VTT-72370
Appellant 3

ORIGINAL

APPLICATIONS:

# APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

## 1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning

Regarding Case Number: ~~VTT72370VN 1A~~ 3 VTT 72370 CN HA

Project Address: 8150 Sunset Blvd et al.

Final Date to Appeal: 08/29/2016

Type of Appeal:
☑ Appeal by Applicant/Owner
☐ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

## 2. APPELLANT INFORMATION

Appellant's name (print): Susane Manners

Company:

Mailing Address: 1229 N. Olive Drive

City: West Hollywood State: Calif Zip: 90046

Telephone: (310) 666-1800 E-mail: mannersgroup@gmail.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  ☑ Self ☐ Other: and Manners Trust owner of the Property as Sole Trustee

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

## 3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Allan Wilion, Esq.

Company:

Mailing Address: 8383 Wilshire Blvd.,

City: Beverly Hills State: Calif. Zip: 90211

Telephone: (310) 435-7850 E-mail: aew@aewlaw.net



APPEAL BY MANNERS RE VTT

## 4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☑ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☐ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

## 5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: 08/29/2016

## 6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

✓ • Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter

✓ • A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).

• All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.

• Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.

NA • A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

• Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).

• Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

• A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

| This Section for City Planning Staff Use Only | | |
|---|---|---|
| Base Fee: $89.00 | Reviewed & Accepted by (DSC Planner): Anna M. Vidal | Date: 8/29/16 |
| Receipt No: 0201346821 | Deemed Complete by (Project Planner): | Date: |
| ☐ Determination authority notified | ☐ Original receipt and BTC receipt (if original applicant) | |

# APPEAL BY MANNERS FROM VTT 727230CN 1A

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**August 29, 2016**

**City Council Los Angeles**

**Hn. Jose Huisar Chair**
**City Council Planning and Land Use Committee**

**RE: APPEAL TO CITY COUNCIL OF LOS ANGELES RE 8150 Sunset Blvd. (short term "8150") Hearing 7-28-16 Planning Commission RE VTT727230CN 1A**

**Vesting Tract MapNo: VTT 72730-CN;**
**Related: CPC-2013-2551-MCUP-DB-SPR;**
**CEQA: ENV-2013-2552-EIR, SCH No. 2013091044**
**ADDRESSES:**
**8148-8182 West Sunset Blvd., Los Angeles**
**1438-1486 N. Havenhurst Drive, Los Angeles**
**1435-1443 N. Crescent Heights Blvd., Los Angeles**

**APPELLANT: SUSANNE MANNERS OWNER OF 1477-79 HAVENHURST DRIVE LOS ANGELES AN 8 UNIT APARTMENT BUILDING SITUATED DIRECTLY ACROSS THE STREET FROM THE 8150 MONSTROSITY PROJECT AND MOST NEGATIVELY AFFECTED PROPERTY**

## PART 1:

## APPELLANT STANDING

Appellant Susanne Manners ("Appellant") has standing both as a member of the public and as the owner of the Apartment Building located at 1477-79 Havenhurst Drive which is located directly across the street from the Monstrosity Project. It is approximately 70 feet away. (See **Exhibit 1a, 1b** for photos). Havenhurst is 38 feet across not 60 as represented in the Decision. **(Exhibit 1a).** Manners is the sole trustee and beneficiary of the Manners Trust that owns the 8 unit apartment building ("Appellant's Property" or "Apartment Building") (**Exhibit 1a-1b**). **FN 1**

The key fact is that Apartment Building is located within the 1905 Crescent Heights Tract Map Book 6, pages 92-93 ("1905 Tract Map" or "Tract Map" or Map") (**See Exhibit 3a**). Her property will be the most negatively affected by the MONSTROSITY Project along with the Andalusia a world famous historical property next door, and the Senior Citizens Home of West Hollywood located to the south of the Andalusia and literally across the street from the proposed exits to be located on Havenhurst. A photo of the right turn from the exits onto Havenhurst to Sunset is attached as **Exhibit 1c**). Havenhurst one of the most beautiful streets in Los Angeles is about to ruined. The demarcation line between Los Angeles and West Hollywood is at the Senior Citizens Home of WEHO (**Exhibit 1d)** which is directly across the street on Havenhurst from the proposed exits for the Monstrosity Project, and the remainder from that point south is located within City of West Hollywood (WEHO). (**Exhibit 1e**). The street is pinched at this location just south of the proposed exits at the demarcation lines between the City of LA and the City of WEHO and one lane is removed approx. (**Exhibit 1c1, 1e, and 1d3; and 1D4 photo of Fire Department Truck and the narrow area). FN 2**

The Planning Commission illegally approved the VTT which includes a 234 foot Monstrosity that the Developer claims is 15-16 stories but in fact is close to 22 stories, and it is out of touch with the area. (**Exhibit 2; and 1h2**).

**FN 1:** All References are to the LD Decision regarding the CPC 2013-2551-MCUP-DB. The VTT is referred to as VTTetc.
**FN 2:** The City of WEHO is not insane and opposes the project. It is categorically opposed to it. See discussion infra.

The closest buildings that are 22 stories are located in Hollywood and Century City and/or Wilshire Blvd with one exception. There is one 31 story condominium known as the Sierra Towers that was constructed by the same architect that constructed the Apartment Building and it is located on Doheny North of Sunset in the City of WEHO. It is about a mile or so away. The largest building in the area is the La Ronda Apartment (4 stories and 45 feet) and the Colonial House (7 stories and 80 feet) both of which are historical monuments. **(Exhibit 2d). The Monstrosity is the royal finger to the residents of Los Angeles and West Hollywood.**

Under the Decision Letter of Determination, the Developer part of a bait and switch plan engaged in by the City of LA without notice wherein they surreptiously and illegally changed the project completely and called for inter alia: (i) illegal vacation of a dedicated right turn lane on Sunset south onto Crescent Heights, and vacation of the traffic island (known as traffic island) which is located in the middle of Crescent Heights; (ii) changed exits to Havenhurst drive which is a 38 foot (not 60) small little street with a pincher right at the exits (**Exhibit 1e and 1d1**); (iii) increased the amount of dirt to be hauled from 58,000 to 136,000 cy of dirt and 13,600 truck semi truck loads of 10 cy each to be removed by exiting right on Havenhurst north to Sunset (**Exhibit 1b and 1c1**), and then right turn east on Sunset (Exhibit 1f-1g, ; (iv) the post hauling truck deliveries and all business invitee exists and resident exits would be right on Havenhurst and then right on Sunset. The area will be a sig alert; (v) a 234 foot Monster Project which is 22 stories. (**Exhibit 2**)

Appellant objects to the entirety of the Monstrosity Project which is illegal for many reasons including that the current version illegally interferes with her Private Easement. The City of LA is completely unaware of the fact that the Appellant's Property falls within the 1905 Crescent Heights Tract Map and has a Private Easement over all property designated in the Map. Appellant **and everyone else in the area** who falls under the Tract Map has a Private Easement over the streets designated which include Havenhurst and Sunset as well as the dedicated right hand turn lane which the City seeks to vacate, and the traffic island, and other areas.

There is a dedicated right hand turn lane that has existed from Sunset east to south on Crescent Heights since at least 1905 (**Exhibit 3a-3b**) which the City seeks to vacate and give away for nothing, as well as the island in the

middle of Crescent Heights. **(Exhibit 1g1-1g3, 3b).** There is an identical dedicated right hand turn lane east onto Sunset from Crescent Heights. Laurel Canyon ends at Sunset and curves on the other side of the Island to the south and becomes Crescent Heights.

The Decision is illegal since it seeks to interfere with a Private Easement. The law is clear that a vacation does not affect a private easement. (CSHC 8352). See discussion infra.

In addition, even in the absence of a Private Easement, the Monstrosity Project interferes with her rights as a citizen of Los Angeles. It significantly negatively impacts the entire community, and destroys the beauty of Havenhurst as one of the most beautiful streets in Los Angeles, and specifically negatively impacts affects Appellant's Property, and the tenants use of the streets, and quiet enjoyment of their homes. The most impacted properties include Appellant's Property, the Andalusia a historical apartment and now condominium, as well as the Senior Home of the City of WEHO which is located directly across from truck hauling exit and 13,600 trips as well as the Monstrosity Construction, and in the future the proposed exits on Havenhurst and the truck hauling exit. These four properties will be referred to collectively as the "Abused Properties by the City of Los Angeles" and have in effect been condemned.

All residents and properties in the area will negatively impacted due the insane nature of the Project, the traffic, the noise, the fumes, the vibration, the hauling, and drunks, the bums, and then later the truck deliveries, and the business invitees exiters, and the elimination of the one of the best things on Sunset to wit the dedicated right hand turn lane and the traffic island, and the proposed placement of an insane hard right hand turn at Crescent Heights which had to have been developed by three stooges. However, the Abused Properties are especially negatively impacted inter alia because all the 13,600 truck loads of semi trucks will haul right past, and stand in line to make the right hand turn, while their motors eliminate diesel fuel, and fumes, and vibrations, and with the construction right across the street.

