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Supplemental Written Testimony Submittal for 7/28 City Planning Commission Meeting

4 messages

Scott Lunceford <SLunceford@weho.org>

Wed, Jul 27, 2016 at 1:58 PM

To: James Williams <james.k.williams@lacity.org>

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Hello James,

Attached please find a copy of a letter to be included as additional written testimony by the City of West Hollywood pertaining to agenda items #6 and #7 at tomorrow's City Planning Commission meeting. Per your direction, I will also bring 12 hardcopies of the letter with me tomorrow.

Thanks again for all your help.

Sincerely,

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**COMMUNITY
DEVELOPMENT
DEPARTMENT**

July 25, 2016

RE: Appeal of the Advisory Agency decision to approve the Certification of the Final Environmental Impact Report for the 8150 Sunset Boulevard Mixed-Use Project
Case Numbers: VTT-72370-CN, CPC-2013-2551-CUB-DB-SPR
CEQA Number: ENV-2013-2552-EIR

Dear City Planning Commissioners,

This letter is an update of the letter included in the appeal application the City of West Hollywood submitted on July 5, 2016.

The Advisory Agency's Appeal Recommendation Report does not adequately address the EIR's failure to mitigate the significant and unavoidable impact to the intersection of Fountain Avenue/Havenhurst Dr. The Report also does not address the EIR's failure to study the project's impacts on the use and maintenance of wastewater systems in the City of West Hollywood, not just capacity. Given the remaining outstanding issues regarding key items within the Appeal Recommendation Report for Case Number VTT-72370-CN and the Recommendation Report for Case Number CPC-2013-2551-CUB-DB-SPR, the City of West Hollywood requests the City Planning Commission grant the City of West Hollywood's appeal of the Advisory Agency's decision to certify the Final Environmental Impact Report (FEIR) for the 8150 Sunset Boulevard Mixed-Use Project (Project). The City also respectfully requests certain conditions be applied to the Project as detailed below.

MITIGATION MEASURE TR-1

The City of Los Angeles acknowledges that the traffic impact at Havenhurst Drive and Fountain Avenue is significant and unavoidable and must be mitigated. Under 14 Cal Code Regs 15126.4(a)(2), proposed mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments in order to be viable. The City of West Hollywood has reported to the City of Los Angeles on numerous occasions that it will not approve the installation of a traffic signal at the intersection of Havenhurst and Fountain under any circumstances. The City of Los Angeles cannot force West Hollywood to install this signal or otherwise condition the project on this installation. Thus, this option is infeasible and unenforceable and cannot, under the law, be considered an appropriate mitigation measure. "The mitigation measure must be adopted in a way that makes it a legally enforceable requirement." *Woodward Park Homeowners Ass'n v. City of Fresno*, 150 Cal.App.4th 683, 730 (2007). The City of Los Angeles has ignored this requirement and, despite its unenforceability, continues to list MM TR-1 as a mitigation measure in the EIR. In fact, it is the only mitigation measure identified for this impact.

The City of Los Angeles has a duty to identify all feasible mitigation measures that could mitigate or reduce this impact. There is no evidence that the City has explored any actually feasible means of mitigating this impact to the environment, despite





knowing that the proposed traffic signal is a fiction. Contrary to the City's statement in the Appeal Recommendation Report, it is not "wholly appropriate under CEQA for the Lead Agency to adopt a Statement of Overriding Considerations in the event that mitigation measure were not to be implemented" if the traffic impact at Havenhurst and Fountain has not been mitigated to the extent feasible in the first instance. With the knowledge that MM TR-1 is infeasible and unenforceable through permit conditions, the City has not met its burden to mitigate the identified impact under CEQA notwithstanding its adoption of a Statement of Overriding Consideration. "Mitigation measures must not be remote and speculative." *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1260 (2000). Therefore, the FEIR inadequately addresses a known significant traffic impact, and it should not be certified unless MM TR-1 is removed from the list of mitigation measures and replaced with a substitute feasible mitigation measure to eliminate the traffic impact at this intersection.

