo Act.

Fix the City also errs in asserting that the review of geologic hazards has been inadequate, and that the Project violates the Alquist-Priolo Act by placing a habitable structure over an active fault. According to the staff report for the PLUM committee hearing, the Los Angeles Department of Building Safety (“LADBS”), reports that the nearest mapped fault is 100 feet from the project. Fix the City cites a regulation implementing the Alquist-Priolo Act stating that an area within 50 feet of an active fault must be presumed to be under a fault unless proven otherwise by an appropriate geotechnical investigation and report. However, this presumption is not applicable to the project, because there was a geotechnical investigation prepared by Golder Associates that took core samples and conducted soundings along the western edge of the property (the side nearest the identified Earthquake Fault Zone). LADBS reviewed this investigation and concluded that “no active faults underlie the site” in an approval letter dated October 19, 2015 (“LADBS Approval Letter”). This determination by the City’s technical experts deserves deference, particularly when Fix the City has provided no contrary evidence. Fix the City simply asserts, without providing any technical support, that core samples should have been taken in other directions. provides no evidence that any portion of the project is within 50 feet of an active fault Recognizing the Project Site’s proximity to the Hollywood Fault, the Applicant has commissioned thorough studies of potential risks posed by seismicity. The LADBS Approval Letter concluded that the analyses submitted by the Project’s geophysical consultants “are acceptable,” so long as certain conditions during the Project’s construction are satisfied. The LADBS Approval Letter further noted the results of studies showing that,” but it nonetheless recommended reinforcing the foundation at the northwest corner of the Project site as a precaution. (See July 13 Letter at section III.D (Appendix B)). (See *also* July 13 Letter at section III.D.)

4. The Project is compatible with the neighborhood

Fix the City also argues in its appeal of the CPC Approval that the Project “does not consist of an appropriate or compatible arrangement of buildings and structures.” This opinion has been addressed in the EIR, in the Applicant’s prior response letters, and in the CEQA Findings included in both of the Project Approvals. Uniquely, Fix the City also argues that a loading dock on Havenhurst is incompatible with residents on that block, but this ignores that commercial delivery vehicles will only be permitted to traverse the northernmost portion of Havenhurst, that the delivery dock will located within the Project’s garage, and that deliveries will only be permitted at certain hours. (See, *e.g.*, CPC at F-17.) All

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appropriate efforts have been and will be made to ensure that the commercial activities associated with the Project are compatible with the neighborhood.

5. The Project will satisfy the requirements of a conditional use permit

In claiming that the City may not issue a conditional use permit to the Project, Fix the City repeats many of the same arguments addressed above. In addition, Fix the City argues that alcohol sales should not be permitted at the Project because the area is “saturated” with alcohol sales already and because they would interfere with services at the Buddhist temple located on Crescent Heights. Fix the City offers no evidence to support these claims. The Planning Commission and PLUM committee already recognized, and took into account, the fact that the temple is one of a few “sensitive uses” within 1,000 feet of the Project site. (CPC at F-5.) Its presence has been considered. Moreover, it is important to recognize that the Master Alcohol Conditional Use Permit granted by the Planning Commission will not support the development of the types of establishments that Fix the City imagines in its parade of horrible. Nightclubs or other venues where the consumption of alcohol is the main attraction are not authorized by the permit. The permit is for “the sale and/or dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with four restaurant/dining uses” and “full line of alcoholic beverages in conjunction with a grocery store.” (CPC at C-3.) Food must be served at all times in the restaurants, cover charges and after hours parties are not allowed, and the City may only approve other club-like entertainment (video games, pool tables, DJs, etc.) in subsequent proceedings subject to a public hearing. (CPC at C-3 to C-4.) Fix the City’s fears about the establishments that will serve alcohol are unfounded.

6. The City does not need to recirculate the EIR again

As the Applicant explained in both of its prior letters (see June 7 Letter at section IV.H; July 13 Letter at section III.A; *supra* at section II.B.2-4), the EIR’s analysis of the impacts on traffic are sufficient. Fix the City complains that an errata to the EIR, acknowledging that impacts on the Fountain and Havenhurst intersection will be significant absent the installation of a traffic signal, was not disclosed soon enough for the public to comment. But the errata merely highlighted information that was already included in the Final EIR. Indeed, affected parties have submitted many comments about this intersection, particularly the City of West Hollywood, which demonstrates that there was sufficient time to comment on this aspect of the EIR.

7. The EIR adequately analyzes impacts to public services.

Contrary to Fix the City’s arguments, the LAFD did not clearly, or even impliedly, state that the Project would, or could, have a significant impact on fire and emergency services. A project has “a significant impact on fire protection if it requires the addition of a new fire station, or the expansion, consolidation, or relocation of an existing facility to maintain service, construction of which would result in a substantial adverse physical impact on the environment.” (Draft EIR at 4.I.1-12.) LAFD never suggested that new facilities are or might be required to support the Project. Moreover, even though response times are not a basis for identifying a significant environmental impact, the Draft EIR still considered the impact of the Project on such matters, noting that in addition to traffic mitigation measures that would address “[i]mpacts on traffic that could cause delays in emergency response times,” the LAFD is undertaking “a number of steps to improve the . . . systems, processes and practices” that address the larger suite of factors that “influence emergency response times in addition to traffic.” (*Id.* at 4.I.1-14.) As documented in the Draft EIR, “[u]pdates underway or pending [to improve response times] include: installation of

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automated vehicle locating systems on all LAFD apparatus by September 2014; replacement of fire station alerting systems that control fire station dispatch audio, signal lights, and other fire station alerting hardware and software; development of a new computer aided dispatch system to manage fire and emergency medical service incidents from initial report to conclusion of an incident; and, use of traffic pre-emption systems.” (*Id.*) Not surprisingly, given this analysis, the LAFD had nothing more to say about response times in its May 10, 2016 comment letter on the Draft EIR. The analysis of the Project’s impacts on response times was sufficient.

This conclusion is still true, notwithstanding any uncertainty surrounding whether TR-1 will be implemented. As clarified in the Final EIR, TR-1 was included in the analysis of the impacts of the Project on emergency response times because it would mitigate the only significant traffic impact of the Project, which is limited to “the area” of the intersection. (Final EIR at 2.A-51.) But this was an additive consideration, considered “along with” the significant systemic improvements that the LAFD is already pursuing to deal with a variety of factors contributing to existing response time challenges. Moreover, as observed in the Final EIR, “[i]n addition to these improvements being implemented by the LAFD, emergency response is also routinely facilitated, particularly for high priority calls, through use of sirens to clear a path of travel, driving in the lands of opposing traffic, use of alternative routes, and multiple station response.” (*Id.* at 2.A-52.) In other words, the unmitigated traffic conditions that might result in significant impacts for the general population do not necessarily result in significant impacts for emergency responders. Taken together, the analysis in the Draft EIR, fortified by the analysis in the Final EIR and not contradicted by the comments from the LAFD, supports the conclusion the Project would not have significant effects on emergency response times.

Fix the City’s claims that the analysis of the Project’s impacts on public services was inadequate also include an allegation that the EIR improperly failed to consider “the need to relocate water mains which run under Sunset Boulevard, adjacent to the fault line.” (Fix the City CPC Letter at p. 9.) This claim fails to provide any evidence of or explanation for how the construction of the Project might have an impact on existing water mains such that mitigation might be required. The location of the water mains in relation to the fault is a baseline condition that the Project does not bear responsibility for addressing.

8. The City has authority to deviate from the “D” limitation in order to grant a density bonus.

Fix the City argues that the City does not have authority to deviate from the 1:1 FAR “D” limitation in order to grant a density bonus. In fact, the “D” limitation 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 piecemeal efforts to make the changes necessary to bring the City’s zoning into consistency with its General Plan, which is currently undergoing a long-overdue and delayed update. 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.”

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Even if the change in FAR did require some other discretionary proceeding, the opponents' suggestion that it would, as a result, be unauthorized under any circumstances is based on a mistaken reading of the code given that 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 FAR for the property was previously restricted by a site-specific ordinance, or the fact that it was incorporated into CEQA mitigation measure.

The fact that the “D” Limitation was in part a response to a CEQA mitigation measure does not change the analysis. As explained in *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 358-9 (2001):

[T]here is no statutory authority for the proposition that an amendment may not include the deletion of an earlier adopted mitigation measure. The claim that once a mitigation measure is adopted it never can be deleted is inconsistent with the legislative recognition of the need to modify land-use plans as circumstances change. It is also true that mistakes can be made and must be rectified, and that the vision of a region’s citizens or its governing body may evolve over time....

The lead agency is entitled to modify a previously adopted mitigation measure if it “state(s) a legitimate reason” “supported with substantial evidence.” *Id.* at 359. In the staff report for the PLUM committee hearings, City staff explain that the density limitation was imposed as a result of concerns about impacts to the City’s transportation system, and further explains that the EIR for this Project concluded that the transportation system can support the Project at its proposed density.

#### IV. CONCLUSION

For the detailed reasons set forth above, and in the Applicant’s previous responses attached hereto as Appendix A and Appendix B, we respectfully request that the Los Angeles City Council reject each of the appeals related to case numbers CPC-2013-2551-MCUP-DB-SPR; VTT-72370-CN-1A; ENV-2013-2552-EIR.

Sincerely,



Gordon E. Hart & Jill E.C. Yung  
for PAUL HASTINGS LLP

## ATTACHMENT A

**AG-SCH 8150 Sunset Boulevard Owner, L.P.**

P.O. Box 10506  
Beverly Hills, CA 90213

June 7, 2016

Ms. Luci Ibarra  
City Planner – Major Projects  
200 North Spring Street, Room 750  
Los Angeles, CA 90012

Mr. William Lamborn  
Planning Assistant – Major Projects  
200 North Spring Street, Room 750  
Los Angeles, CA 90012

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:

On May 24, 2016, the City of Los Angeles (the “**City**”) held a joint Hearing Officer and Advisory Agency hearing (the “**Hearing**”) on the proposed mixed-use project<sup>1</sup> (the “**Project**”) located at 8150 Sunset Boulevard (the “**Property**” or “**Project Site**”). During the Hearing, a number of Project opponents raised questions about the adequacy of the environmental impact report<sup>2</sup> (the “**EIR**”) prepared for the Project. The EIR adequately addressed all of the issues raised during the hearing, and no additional response or analysis is required. However, AG-SCH 8150 Sunset Boulevard Owner, L.P. (the “**Applicant**”) submits this letter to the City to address some of the issues that were raised during the Hearing and to provide citations and summaries of how each issue was addressed in the EIR and to clarify some of the analysis. We respectfully request that the City incorporate this letter into the Project’s administrative record.

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<sup>1</sup> As used herein, the Project refers to the project identified in the Draft EIR and Alternative 9, unless otherwise specified.

<sup>2</sup> As used herein, the term EIR includes the Draft EIR, the Recirculated Draft EIR (“**RP-DEIR**”), the Final EIR (“**FEIR**”), and an Errata.

**I. THE PROPERTY IS ELIGIBLE FOR A DENSITY BONUS PURSUANT TO STATE DENSITY BONUS LAW.**

- A. The City is required to grant the density bonus pursuant to State density bonus law and the City's implementing ordinance.