The City of LA claims that it is not vacating the dedicated right hand turn, and the traffic island, and instead is changing it to off site open public space and the open space is for pedestrians. This position is ludicrous and illegal since street use (does not matter amount type or degree) is being eliminated. This is a per se violation of the California Street and Highways Code

("CSHC") Section 8308-8308, 8324, 8352-8353 as well as D700 issued by the City of LA to incorporate State law. **(Exhibit 6).** In addition, Appellant submits that the City of LA is unlawfully giving away public property to the Developer.

The Hollywood Earthquake **fault runs directly under the proposed project (**the City claims it is 100 feet but the new maps show it is under about 75% of the subject property and the City does not care.)

The Approval permits the construction of a 235 which 22 stories tall not 15, Monstrosity on top of an earthquake fault which will totally out of touch with the neighborhood.

## SPECIFIC BASIS FOR STANDING BY APPELLANT

The areas of negative impact will be discussed separately infra. The following is a list:

## ADVERSE IMPACT ON APPELLANT'S PROPERTY AND TENANTS OF THE APARTMENT BUILDING. THE PROJECT WILL SUBSTANTIALLY INTERFERE WITH THE QUIET ENJOYMENT OF THE APPELLANT'S PROPERTY

### Illegal Taking of Property that is Subject to a Private Easement and Its Elimination Which is Illegal. See discussion infra.

=(i) Appellant has a private easement right for passage over the curved right hand turned lane and Sunset east as the feeder lane and all other streets in the area under the 1905 Crescent Heights Tract. **(Exhibit 3a).** The elimination of the dedicated right hand turn lane from Sunset south onto Crescent Heights (**See Exhibit 1g, and 3b** for diagrams of area) is illegal and violates the Private Easement owned by Appellant and other owners of property that are in 1905 Crescent Heights Tract. **(Exhibit 3a).**

In addition the attempted vacation of the traffic island in the middle of Crescent Heights in conjunction with the dedicated right hand turn lane (total of 9134 feet) is illegal as well and violates the Private Easement. **(Exhibit 3ba-c, 1g1-1g3).**

=(ii) Separate and apart from interference with the Private Easement, there is wrongful and illegal vacation of the 9134 (VTTLD114) feet of the dedicated right hand turn lane and the island in the middle of Crescent Heights in violation of the California Streets and Highways Code Section 8308-8309, 8324, and 8352 and 8353 et. al. The traffic island is a bizaare piece of property and has its own address 8181 and zoned for affordable housing although it has been a traffic island since the mid 1960s when the Pandora's box was torn down.

=(iii) Illegal and wrongful removal of the traffic island and area 9134 feet (VTTLD 114) apprx from street use to off site open public space for pedestrian use for the exclusive benefit of the Developer. This also constitutes a violation of California Streets and Highways Code noted since it is also a vacation of a street which is illegal.

**Blockage of Havenhurst North with 13,600 Trucks Semi Trailers Hauling 136,000 cy of dirt, and de facto closure of Havenhurst north post hauling as trucks try to use Havenhurst which is a small street, and residents and invitees exiting on Havenhurst try to go North and then east on Sunset in the dedicated feeder lane on Sunset without a dedicated curved right turn land which now exists.**

=(iv) Wrongful and illegal blockage of Havenhurst north for removal of 136,000cy of dirt (which is enough to fill the Los Angeles Coliseum) by 13,600 trucks (LD9) by way of Havenhurst and east on Sunset. The 2 trucks exits part of the bait and switch campaign promulgated the Developer in conjunction with the City of LA proposed on Havenhurst will substantially and de facto block use of Havenhurst. (**Exhibits 1b, 1c1, and 1d1and 1d4)** This will force traffic of 13,600 semi trucks. All of the above will go by Appellant's Property and the other Abused Properties north on Havenhurst and east on Sunset and will result in the defacto closure of Havenhurst at times 6 days a week during the 13,600 trucks hauling, and during most of the time when the project is opened. This is a de facto closing of Havenhurst and is illegal.

A review of Photo **Exhibit 1d4** reflects that narrow area south from the demarcation and the exits and the Fire Department Truck.

**Hauling of Dirt on Saturday Also. It is Not Enough for the Capitalists to Interfere on M-F but now Also Saturday.**

=(v) Hauling dirt on Saturday as well as M-F. (LD9)

**Post Hauling Truck Usage and Business Invitee Usage and Resident Usage with Exit North on Havenhurst Past Appellant's Property, and east on Sunset.**

**Noise, Horns, Fumes, Vibration from Trucks 13,600 Trips.**

=(vi) Can you imagine 13,600 semi trucks hauling 136,000 cy of dirt past your house. Perhaps we should do this and schedule a haul past each of your houses to demonstrate the noise, the vibration, and negative impact of one truck, let alone 13,600 truck loads, and then deliveries. The trucks will stand idle and there will be toxic fumes, and noise, and vibration. It is a nightmare scene.
=(v) The noise level generated by the construction and the trucks as mitigated to 58 (VTTLD) will be about 85-90 is which the equivalent of a motorcycle charging by (**Exhibit 11**), and continued use by drunk and alcoholic patrons including amplification noise of 86 which is again in motorcycle range.

**Traffic Jams, and Total Chaos.**

=(via) Sunset currently is completely jammed most mornings for several hours west on Sunset as cars empty from Laurel Canyon which is the main pass route from the Valley where it joins in with Sunset and becomes Crescent Heigths with a name change, and east every day M-F for several hours in the morning; and both east and west especially in the afternoon from 230pm onward til 730pm at least; and east and west late on Friday (Saturday and some days on Sunday) past Havenhurst

=(vib) There is also traffic on Sunset on Saturday east and west mainly from 11:00 am and during light hours and then virtual massive traffic nearly total blockage Friday night and Saturday night, and at times on Sunday as well.
=(vic) There is massive traffic south over Laurel Canyon which becomes Crescent Heights M-F in the morning for hours,
=(vid) There is also massive traffic north on Crescent Heights, and Sunset over Laurel Canyon from about 230pm to 8:00pm M-F.
=(vie) There is also morning Laurel Canyon traffic on Saturday morning south, and heavy traffic from 3:00pm thru the night depending on what is

going on with heavy traffic usually at night as cars pour into the Sunset Strip.
=(vif) There is also traffic north on Laurel Canyon Saturday during the afternoon and into the evening. It becomes heavier in the afternoon and heavy into the evening as vehicles pour into the Sunset Strip.
=(vig) The same is true as to Sunday.

=(vih) Traffic on Fountain is also heavy most of the time in the afternoon all the time. (**Exhibit 15** taken from Santa Monica and Crescent Heights intersection as there is traffic backed up to Melrose in afternoon)

=(vii) Traffic on Havenhurst will become unpassable at most times. A review of Photo **Exhibit 1d4** reflects that narrow area south from the demarcation and the exits and the Fire Department Truck.

=(vij) Throw in 38 other projects and you have the 405 freeway and gridlock.

And this insane project wants to dump 13,600 truck loads onto Sunset Blvd., east, and business invitees, and remove the dedicated right hand turn lane etc. that will create a standstill on Sunset and Crescent Heights and a sig alert in the area.

**Post Hauling: Noise, Horns, Fumes, Lights, Sounds, from Tenants, and Business Invitees Using Havenhurst, North to Sunset, Let Alone at Night from the Bars and Drunken Hell Holes**

=(viii) Post Hauling of 136000 cy, the vehicles exiting the project on Havenhurst by residents of the multi million dollar condos, and the mass business invitees visitors to the commercial project with the restaurants. It appears that the vehicles will be required to turn right north on Havenhurst etc. and then east on Sunset. **(Exhibits 1b and 1c1).** Most drivers at night will be drunken fools especially after sleeping hours while the alcholics drink and could care less about the residents.

=(ix) The drunken invitees will have to wait in line along Havenhurst to get to Sunset. They will honk their horns, yell, and there will be fumes and loud music playing, and at night the lights will flash all over the place. Alcohol, horns, lights==a formula for disaster. It will materially interfere with the sleep of the residents as late nights drunks will exit and create havoc.

It is clear from the past that new liquor licenses will attract alcoholics, drunkers, drug addicts, bums, and others especially after closing hours and late at night who urinate, try to have sex, and or sleep in the area.

It will act as an attractive nuisance like a bee to honey for drunken drivers and limousine and Uber drivers who are insensitive and will have lights on and honk their horns because they could care less, and play loud music, and wake people up, especially while waiting in line to exit on Havenhurst to traverse to Sunset to make a right turn..

=(x) The noise level generated by the trucks and vehicles as mitigated will be about 85-90 (**Exhibit 11)** is which the equivalent of a motorcycle charging by, and continued use by drunk and alcoholic patrons including amplification noise of 86 which is again in motorcycle range. This is like having a hells angel gang living in the area. They should be directed to the areas where you live.