Furthermore, this proposal would itself cause significant environmental impacts, distinct from the project itself. Those impacts are not addressed in the EIR as required by 14 Cal Code Regs § 15126.4(a)(1)(D). The proposed traffic signal at Sunset Boulevard and Havenhurst Drive along with the proposed signaling of the intersection at Fountain Avenue and Havenhurst Drive would effectively make Havenhurst Drive a cut-through route, generating additional traffic congestion and noise impacts to the residential neighborhood along this portion of Havenhurst Drive. In Response No. A9-10, the FEIR erroneously states that the installation of new signals at both ends of the segment of Havenhurst Drive between Sunset Boulevard and Fountain Avenue will not result in any significant cut-through traffic because there are already a series of speed humps along this segment of Havenhurst Drive, and the two new traffic signals could be intentionally "mis-timed" to delay and deter cut-through traffic. In reality, "mis-timing" the signals would only slow down the increased traffic going through this segment of Havenhurst Drive and cause more traffic congestion, rather than lessen the anticipated impacts.

The City of Los Angeles complains that West Hollywood has not assisted them with ideas for mitigating this impact. While CEQA is clear that it is the lead agency's responsibility to identify feasible and effective mitigation measures for a known impact, which so far has not been done, one alternative that should be included is a project design with no vehicular access off Havenhurst Drive. This alternative should be considered and analyzed as a possible alternative mitigation measure that may reduce the identified impact.

PROJECT DESIGN FEATURE PDF-WW-1

The EIR is deficient in another respect. With respect to the impacts to the City of West Hollywood's wastewater systems, only impacts based on wastewater contribution to capacity were studied. There were no studies, however, on the impacts based on system use and the resulting cumulative impacts on maintenance and upkeep as a result of the project's use of West Hollywood's system. The City of Los Angeles acknowledges that it has not examined these impacts in PDF-WW-1 by referencing applicant's "fair-share" contribution responsibility, but stating that it "shall be determined at such time that the necessary improvements and associated capital costs are known . . ." The City of Los Angeles has made no effort to address the cumulative impacts on West Hollywood's wastewater system.





By contrast, West Hollywood has an identified method for mitigating such impacts. West Hollywood provided its formula based on sewer usage fees collected from property owners on their property tax bill. This would ensure that the applicant contributes its fair share to mitigate the actual impact on the operation and maintenance of the sewer system. As outlined in our July 5 letter, per the table below, based on the Project land uses listed in the FEIR, the sewer usage by the proposed development is 270 Equivalent Sewer Units (ESU).

Land Use	Quantity	Unit	Factor	GPD (gallons per day)	ESU (equivalent sewer unit)
Studio Unit	54	Residential Units	156.00	8,424	32
One Bed Unit	134	Residential Units	156.00	20,904	80
Two Bed Unit	35	Residential Units	156.00	5,460	21
Three Bed Unit	24	Residential Units	260.00	6,240	24
Four Bed Unit	2	Residential Units	260.00	520	2
Retail	11,937	Square Feet	0.10	1,194	5
Restaurant	23,158	Square Feet	1.00	23,158	89
Supermarket	24,811	Square Feet	0.15	3,722	14
Bank	5,094	Square Feet	0.10	509	2
Total				70,131	270

The annual City Sewer Service Charge rate for Fiscal Year 2016-17 is \$40.91 per ESU. Considering the proposed project of 270 ESU, the City Sewer Service Charge for FY 2016-17 would be \$11,034.80. The City Sewer Service Charge is adjusted by the CPI-LA on July 1 of each year. For example, the CPI-LA which has been applied for calculation of the 2016-17 assessment rates is 3.266%. Assuming a 50-year term for calculation of the developer's obligation for funding their fair-share of costs for on-going operation and maintenance of the City of West Hollywood sewer system, as well as an annual CPI-LA of 3% per year for the next 50 years, the amount the developer would need to pay the City of West Hollywood is \$1,244,691.30. Again, this dollar amount would need to be paid to the City of West Hollywood prior to issuance of the Building Permits.

Therefore, the City of West Hollywood requests the language of PDF-VVW-1 be revised as follows:

- PDF-VVW-1:** In order to address ~~potential future improvements to the operation and maintenance costs for~~ sewage conveyance facilities within the City of West Hollywood that serve the project site, prior to issuance of Building Permits the applicant shall pay to the City of West Hollywood a lump sum amount of \$1,244,691.30 which is the amount equal to the West Hollywood City Sewer Service Charge to be paid by an identical project generating 270 Equivalent Sewer Units (ESU) located in the City of West Hollywood for 50 years. ~~the project shall contribute fair share payments to the City of West Hollywood commensurate with the project's incremental impact to affected facilities. Prior to the issuance of building permits, the applicant shall enter into an agreement with the City of West Hollywood~~





~~determining the project's specific fair share contribution for West Hollywood sewage system upgrades. The fair share contribution shall be calculated in the same manner used to calculate the fair share contribution for development projects within the City of West Hollywood, and the project's specific contribution shall be determined at such a time that 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 West Hollywood-owned sewer. The applicant shall guarantee (by bond, cash or irrevocable letter of credit, subject to the approval of the City of West Hollywood) the necessary funding to enable the City of West Hollywood to design and install the necessary improvements.~~

The language of PDF-WW-1 must be revised to more accurately reflect how the project will address its impact on the West Hollywood sewer system.