*Please See:* Chapter 2 (Project Description) and Chapter 4, Section 4.F (Land Use) of the Draft EIR; and Chapter 2, Sections 2.A (Topical Responses), Response TR-2.2 (Qualifications for Incentives) and 2.B (Response to Comments), and Response B1-65 of the FEIR

As explained in the EIR, the Project's residential component is comprised of 11 percent (28) very-low income units, which qualifies the Project for a 35 percent density bonus pursuant to California Government Code Section 65915 *et seq.* (the "**State density bonus law**") and Los Angeles Municipal Code (the "**LAMC**") Section 12.22.A.25, which establishes the procedures for implementing the State density bonus law. Under LAMC Section 12.22.A.25(f)(4)(ii), a project that qualifies for 35 percent density bonus must be granted an "on-menu" incentive to allow a floor area ratio ("**FAR**") of 3:1, provided that the project is in a commercial zone in Height District 1, fronts on a major highway ("**Major Highway**") as identified in the City's General Plan (the "**General Plan**"), and 50 percent or more of the commercially zoned property is located within 1,500 feet of a transit stop, which is defined as a Metro Rapid Bus stop located along a Metro Rapid Bus route, without any qualification on the hours of operation ("**Transit Stop**")<sup>3</sup>. The Property is zoned C4, which is a commercial zone and is in Height District 1. The Property fronts Sunset Boulevard and Crescent Heights Boulevard, both of which are designated as a Major Highway by the City's General Plan. The Project is an in-fill housing project that would set aside 11 percent of its housing for very-low income households, which qualifies for a 35 percent density bonus<sup>4</sup>.

Although the Applicant is entitled to a 35 percent density bonus based on the 11 percent very-low income set aside, the Applicant is only requesting a 22 percent density bonus to provide 45 additional units within the Project. The Applicant has also requested incentives under the density bonus law to secure relief from development standards that would otherwise be awarded by right, if the Project were marginally closer to public transit. Specifically, the Applicant requests the on-menu FAR of 3:1, as described in more detail above. As also noted above, 50 percent of the commercial component of the Project is located within 1,560 feet of a Transit Stop at the intersection of Fairfax Avenue and Sunset Boulevard (Metro Rapid Route 780). The distance between this Transit Stop and 50 percent of the Project is only 60 feet (or four percent) further than allowed by the on-menu incentive. Because the Project satisfies all of the other requirements, and 50 percent of the commercially zoned portion of the Property is located only 60 feet further than the 1,500-foot requirement from the nearest Transit Stop, the Project satisfies

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<sup>3</sup> LAMC §12.22.A.25(b).

<sup>4</sup> LAMC §12.22.A.25(c)(1).

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the City's intent to locate affordable housing projects near Transit Stops, and the requested incentive is only a minor departure from the applicable development standards.

LAMC Section 12.22.A.25 authorizes the City Planning Commission to approve applications for density bonuses requesting any off-menu incentives. Specifically, LAMC Section 12.22.A.25(g)(3) permits an applicant to request off-menu incentives when a project does not meet the exact requirements for on-menu density bonus incentives. Here, the Project fully meets two of the three requirements and almost fully meets the third requirement, as 50% of the Project Site is only 60 feet short of being within 1,500 feet from a Transit Stop. Accordingly, the Project includes a request for incentives to allow an increase in FAR and to allow FAR to be calculated on the pre-dedication area of the Property, both of which are necessary to provide the 28 affordable units. Without the incentives, the Property would be limited to an FAR of 1:1, which would make the inclusion of affordable units infeasible.<sup>5</sup> The request for additional floor area within close proximity to significant transit options is entirely consistent with the requirements of the City's on-menu incentive allowing a 3:1 FAR on a commercial parcel, except that in the case of the Project, it is located within 1,560 feet of a Transit Stop, in lieu of the 1,500 foot distance required for the on-menu incentive. As such, it is a perfect candidate for an off-menu incentive. Moreover, State density bonus law makes it quite clear that a city shall grant the requested density bonus incentive unless the city can make a finding that it is not necessary to provide the restricted low-income housing, or the incentives would have a specific adverse effect, or the incentives would be contrary to state or federal law.<sup>6</sup> Therefore, since (i) the Project qualifies for off-menu incentives, (ii) the Applicant has demonstrated through a pro-forma and third party independent review that the requested incentive is necessary to make the very-low income units financially feasible, and (iii) the City has no basis for making the State mandated findings necessary to deny the requested incentives, the City must grant the requested off-menu incentives.

- B. The Property is not too far from the Transit Stop and other public transportation to justify the density bonus.

*Please see:* Chapter 2 (Project Description) and Chapter 4, Section 4.F (Land Use) of the Draft EIR; and, Chapter 2, Sections 2.A, (Topical Responses) Response TR-2.2 (Qualifications for Incentives) and 2.B (Responses to Comments) Response No. B1-65 of the FEIR

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<sup>5</sup> As required by the City's procedures, the Applicant submitted a pro forma (prepared by HR&A Advisors, Inc., dated March 1, 2016) and an independent third-party review of the pro forma (prepared by RSG, Inc., dated April 19, 2016) to evaluate the financial feasibility of the Project. The pro forma and independent third-party review evaluated a mixed-use project with no affordable housing incentives and a mixed-use project with affordable housing incentives, including an incentive that achieves a 3:1 FAR, and both concluded that the requested incentives would be necessary to make the Project financially feasible.

<sup>6</sup> California Government Code §65915(d)(1)(A)(B) and (C).

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The intent of the on-menu incentive is to ensure that a property is accessible without a passenger vehicle. The Property is located in a portion of the City that is served by a significant amount of public transportation. In addition to the Metro Rapid Line 780 stop, Metro also operates the following public transportation stops near the Property within convenient walking distance:

- Metro Local and Limited Line 2/302 (24-hour service) stop is located at the intersection of Sunset Boulevard and Crescent Heights Boulevard, which is adjacent to the Property. Metro Local and Limited Line 2/302, which has an annual ridership of more than six million passengers,<sup>7</sup> also has stops at the intersection of Fairfax Avenue and Sunset Boulevard, providing a convenient transfer point to and from Metro Lines 217 and 780.
- Metro Local and Limited Line 218 stop is located at the intersection of Sunset Boulevard and Crescent Heights Boulevard, which is adjacent to the Property.
- Metro Local and Limited Line 217 (24-hour service) stop is located at the intersection of Fairfax Avenue and Sunset Boulevard, at the same location as the Metro Rapid Line 780 stop.

Together, these Metro lines had a combined annual ridership of more than 12 million passengers.<sup>8</sup> Metro Lines 2/302, 217, and 780 all offer peak hour headways of 15 minutes or less, consistent with the definition of a Major Bus Route in the LAMC and the City's adopted Affordable Housing Incentives Guidelines. The LAMC further provides that areas proximate to Major Bus Routes are appropriate locations for mixed-use developments. The intersection of Sunset Boulevard and Fairfax Avenue serves as a transit node that provides interconnectivity to transit throughout the area and the City. Therefore, the Project is sufficiently close to a Transit Stop and other bus routes to justify approval of the requested density bonus incentives.

## **II. THE EIR ADEQUATELY ADDRESSED THE FACT THAT THE BANK BUILDING IS NOT ELIGIBLE FOR STATE OR FEDERAL RECOGNITION, THAT ALTERNATIVE 9 IS COMPATIBLE WITH THE EXISTING HISTORICAL BUILDINGS THAT ARE LOCATED NEAR THE PROJECT SITE.**

- A. The EIR correctly concluded the Property is ineligible under the National and State criteria, but did conservatively determine that it was eligible under local criteria for its architecture.

*Please see:* Chapter 4, Sections 4.A (Aesthetics/Visual Resources), 4.C.2 (Historical Resources) and 4.F (Land Use), and Appendix C-3 (Historical Resources Assessment) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor

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<sup>7</sup> 2012 annual estimated ridership, <http://isotp.metro.net/MetroRidership/IndexSys.aspx>

<sup>8</sup> Ibid.

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and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Section 2.A (Topic Responses) Response TR-3.1 (Eligibility Findings/Statement of Significance) of the FEIR

The EIR correctly analyzed the historical significance of the bank building located on the Property and determined that it was not eligible for the National and California Registers because (i) it is not associated with events that have made a significant contribution to the broad patterns of California or national history in that Lytton Savings only played a minor role in the development of the savings and loan industry having gone bankrupt within ten years of its founding, with the building going through extensive alterations by subsequent owners, and the modern art collection associated with the bank having been removed (with the exception of two works); (ii) it is not associated with persons of significance in our past related to the savings and loan industry; (iii) it does not embody characteristics of a type, period, region, or method of construction, or represent the work of an important creative individual or possess high artistic value due to alteration and removal of distinguishing architectural, design, art and landscaping features; and (iv) it is not likely to yield information important in prehistory or history.

However, the analysis did conclude that the bank building has maintained enough integrity to conservatively meet the local criterion for designation as a local historic cultural monument as an early example in California of the mid-century modern bank building type and an early example of Kurt Meyer's work that may have been instrumental in his success as a savings and loan architect for Lytton Savings and American Savings. Accordingly, the EIR contains mitigation measures designed to protect this potentially locally significant resource, including, preparation of a Historic American Buildings Survey, demolition monitoring and salvage, relocation of the two remaining art works, and relocation of the bank building. However, since relocation of the bank building may not be feasible, the EIR conservatively concludes that demolition of the bank building would result in a significant and unavoidable impact.

B. The Project would not result in any significant indirect impacts to Historical Resources.

*Please see:* Chapter 4, Section 4.C.2 (Historical Resources) and Appendix C-3 (Historical Resources Assessment) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Section 2.A, (Topical Responses) Response TR-3.3 (Indirect Impacts to Historical Resources) of the FEIR

The EIR analyzed the potential indirect impacts of the Project, and correctly concluded that the Project would not result in a substantial material change to the integrity and significance of historical resources within the Project vicinity. The Project, and specifically Alternative 9, would not destroy spatial relationships that are important for experiencing the character and design of nearby historical resources because the Project is designed to be set back from the

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street adjacent properties to protect that spatial relationship. Moreover, as identified in the Historical Resources Assessment, (Appendix C-3 of the Draft EIR), the historic setting of historic resources in the Project vicinity have eroded considerably at both the Project Site and in the vicinity.

In addition, Alternative 9 would be differentiated from the surrounding built environment, but generally would be compatible with the historic materials, features, and massing of the adjacent buildings, thereby protecting the integrity of the properties in the surrounding environment. Thus, there would be no significant visual change in the public experience of the historical resources surrounding the Project, and there would be no significant impact on historical resources that have distant to direct views of the Project.

- C. The Project's vibration impacts were adequately analyzed in the EIR and will not cause damage to historic buildings located near the Property.

*Please see:* Chapter 4, Section 4.G (Noise) of the Draft EIR; and, Chapter 2, Section 2.A, (Topical Responses) Response TR-8 (Noise and Vibration) of the FEIR

The EIR fully analyzed ground-borne vibrations in the Project vicinity, including vibrations from both construction and operational activities. Utilizing the Federal Transit Administration's significance threshold levels, the EIR concluded that the vibration velocities generated by construction activities would be lower than 1.0 inches per second, less than the threshold for potential building damage to off-site buildings, which includes all of the historical buildings in the Project vicinity.

- D. There are no additional feasible mitigation measures to eliminate or reduce the significant and unavoidable impact related to demolition of the bank building.

*Please see:* Chapter 4, Section 4.C.2 (Historical Resources) and Appendix C-3 (Historical Resources Assessment) of the Draft EIR; Chapter 2, Section 2.A, (Topical Responses) Response TR-3.2 (Removal of the Bank Building and Preservation Alternatives) of the FEIR; and, Findings of Facts (CEQA) Sections, VIII.A.5, IX.C.6.d, IX.C.7.d and IX.C.8.d, and Statement of Overriding Considerations, Section XII.A.1

The EIR contains four mitigation measures designed to reduce the significant impacts of the demolition of the bank building. However, Mitigation Measure HIST-3, the relocation of the bank building, requires future determination of the feasibility of moving the structure without damage and finding a purchaser willing to relocate the bank building. Failure to achieve either of these requirements would result in Mitigation Measures HIST-1, HIST-2, and HIST-4 being implemented to document and salvage the history and architecture of the bank building. There is no other feasible mitigation measure available to preserve the historical significance of the bank building while developing a project that achieves the Project Objectives. As discussed in

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subsection E, below, the preservation alternatives are infeasible. Therefore, the mitigation measures imposed on the Project provide the most feasible protection for the bank building.