**Post Hauling: Noise, Horns, Fumes, Lights, Vibration, Sounds, from Delivery Trucks Using Havenhurst, North to Sunset Especially in Morning.**

=(xi) The trucks deliveries will have substantial problems making a right turn on Havenhurst and will block the street, and create traffic, and noise, and vibration and fumes and will substantially impact everyone along Havenhurst north and a degree south as well. A review of Photo **Exhibit 1d4** reflects that narrow area south from the demarcation and the exits and the Fire Department Truck. It is going to be almost impossible to traverse the turn.

The trucks with the vehicles mixed at times with vehicles will all go north past the Apartment Building, and then east on Sunset. The City of WEHO has refused to permit any access exit or otherwise by trucks on Havenhurst.

**Lies about the Height of the Project Which is 234 feet or 22 Stories NOT 16. This will create shadows, and blockage of sunlight let alone business invitees who will pollute the area.**

=(xii) The proposed project **falsely states that it will be 15 stories** when it is 234 feet (LD38 and VTTC1) or 21.6 stories which will interfere with the

light, heat, shadow, on her property which will be directly across the street (when they try to tear down the Lytton building which is a historical building). See **Exhibit 2a-2d** for photos of the proposed building. The Building is gigantic and overwhelms anything except buildings in Hollywood, Century City and the Sierra Towers on Doheny and Sunset at 31 stories.

**Substantial Interference with Ability to Travel in Area with 38 Projects on the Board for Approval. Total Traffic Stoppage.**

= (xiii) The Project would substantially interfere with the ability to travel in the area with the Monstrosity Project, and the cumulative impact of 38 other projects. There will be long line for cars and trucks going north on Havenhurst and then right or east on Sunset without the ability to turn on a dedicated right hand turn lane at Crescent Heights etc. The idea of a hard turn lane at Crescent Height is insane. **(Exhibit 1g2-1g3, 1h1-1h2).**

**Construction Noise, Fumes, Vibration of 234 Foot Monstrosity**

=(xiv) The construction will interfere with the quiet enjoyment of the tenants and everyone in the area. The noise, the fumes, vibration, and blockage of Havenhurst.

**The Project Would Impact Noise Sensitive Receptors.**

It is admitted that the project would increase noise levels at adjacent noise sensitive receptors. (LD87;(VTTF5)

**Removal of 136,000 cy of dirt In a Project that is Within an Earthquake Fault is Not Only Illegal, but Insane, and Could Well Trigger an Earthquake. The vibration impacts alone are enormous.**

=(xv). The Montrosity is located directly on top of an earthquake Hollywood Fault. As best as one can deteremine, at least 75 of it is under the fault. **(Exhibit 7).** The removal of 136,000 cy of dirt which is enough to fill the coliseum and 13,600 trips will cause massive vibration and threat to trigger an earthquake.

=(xvi) Vibration impact which is significant, and the threat of earthquake trigger due to the removal of 136,000 cubic yards dirt and 13,600 truck trips.

 4-44 am

**Fire Department Impact is Enormous and Police**.

=(xvii) Delay of Fire Department and Police response time which will be almost impossible during certain hours of the day. See traffic concerns. The City has issued a Statement of Overriding Conditions due to the traffic. (LD5; 29, 129, 198-199; VTTF8, VTTF143)). A review of Photo **Exhibit 1d4** reflects that narrow area south from the demarcation and the exits and the Fire Department Truck.

**Illegal Removal of a Historical Building, Now the Chase Building.**

=(xviii) The Lytton building now Chase is a historical building and cannot be torn down. There is currently a hold on any tear down action and it is highly likely that the building will be designated a historical modern building. The issue is that the Chase is utilized by residents on Havenhurst.

In summary, Appellant has standing and is aggrieved to file this appeal due to the illegal action by the City.

## PART 2:

## OBJECTION TO THE ENTIRE CITY OF LOS ANGELES FRAUDUELNT ACTIVITY IN REGARD TO THIS PROJECT

As Set forth below, the entire City of LA is in a conflict position and is acting contrary to their role mandated under law and should be disqualified, especially the City Attorney who cannot represent the City Council, and the Planning Commission, and also render legal advice.

The City of Planning Commission violated the Brown Act in this matter. They (and the hearing office, and the entire staff) had no clue that there is a Private Easement. They stated that the Monstrosity Project was 15 or 16 stories which is a patent lie when in fact it is 234 and 22 stories. They claim that Havenhurst is 60 feet when in fact it is 38 feet. They are oblivious to the fact that there is a Senior Home of WEHO across from the exits as proposed. They permitted fraudulent notice as part of a joint bait and switch campaign. They fraudulently claim that they are not vacating the dedicated right hand turn lane, and the traffic island which is per se violation of the CSHC 8308 et. Seq, They claim that the Project is 100 from an Hollywood Earthquake fault when in fact they are relying on an OLD MAP. The refiled application in 2016 mandates a new Map be used, and it is clear cut to a blind person that at least 75pc of the Project falls DIRECTLY ON TOP OF THE FAULT. In addition, there was no testing at all done in conformity with the law. The City claims it can get away with this outrageous conduct because the Tract Map is used with a B Permit. Well the City again can't read, because the Tract Map cannot apply to commercial property, and the B Permit does not facially apply.

In addition the Decision by the Planning Commission conveniently omits (Appellant believes that this is another example of an intentional omission or fraudulent nondisclosure or outright fraud perpetrated let alone illegality and invalidity) this important critical point since the entire decision is predicated on a mitigation factor MTR1 which calls for a street light at Fountain and Havenhurst (south of the Monstrosity).The City of WEHO categorically **refuses** to install one and OPPOSES the PROJECT. The City of LA has been aware of this since mid May. (**Exhibit 4).**

It is also omitted that the City of WEHO will not permit hook up to the sewer line unless City of LA meets its standards and the City of LA refuses to do so. (See **Exhibit 4).**

**In addition, the City is cloaked with ELDP duty to act as the lead agency to verify and mandate compliance with all mitigation measures, and changes that are made to make sure it falls under the ELDP.** (Here, the ELDP was fraudulently obtained as well). The City has refused to exercise its duty after a materially changed Alternative 9 was dumped with no legal Notice that failed to disclose material items such as the fact that there would be 2.3 times the dirt hauled away, that it would be hauled on Havenhurst, and that the dedicated right hand turn lane and the traffic island (9134 feet) would be given away and removed as part of the street system. In addition, the City failed to take action when it learned that the project would be reduced from 111,000 commercial to 58,000 and there would be no high paying jobs which is the legal hook or sine qua non to falling under the ELDP and the representations made. As such, the City is under a mandatory duty to remove the Project from ELDP and deny it. It has refused to do so.

The City claims that it has issued a statement of overriding consideration about the fact the key Mitigation measure cannot be met (MTR1; VTTC23-24; F19 & F26, F154-155) and the sewer line has not been resolved, and that the traffic will be gridlock. Yet, there is alternatives which the City completely failed to review and in fact totally failed to have any review of Alternative number 9. It is totally missing from the LD.

The City claims that the reduction from 111000 to 58000 sq feet and 192 jobs is not a material change in the ELDP. Appellant challenges the City to find one high paying job other than retail and restaurant that was created. There are none.

The entire process reflects that the City has acted in a conflict situation and is not neutral and the entire judgment and decision of everyone involved by the City is challenged. This failure to disclose the position of the City of WEHO is particularly shameful and is another glaring example of the non objectivity of the City and the failure to act in a neutral manner in violation of CEQA and the ELDP (discussed infra).

 44. 10am

## PART 3

## PART 1 OF APPEAL: PRIVATE RIGHTS OF APPELLANT

## APPEAL RE INTERFERENCE WITH APPELLANT'S PRIVATE EASEMENT RIGHTS TO USE THE DEDICATED RIGHT TURN LANE, AS WELL AS SUNSET AND ALL STREET IN THE1905 CRESCENT HEIGHTS MAP, AND THE STREETS.

**=1. THE CITY IS ILLEGALLY INTERFERING WITH THE PRIVATE EASEMENT RIGHTS OF APPELLANT AND ALL OWNERS OF PROPERTY THAT FALL WITHIN THE 1905 CRESCENT HEIGHTS TRACT. THE CITY CANNOT ELIMINATE THE CURVED RIGHT HAND TURN LANE FROM SUNSET ONTO CRESCENT HEIGHTS BACKGROUND RE 8150 AND THE LANE ON SUNSET LEADING TO IT.**

**AND IT CANNOT TRANSFER THE SUBJECT AREA FROM STREET USE INTO OPEN SPACE, LET ALONE FOR THE SPECIFIC USE OF THE APPLICANT WHICH ARE PROJECT ISSUES DICUSSED INFRA.**

**SEPARATELY, THE CITY CANNOT APPROVE DE FACTO BLOCKAGE PUBLIC STREETS FOR 13,600 TRUCK LOADS BY SEMI TRUCKS OF 136,000CY OF DIRT ON SUNSET FEEDER LANE AND THE CURRENT DEDICATED RIGHT HAND TURN LANE SOUTH ONTO CRESCENT HEIGHTS, AND BLOCK HAVENHURST.**

The statement in the LD206 that there are no easements known to exist:

> "(g) THE DESIGN OF THE SUBDIVISION AND THE PROPOSED IMPROVEMENTS WILL NOT CONFLICT WITH EASEMENTS ACQUIRED BY THE PUBLIC AT LARGE FOR ACCESS THROUGH OR USE OF PROPERTY WITHIN THE PROPOSED SUBDIVISION.