REQUESTED CONDITIONS OF APPROVAL

This section addresses Item No. 7 on the agenda. Based on the anticipated impacts the project will have on traffic, pedestrian safety, and public infrastructure within the City of West Hollywood, the City respectfully requests the following issues be applied as conditions to the Project:

Elimination of Commercial Site Access on Havenhurst Drive

The current version of the Project proposes removal of driveway access to the site along Sunset Boulevard. The LOD and Recommendation Report for Case Number CPC-2013-2551-CUB-DB-SPR has conditioned the project such that all residential traffic access the site on Havenhurst Drive and all commercial traffic to access the site on Crescent Heights Boulevard. However, the LOD and FEIR state commercial delivery and service trucks will also access the site from Havenhurst Drive. The City of West Hollywood requests that a condition be applied to the Project to *preclude all commercial traffic (including delivery and service trucks) from accessing the site from Havenhurst Drive.*

Traffic Impacts Along Fountain Avenue

On Fountain Avenue, the level of service calculations show worsening conditions at all intersections studied. Although the signalized intersections of Fountain/Olive and Fountain/Laurel were not included in the analysis, they too will be impacted. To mitigate the worsening of conditions at these intersections, the developer should be required to *fund the upgrade of the traffic signal controller equipment, replacing existing 170 controllers with 2070 controllers, as well as fund installation of battery back-up systems for the following City of West Hollywood signalized intersections: Fountain/La Cienega; Fountain/Olive; Fountain/Sweetzer; Fountain/Crescent Heights; and Fountain/Laurel (Fountain/Fairfax is not included, as that intersection already has an upgraded 2070 controller and has a battery back-up system).*

Safe Pedestrian Access

The proposed project will increase both vehicular and pedestrian traffic in the surrounding area, and this increase in pedestrian traffic levels warrants an upgrade to the existing mid-block crosswalk located south of the project site on Crescent





Heights Boulevard. In Response No. A9-11, the FEIR states there is no nexus between the proposed Project and any significant pedestrian related impacts on Crescent Height Boulevard to justify upgrading the existing mid-block crosswalk, because development in the surrounding area will create more traffic in the area and contribute much more toward possible increases in conflicts between vehicles and pedestrians than the proposed Project itself. However, this reasoning is flawed in that it does not recognize the increase in pedestrian traffic caused specifically by the proposed Project.

Therefore, the City of West Hollywood requests the project be conditioned to *upgrade the current crosswalk to a mid-block pedestrian signal, including the incorporation of additional pedestrian visibility enhancements into the signalization of this crosswalk* (i.e. sidewalk bulb-outs, refuge island, reflective markings, etc.).

CONCLUSION

The EIR is deficient in that a known significant and unavoidable traffic impact has not been mitigated as CEQA requires. In addition, the cumulative impact to West Hollywood's wastewater system has also not been adequately studied or mitigated. For these reasons, we respectfully request that the Commission grant the appeal and deny certification of the EIR until these issues are addressed.

For Item No. 7 on the agenda, based on the anticipated impacts the project will have on traffic, pedestrian safety, and public infrastructure within the City of West Hollywood, the City respectfully requests the following issues be applied as conditions to the Project:

- Preclude all commercial traffic (including delivery and service trucks) from accessing the site from Havenhurst Drive.
- Fund the upgrade of the traffic signal controller equipment, replacing existing 170 controllers with 2070 controllers, as well as fund installation of battery back-up systems for the following City of West Hollywood signalized intersections: Fountain/La Cienega; Fountain/Olive; Fountain/Sweetzer; Fountain/Crescent Heights; and Fountain/Laurel.
- Upgrade the current crosswalk to a mid-block pedestrian signal, including the incorporation of additional pedestrian visibility enhancements into the signalization of this crosswalk.

Thank you for the opportunity to provide input on the proposed Project.

Sincerely,

Scott Luncford, AICP
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City of West Hollywood