E. Alternatives 5, 6 and 7, which maintain the bank building, are not feasible.

*Please see:* Chapter 5, Sections 5.E (Bank Preservation Alternative), 5.F (Reduced Height and Bank Preservation Alternative), and Section 5.G (On-Menu Alternative) of the Draft EIR; and, Chapter, Section 2.A (Topical Responses) Response TR-3.2 (Removal of the Bank Building and Preservation Alternatives) and Appendix B (Geology and Soils Report and Correspondence) of the FEIR; Findings of Fact (CEQA) Section IX

The EIR analyzes each of the alternatives that preserve the bank building. However, as stated in the City's Findings of Fact (CEQA), Section IX, the bank preservation alternatives are not feasible because all three alternatives fail to meet, or only partially meet, a substantial number of the project objectives. For example, as stated in the Findings, these alternatives fail to create a development that complements and improves the visual character of the westernmost area of Hollywood, that promotes quality living spaces, and that effectively connects with the surrounding urban environment through high quality architectural design and detail. In fact, Gehry Partners, LLP's ("**Gehry**") architectural team explored multiple design options that would have kept the bank building as part of the overall development. Ultimately, however, Gehry determined that it was not feasible to address concerns about view obstruction and overall visual quality, and to meet the Project objectives, with a design that preserved the bank building. This determination was based on the following factors:

- Loss of opportunity to introduce landmark architecture on Sunset Boulevard and to create a gateway to Sunset Strip. A goal of the building along the Sunset Strip is to create transparency through a retail corridor along Sunset Boulevard to allow the central public plaza to be inviting; however, the architecture of the existing bank building does not support this design goal.
- Limited pedestrian access. The bank building has no setback from the street and its service location blocks the entry to the public plaza at the corner of Sunset Boulevard and Havenhurst Drive. The bank building would impede access to the central plaza and related public functions. The Project Site is situated in a prime location for creating pedestrian-friendly improvements to the public realm, and preserving the bank building would interfere with such development.

- Constraints on efforts to address height/massing. Maintaining the bank building would result in taller towers and/or would reduce the north-south view corridor to the Hollywood Hills between the two residential buildings.
- Inconsistent design elements. Alternative 9, which was developed in response to public comments to the Draft EIR, including comments to the preservation alternatives, presents a carefully crafted sculptural composition and ensemble of buildings for the Project Site and its surroundings. Integrating the bank building while conserving its architectural language and design motifs in a respectful manner would substantially interfere with the careful composition of this alternative and impede its ability to meet the Project's objectives.
- Inability to expand parking options without impacting views. Because parking cannot be constructed below the bank building, the bank building preservation alternatives require more extensive excavation compared to the Project while Alternative 9 makes more constructive use of additional excavation by providing significantly more parking, which was a chief concern expressed by the public.

Decision makers have discretion to weigh the complex considerations involved in balancing historic preservation and community development goals. Indeed, the Los Angeles Superior Court recently upheld the City of West Hollywood's determination that an environmentally superior preservation alternative was infeasible.<sup>9</sup> The court recognized that a desire for "signature architecture" is a legitimate Project objective that cannot be met by a preservation alternative that results in a "fragmented and not cohesive design". This decision was consistent with established legal precedent that the California Environmental Quality Act ("CEQA") "does not compel retention of old buildings in the name of historical preservation" in particular when demolition will foster an agency's "continuing goal of redevelopment".<sup>10</sup>

In addition to failing to meet the design goals, preservation alternatives would be more expensive to construct due to design inefficiencies and additional precautions that must be taken to excavate the parking lot next to the bank building, not to mention the costs of restoration activities. Indeed, equivalent parking for any bank building preservation alternative would require additional levels of subgrade parking (because the area under the bank building would not be available to construct subterranean parking), which would increase environmental impacts and increase construction costs. In addition to being inefficient to construct, the garage entrance arrangements would be much more awkward, with the potential to complicate traffic conditions. The parking solutions under Alternatives 5 and 6 would be much less functional, less efficient, and create more environmental impacts to a number of resources. There would also be a limit to

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<sup>9</sup> *Los Angeles Conservancy v. City of West Hollywood*, Case No. BS151056, Statement of Decision (L.A. County Sup. Ct. Jan. 5, 2016).

<sup>10</sup> *Dudek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029.

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the types of improvements that could be made to enhance the building's attractiveness because alterations that increase building loads by 10 percent or more would trigger a requirement for seismic upgrades, adding significantly to the expense of the Project.

Additionally, there are safety concerns related to the preservation alternatives. As explained in more detail in Addendum No. 1 to Golder Associates Inc.'s Geotechnical Exploration and Recommendations Report (Appendix B of the FEIR), it was recommended that the Applicant reinforce foundations in the northwest corner of the Project Site (specifically, the design calls for a 10-inch horizontal ground displacement and a 2-inch vertical ground displacement). The reinforced foundation zone encompasses the area underlying the bank building. These foundation requirements cannot be implemented for the bank building. Accordingly, the preservation alternatives would maintain a potentially hazardous condition.

**III. THE EIR CORRECTLY CONCLUDED THAT THE PROJECT'S MASSING AND SCALE ARE CONSISTENT WITH THE SURROUNDING COMMUNITY AND WOULD NOT HAVE A SIGNIFICANT EFFECT ON SCENIC VISTAS OR SCENIC RESOURCES NOR SUBSTANTIALLY DEGRADE THE VISUAL CHARACTER OR QUALITY OF THE SITE AND ITS SURROUNDINGS.**

A. Alternative 9's massing and scale are designed to enhance the view corridors.

*Please see:* Chapter 4, Sections 4.A (Aesthetics/Visual Resources), 4.C.2 (Historic Resources), and 4.F (Land Use) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Section 2.A (Topical Responses) Responses TR-1.1 (Views from Surrounding Community and Hollywood Hills), TR-1.2 (Visual Character and Quality Related to Height and Scale), TR-2.3 (Compliance with Development Standards – Building Height and Scale), TR-3.5 (Compatibility with Surrounding Development), TR-3.4 (Consistency with City of Los Angeles Plans and Policies Related to Height and Scale, and TR-6 (Consistency with Development in the City of West Hollywood) of the FEIR

Alternative 9, prepared in response to public comments received to the Draft EIR, is designed to be more responsive in scale and character to the adjacent context and topography of the Project Site. As explained in the EIR, the tower elements fronting Crescent Heights Boulevard and Havenhurst Drive, respectively, are oriented north-south to open view corridors from the Hollywood Hills towards the south and from West Hollywood towards the north, and are set back from Sunset Boulevard to alleviate the impression of their mass. The variety of building heights of the various elements of the Project appropriately scales the Project and allows it to relate to the immediate context, such as the Chateau Marmont Hotel and the Granville Towers, as well as the other buildings in the vicinity. Additionally, the massing of the retail component facing Sunset Boulevard is articulated to have an important street frontage and a marquee element, which relates in character to the billboards adjacent to the Chateau Marmont Hotel.

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Thus, Alternative 9 would have a less than significant impact regarding land use compatibility given the reduction in the garage podium structure height, variation in building massing and setbacks, connectivity with surrounding streets at the pedestrian scale, and unique iconic design features.

With respect to the height and mass as it relates to the City of West Hollywood, Alternative 9 is not incompatible with development in West Hollywood, including several buildings ranging in height from nine to 31 stories. Although the Project is not located in the City of West Hollywood, and therefore not subject to the City of West Hollywood's Sunset Specific Plan, the Project would generally meet the criteria outlined for target sites that allow for increased density and height set forth in the Sunset Specific Plan given the Project's location, context, physical characteristics, and access. The Property is a large site that is under a single ownership; provides a significant public amenities, the Corner Plaza open space area, as well as a landmark building; it qualifies for increased FAR based on provision of affordable housing; its aesthetic impacts are less than significant; it is located at a major intersection with multiple street frontages offering increased accessibility; it is geographically dispersed along the length of Sunset Boulevard related to other high-rise developments; and, it is intended to act as a design anchor for the entire street.

Furthermore, CEQA expressly provides that aesthetic impacts of a mixed-use residential development on an infill site within a transit priority area, such as the Project, "shall not be considered significant impacts on the environment."<sup>11</sup> In addition, the City has issued ZI No. 2452 (the "ZI") concerning guidance on this requirement, which provides that "visual resources, aesthetic character, shade and shadow, light and glare, and scenic vistas or any other aesthetic impact as defined in the L.A. CEQA Threshold Guide shall not be considered an impact for infill projects within [Transit Priority Areas]." Therefore, pursuant to State law and the ZI, the Project's aesthetic impacts are not significant impacts on the environment.

Nonetheless, although not required by CEQA, the EIR included analysis to determine whether the Project's impacts would exceed thresholds typically used by the City for analyzing the significance of a project's impacts on aesthetics, including aesthetic character and views. The analysis in the EIR concluded that the Project's impacts would fall below the standards of significance used by the City.

B. Alternative 9 will not degrade the visual character of the area.

*Please see:* Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) and Appendix E (Alternative 9 Design Concept Narrative) of

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<sup>11</sup> The Project qualifies as an infill project because it lies on a previously developed parcel in an urban area where the entire parcel is surrounded by developed uses or improved public rights-of-way adjacent to parcels with qualified urban uses. The Property qualifies as a transit priority area because it is located less than one-half mile from a Major Transit Stop (as defined by California Public Resources Code Section 21064.3), located at the intersection of Sunset Boulevard and Fairfax Avenue.

the RP-DEIR; and, Chapter 2, Section 2.A (Topic Responses) Response 1.2 (Visual Character and Quality Related to Height and Scale) of the FEIR

Alternative 9 would enhance the visual character of the area by removing an unsightly strip mall and replacing it with a world-class gateway to Sunset Boulevard designed by Gehry. The location and height of the building massing were carefully designed to achieve the objectives of creating a pedestrian friendly retail destination, extending the landscape from the Hollywood Hills by creating multiple outdoor terraces, and preserving the view corridor from the Hollywood Hills. Alternative 9 would provide unified architecture, landscaping and pedestrian amenities at a site currently characterized by surface parking, a range of competing signage, fast food restaurants, and non-cohesive architectural design. Therefore, the Project would not degrade the visual character of the area. Rather, the Project would improve the area's visual character by replacing the existing outdated structures with more pedestrian friendly commercial uses along Sunset Boulevard, residential uses set back from the commercial uses, and public open space and amenities, all of which will enhance the visual character of the area.

#### **IV. THE EIR ADEQUATELY ANALYZED TRANSPORTATION AND PARKING.**

- A. The Traffic Study correctly analyzed the Project's trip generation rates and the Project's traffic impacts.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) and Appendix A (Air Quality, Green House Gas Emissions, Noise, and Traffic Data for Alternative 9) of the RP-DEIR; and, Chapter 2, Sections 2.A (Topical Responses) Response TR-4.1 (Traffic Generation and Related Impacts) and 2.B (Responses to Comments) Response B1-76 through B1-78 of the FEIR

The EIR correctly analyzed the Project's trip generation rates using estimation methodology and resulting project trip calculations, including both the existing and proposed uses, which were discussed with, reviewed, and approved by the Los Angeles Department of Transportation ("LADOT"). The trip generation rates and assumptions reflect the direction and requirements for trip calculations as identified by LADOT's current Traffic Study Policies and Procedures, and were deemed by LADOT as adequately evaluating the Project-related impacts on the surrounding community.

- B. The EIR included a complete related projects list.