No such easements are known to exist. Needed public access for roads and utilities will be acquired by the City prior to recordation of the proposed tract."

Obviously, this is statement is dead wrong. As set forth herein, the 1905 Crescent Heights Tract Map contains inherent easements across all roads including the dedicated right hand turn lane and Sunset east leading to it.

## A. INTERFERENCE WITH PRIVATE EASEMENT OWNED BY APPELLANT AND OTHERS IS ILLEGAL AND INVALID BY REASON OF VACATION OF CERTAIN STREETS INCLUDING THE DEDICATED RIGHT HAND TURN LAND, AND THE ISLAND, AND OTHER PARTS OF THE STREETS IN THE AREA

The area underlying the 8150 property is located within the 1905 Crescent Heights Tract and Appellant's Apartment Building, and so are the streets. **(See Tract Map 1905 Exhibit 3a).** As one can see, the 1905 plan included two curved intersections and lanes on Sunset Blvd. (east and west on Crescent Heights), with one providing a right turn off from Sunset south onto Crescent Heights, and the other north on Crescent Heights and eastbound on Sunset Blvd. There is symmetry on the other side with a right turn lane from Crescent Heights east onto Sunset. This was the intent.

The law is clear since the old days that the 1905 Map is sufficient to impose a private easement with regard to the streets by reference to a Tract Map. **(Danielson v. Sykes,** 157 Cal. 686, 109 P. 87; Neff v. Ernst, 48 Cal. 2d 628 (1957). See **Exhibit 5** for a copy of the **Ernst** case.). It creates a Private Easement in the owners of property within the Tract Map. Appellant holds such rights as a successor which is transferred to the renters in its Apartment Building, as well as all the other members to wit owners of property within the 1905 Tract Map. **FN 3**

A copy of the current situation is set forth in the documents attached as **Exhibit 3b and 1g1-1g3).**

**FN 3:** Appellant is suing and such suit will be joined by others who own land in the Tract, and if not, a class action will be filed.

The City of Los Angeles is totally oblivious to the easement in the LD206 claiming none exist.

The City of Los Angeles intends to do away (eliminate) the subject existing dedicated curved right hand turn lane south on Sunset to Crescent Heights. It also seeks to eliminate the traffic island in the middle of Crescent Heights which together with the dedicated right hand turn lane totals 9134 feet. It claims that it will turn it into non site open space and sidewalk (LD161), and it claims it will build a new hard right turn lane somewhere in the area. It also claims it is not vacating the Street but rather will be transmuting the area of the right turn lane into a pedestrian zone and making it public use but giving it to the Developer which is illegal.

The City cannot remove the dedicated right hand turn lane nor the traffic island, and and cannot interfere with the private easement of Appellant and all members of the Tract Map 1905. In effect, the City is vacating the part of the street which is illegal. See infra violation of California Streets Highways Code. Part 4 infra.

The California Supreme Court in **Ernst v. Neff,** 48 Cal. 2d 628 (1957)(**Exhibit 5**) made it clear that even though a public use ceases on a vacation of a street, the rights acquired by the owners who have rights to a private easement in such streets are **not affected**. (See California Streets Highway Code 8352; 8324; see also 8350-8353; and all other sections; see also City of LA D700 adopting State Law). As the Court ruled:

> "No relinquishment of the private easements in these streets by the plaintiffs or the grantor was shown, and the private rights of these parties therefore continued". (Id. 637)

Thus, the City may not approve removal of the dedicated right hand turn lane from Sunset south onto Crescent Heights nor the use of feeder lane on Sunset or any other streets in the area or engage in any interference with the easements by overburdening them with semi trucks, and increase traffic intentionally that will cause blockage.

It claims it will be adding a new hard right turn lane. This is insane. The photos reflect that it would be a three stooges turn. (**Exhibit 1h**). Laurel

Canyon empties into Crescent Heights but it makes a sharp turn and the area is curved in nature. The hard right turn would be impossible let alone for a truck and it cause massive road blockage west on Sunset.

**=B. INTERFERENCE WITH PRIVATE EASEMENT BLOCKING USE OF PART OF HAVENHURST AND THE DEDICATED LANE ON SUNSET THAT TURNS INTO THE DEDICATED RIGHT HAND TURN LANE SOUTH ONTO CRESCENT HEIGHTS CAUSED BY HAULING OF 13,600 SEMI TRUCK TRIPS CARRYING 136,000 CY OF DIRT, AND POST HAULING BY TRUCK DELIVERIES, AND BY BUSINESS INVITEES ALL MAKING RIGHT HAND TURNS OUT THE EXITS ONTO HAVENHURST NORTH TO SUNSET, AND THEN RIGHT ON SUNSET.**

This is discussed above. The City's approval substantially interferes with the Private Easement and in effect blocks a city street Havenhurst north to Sunset, and then right on Sunset with the hauling of 13,600 truck trips by semi trucks; and post hauling by business invitees, and residents and others including delivery truck blocking Havenhurst north. It will materially negatively impact use of Havenhurst for all time.

## PART 4

## PART 2 OF APPEAL REGARDING PUBLIC RIGHTS OTHER THAN THE PRIVATE EASEMENT OWNED BY APPELLANT. THE CITY CANNOT VACATE THE DEDICATED RIGHT TURN LANE AND ANY OTHER PART OF THE STREETS INCLUDING THE ISLAND, BECAUSE IT VIOLATES CALIFORNIA STREETS HIGHWAYS CODE. THIS IS RAISED BY APPELLANT AS A MEMBER OF THE PUBLIC (AND PRIVATE EASEMENT HOLDER).

Under California law, Appellant holds a private easement over the subject streets by reference to the recorded 1905 Tract map including use of the public streets which includes inter alia the subject right hand turn lane which commences on the south side of Sunset closest to the sidewalk and becomes the subject right turn lane. This subject right turn lane cannot be eliminated nor transmuted into off site open space, nor to pedestrian easement.

Even in the absence of the Private Easements,

In terms of State law, elimination of any **portion of or right in a** public street or highway requires a formal vacation procedure and to try to vacate the private easement which would be illegal to do. (California Streets Highways Code Sections 8308-8309, 8324, and 8353; See **Exhibit 6).** (Also a violation of D700 of the LA City Regulations). Section 8308 is clear that one cannot interfere with any rights connected with a street including the **right of access**, easements.

The de facto illegal attempted vacation of the dedicated right hand turn violates the California Streets Highways Code 8324 and the City can never establish that the area is totally unnecessary for present or future public use.

Furthermore, State law requires a hearing procedure under Section 8320-8325 with due process and notice to the public, separate dedicated hearings, findings, etc. No notice was given and no hearings were noticed nor held. **Under no circumstances would the City be able to meet the proper standard for vacation of the curved right hand turn lane which is that it will never be reasonable necessary for its current use. This mickey mouse attempt to circumvent the Code is illegal.**

**In any event as separately discussed infra, it cannot do so since it is subject to a private easement held by Appellant and others**.

**=B. Tract Map Argument Raised by City is Facially Illegal and Patently Fraudulent**

The City also claims that a vacation is not required because the subject curved right hand turn property and the island property which both total about 9134 feet (and which has its own address 8181 Sunset) and which is in the middle of Crescent Heights and is part of the street, would become non site open space and sidewalk and merged through the tract map (merger and resubdivision). This misses the point.

The City cannot eliminate the area because it is subject to a private easement(s), and it cannot do so in any event.

And even if arguendo they could which they can't, a Tract Map only **encompasses private property and does NOT cover the public streets,** and thus use of a subdivision to take away City property subject to a private easement is illegal and invalid. The only proper procedure is vacation of a part of a street and the required notice etc and the very difficult standard which the City will never ever be able to overcome.

Even with a formal vacation under Section 8308 et al if that were possible somewhere in the universe (which it is not), Appellant's private easement and that of the other owners of property in the Tract Map 1905 cannot be interfered with and cannot be extinguished. (CHSC 8350-8353).

All private easement owners in the 1905 Tract are required to be notified that their private easement rights are being interfered with and the City is conspiring to take away private property rights. No such notice has been given by the City and nay notice that was given was fraudulent. See infra.

=C. The City claims with a straight face that it is not vacating the street merely changing its use to open public space for pedestrian usage. However, it is seeking to **totally eliminate vehicular use of a street to wit the heavily used subject** dedicated right turn lane (through a Ministerial B permit and a revocable permit.) This it cannot do as well. It cannot eliminate

vehicular use of the subject dedicated right turn lane, nor can it transmute it into a hard right turn lane, and it cannot vacate it without compliance with the applicable code sections noted.

In any event, the City cannot seek to circumvent the applicable State law by means of a mickey mouse ministerial B permit and a revocable permit which interferes with the private easement and is illegal. A "B" permit is for a massive construction project, and transmutation of any property into open space is a devious attempt to try to circumvent the law re compliance with the vacation law. (See **Exhibit 12**):

> "5.1 B Permit Description and Purpose
>
> The B Permit is required for major street construction in the public right of way. This includes widening of streets, the changing of existing street grade, and the installation of sewers, storm drains, street lights, and traffic control signals. Street widening generally includes . . . .B Permit construction plans are often complex and prepared by an Engineer hired by the B Permit Applicant."

And

> "The primary purpose of a BC-Permit is to mangae the City's inspection of major street construction work."

And:

> "The B Permit is frequently issued for major street improvements **adjacent to land under private development."**

**A B permit is not used to steal public property and give it to a Developer. It has nothing to do with changing use, let alone vacation of part of a public street. The position by the City is condoning theft by the City.** Use of a B Permit to try to cover up the illegal give away of public property would not be valid even if there had been no private easement. (LAMC 62.106(b). It is for extensive public work improvements. The City knows this and the attempted giving away of property with a B Permit is an intentional wrongful act and is illegal.

In regard to the last fraudulent ludicrous argument by the City about an encroachment permit, that the City will issue an encroachment permit which is revocable, try moving a building that is constructed. It is an insane argument as a last ditch effort by the City to permit a fraud to take place and to steal public property subject to Private Easements. In any event, it cannot encroach into an area that is a street covered by private easement, and it cannot be given away. There is no encroachment. The City is giving away its land that is street use and vacating vehicular use of the streets.

**=D. An EIR is Required with Full Disclosure Re the Scam Merger Argument by the City.**

In addition, the attempted removal of the curved right hand turn lane also requires evaluation under in the EIR since it is a discretionary approval. It must be fully disclosed which never took place here. There was no notice. **The Notice, and the EIR, the Staff Reports, and the Letters of Determination failed to disclose that the dedicated right hand turn lane and that the 9123 feet would be given to the Developer consisting of the island and the dedicated right had turn lane and used by the Developer for in effect for nothing.**

**III: POST HAULING INTERFERENCE WITH PRIVATE EASEMENT BLOCKING USE OF PART OF HAVENHURST AND THE DEDICATED LANE ON SUNSET THAT TURNS INTO THE DEDICATED RIGHT HAND TURN LANE SOUTH ONTO CRESCENT HEIGHTS**

This is discussed above. The City's approval substantially interferes with the Private Easement and in effect blocks a city street Havenhurst north to Sunset, and then right on Sunset with the hauling of 13,600 truck trips by semi trucks; and post hauling by business invitees, and residents and others including delivery truck blocking Havenhurst north. It will materially negatively impact use of Havenhurst for all time.

Accordingly, demand is made that the City has no right to eliminate the subject right turn nor change the island a total of 9134 feet, without approval of the Appellant and other holders of similar rights under the Tract Map. Demand is made that City must reject the Monstrosity the Project and that the appeals filed be granted to avoid the City facing lawsuits. There are other

options that do not call for removal of the island and the dedicated right hand turn lane that can be considered perhaps.

## PART 5

## FRAUDULENT AND ILLEGALITY RE APPROVAL OF 8150. THE APPROVAL PROCESS FOR VESTING TT IS ILLEGAL AND THE BASIS FOR APPROVAL IS EITHER ILLEGAL OR INVALID.

The Letters of Determination (LD for CPC, and VTTLD) were issued on 8-17-16. The LD was illegally and ultra vires granted and is replete with illegality invalidity, and outright fraud. Certain of these impact the private easement legal rights of Appellant and others are public in nature. The following is the appeal based on non private easement rights which are set forth above to separate them.

### =1. The PC Violated the Ralph Brown Open Meetings Act (Government Code Section 54950 et. seq) By Holding Ex Parte Meetings and/or Conversations by a Majority of the Commissioners in a Serial Scheme to Violate the Brown Act

The approval by the City is illegal. There were several ex parte communications held by several meetings or conversations or discussions with the Developer and the project architectural firm. This was disclosed and admitted in open discussion at the PC hearing. They are ex parte communications and serial meetings and they violate the Brown Act. (Government code Section 54952.2b(1) et. seq; **Stockton Newspapers Inc. v. Redevelopment Agency,** 171 Cal. App 3d 95 (1985). Therefore the vote taken by the PC is illegal and unlawful and impeaches the entire City of LA and all of its personnel. **FN 4**

**FN 4:** The only PC commissioner who recused himself was Richard Katz. The other four commissioners all held ex parte communications. Appellant believes that there were other ex parte communications and wants to conduct discovery regarding the nature of such contacts in this regard.

**In addition, the City Attorneys office which has represented the City is now caught in a conflict itself due to this, and due to the City's failure to act as the lead agency and remove the Project from the ELDP list. Since it has failed to do so, the City is not neutral and is biased.**

**=2. The ELDP Designation Was Fraudulent, and the Material Bait and Switch Change Re Alternative 9 is also Fraudulent and Illegal and Does Not Fall Under the ELDP, and the City of LA is Obligated to Verify the Same. As a Result, the City of LA is in a Conflict Position and Needs to Delegate that Review to an Independent Body other than the City of LA Which Must Take Place Before Review of the Appeal. The DECISION IS ILLEGAL Because There was No Recertification of the Alternative 9 That Was the Bait and Switch Scam Perpetrated which Materially Changed the Plan and Compliance with the ELDP**

This Project received fast tract approval under the ELDP based on false promises of high paying jobs. (See LD45):

> "In certifying the original Project, the Governor determined that the original project would result in a minimum investment of $100 million, **would create high wage jobs, .** . ..." (LD45).

The certification was not based on construction jobs

This was a total lie and a fraud.

After the total material changes in the Alternative 9 which is the bait and switch scam that was perpetrated, there was no effort to seek reapproval by the City of Los Angeles who is charged to do so with regard to the Environmental Leadership Development Project.

The Alternative 9 lowered the square footage commercial by 40pc from 111,000 to 65,000 and there are no high paying jobs or high tech jobs just menial workers in retail and restaurants. (LD46). It now claims there are only 192 full and part time positions which is a euphemism for low paid employees. They are no high wage high skill jobs in the amended ELDP Alternative 9 required by the Code Section 21183(d) and 21178.

> "7. CEQA requires the Lead Agency approving a project to adopt a

Mitigation Monitoring Program ("MMP") or (sic?) **the changes to the project which it has adopted or made a condition of project** approval in order to ensure compliance with the mitigation measures during project implementation. The mitigation measures included in the EIR as certified by the City and revised in the MMP as adopted by the City serve that function. The MMP includes all mitigation measures and project design features adopted by the City in connection with such measures during implementation of the project. In accordance with CEQA, the MMP provides the means to ensure that the mitigation measures are fully enforceable. In accordance with the requirements of **Public Resources Code Section 21081.6,** the City hereby adopts the MMP."

The City of Los Angeles is obligated to enforce any changes or mitigation requirements as the lead agency. (LD195) It failed to do so.

The City claims that this does not constitute a material change. If this is not a material change then nothing is. I dare the City to show one high paying job that is not a manager of a restaurant or retail store.

**Appellant contends that it does and the City has no authority to proceed with any review because it is violated its duty. Appellant objects to any further interaction by the City until it acts to disqualify the project from ELDP.**

**=3a. The Approval Fraudulently States that the Project is 15 or 16 Stories When In Fact it is 234 feet which is 21.6 Stories. The Monstrosity Is Totally Not Consistent with the Community. The Tallest Building is the Sierra Towers at Sunset and Doheny a long way away.**

It is claimed that the project will be 16 stories, but this is false, it will be 234 feet high (LD38; VTTC1) which is the equivalent of 21.6 stories or 22 stories. (See **Exhibit 2 and 1h1,** group for photos of the Monstrosity). It is completely out of touch with the community. The closest structure of this height is in Hollywood and or Century City; the Sierra Towers on Doheny north on Sunset which has been there for 30 plus years is also present at 31 stories condo non mixed project. The La Ronda is 4 stories and 45 feet, and

the Colonial House is 7 stories and 80 feet. Both are historical buildings, along with the Andalusia (next to Appellant's Property and Mia Casa (south)

Furthermore, the Monstrosity is totally out of touch with the low level nature of the Community let alone Havenhurst which is a historical street and masterpiece which will be ruined by this Monstrosity Project.

**=3b. The Approval Fraudulently States that Havenhurst is 60 Feet Wide When in Fact It is 38 Feet, and the South Side is Pinched AT the Demarcation Point Between LA and WEHO.**

The Approval again misleads when it states that Havenhurst is 60 feet wide. (LD204). In fact, it is a little more than half of that size at 38 feet. See **Exhibit 1a and 1b**. Obviously no one has been out there to walk the street.