*Please see:* Chapter 3 (General Description of Environmental Setting) and Chapter 4, Section 4.J (Transportation and Circulation) of the Draft EIR; and, Chapter 2, Section 2.B (Responses to Comments) Response A9-2 of the FEIR

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CEQA requires the cumulative impacts analysis study the impacts of a project in conjunction with the impacts of reasonably foreseeable growth. CEQA does not require that every conceivable project be included, but rather the selection and discussion of related projects be guided by a standard of reasonableness and practicality, and limited to projects within a reasonable study area that could potentially affect environmental impacts of the project. With these limitations in mind, the EIR is required to include “a list of past, present and reasonably anticipated future projects producing related or cumulative impacts.”<sup>12</sup> Additionally, CEQA does not require the inclusion of projects which were not known at the time of the Notice of Preparation (the “NOP”) and whose application for development were submitted after the NOP was filed.<sup>13</sup>

The EIR included a list of related projects within the City of Los Angeles and the City of West Hollywood, the contents of which were provided to the Project’s traffic engineer by staff from each respective city during preparation of the NOP. Nonetheless, to support an up-to-date analysis, additional related projects were subsequently added to this list during preparation of the Draft EIR. The area for which the related projects were identified was the area in which the Project might substantially affect traffic conditions. Thirty-eight related projects were identified and studied, 12 in the City and 26 in the City of West Hollywood. The analysis also assumed a 1.0 percent average annual growth factor in traffic levels between 2013 and 2018. The projected cumulative development was addressed in the analyses of each of the environmental issues. Therefore, all foreseeable related projects with the potential to contribute to Project impacts were included in the EIR.

C. The EIR correctly analyzed the Project’s trips during construction.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) of the Draft EIR; and, Chapter 2, Section 10 (Transportation and Circulation) of the RP-DEIR

The EIR thoroughly analyzed construction traffic impacts including all five stages of construction: (i) demolition, (ii) shoring and excavation, (iii) garage construction, (iv) building construction, and (v) site work. The traffic generation and impacts associated with each of these phases were evaluated separately to ensure that all aspects of construction were adequately studied. Standard assumptions were utilized regarding permitted hours of construction and hauling activities and specific assumptions were used for construction activities specific to each phase of construction, such as the duration of the phase, the amount of haul or construction-related material involved, and the maximum anticipated daily activities. Conservative assumptions were made to ensure that no potential impact was over-looked. Significance levels were determined based on the L.A. CEQA Thresholds Guide which states that a determination of significance should be based on the temporary traffic impacts, temporary loss of access,

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<sup>12</sup> California Code of Regulations, Title 14, Chapter 2, Section 15130(b).

<sup>13</sup> *Id.* at Section 15125.

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temporary loss of bus stops or rerouting of bus lines, temporary loss of on-street parking, and cumulative construction impacts.

Based on all the foregoing, the EIR correctly analyzed every aspect of potential construction-related traffic impacts taking into account the required Construction Traffic Management Plan, permitted construction hours, truck haul routes, and staging and parking areas. The EIR states for Alternative 9 that because this alternative will increase the depth of excavation for the subterranean parking, it would have an incrementally increased intensity of excavation and shoring activities. Although significant construction-related traffic impacts were generally not anticipated, temporary significant impacts could occur along Sunset Boulevard between Crescent Heights Boulevard and the US-101 freeway during off-peak periods during the shoring and excavation phase. The EIR concluded that no feasible mitigation measures are available that could reduce the significance of construction-related traffic impacts during the shoring and excavating phase. As such, these impacts, although temporary, would remain significant and unavoidable. All other construction-related traffic was appropriately determined to result in a less than significant impact.

- D. The vehicular driveway along Crescent Heights Boulevard is sufficient to accommodate the Project's trips.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Topical Response 4.3 (Traffic Island Reconfiguration) of the FEIR

The EIR adequately analyzes the traffic impacts of the Project. That analysis studied the estimated trips and direction of travel, and the resulting impacts on all the study intersections. The EIR concluded the elimination of left-turn exits from the Crescent Heights Boulevard driveway would not result in any significant changes to the previously identified impacts for either the Project or any of its alternatives.

Specifically for Alternative 9, driveway volumes were identified and analyzed using the same methodologies and procedures described in the Draft EIR, and the results of this supplemental analysis are shown in Tables A-1(a) through A-3 in Appendix E-2 of the FEIR. As shown in these tables, the potential elimination of a left turn exit from the Crescent Heights Boulevard driveway for all Project uses would not result in any new significant impacts to any of the study intersections or street segments other than the impact to the intersection of Fountain Avenue and Havenhurst Drive without mitigation, discussed below. Therefore, Crescent Heights Boulevard would adequately accommodate all Project-related traffic. Moreover, due to the elimination of the commercial entry-only driveway on Sunset Boulevard in Alternative 9, an additional lane was added to the Crescent Heights Boulevard driveway. Additionally, adjustments were made to the internal circulation of the parking structures to ensure that the Crescent Heights Boulevard driveway could accommodate both ingress and egress. Therefore, the EIR considered the ability

of the Crescent Heights Boulevard driveway to accommodate project-related traffic and made the necessary design adjustments to ensure the adequacy of the driveway. Thus, with the modifications proposed for Alternative 9, the driveway capacity at the Crescent Heights Boulevard driveway will be adequate to accommodate both commercial and residential traffic.

E. The Project includes a sufficient number of parking spaces.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; Chapter 2 (Alternative 9 – Enhanced View Corridor and Additional Underground Parking Alternative) and Appendix A (Air Quality, Greenhouse Gas Emissions, Noise, and Traffic Data for Alternative 9) of the RP-DEIR; and, Chapter 3 (Corrections and Additions to the Draft EIR and the RP-DEIR) and Chapter 2, Section 2.A (Topical Responses) Response TR4.4 (Parking Adequacy) of the Final EIR

As discussed in the Draft EIR and above, pursuant to State law, a project’s aesthetic and parking impacts shall not be considered for an infill, mixed-use residential project within a Transit Priority Area, such as the Project. Nonetheless, the EIR analyzed parking adequacy and determined that the Project had less than significant parking impacts. However, in response to public comments expressing concern that there could be spillover parking onto nearby streets, Alternative 9 was designed to increase parking spaces in addition to providing bicycle parking spaces and amenities. Alternative 9 will provide 820 parking spaces, which are 198 spaces more than required by the LAMC.<sup>14</sup>

A new Project Design Feature, PDF-Traffic-2, was developed for large occasional special on-site events. This Project Design Feature requires a Traffic and Parking Management Plan that may include, among other strategies, securing off-site parking spaces and locations, including a shuttle service to ensure that there is no spillover parking on nearby streets. Therefore, the Project would include more parking spaces than are necessary for all uses, including employee parking. Furthermore, PDF-Traffic-2 will ensure adequate parking for large special events and a thorough Traffic and Parking Management Plan for all vehicles.

F. The elimination of the curb cut on Sunset Boulevard improves traffic and was studied in the EIR.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; and, Chapter 2 (Alternative 9: Enhanced View Corridors and Additional Parking Alternative) of the RP-DEIR

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<sup>14</sup> It should be noted that the 144-space parking surplus identified in the RP-DEIR for Alternative 9 was based on the inclusion of a health club use as well as guest parking for the proposed condominium units; however, with elimination of both the health club use and the guest parking requirement for the proposed condominiums (as a result of Parking Option 1, which allows provision of no guest parking for any residential unit, whether affordable or market/rental or for-sale) the parking surplus under Alternative 9 is now 198 spaces.

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The EIR thoroughly analyzed the traffic impacts for the Project and Alternative 9. Alternative 9 vehicular access to the on-site parking facilities would be similar to that provided in the Project except for the elimination of the entry-only commercial component driveway along Sunset Boulevard. Elimination of the Sunset Boulevard driveway would eliminate potentially dangerous conflicts between pedestrians and vehicles and improve the traffic flow on Sunset Boulevard. In order to compensate for the loss of this access point, the primary commercial access driveway on Crescent Heights Boulevard, which provides both ingress and egress, was modified to include a second entry lane. With the elimination of the commercial passenger vehicle access on Havenhurst Drive, all commercial passenger vehicle traffic for Alternative 9 would enter and exit only at the Crescent Heights Boulevard driveway. The traffic analysis for Alternative 9 concludes that the Crescent Heights Boulevard driveway has adequate capacity. Therefore, the EIR adequately analyzed the impacts of eliminating the Sunset Boulevard entry-only commercial component driveway and made Project design adjustments to accommodate the commercial traffic.

G. LADOT reviewed and approved the traffic study.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; and, Chapter 2, Section 2.A (Topical Responses) Response TR-4 (Traffic and Parking) of the FEIR

The traffic study prepared for the Project and all the alternatives was based on established LADOT proscribed methodologies and included sufficient discussion of impacts based of the City of West Hollywood's methodologies. The traffic impact analysis ("TIA") (Appendix H-1 of the Draft EIR) was reviewed and approved by LADOT to ensure that appropriate analysis methodologies and assumptions were utilized (refer to Appendix H-5 of the Draft EIR for a copy of the LADOT Traffic Impact Analysis Approval Letter for the Project). Based on LADOT's recommendations, the TIA evaluated the existing and forecasted future conditions at a total of 14 signalized intersections and one unsignalized intersection in the Project vicinity, including locations within both the City and the City of West Hollywood. The TIA also evaluated the potential for Project-related impacts to a number of nearby regionally-significant intersections and freeway segments, all pursuant to LADOT's recommendations, as well as the potential impacts to the existing public transit facilities as required by the current Los Angeles County Management Program. Alternative 9 reduces the number of vehicular trips as compared to the Project by substantially reducing the Project's commercial component and avoiding traffic conflicts on Sunset Boulevard by eliminating the Sunset Boulevard Driveway while enlarging the Crescent Heights Boulevard driveway to accommodate the loss of the Sunset Boulevard driveway. Therefore, the potential traffic impacts of Alternative 9 are even less than those for the original Project evaluated in the TIA.

- H. The proposed mitigation measure to reduce the impact at the intersection of Havenhurst Drive and Fountain Avenue is compliant with CEQA.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) of the Draft EIR and Findings of Fact (CEQA) Section XII.A.3 (Statement of Overriding Considerations – Transportation and Circulation)

The EIR includes a mitigation measure requiring a signal to be installed at the intersection of Havenhurst Drive and Fountain Avenue to reduce Project-related traffic impacts at that intersection to a less than significant level. However, this mitigation is dependent on approval by another agency, the City of West Hollywood. A lead agency may approve a project even when a mitigation measure is infeasible due to specific economic, social, or other conditions. In this case, the other condition is the lack of control over the decision of an adjacent city with approval powers over the mitigation.<sup>15</sup> Since the City cannot control whether the City of West Hollywood will agree to this mitigation measure, the EIR appropriately concluded that the impact would be significant and unavoidable if the City of West Hollywood refused to permit the installation of the necessary traffic signal.

- I. The potential cut through trips on Havenhurst Drive were analyzed in the EIR.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Sections 2.A (Topical Responses) Response TR-4 (Traffic and Parking) and 2.B (Responses to Comments) Response A9-10 of the FEIR

The EIR analyzed the potential impacts to Havenhurst Drive, which is currently used by drivers to the Project Site. The EIR correctly concluded that the Project would not result in any significant impacts to Havenhurst Drive, either from Project-related traffic or due to the effects of heavy trucks on that local/residential street. Alternative 9 would provide a Project-serving loading dock facility on Havenhurst Drive near the southern boundary of the Project Site. Since heavy truck delivery activity at the Project Site is anticipated to be relatively nominal, and can be scheduled during off-peak periods, the potential effects of truck traffic on Havenhurst Drive would be minimal. As shown in Table 4.J-5 of the Draft EIR, the Project would result in a less than significant impact on the street segment of Havenhurst Drive between Sunset Boulevard and Fountain Avenue.

Moreover, the installation of signals at both ends of Havenhurst Drive between Sunset Boulevard and Fountain Avenue is not anticipated to result in any significant cut-through traffic along this

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<sup>15</sup> See, California Public Resources Code, Sections 21002 and 21081 and California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15021.

segment of Havenhurst Drive. First, there are three speed bumps along this roadway making it an inconvenient street to use as a cut-through. Second, the EIR traffic consultant has recommended that these two signals be mis-timed so that the potential for cut-through traffic to have to wait at the end of the segment would increase travel time and, therefore, make the cut-through less viable. As a result, the potential of the signals encouraging cut-through traffic is minimal.