**=4. The Notice for the Hearing on May 26, 2016 Is Invalid and Thus The Entire Hearing Process is Illegal and Must be Set Aside. It is Part of a Fradulent Scheme Engaged in by the City of LA.**

**=A. Nothing Was Disclosed About the Bait and Switch with Regard to the Vacation of the Island and the Dedicated Right Turn Lane etc. and the Alleged Change to Non Site Public Use.**

The Monstrosity Project is predicated on a bait and switch participated in by the City of Los Angeles by failure to give Notice to the public that a new Alternative 9 which changed everything would be considered which called for exits on Havenhurst and the end of the curved right hand turn lane on Sunset, and the fraudulent and illegal giveaway by the City of the island and the curved right hand turn lane over 9134 square feet to the Developer for a few pieces of Silver, and that the amount of dirt hauled away would be increased by 2.3x. (See LD37 re no notice given, rather a recirculated DEIR or RP-DEIR; and LD67).

The hearing notice of May 24, 2016 hearing states that that there is an off menu item called "lot area including any **land to be set aside for street purposes to be included in calculating the maximum foor area. . . .** " (**Exhibit 8**). There is no indication that a portion of the street to wit the dedicated right hand turn lane from Sunset onto south on Crescent Heights, and the lane on Sunset would be given away and removed for vehicular use. This language used intentionally fraudulent, confusing, and misleading and

states that land will be set aside for **street purposes** not removal of it. **The exact opposite**. This violates California Streets and Highway Code Section 8324(b), and 8353(b). (See **Exhibit 6**) and LAMC 12.37. (**Exhibit 10)**

The tract map was silent regarding the proposed closure and the give away of the median island and the dedicated right hand turn lane area , let alone a gift to the Developer of 9123 square feet of City Property for off site open space. (LD161).

There was no indication that there would be off menu incentives granted. Moreover, it failed to disclosure that certain discretionary approvals were required for FAR as well as the following:

"1. Elimination of vehicular access on the dedicated right hand turn lane area etc.

2. Street vacation of part of a street in conjunction with the Tract Map and the City Engineer's Report

3. Height District change from 1-1 to 3-1 since it is in a 1-1 zone and violates the Hollywood General Community Plan

4. General Plan Amendment to the HCP to amend MP2035 to show that the island and dedicated right turn lane are closed. The Map for the intersection of Crescent Heights and Sunset in MP2035 conflict with the changes and would require hearings. "

In closing, **the EIR, the Staff Reports, and the Letters of Determination failed to disclose that the dedicated right hand turn lane and that the 9123 feet would be given to the Developer consisting of the island and the dedicated right had turn lane and used by the Developer for in effect for nothing. The Notice is evidence of a fraud.**

**=B. The Notice is Fraudulent and Fails to Disclose that a Change from 58,000 cy to 136,000 cy and 13,600 Would Exit on Havenhurt and go North to Sunset.**

The Notice is also fraudulent it states that there would be removal of **58, 500 cubic yards of dirt NOT 136,000 cy THAT IS PART OF A BAIT AND**

**SWITH THAT TOOK PLACE. Actual fraud took place by the Developer with approval by the City.**

**=C. No Disclosure in the Notice that the Private Easements of Owners in the 1905 Crescent Heights Tract Was Being Attacked.**

Finally, there was no disclosure that there were private easement rights of dozens of owners of Property within the 1905 Crescent Heights Tract.

**=5a. Failure to Disclose in the Decision by the PC that the City of WEHO Has Refused to Permit a Light at Fountain and Havenhurst which is the key mitigation factor under TR1, and Refuses to Permit Sewer Hookup. Thus, the entire Project falls.**

TR1 is the key mitigation measure. It calls for a traffic light at Sunset and Fountain. The City of WEHO who controls the light **refuses to permit it and refuses to permit any exits on Havenhurst. It also refuses to permit sewer** hookup. (LD34; 128). This **is not disclosed in the LD** as best one can determine but the City of WEHO advised the City that this is the case in July early. (See **Exhibit 4** for latest letter from City of WEHO) (LD9, 29, 129,133,145, 198; VTTC23-24, F96, F155).

The most outrageous point is that:
=(i) the City designated the City of WEHO as the enforcing agency when it knew that WEHO would not enforce it because it refused to grant approval to TR1. This was all part of a fraudulent attempt by the City to seek to enforce use of alternative exits such as the obvious one Crescent Heights. The City did not do so. The City never evaluated this scenario.
=(ii) The City violated the ELDP which granted them a mandatory duty to review changes and to enforce compliance with any mitigation measures. (See ELDP 4(2) supra). It failed to do so and to disclose it in the LD.

The City is now attempting to circumvent violation of the law by claiming that this calls for a Statement of Overriding Considerations. (LD198; VTTF8, F55) This is illegal and improper and it must be disqualified from acting any further in this matter since it has violated its duty and requiring Mitigation TR1 compliance and it cannot circumvent it by undermining its own duty by issuance of a fraudulent Statement of Overriding Considerations because the City of WEHO refused to approve a light at

Fountain and Havenhurst and permit sewer hook up except on its terms, and the City of LA refuses to do so.

It is illegal to utilize the term unavoidable when it is not unavoidable, since the problem would be reduced if the exits are placed on Crescent Heights, as well as the dirt removal..

**=5b. Reduction in Response Time by the Fire Department.**

See 15a infra.

It is admitted that it would reduce the time for the fire department to reach the area:

> "Furthermore, if the City of West Hollywood elects not to implement Mitigation Measure TR-1, project related traffic impacts at the intersection of Havenhurst Drive and Fountain Avenue would remain **significant** and unavoidable." (Emp. Added).(LD129)(See also LD 29, 129,145, 198; VTTF96, F155; C23-24).

New emergency responses times by the Police and Fire must be recalculated due to the non implementation of the TR1 all thanks to the City of LA.

A photo of the Fire Truck dealing with the narrow street south of the demarcation is attached as **Exhibit 1d4**).

**=6. NO CEQA Review by the Hearing Officer of the PC of Alternative 9. This was Skipped over**.

There is no analysis in the Decision by the hearing officer, nor in the LD about Alternative 9. It does not exist. (LD 183; VTT137). There is no compliance with CEQA. The City abdicated its duty to conduct a proper CEQA review. The Decision goes from 1-8 and 10, and the Decision by the PC stops at 8. (LD178; VTT137). Unbelievably Alternative 9 is not discussed as required under CEQA.

**=7. The Monstrosity Project Falls Apprx 75% plus In the Hollywood Earthqauke Fault. As Such It is Illegal to Approve the Project.**

**=A. At Least 75Pc of the Property Lies over the Fault as Reflected in the Latest Map. Only 1 Bore Location Took Place and There is No Way to Be Sure Where the Fault is Exactly Without Borings On All Sides Especially the Southern Side.**

The CPC was revised in April 2016. Thus, the new earthquake maps are applicable. The PC had to make a finding that there is no public safety threat. It is also a CEQA issue. The PC adopted the argument by the Developer hook line and sinker and failed to make any independent analysis.

The Monstrosity Project falls within the Hollywood Earthquake Fault Zone. (LD75;125;VTTF51). In fact, at least 75pc of the project and perhaps more falls inside the Zone and is over the Fault according to the latest maps. (**Exhibit 7**). The latest map is 11-14.

The City claims that the fault is 100 feet away, and requires a 50 foot setback from the edge of the fault according to their outdated map. This is no valid. There is no way to know where the exact fault lies but the latest map shows it under at least 75pc of the 8150 property. **FN 5 The Applicant ONLY tested ONE LOCATION.**

**The only way to be sure is to test all sides of the property which was not done. It could be at the Southern end where the residences were moved. The borings provided do not answer the question needed to make a determination if it under the site, if it active, and/or how far away the fault is from the line.**

It should be noted that the fault if it is not part of the Raymond Fault, will trigger every 1600 years at 5.8 to 6.5. If it is part of the Raymond Fault it will trigger every 3,000 to 5,000 year at up to 7.0.

**FN 5:** Government Code Section 3603 prohibits construction over an active fault.

**=B. There Is No Analysis Regarding the Removal of 136,000 cy of dirt and 13,600 Trip Loads of Dirt Over the Area, Plus Construction Will Have.**

There is also no analysis regarding removal of 136,000 cubic yards of dirt and 13,600 huge semi trucks impact on Havenhurst and Sunset. The City claims that no analysis is needed because it has been determined that removal of 136,000 of a project sitting on an earthquake fault with 13,600 truck trips it is not significant impact (LD125; VTTF51). This position standing alone impeaches the credibility of the entire City of Los Angeles Review staff and they should be disqualified from further review of this case.

**=8. The City Cannot Remove the Dedicated Right Hand Turn Lane from Sunset south onto Crescent Heigths, nor the feeder lane on Sunset Because It violates the Private Easement Rights.**

See supra.

**=9. The City Cannot Remove the Dedicated Right Hand Turn from Sunset south onto Crescent Heights, nor the feeder lane on Sunset Because it Violates the California Streets and Highways Code Sections 8308, 8309, 8324, 8353, and D700 of the City of LA Provisions Adopting State Law, and all other related Sections.**

See supra.

The improvement of the intersection also violates LAMC 12.37.A.3 which provides that no additional improvement shall be required on such a lot where "complete roadway, curb, gutter and sidewalk" exist.

**=10. The City Cannot Interfere With the Private Easement Rights Re Use of Havenhurst and Cause De Facto Blockage of Havenhurst north to Sunset By Reason of the 13,600 Truck Loads of Dirt, and the Post Hauling Use by Business Invitees and Residents and Delivery Trucks, All of Whom Will be**

See Supra.

**=11. The City Cannot Violate the State Streets and Highways Colde Section 8308-8309, 8324, and 8353 et al. (Exhibit 6) and Interfere With the Rights Re Use of Havenhurst and Cause De Facto Blockage of Havenhurst north to Sunset By Reason of the 13,600 Truck Loads of Dirt, and the Post Hauling Use by Business Invitees and Residents and Delivery Trucks, All of Whom Will be Required to Travel North On Havenhurst and then right or east on Sunset.**

See Supra.

**=12. The City Cannot Change the Use of the Dedicated Right Hand Turn Lane and the Island in the middle of Crescent Heights Which Totals 9123 Feet From Street Use into Open Space Since it Also Violates the Private Easement Rights of Appellant et. al.**

See Supra. The 9134 square feet of the island, plus the dedicated right hand turn lane, as non site open space and sidewalk. (LD161).

**=13. The City Cannot Remove 9134 Feet from Street Usage, and Transform It into Open Space. Let Alone Give it to the Developer for Peanuts.**

The City cannot giveway of 9134 feet of its property which covers the island and the dedi-cated right hand turn lane as non site open space and sidewalk. (LD161). It is illegal to do so by reason of the Street Highways Code vacation Sections discussed supra, 8308-8309, and 8353, and 8324.

**=14. There is No Cumulative Analysis of the Impact of 38 Other Projects. This is Illegal. The City Should be Disqualified For Abdicating Their Mandatory Duty.**

There are 38 other projects going up in the vicinity and the claim is there is no significant impact from this project. (LD128; VTTF42, F95) As noted, this is another example of a false claim and the insanity of the City of LA and how desperate they are to approve this Monstrosity. This position further impeaches the credibility of the entire City of Los Angeles Review staff and they should be disqualified from further review of this case.

The issuance of the Statement of Overriding Considerations at LD 196 et seq **IMPEACHES THE FRAUDULENT ANALYSIS IN THE DECISION** and clearly shows that there is a significant adverse impact from this Project (traffic (LD198-199; VTTF8, F154-155, F96) and emergency response time(LD198; VTTF95) and noise and vibration. (LD197;F8, F154, F107), let alone during construction.(LD198F8).

There is no cumulative traffic analysis re 38 projects and the added congestion of MP2035.

**=15a. The City Ignores the Impact of the Traffic on Fire and Police Response.**

The City again claims that the impact on Fire and Police is less than significant with the horrific gridlock on Sunset and Crescent Heights virtually all morning, and most of the afternoon, and at night on weekends. (LD129); (See also traffic LD29; 129; 145). Yet they issue a statement of overriding consideratins. (VTT154-155; F1-9, F96, F8) Laurel Canyon empties into Crescent Heights and there is bumper to bumper traffic most of the mornings in the week, and down Crescent Heights and on Sunset. In the afternoon, there is bumper to bumper traffic north on Crescent Heights to Laurel Canyon, and both directions on Sunset. In addition, Fountain is busy most of the afternoon as well and into the early evening. On weekends, Sunset is bumper to bumper, and so is parts of Fountain. The notion that there is less than a significant impact in the area for FD and Police is patently absurd.

There is also no analysis of the impact on the elimination of the dedicated right hand turn lane etc. on fire trucks. There is no chance they can make a right turn without it. Response time is more than 5 minutes 90 pc of the time per the Fire Department. Fire response is a key element of the HCP.

It is admitted that it would reduce the time for the fire department to reach the area:

> "Furthermore, if the City of West Hollywood elects not to implement Mitigation Measure TR-1, project related traffic impacts at the intersection of Havenhurst Drive and Fountain Avenue would remain **significant** and unavoidable." (Emp. Added).

The City issued a Statement of Overriding Considerations (LD29, 129, 145, 198-199); VTTF8, F154-155)

It is illegal to utilize the term unavoidable when it is not unavoidable, since the problem would be reduced if the exits are placed on Crescent Heights, as well as the dirt removal. The City never evaluated this scenario.

**=15b. The Building Will Be Over 150 Feet from the Street and Thus It is Illegal to Approve Under the Fire Department Rules.**

The Fire Rules provide that a building may not be more than 150 feet from the edge of a roadway. (LD5) This is the case here without the free gift of 9134 feet. A cursory walk of the area reveals that any building will be more than 150 feet from the edge of the roadway especailly because of the addition of the alleged 9134 feet.

=16. Blank

**=17. The Decision Regarding Noise Level Is Not Valid. It States that a Standing Truck Has a dba of 58. Wrong. The level is 80-90.**

The findings regarding noise level are fraudulent. It is noted that a standing truck has a dba of 58. (VTT58) Perhaps in fairy land. A review of any sound chart reflects that the noise of a standing truck let alone hauling diesel truck is in the 80-90 range which is motorcycle range. (LD87; VTT58). In addition, it permits amplification noise of 86 which again is in motorcycle noise range. (LD24). See Chart Noise Level **Exhibit 11).**

**=18. The Decision Conveniently Seeks to Disregard the Fact That the 50 Trip standard is Violated and applies a Net Theory to try to circumvent it. (LD103, 145).**

All of the figures utilized by the City re traffic are wrong let alone take into account 38 new projects. (VTTF42, F95)However, the fact is that any increase over 50 is a problem. Here, the 50 trip standard was violated.

However, the City ignores this and tries to apply a net theory of averaging which is illegal. (LD103, 145; VTTF51); VTTF129

**=19. The Decision Totally Fails to Comply with the Hollywood Community Plan.**

There is a total failure to comply with the Hollywood Community Plan. (Housing Standards and Criteria, page 2; **Exhibit 14**) and traffic, sewer, drainage fire protection etc, and hauling of 136,000 cy dirt, and 13,600 truck trips.

As noted, there is no compliance with section 3, to with no compliance with the General Plan and the Community Plan and is illegal. The project would be non compliant with the street map in the HCP and MP2035.

All of it is incompatible with the HCP. Not one thing is compatible.

**=20. There was no Height District change from 1-1 to 3-1 under LAMC 12.32F and thus the Decision is Illegal.**

A Height District change is mandatory from 1-1 to 3-1. See infra re FAR. Right now the Decision is illegal and violates the Hollywood General Community Plan. The failure to request a Height District amendment and General Plan Amendment means that the land use element would be inconsistent and not accurately reflect the tripling of FAR from 110,000 to an insane 330,000 feet. The Project would show a 1-1 FAR but the Project would have a 3-1 FAR.

In addition, the Project did not qualify for the off menu incentive bonus items because there are specific adverse impacts as documented by the Statement of Overriding Considerations.

**=21. A General Plan Amendment to the HCP to amend MP2035 Is Required and Without It the Approval Is Illegal.**

The Map for the intersection of Crescent Heights and Sunset in the MP2035 conflict with the approval and would require a hearing(s). MP 2035 must be amended to show that the island is gone and the dedicated right turn lane are closed forever.

**=22. The Approval of a CUP Even Though it Does Not Appear One was Requested and Noticed for Alcohol Which Violates the Maximum Number of ABC licenses Issued in the District 1942. It Will Negatively Materially Impact the Residents of the Apartment Building, and Others Including the Senior Home of WEHO, and the Buddhist Temple All Within 100 Feet.**

**=a. The Maximum Number of 5 On Site Licenses Has Been Exceeded And No New Licenses Can Be Issued.**

The Decision purports to grant a liquor license upon application with the ABC. (VTTC3-C6)

There is a limit on alcoholic licenses that can be issued. Unless the owners of any restaurants who want to use liquor can obtain an existing license, no new license may be issued. The material disclosed is that there is an over concentration of on site liquor licenses in Census Tract 1942 which covers 8150 eastward and northward. There is a limit of 5 on site and 4 off site licenses in the Tract 1942. It has 13 on site, and 4 off site. Within 600 feet, there are 12 on site and 2 offsite. This does **not** include the Census Tract that starts at Havenhurst and goes West and South and there are many licenses in that Tract.

Therefore no new license can be issued since it exceeds the maximum permitted.

**=B. No new License Can Be Issued Since It will Materially Impact the Residents of Appellant's Apartment, the Senior Home of WEHO, and the Buddhist Temple**.

A liquor license or renewal etc. also cannot be granted (shall not be approved) if it will materially impact residents within 100 feet if it will interfere with the quiet enjoyment of the residents. (Government Code 23789, and Rule 61.4). The burden is on the Applicant to demonstrate no material impact of quiet enjoyment of the residents. The Applicant must fill out a form and list all residents within 100 feet. (See **Exhibit 13)** The distance is measured by a direct line from the closest edge of the residential structure to the closest edge of your structure or parking lot. Here, the Apartment Building is about 50-60 from the property. (Havenhurst is 38 feet

(not 60 feet as set forth by the City) plus the sidewalk of about 10 feet on either side. `

In addition, a license can be refused if it is within 600 feet of a church. (Section 23789(a). Here, the Buddhist Temple is 90 feet away.