- J. The EIR correctly concluded that the traffic signals on Fountain Avenue do not need to be upgraded.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; and, Chapter 2, Sections 2.A (Topical Responses) Response TR-4.1 (Traffic Generation and Related Impacts) and 2.B (Responses to Comments) Response A9-12 of the FEIR

The EIR correctly analyzed the impacts of traffic volumes on all the relevant street intersections and segments. As noted in the DEIR, traffic increases would remain below the level of significance established by the City at all street segments except for the unsignalized intersection of Fountain Avenue and Havenhurst Drive, which would experience increases in vehicular delay of nearly 80 seconds per vehicle during the P.M. peak hours. No other Project-related changes in the level of service are expected at any of the other study intersections during either peak hour. Therefore, no other traffic signal upgrades are necessary since there will be no other traffic impacts on Fountain Avenue to mitigate.

- K. The EIR correctly analyzed potential impacts to pedestrian safety, including the pedestrian crosswalk south of the Project Site on Crescent Heights Boulevard.

*Please see:* Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-I (Traffic and Parking) of the DEIR; and, Chapter 2, Sections 2.A (Topical Responses) Response TR-4 (Traffic and Parking) and 2.B (Response to Comments) Response A9-11 of the FEIR

The EIR analyzed both the existing pedestrian safety hazard at the City's traffic island and the design features that will improve pedestrian and bicyclist safety at the Project Site. The methodology for the analysis of pedestrian and bicycle safety in the EIR includes a review of the Project's access and circulation scheme and a determination of whether the Project would substantially increase the potential for conflicts between vehicles, pedestrians, and bicyclists. The EIR correctly concluded that the proposed driveways would function adequately with no significant vehicular queuing or disruption of either pedestrian or vehicular traffic flows.

Additionally, Project-related traffic increases do not require the upgrade of the pedestrian crossing south of the Project Site at Crescent Heights Boulevard. While it is possible that the Project's new commercial uses may increase pedestrian traffic to the Project Site, there are

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existing crosswalks across Crescent Heights Boulevard provided directly adjacent to the Property controlled by the traffic signal at Sunset Boulevard and Crescent Heights Boulevard, and approximately 950 feet south of the Property at the intersection of Fountain Avenue and Crescent Heights Boulevard. It is anticipated that pedestrians would use these nearby crosswalks. Thus, the Project does not create sufficient impacts to warrant upgrades to the crosswalks south of the Property on Crescent Heights Boulevard.

**V. THE RECONFIGURATION OF THE TRAFFIC ISLAND WILL IMPROVE TRAFFIC FLOW AND NOT INCREASE THE APPLICANT'S PROPERTY RIGHTS.**

A. The right-turn from Sunset Boulevard to Crescent Heights Boulevard will be safe.

*Please see:* Chapter 2 (Project Description) and Chapter 4, Section 4.J (Transportation and Circulation) and Appendix H-1 (Traffic and Parking) of the Draft EIR; and, Chapter 2, Section 2.A (Topical Responses) Response TR-4.3 (Traffic Island Reconfiguration) of the Final EIR

The LADOT has reviewed and approved the Project's traffic impact analyses, and further, has expressed support for the proposed improvements to the existing traffic island that would eliminate a number of existing traffic and pedestrian conflicts, thereby improving both vehicular and pedestrian safety at that location. More importantly, the proposed intersection modification will not result in any significant deterioration of the overall operations of the subject intersection, and more specifically, to the operations of the eastbound right-turn movement from Sunset Boulevard to southbound Crescent Heights Boulevard.

Furthermore, the current condition of the right-turn lane is not ideal because it is not a free right-turn facility. That is, the vehicles using the current right-turn lane must yield to pedestrian and vehicular traffic, have impeded views of on-coming traffic, and must be aware of traffic entering and exiting the Project Site via the existing driveway on Crescent Heights Boulevard. The proposed reconfiguration would alleviate these existing conflicts through improved visibility of southbound through traffic on Crescent Heights Boulevard, while not decreasing the space available for queuing for the right-turn (approximately five car lengths in each case). The proposed intersection modifications are also expected to result in a relatively standard intersection design where pedestrians cross the street in front of the right-turn lane, generally during a controlled walk signal. This will be an improvement from the existing unsignalized pedestrian crossing between the Project Site and the raised triangular island, which is currently the location for the vehicles to turn right. The proposed reconfiguration would remove this safety hazard.

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- B. The City will retain ownership of the traffic island and the Applicant will not get open space credit for the newly landscaped traffic island.

*Please see:* Chapter 2 (Project Description), Chapter 4, Section 4.J (Transportation and Circulation), and Appendix H-1 (Traffic and Parking) of the DEIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Sections 2.A (Topic Responses) Response TR-4 and 2.B (Responses to Comments) Response B5-8 of the FEIR

The City would retain ownership and control over the traffic island. The Applicant has simply volunteered to maintain the traffic island.

As shown in Table 2-3 (Open Space Summary) of the Draft EIR, the Project's open space calculation does not include credit for the conversion of the adjacent City traffic island to provide a 9,134 square-foot public space. The open space square footage calculation is based solely on the private balconies, terraces, recreational rooms, roof decks, and public plazas, as permitted by the LAMC. Similarly, Alternative 9 would increase the open space available on the Project Site without use of the traffic island. The open space calculation for Alternative 9 would include a reduced public plaza and increased private open space amenities for apartments and condominium units and increased private/resident terraces, balconies and common areas resulting in the provision of 41,150 square feet of open space, well above the minimum City requirements. In addition, the dedicated right-turn only lane from eastbound Sunset Boulevard to southbound Crescent Heights Boulevard would be removed, and the reconfigured traffic island would be converted to public open space with landscaping, seating, and a fountain/water feature, but would remain under City ownership. The Applicant would be responsible for the maintenance of this area but would get no open space credit for these improvements. Consequently, the open space improvement on the City's traffic island property is not counted towards the Project's open space requirements.

- C. The Applicant is not getting additional FAR based on the traffic island.

*Please see:* Chapter 2 (Project Description) and Chapter 4, Section 4.F (Land Use) of the DEIR; Chapter 2, Section A (Description of the Alternative) of the RP-DEIR; and, Chapter 2, Section 2.B (Responses to Comments) Response B27-7 of the FEIR

The Applicant is not getting additional FAR for the improvements proposed for the City's traffic island. The 3:1 FAR requested for the Project is based solely on the 111,339 square feet of the Property. The Project's FAR calculation of 3:1 is equivalent to approximately 334,000 square feet of floor area. The Project's 334,000 square feet of floor area would be comprised of 269,000 square feet of residential uses; 11,937 square feet of retail uses; 23,158 square feet of restaurant use; 24,811 square feet of grocery store use; and, 5,094 square feet of walk-in bank use with none of the FAR calculation attributed to the City's property.

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**VI. THE CITY OF WEST HOLLYWOOD'S SEWERS HAVE SUFFICIENT CAPACITY TO ACCOMMODATE THE PROJECT AND THE CITY HAS INCORPORATED AN ENFORCEABLE MITIGATION MEASURE.**

*Please see:* Chapter 4, Section K.2 (Wastewater) and Appendix I (Utility Correspondence and Technical Data) of the Draft EIR; Appendix C (Sewer Area Study) of the RP-DEIR; and, Chapter 2, Section 2.A (Topical Responses) Response TR-6.2 (Adequacy of Infrastructure Serving the Project Site) and Chapter 3 (Corrections and Additions to the Draft EIR and the RP-DEIR) of the FEIR

The EIR demonstrates that the Project would generate a negligible amount of wastewater during construction. Therefore, construction wastewater impacts would be less than significant and no mitigation would be required. The EIR also demonstrates that existing wastewater systems are not constrained or at capacity, and that there is sufficient capacity to accommodate the Project. Therefore, impacts on wastewater during operations would be less than significant and no mitigation is required.

The City's Department of Public Works, Bureau of Engineering ("LABOE") prepared a sewer capacity availability assessment (Appendix I (Utility Correspondence and Technical Data), which concluded that the sewer facilities which would service the Project had adequate capacity. However, after preparation of the Draft EIR, the City of Los Angeles Bureau of Sanitation ("LABOS") suggested that the City sewers would convey flows from the Project Site via Los Angeles County (the "County") operated sewers in the City of West Hollywood and other County operated trunk facilities to the Hyperion Treatment Plant, which has adequate capacity to treat Project-related wastewater flows. LABOS also indicated that while the Hyperion Treatment Plant could accommodate Project-related wastewater, they could not confirm that the facilities in the City of West Hollywood had adequate capacity without further testing.

Because of the conflicting information from LABOE and LABOS, the EIR requires the Project to comply with Project Design Feature PDF-WW-1 in order to address potential future improvements to sewage conveyance facilities within the City of West Hollywood that service the Project Site, if needed. This Project Design Feature requires that the Project contribute fair-share payments to the City of West Hollywood commensurate with the Project's incremental impact to affected facilities. The Project's specific fair-share contribution for the City of West Hollywood sewage system upgrades would be determined by the City and the City of West Hollywood at such a time as the necessary improvements and associated capital costs are known, and shall be proportional to the Project's contribution to total wastewater flows in each affected City of West Hollywood-owned sewers. This Project Design Feature was developed even though the Project would not contribute sewage flows to City of West Hollywood facilities in sufficient volumes to be cumulatively considerable based on the minimal contribution of the Project to total wastewater flows in affected sewer lines, the remaining capacity in the affected City of West Hollywood facilities, and the fact that only a portion of sewage flows from the various related projects both within and outside of the City of West Hollywood would be

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conveyed by the same sewer facilities impacted by the Project. The payments required by PDF-WW-1 would further reduce the Project's contribution to cumulative effects on sewage conveyance facilities. With implementation of PDF-WW-1, the sewer capacity within the City of West Hollywood will be adequate. Therefore, the cumulative impact related to wastewater would be less than significant.

## **VII. THE LOS ANGELES FIRE DEPARTMENT HAS CONFIRMED THAT IT HAS THE CAPACITY TO SERVE THE PROJECT.**

*Please see:* Chapter 4, Section 4.1.1 (Fire Protection and Emergency Medical Services) and Appendix G (Public Services Correspondence) of the Draft EIR; Chapter 2 (Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative) of the RP-DEIR; and, Chapter 2, Section 2.A (Topical Responses) Response TR-6.1 (Emergency Services (Police and Fire/EMS) and Emergency Vehicle Response Times) and TR-6.2 (Adequacy of Infrastructure Serving the Project Site), and Appendix C (Fire Department Correspondence and Fire Flow Report ) of the FEIR

The Draft EIR thoroughly addresses the capacity of the Los Angeles Fire Department (the "LAFD") to serve the Project. As shown in Appendix C of the FEIR, the LAFD has identified conditions with respect to firefighting personnel access and apparatus access that would minimize potential cumulative impacts and assist LAFD in providing fire protection and emergency response services to the Project. The Project-specific plan to deal with LAFD issues must be approved by the LAFD prior to the issuance of any building permits. The LAFD has confirmed that it has the capacity to serve the Project.

Furthermore, as discussed in the EIR, a fire flow of 9,000 gallons per minute with a minimum of 50 pounds per square inch residual water pressure from six hydrants flowing simultaneously, the LAFD's requirement, can be achieved. However, if water system improvements are necessary, the Project would either achieve the required fire flows prescribed by the LAFD or provide a combination of lower fire flows and other fire life safety features to the satisfaction of the LAFD, such that impacts would be less than significant.

Additionally, irrespective of fire flow-related facilities and improvements, with incorporation of applicable regulatory requirements including, without limitation, building design, fire safety features, emergency safety provisions, LAFD access, a construction traffic management plan and plot plan review, the EIR adequately analyzed available capacity and found that the Project would not result in a substantial increase in demand for additional fire protection services nor exceed the capability of the LAFD to service the Project such that it would require construction of new fire facilities. Based on the relatively limited incremental impact of the Project within the service area and the established methodology for assessment of impacts utilized in the EIR, the Project's impact to LAFD's ability to service the Project is less than significant.

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## VIII. THE PROJECT CONFORMS TO EXISTING LAND USE RULES INCLUDING HEIGHT AND CALCULATION OF OPEN SPACE.

- A. The Property does not have a height limit.

*Please see:* Chapter 2 (Project Description) and Chapter 4, Sections 4.A (Aesthetics/Visual Resources) and 4.F (Land Use) of the Draft EIR; and, Chapter 2 (Topical Responses) Response TR-1 (Views from Surrounding Community and Hollywood Hills) and TR-2.4 (Consistency with City of Los Angeles Plans and Policies Related to Height and Scale) of the Final EIR

The Property is located within the Hollywood Community Plan area in the City and is zoned C4-1D with a General Plan designation of Neighborhood Office Commercial. The Property is not located within any specific plan area and is not subject to any interim control ordinance. The zoning designation does not restrict height – in fact, it specifically allows unlimited height at the Property. Thus, the Project Site is not subject to any height limit under LAMC.<sup>16</sup>

- B. The LAMC explicitly allows projects to incorporate a portion of balcony square footage as open space.

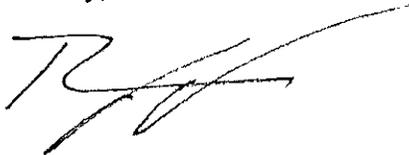
*Please see:* Chapter 2 (Project Description) and Chapter 4, Section 4.I (Parks and Recreation) of the Draft EIR

LAMC Section 12.21.G explicitly permits a portion of a project's required open space be private open space. As described in the EIR, the Project includes balconies that are counted towards the required open space, as permitted by the LAMC.

## IX. CONCLUSION

For all the foregoing reasons, the EIR is adequate as drafted and not only meets the requirements of CEQA, but also addresses all of the concerns raised at the Hearing. We again request that this letter referencing the relevant EIR provisions and summarizing the response to the public comments be added to the administrative record for clarity on all these issues.

Sincerely,



Tyler Siegel

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<sup>16</sup> Because the Project is a mixed-use project, it is not subject to the Commercial Corner Development height limit of 45 feet pursuant to LAMC §12.22-A,23(d)(1).

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cc: Jeffrey S. Haber, Paul Hastings LLP  
Edgar Khalatian, Mayer Brown LLP  
Jay Ziff, ESA PCR

## ATTACHMENT B

**AG-SCH 8150 Sunset Boulevard Owner, L.P.**

P.O. Box 10506  
Beverly Hills, CA 90213

July 13, 2016

Ms. Luci Ibarra  
City Planner – Major Projects  
200 North Spring Street, Room 750  
Los Angeles, CA 90012

Mr. William Lamborn  
Planning Assistant – Major Projects  
200 North Spring Street, Room 750  
Los Angeles, CA 90012

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."<sup>1</sup> 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

<sup>1</sup> [http://cityplanning.lacity.org/PolicyInitiatives/UrbanDesign/ResidentialDesignGuidelinesHighRes\\_6\\_23\\_2011.pdf](http://cityplanning.lacity.org/PolicyInitiatives/UrbanDesign/ResidentialDesignGuidelinesHighRes_6_23_2011.pdf) at 5.

Pedestrian-Oriented/Commercial & Mixed-Use Projects<sup>2</sup> (“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

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<sup>2</sup> [http://planning.lacity.org/PolicyInitiatives/UrbanDesign/CommercialDesignGuidelinesHighRes6\\_23\\_2011.pdf](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<sup>3</sup> ("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.

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<sup>3</sup> [https://losangeles2b.files.wordpress.com/2012/12/mobilityplan\\_web\\_jan\\_2016v61.pdf](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)<sup>4</sup>.

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**

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<sup>4</sup> 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.<sup>5</sup> 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

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<sup>5</sup> 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)<sup>6</sup>.) 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

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<sup>6</sup> 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 the 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,

A handwritten signature in black ink, appearing to read 'Tyler Siegel', with a long horizontal flourish extending to the right.

Tyler Siegel

## ATTACHMENT C



700 South Flower Street, Suite 2995, Los Angeles, CA 90017  
T: 310-581-0900 | F: 310-581-0910 | www.hraadvisors.com

October 31, 2016  
Tyler Siegel  
AG-SCH 8150 Sunset Boulevard Associates, L.P.  
Suite 702  
8899 Beverly Blvd.  
West Hollywood, CA 90048

Re: Financial Feasibility Analysis for the 8150 Sunset Blvd. Project (Alternatives 5 and 6, preserving the Chase Bank)

Dear Mr. Siegel:

Per your request, HR&A Advisors, Inc. (HR&A) has completed financial feasibility analyses of a development program that reflects Environmental Impact Alternatives 5 and 6 that you provided to us for a mixed-use development located at 8150 Sunset Boulevard in the City of Los Angeles ("City").<sup>1</sup> As with our previous analyses, AG-SCH 8150 Sunset Boulevard Associates, L.P. ("AG-SCH") provided us the basic development program for the development with a Density Bonus and Affordable Housing Incentives, as well as the 2012 land acquisition cost, costs associated with the buy-out of eight existing tenants on the site, and estimates for certain professional fees, legal and environmental consulting costs, which are above-average due to the particulars of this project. We used AG-SCH's development program, land cost, buy-out cost, and certain consultant costs in our analyses, but applied our own independent calculations of all other development costs, net operating income and investment returns. Our analysis utilizes HR&A's extensive real estate analysis experience as well as a number of well-established third-party real estate industry data sources for the Los Angeles area, which are noted in the detailed development pro formas in Attachment A to this letter.

We evaluated the project's financial feasibility based on two investment return metrics commonly used in the real estate industry. First, for the income-producing apartment and retail uses, we evaluated the return on total development cost (i.e., Net Operating Income (NOI) divided by total development cost), for which we assumed a minimum threshold of one percentage point more than the applicable weighted average income capitalization (or "cap") rate for new development at this location, to account for investment risk.<sup>2</sup> Second, we evaluated the developer profit margin that would be generated by the project. This involved dividing the NOI from the project's rental components (retail and apartments) by the weighted average cap rate to estimate the sale value of the rental component of the development at stabilized operation. We then added estimated sale proceeds for the project's for-sale condominium units, and deducted costs of sale and total development costs. The ratio of the resulting developer profit to the net after-sale value of the project as a whole was then compared with a minimum developer profit margin threshold of 12.5 percent, which in our experience is a typical return threshold for Los Angeles development projects (i.e., midpoint of a 10-15 percent range). Both of these return metrics are viewed as conservative

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<sup>1</sup> This Financial Feasibility Analysis is for Alternatives 5 and 6, and supplements our March 1, 2016 Financial Feasibility Analysis for the 1:1 FAR development scenario and the original project 3:1 FAR development scenario.

<sup>2</sup> The cap rate used for the feasibility determination in this analysis is a weighted average, based on the share of Net Operating Income (NOI) generated by retail versus residential uses, which is then multiplied by the cap rate for each respective land use.

(i.e., relatively low), considering the significant entitlement and litigation risk associated with a large project in the Hollywood Community Plan area.

Using this approach and based on the analysis summarized below, and supported by the calculation detail in Attachment B to this letter, we conclude that:

- **The development alternative which preserves the Chase Bank with 231 market rate rental units, 32 affordable rental units for very low-income households, 28 market rate for-sale units, 42,059 square feet of new commercial space, and Affordable Housing Incentives that achieve a 3.0 FAR would not be financially feasible.** This is because the income-producing uses would generate a return on total development cost that is less than the minimum threshold (i.e., 5.1% vs. 5.5%), and the entire project including the for-sale units, would generate a developer profit margin that is less than the minimum acceptable threshold (i.e., 7.6% vs. 12.5%).

The basis for this conclusion is summarized below. Sources and notes for the assumptions used in the analysis are included with more detailed pro formas in Attachment B to this letter.

As shown in Table 1, the project's development costs total \$252.4 million, Net Operating Income totals \$9.4 million and Net Sales Revenue totals \$67.8 million. As stated above, the minimum return on cost feasibility threshold for the income-producing uses was set at one percentage point more than a weighted average of the applicable cap rates for each rental land use (i.e., 5.4% for retail and 4.2% for multi-family residential, resulting in a weighted average cap rate for this development scenario of 4.5%). In order to appropriately reflect the return on cost of the NOI generated by the rental uses, both the condominium sales and the cost of constructing the condominiums were excluded from this calculation. The resulting return on total development cost, less the condominium construction cost, is 5.1 percent, as compared with a minimum threshold of 5.5 percent. For the project as a whole, which includes the sale value of the condos and the cost of construction for all product types, the ratio of developer profit to net after-sale value produces a profit margin of 7.6 percent, as compared with a minimum threshold of 12.5 percent. Therefore, this development scenario is not financially feasible.

**Table 1: The 3.0 FAR Development Scenarios preserving the Chase Bank (Alternatives 5 and 6) with Market Rate and Affordable Housing and Retail, Density Bonus, Flexible Parking Incentives, and Off-Menu FAR Incentives**

	<b>With Density Bonus</b>	
	<u>Per Unit</u>	<u>Total</u>
<b><u>Development Program</u></b>		
Land Area (sf)	383	111,339
Gross Building Area (GSF)	1,122	326,546
FAR (based on GSF)		3.0
Rentable Area - Residential (NSF)	619	180,055
Rentable Area - Commercial (NSF)		42,059
Rentable Area - Commercial (NSF)		20,172
Sellable Area - Residential (NSF)		70,000
Building Efficiency		89.5%
<b>Apartments</b>		
Market Rate		231
Affordable		32
Affordable		28
Total Units		291
Subterranean Parking		-
Levels		6
Total Residential & Commercial Parking		720
<b><u>Development Costs</u></b>		<b><u>Total</u></b>
Land Acquisition	\$	34,000,000
Hard Construction	\$	147,890,876
Soft Costs	\$	47,506,477
Financing Costs	\$	22,973,735
<b>Total Development Cost (TDC)</b>	<b>\$</b>	<b>252,371,088</b>
<b>Sales - Residential</b>		
Net Sales Revenue	<b>\$</b>	<b>67,825,000</b>
<b><u>Net Operating Income</u></b>		<b><u>Annual</u></b>
Net Apartment Income	\$	6,301,953
Net Commercial Income	\$	3,095,683
<b>Net Operating Income (NOI)</b>	<b>\$</b>	<b>9,397,636</b>
<b><u>Feasibility</u></b>		
Return on Cost (NOI / TDC)		<b>5.1%</b>
<b>Feasible?</b>		<b>NO</b>
(Minimum = Cap Rate + 1.00% = 5.7%)		
<i>Developer Profit Margin</i>		
Net Project Sale Value	\$	273,125,222
Less: Total Development Cost (from above)	\$	(252,371,088)
Developer Profit	<b>\$</b>	<b>20,754,135</b>
Developer Profit Margin		<b>7.6%</b>
<b>Feasible?</b>		<b>NO</b>
(Minimum = 12.5%)		

Tyler Siegel  
AG-SCH 8150 Sunset Boulevard Associates, L.P.  
October 31, 2016

The details of our analysis of project feasibility are included in Attachment A to this letter. As noted above, AG-SCH provided us the basic development program for both scenarios, the 2012 land acquisition cost (which we reviewed against comparable sales for that period). AG-SCH also provided us the costs associated with the buy-out of eight existing tenants on the site, including two major national/regional fast food chains, and other design, environmental, legal and outreach (collectively "consultant") costs in consideration of the high degree of litigation risk associated with major projects within the Hollywood Community Plan area. As also noted above, we used the development programs, land, buy-out and consultant costs, but applied our own independent calculations of development costs, net operating income and investment returns.

Development costs for the 3.0 FAR Development Scenarios preserving the Chase Bank (Alternatives 5 and 6) reflect both an elevated level of interior and exterior finishes as well as extensive subterranean parking, which will require major excavation and export of soil. In addition, the retail component of the project will require broker involvement to ensure rapid lease-up, commissions for which are included in total development costs. The elevated levels of finishes are expected to support residential and retail pricing at the highest end of current offerings in the Los Angeles area, which will be consistent with retail and residential products along the Sunset Strip portion of Sunset Boulevard in West Hollywood and Los Angeles.

In determining the above-mentioned development costs, net operating income, project value and investor returns, HR&A relied on generally accepted third party and other data sources (sources for all assumptions are included in Attachment B) and our own expertise. HR&A is a national economic development, real estate advisory and public policy consulting firm. We have extensive experience analyzing the financial feasibility of many different kinds of development products and planning initiatives, including extensive experience in the Los Angeles metro area. Our clients include a wide range of private and public sector organizations, including various departments of the City of Los Angeles.

Please contact me if you or the City of Los Angeles Department of City Planning has any questions about our analysis and conclusions.

Sincerely,



Paul J. Silvern  
Vice President

Attachment A: 8150 Sunset Blvd. Financial Feasibility Analysis With Proposed Density Bonus and Affordable Housing Incentives for Increased Floor Area

**Attachment A**  
**8150 Sunset Blvd. Project Alternatives 5 and 6,**  
**Financial Feasibility, With Density Bonus, 3.0 FAR Development Scenario**  
**with Off-Menu FAR Incentive, and Side Yard Reduction, Preserving the Existing Chase Building**

	<u>With Density Bonus</u>	
	<u>Per Unit</u>	<u>Total</u>
<b>Development Program<sup>1</sup></b>		
Land Area (sf)	383	111,339
Gross Building Area (GSF)	1,122	326,546
FAR (based on GSF)		3.0
Rentable Area - Residential (NSF)	619	180,055
Rentable Area - Commercial (NSF)		42,059
Rentable Area - Chase Bank, Remaining (NSF)		20,172
Sellable Area - Residential (NSF)		70,000
Building Efficiency		89.5%
Apartments		
Market Rate		231
Affordable		32
Condominium		28
Total Residential Units		291
Subterranean Parking		
Levels		6
Market Rate Apartment Spaces		344
Affordable Apartment Spaces		46
Condominium Spaces		70
Retail Spaces		260
Total Residential & Commercial Parking Spaces		720

	<u>Number</u>	<u>Net Rentable SF</u>	<u>Mo.</u>		<u>Total Mo. Rent</u>
			<u>Rent/NRSF</u>	<u>Mo. Rent</u>	
<b>Unit Mix<sup>1</sup></b>					
<i>Market Rate<sup>2</sup></i>					
Studio	96	480	\$5.55	\$2,664	\$ 255,744
1 Bedroom	114	725	\$5.45	\$3,951	\$ 450,443
2 Bedroom	21	1,150	\$5.30	\$6,095	\$ 127,995
	231				\$ 834,182

<i>Affordable<sup>3</sup></i>					
Studio	14	575	\$0.81	\$463	\$ 6,482
1 Bedroom	15	975	\$0.53	\$520	\$ 7,800
2 Bedroom	3	1,500	\$0.38	\$576	\$ 1,728
	32				\$ 9,528

	<u>Number</u>	<u>Net_SF</u>	<u>Sale</u>		<u>Total Sales</u>
			<u>Price/NSF</u>	<u>Price</u>	
<i>Condominium<sup>4</sup></i>					
2 Bedroom	26	2,300	\$1,050	\$2,415,000	\$ 62,790,000
4 Bedroom	2	5,100	\$1,250	\$6,375,000	\$ 12,750,000
	28				\$ 75,540,000
Total Residential Units	291				

	<u>Per Land SF</u>	<u>Per Unit</u>	<u>Total</u>
<b>Land</b>			
Land Acquisition <sup>5</sup>	\$ 305	\$ 116,838	\$ 34,000,000
<b>Subtotal Land</b>	\$ 305	\$ 116,838	\$ 34,000,000

	<u>Per Bldg.</u>		<u>Total</u>
	<u>GSF</u>	<u>Per Unit/Space</u>	
<b>Construction<sup>6</sup></b>			
Hard Construction-Buildings (weighted average for all components)	\$ 302	\$ 338,752	\$ 98,576,753
Hard Construction-Subt. Parking (per space) <sup>7</sup>		\$42,500	\$ 30,600,000
Hard Construction-Sitework (x Excavation Cu. Yard) <sup>8</sup>	\$75		\$ 4,387,500
Hard Construction-Site Improvements (x Open Area SF)	\$50		\$ 4,172,650
Tenant Improvements Allowance (x Retail NSF) <sup>9</sup>	\$50	\$ 10	\$ 3,111,550
Hard Cost Contingency (x Subtotal) <sup>7</sup>	5%	\$ 22	\$ 24,201
Subtotal Construction	\$ 453	\$ 508,216	\$ 147,890,876

		<u>Per GSF</u>	<u>Per Unit</u>	<u>Total</u>
<b>Soft Costs<sup>9</sup></b>				
Design, Engineering & Consulting Services (x Hard Costs)	14.0%	\$ 63.41	\$ 71,150	\$ 20,704,723
Permits & Fees (x Hard Costs)	4.0%	\$ 18.12	\$ 20,329	\$ 5,915,635
Taxes, Insurance, Legal & Accounting (x Hard Costs)	3.0%	\$ 13.59	\$ 15,246	\$ 4,436,726
Development Management (x Hard Costs)	4.0%	\$ 18.12	\$ 20,329	\$ 5,915,635
Tenant Buyouts <sup>10</sup>		\$ 15.62	\$ 17,526	\$ 5,100,000
EIR, Legal, & Public Outreach <sup>11</sup>		\$ 8.27	\$ 9,278	\$ 2,700,000
Leasing Commissions <sup>12</sup>		\$ 4.98	\$ 5,583	\$ 1,624,576
Soft Cost Contingency (x Subtotal)	3.0%	\$ 3.40	\$ 3,812	\$ 1,109,182
Subtotal Soft Costs	32.1%	\$ 145.48	\$ 163,252	\$ 47,506,477

	<u>Per GSF</u>	<u>Per Unit</u>	<u>Total</u>
<b>Construction Financing Costs<sup>9</sup></b>			
Land + Hard Costs + Soft Costs	\$ 229,397,353		
Loan to Cost Ratio	80%		
Construction Loan Principal	\$ 183,517,882		
Loan Fees (%)	2.0%	\$ 11.24	\$ 12,613
Interest Rate	6.0%		
Outstanding Principal Balance	60%		
Term (years)	2		
Construction Period (months)	30		
Construction Loan Interest	\$ 50.58	\$ 56,758	\$ 16,516,609
Permanent Loan Points	2.0%	\$ 8.53	\$ 9,577
Subtotal Construction Loan	\$ 70.35	\$ 78,948	\$ 22,973,735
<b>Total Development Cost (TDC)</b>	\$ 772.85	\$ 867,255	\$ 252,371,088

**Sales - Residential**

	Number	Net SF	Sales Price/NSF	Sales Price/Unit	Total Sales Price
Total Units	28				
2 Bedroom	26	2,300	\$ 1,050	\$ 2,415,000	\$ 62,790,000
4 Bedroom	2	5,100	\$ 1,250	\$ 6,375,000	\$ 12,750,000
Total Unit Sales Price					\$ 75,540,000
Less: Marketing and Cost of Sale <sup>9</sup>	10%				\$ (7,554,000)
Less: HOA Fees Through Full Building Absorption <sup>13</sup>				\$ (18,000)	\$ (189,000)
Less: Warranties <sup>9</sup>	28			\$ 1,000	\$ 28,000
Net Sales Revenue			\$ 969		\$ 67,825,000

	Net SF	Per Unit/Mo.	Per NSF/Unit/Mo.	Annual
<b>Net Operating Income</b>				
Gross Apartment Rental Income				
Market Rate Apartments <sup>2</sup>	231	\$ 3,611	\$ 5.46	\$ 10,010,178
Affordable Apartments (Very Low-Income) <sup>3</sup>	32	\$ 298	\$ 0.35	\$ 114,336
Miscellaneous Revenue <sup>9</sup>		\$ 50	\$ 0.08	\$ 174,600
Gross Income		\$ 2,949	\$ 4.77	\$ 10,299,114
Less: Vacancy Allowance <sup>9</sup>	5.0%	\$ (147)	\$ (0.24)	\$ (514,956)
Effective Gross Income (EGI)		\$ 2,802	\$ 4.53	\$ 9,784,158
Less: Annual Operating Expenses (x EGI) <sup>9</sup>	35.0%	\$ (981)	\$ (1.58)	\$ (3,424,455)
Less: Replacement Reserve (per unit/year) <sup>9</sup>	\$250	\$ (17)	\$ (0.03)	\$ (57,750)
Net Apartment Income		\$ 1,805	\$ 2.92	\$ 6,301,953

	Net SF	Per NSF/Mo	Annual
Gross Retail Rental Income - New Construction (NNN) <sup>2</sup>	42,059	\$ 5.50	\$ 2,775,894
Less: Vacancy Allowance (x Gross Income) <sup>9</sup>	5%	\$ (0.28)	\$ (138,795)
Plus: Net Retail Income - Chase Bank <sup>14</sup>	20,172	\$ 2.29	\$ 554,327
Effective Gross Income (EGI)		\$ 4.27	\$ 3,191,426
Less: Management Fee (x EGI) <sup>9</sup>	3%	\$ (0.19)	\$ (95,743)
Net Commercial Income		\$ 4.08	\$ 3,095,683
<b>Net Operating Income (NOI)</b>		\$ 2.40	\$ 9,397,636

**Feasibility**

Return on Total Development Cost			
Net Operating Income (from above)		\$	9,397,636
Subtotal Development Cost (from above)		\$	252,371,088
Less: Condominium Net Sales Revenue		\$	(67,825,000)
Total Development Cost		\$	184,546,088
Return on Cost (NOI / TDC)			5.1%

**Feasible?**

(Minimum = Weighted Average Cap Rate + 1.00% = 5.5%)<sup>9</sup>

Developer Profit Margin			
Net Operating Income (from above)		\$	9,397,636
Weighted Average Cap Rate <sup>15</sup>	4.5%		
Apartment and Retail Value (NOI x Cap Rate)		\$	207,373,962
Less: Cost of Sale <sup>9</sup>	1.0%	\$	(2,073,740)
Plus: Condominium Sales		\$	67,825,000
Net Project Sale Value		\$	273,125,222
Less: Total Development Cost (from above)		\$	(252,371,088)
Developer Profit Margin		\$	20,754,135
% x Net Project Sale Value			7.6%

**Feasible?**

(Minimum = 12.5%)<sup>9</sup>

**SOURCES & NOTES:**

<sup>1</sup> Townscape Partners.

<sup>2</sup> HR&A, based on a review of market comps for high-end new construction apartments with retail in prime submarket areas and an analysis of rent premiums associated with highly-amenitized, luxury buildings.

<sup>3</sup> LA Housing & Community Investment Dept. affordable rent schedule for Density Bonus program (Schedule VI), August 1, 2015, net of utility allowances, per Housing Authority of the City of Los Angeles.

<sup>4</sup> HR&A, based on a review of market comps for high-end new construction condominiums with retail in prime submarket areas and an analysis of rent premiums associated with highly-amenitized, luxury buildings.

<sup>5</sup> Townscape Partners-reported 2012 sale price. HR&A's review of comparable land sales for that period finds a range of prices between \$400 and \$600 PSF, suggesting that this price is reasonable and likely significantly below current market value.

<sup>6</sup> HR&A estimate of weighted retail (\$238 psf) and residential (\$308 psf apartments; \$338 psf condominiums) based on Marshall & Swift Cost Estimator software, January 2016 data for LA area. Includes demolition, some site work, but factored to remove soft costs listed separately. Assumes an above-average quality and higher ceiling heights. Costs for the substantial reconstruction of the Chase Bank building to comply with current building codes are assumed to equal those of new construction. Additional supporting documentation from HR&A is available upon request.

<sup>7</sup> HR&A estimate of parking costs based on Marshall & Swift Cost Estimator software, January 2016 data for LA area. Assumes subterranean parking at \$100 per GSF and 425 square feet per space.

<sup>8</sup> HR&A estimate of additional site work costs due to the significant amount of soil to be excavated and exported to Inwindsale, CA, based on Marshall & Swift Cost Estimator software, January 2016 data for LA area.

<sup>9</sup> HR&A assumptions typical for this type of project and/or calculations.

<sup>10</sup> Townscape Partners. Includes buyout of 8 tenants, including 2 major national/regional fast food chains and miscellaneous other retail.

<sup>11</sup> Townscape Partners. Includes consideration of entitlement uncertainties and the high degree of litigation risk associated with major developments within the Hollywood Community Plan area.

<sup>12</sup> HR&A. Assumes a 3% broker commission on 5-year term commercial leases and 1.5% commission on 5-year lease renewals and marketing costs for both residential units and commercial space, not including space within the Chase Bank building.

<sup>13</sup> HR&A. Assumes average Homeowners Association (HOA) fees of \$1,500 per month, and that 50% of units are pre-sold, with the remainder absorbed over a two-year period.

<sup>14</sup> Townscape Partners. NNN rent, less real estate taxes that cannot be recovered due to Proposition 13 protection.

<sup>15</sup> Blended 5.4% retail and 4.2% multifamily cap rate, based on HR&A review of third party data sources (e.g., CoStar data for sale of similar buildings within relevant, nearby submarkets since 2012).

Prepared by: HR&A Advisors, Inc.

## ATTACHMENT D



Hirsch/Green Transportation Consulting, Inc.

October 18, 2016

Mr. Tomas Carranza  
Principal Transportation Engineer  
Metro Development Review  
Los Angeles Department of Transportation  
100 S. Main Street, 10th Floor  
Los Angeles, California 90012

RE: Potential Alternative Mitigation Measures to Address Identified Significant Impact of 8150 Sunset Boulevard (Alternative 9) Project at the Intersection of Fountain Avenue and Havenhurst Drive, Located Within the City of West Hollywood

Dear Tomas,

As you are aware, the City of West Hollywood has filed several appeals related to the recent City of Los Angeles Advisory Agency's approval of the Environmental Impact Report ("EIR") for a proposed mixed-use project located at 8150 Sunset Boulevard, within the City of Los Angeles. The most recent of these appeals, dated "August 26, 2016", identifies concerns related to the proposed installation of a new traffic signal intended to mitigate the significant impacts of the Proposed Project at the intersection of Fountain Avenue and Havenhurst Drive, which is located within the City of West Hollywood. Specifically, the City of West Hollywood's appeal states that the proposed new traffic signal is not "acceptable" as mitigation since that City would not approve its installation, and as such, that alternate measures should be identified. The City of West Hollywood appeal also suggests that the City of Los Angeles had "considered other feasible [mitigation] measures" that were not included in the project's EIR. It is of note that the traffic mitigation comments contained in current City of West Hollywood appeal have already been addressed in responses to comments incorporated into the Project's Final EIR ("FEIR") and/or Recirculated Portions of the Draft EIR ("RP-DEIR") documents. Nonetheless, as this issue continues to be raised by the City of West Hollywood and others, we believe that it is important to provide a clear and concise summary of the facts of this matter.

A review of the current conditions at the intersection of Fountain Avenue and Havenhurst Drive indicates that limited rights-of-way on both sides of each of these streets generally restrict the ability to implement meaningful roadway widenings along either of these facilities. As a result, measures to mitigate the potential project-related significant impact at that location (including impacts associated with both the Proposed Project and the Alternative 9 Project) are essentially limited to three options: reductions in the number of project-related trips (via implementation of a Transportation Demand Management, or "TDM", Program), restriping of the roadway(s) within the existing rights-of-way to provide additional lanes, and/or installation of a new traffic signal.

Letter to Mr. Tomas Carranza  
October 18, 2016  
Page 2 of 2

As described in the project traffic study and EIR documents, the Proposed Project (including the approved Alternative 9 Project) will be required by the City of Los Angeles to develop and implement a TDM Program. However, the trip reductions associated with such a program alone (assumed as an approximately 15 percent reduction in the project's residential component trips and approximately 10 percent reduction in the project's commercial component trips) will not be sufficient to reduce the project-related impact at the intersection of Fountain Avenue and Havenhurst Drive to less-than-significant levels. As a result, while a TDM Program is identified as a traffic mitigation measure for the Proposed (and Alternative 9) Project, since this program alone will not mitigate the impact, additional and/or supplemental measures were examined.

The installation of new left-turn lanes in both directions on Fountain Avenue at Havenhurst Drive was also initially considered as a potential mitigation measure, but it was determined that the new left-turn lanes (either alone or in conjunction with any TDM Program-related trip reductions) would not reduce the Project's potential impact at this location to less-than-significant levels. Additionally, this measure could create secondary impacts in the project vicinity due to the removal of some existing on-street parking on the south (eastbound) side of Fountain Avenue. As a result, such an improvement is not a feasible mitigation measure for the Project's impact at the intersection of Fountain Avenue and Havenhurst Drive.

Therefore, the only feasible mitigation measure to reduce the Project's impact at the intersection of Fountain Avenue and Havenhurst Drive to less-than-significant levels is the installation of a new traffic signal. As detailed in the project traffic study and EIR documents, a new traffic signal installed at the intersection of Fountain Avenue and Havenhurst Drive would reduce the impact of the Proposed (and Alternative 9) Project at that location to less-than-significant levels.

Please let me know if you have any further questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Hirsch".

Ron Hirsch, P.E.  
Principal

## ATTACHMENT E

# Gehry Partners, LLP

Frank Gehry

Brian Aamoth  
John Bowers  
Anand Devarajan  
Jennifer Ehrman  
Berta Gehry  
Meaghan Lloyd  
David Nam  
Tensho Takemori  
Laurence Tighe  
Craig Webb

March 24, 2016

Mr. Tyler Siegel  
Mr. John Irwin  
Townscape Partners, LLC  
8899 Beverly Blvd, Suite 710  
West Hollywood, CA

Dear Tyler and John:

We are writing to you in response to the letter that has been filed by the Los Angeles Conservancy dated October 26, 2015 regarding the Mixed-Use Project at 8150 Sunset Boulevard. The letter objects to the proposed removal of the Lytton Savings and Chase Bank building that currently occupies a portion of the project site. While we are in support of the Los Angeles Conservancy's mission to protect culturally and architecturally significant buildings where practical and economical, we do not agree with their position regarding the Lytton Savings building.

As your architect on the project, we are sympathetic to their concerns. Our office has had several of our older projects torn down or significantly altered over the last few years to make room for newer development. Though it was hard news to receive, we did not protest nor did we implore anyone to reconsider despite our belief in their significance as a part of our complete body of work. We didn't because we believe that it is as important to look forward as it is to look backward and that each building plays a role in the city and over time, those roles change. As populations evolve, the structure of the city needs to evolve with them.

By way of explaining our logic, we would like to offer a brief explanation of our design for this project and the process that we used to arrive at the current design. Our design for the project is intended to create a unique architectural identity for the site by crafting the project as an ensemble of buildings. The location and height of each of the buildings are carefully designed in order to achieve, among other design objectives, the following three goals:

- To create a pedestrian friendly retail destination
- To extend the landscape from the hills by creating multiple outdoor terraces
- To preserve the view corridor from the hills.

In addition to these design objectives, we have designed the project to meet the following:

- Provide an attractive retail face along street frontages;
- Redevelop and revitalize an aging and underutilized commercial site;
- Build upon the existing vitality and diversity of uses in Hollywood;

12541 Beatrice Street, Los Angeles, California 90066  
Tel: 310.482.3000 Fax: 310.482.3006

- Provide high - quality commercial uses that enhance the character of the area;
- Create a development that complements and improves the visual character of the westernmost area of Hollywood and promotes quality living spaces that effectively connect with the surrounding urban environment through high quality architectural design and detail; and
- Enhance pedestrian activity and neighborhood commercial street life in the westernmost area of Hollywood.

We have used these guiding principles to create a design that we believe will foster a new and exciting commercial and retail destination, add much-needed affordable housing, and create an iconic gateway to Hollywood.

We do not believe that the Lytton Savings and Chase Bank building helps meet any of the goals and objectives set forth above. The bank building belongs to an outdated commercial real estate model. It does not provide street-front engagement along Sunset Boulevard, it turns its back to Havenhurst Drive, and it impedes pedestrian access to the project from Havenhurst and Sunset. The size and layout of the building limits the number and types of tenants that could occupy the space. We do not believe that this building has the flexibility to adapt to a new usage, which would severely limit the programming of that building to the detriment of the excitement that you are trying to create on the site. The bank consumes a sizeable portion of the available property, which if preserved, would leave insufficient space to design buildings with comparable function to the ones that we would have to abandon.

Our landscape design has also been sensitively composed with the design objectives in mind, particularly our design of the stepping terraces and the corridor leading from Sunset Boulevard to the central plaza. It has been designed in order to invite and draw people into the beautiful central public plaza. The existing bank building, with its non-porous facade, extends right up to the existing narrow sidewalk on Sunset, and is at odds with the vision for a pedestrian-friendly development.

We have been aware of the Los Angeles Conservancy's interest in the preservation of the bank from the beginning of our design process, and we considered whether it would be feasible to meet the design objectives and overall project objectives with a design that preserved the bank building. For the reasons set forth above, we determined it was not feasible to meet these objectives with a design that preserved the bank.

Sincerely,

Gehry Partners, LLP

## ATTACHMENT F

## **Gehry Partners, LLP**

Frank Gehry

Brian Aamoth

John Bowers

Anand Devarajan

Jennifer Ehrman

Berta Gehry

Meaghan Lloyd

David Nam

Tensho Takemori

Laurence Tighe

Craig Webb

October 24, 2016

RE: 8150 Sunset

Dear Councilmembers:

I am writing to you regarding the upcoming hearing on 8150 Sunset Blvd. When we started this project, we set out to accomplish a number of goals with our clients. Primary among them was to create a building that is simultaneously a good neighbor to the surrounding buildings, while also creating something of significance which would speak to the historical gateway nature of the site. We wanted to create a user-friendly building that would be open and welcoming to pedestrians which would cultivate a vibrant street-life that is so sorely lacking on that corner currently. In order to do this, we broke-up the massing of the building to fit into the existing fabric of the neighborhood. This move also allowed us to create wide view corridors to create reciprocal views between the hills and the city and to engage the street while creating large open plazas to invite lively pedestrian activity.

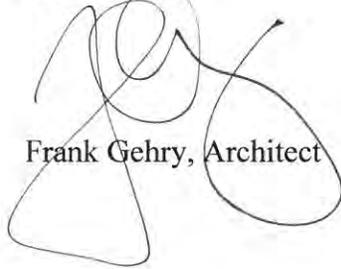
I know this site very well and can contextualize the historical significance of the Garden of Allah. I also remember that there was a huge outcry when the owner of the bank, Bart Lytton bulldozed through the approval process for a project that was out of scale and out of synch with the existing neighborhood. As a practicing architect for all of these years, I have encountered the wrecking ball on a few of my buildings. Each time, I was asked to protest, to fight the demolition of these buildings. I declined because it was clear to me that time had passed and the people behind the demolishing were interested in creating new buildings for a new generation of activities.

In that spirit, I feel that the bank, as it stands, has lost its *raison d'être* and would severely hinder our ability to create a design that engages and activates the street. It would block the creation of a new venue which is open and inviting to the community. It would make it very difficult to create any reciprocal relationship between the site and the hills and to create an appropriate entry to the Sunset Strip.

## Gehry Partners, LLP

My process on this project, as on my other projects, includes the use of models as a tool to explore a variety of options for the project. We tried dozens of massing options for this project to arrive at the best solution. We looked at options using the bank building and without the bank building. I do not come to this recommendation lightly or without having done my homework, but I really do not believe that I can design a successful project while keeping the bank on the site.

Best regards,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Frank Gehry, Architect