The grant of ABC licenses will materially impact the residents in the area including the residents of Appellant's Apartment Building directly across the street which is 38 feet in width Havenhurst, and the residents in the Senior Home of WEHO directly across the street from the exits on Havenhurst, and the Buddhist Temple which is 90 feet away.

It is clear from the past that new liquor licenses will attract alcoholics, drunkers, drug addicts, bums, and others especially after closing hours and late at night who urinate, try to have sex, and or sleep in the area.

It will act as an attractive nuisance like a bee to honey for drunken drivers and limousine and Uber drivers who are insensitive and will have lights on and honk their horns because they could care less, and play loud music, and wake people up, especially while waiting in line to exit on Havenhurst to traverse to Sunset to make a right turn. This is a recipe for a disaster.

**PART 6 IS INCORPORATED INTO THE VTT APPEAL AS WELL. ALL OF THE SECTIONS LISTED BELOW.**

## PART 6

## SECOND APPEAL RE FAR RULING
## CPC-2013-2551-MCUP-DB-SPR
## ALSO PART OF THE VTT APPEAL

## FAR 3-1 APPEAL

### =A. THE GRANT OF FAR 3-1 IS ILLEGAL AND INVALID FOR MANY REASONS. SUMMARY

Appellant also objects to the ridiculous and illegal density bonus (FAR 3 from 111,000 sq ft to 333,000 square feet which is insane) and incentives granted by the CPC on 7-28-16 with a letter issued on 8-17-16. (LD202; ). The FAR Decision is also illegal and invalid.

The City illegally seeks to give away a FAR 3-1 ration in a 1-1 zone because of use of the scam 1818 provision by reason of including of some inclusionary low income housing.

Since there were other discretionary requests, it is illegal to grant additional non menu requests under 12.22A, g(iii). **(Exhibit 9)**

In addition, the project is more than 1500 feet from a major traffic stop it is illegal to use a **non menu** FAR increase item especially in a 1-1 zone within a Height District Change. **FN6**

**FN 6:** 27. At the outset, a CUP is needed under Cp-3251-DB for an off menu FAR incentive. (See LAMC 12.24 U.26 Density Bonus which exceed the maximum permitted under 12.22 A.25). There is none.

**=A. The Grant of a Density Bonus of 3-1 Is Illegal Because It is an Off Menu Item**

=25. The request for a FAR density bonus of **3-1 FAR** is invalid and illegal. The Applicant requested the following incentives: (**Exhibit 8**).

"3. Pursuant to LAMC Section 12.22-A.25©, {1} a 22% density bonus to provide 45 additional units**, in lieu of the 35% density bonus**, where 11% (28 units of the total units will be set aside for Very Low income Households, **and** {2} the utilization of Parking Option 1 to allow one onsite parking space for each Residential Unit of zero to one bedrooms, two onsite parking spaces for each Residential Unit . . . . " {brackets added}

"The Applicant is requesting two Off Menu Affordable Housing Incentives as follows:

a. Pursuant to LAMC Section 12.22-A,25(g)(3), an Off Menu Incentive to allow the lot area including any land to be set side for street purposes to be included in calculating the maximum allowable floor area, in lieu of as otherwise required by LAMC Section 17.05; and

b. **Pursuant to LAMC Section 12.22-A, 25(g)(3), an Off Menu Incentive to allow a 3:1 Floor Area Ratio for a Housing Development Project located within 1560 feet of a Transit Stop, in lieu of the 1,500 foot distance specified in LAMC Section 12.22-A,(f)(4)(ii)" (Emp. Added) FN 7**

**FN 7: See Exhibit 9 for a copy of the Section 25 of Subsection A of 10.01 of the LAMC re Density Bonuses.**

Thus a 3-1 FAR on menu incentive is based on ministerial approval and must meet the standards and it fails to legally do so. There is no discretion.

=1. It must be adjacent to a highway

=2. It must be in height district 1, 1XL, 1VL, 1L, with a FAR of 1.5:1 (as noted below it is not in a 1.5-1 FAR district but in a 1-1 FAR district);

=3. It must be within 1500 feet of a major transit stop. (as noted it is not)

The Applicant asked for

i. Parking reduction
ii. 22 pc extra units from 204 to 249

iii. 3-1 FAR for the entire project which includes half public streets as lot area for FAR which is improper

Numbers 1 and 2 are permitted under what is called the 1818 low income housing rules but not 3 (LD202).

**Thus, the Decision granting the FAR 3-1 pathetically fails to comply with a 3-1 FAR standard and the City had NO discretion and could not grant it since it is ILLEGAL.**

**=B. The Grant of FAR 3-1 Is Also Illegal Because Applicant Already Used Other Discretionary Applications.**

=26. Here, Applicant was also subject to other discretionary applications (under CP 3251-DB, 5-19-16, p.3) which include:

> "a. Partial street vacation required in conjunction with the Tract Map Merger;
> b. Height District change from 1-1 to 3-1 {LAMC 12.32F}
> c. General Plan Amendment to amend MP 2035 to show the island and the dedicated right hand turn lane etc. closed to vehicular traffic.
> d. Inclusion of property beyond the middle of the street Crescent Heights in calculating FAR
> e. Off menu incentives require a Variance with substantial evidence that the bus service on the streets qualify for FAR increase **for housing** only, not commercial. This is a mixed use project and thus it is illegal to do so.
> f. Changes from HD1D to HD1 for FAR purposes

**=C. It is Illegal to Grant 3-1 Because The Property Must be in a HD-1D Zone which is 1.5-1**

=28. In addition, LAMC 12.22 Section 25 Affordable Housing Incentives—Density Bonus (f)(4)(ii) specifically requires that the property be within an HD-1D with a FAR of 1.5-1 not 3-1. This project is in a HD-1D with a far of 1-1 (**Exhibit 3c**) and thus it illegal to have granted the 3-1 FAR.

**=D. The Project Admittedly Lies Outside the 1500 Foot Limit for a Non Menu Item.**

=29. The project lies outside the 1500 feet. (LD44, 199, 202, 206; (VTTF11) ). It is 1560 feet away from a major Metro Stop. (See (f)(4)(ii)(b); **Exhibit 9**). The City cannot rewrite State law to wit Government Code Section 65915-65918 which mandates it be within 1500 feet.

**=E. A 35pc Increase In Bonus Was Not Requested. Since the City is In Bed with the Developer It Can Easily Switch Gears. This is Submitted in the Event it Tries to Do So. A 35PC Bonus Was Not Requested and Cannot be Added, and Would Degrade the Neighborhood And Would Violate the Hollywood HCP**

=30. The Applicant did not ask for a 35pc bonus but since the City is a joint conspiracy with the Applicant it may seek to give it to him A CUP which calls for an increase of 35 pc or more in density as bonus requires an additional finding that the approval would not adversely affect or further degrade the adjacent properties, and the surrounding neighborhood.

"3. Pursuant to LAMC Section 12.22-A.25©, a 22% density bonus to provide 45 additional units, **in lieu of the 35% density bonus**, where 11% (28 units of the total units will be set aside for Very Low income Households, and the utilization of Parking Option"

(Housing Incentives in HCP, page 3, Conditional Use Permit for Greater than 35 pc). The following is required under the HCP:

1. The project will enhance the built environment in the surrounding neighborhood or will perform a function or provide

a service that is essential or beneficial to the community, city, or region;

2. The project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety;

3. The project substantially conforms with the purpose, intent and provision of the General Plan, the applicable community plan, and any applicable specific plan. (Emp. Added)

. . .

- Public Benefit Project: LAMC 14.00 A.2 – Density increase requests for a Housing Development Project to provide for additional density in excess of that permitted in LAMC Section 12.22 A.25 shall find that the proposed project substantially meets the purposes of the performance standards set forth in LAMC Section 14.00 A.2. If utilizing this process, also complete the Public Benefit Projects form (CP-7766)."

Appellant will be greatly adversely affected and impacted by traffic, and noise and vibrations, and lack of fire response because there is a Statement of Overriding Considerations on these issues. (LD29, 198-199).

The Decision and grant of FAR 3-1 is totally incompatible with the HCP.

In particular, the concept of removal of 136,000 cy dirt and 13,600 truck loads by huge double semi trucks for months which enough dirt to fill the Coliseum would damage any community let alone this one which is lovely tree lined residential with a bottleneck.

**=E. The Approval Also Violates MP2035 and the HCP Since the Street Map Does Not Match**.

As noted, there is no compliance with section 3, to with no compliance with the General Plan and the Community Plan and is illegal. The project would be non compliant with the street map in the HCP and MP2035.

Nor does the 9134 feet show up as off site open pace in the HCP. It is designated partially as street to with the dedicated right hand turn lane, and partially the island as affordable housing for the island even though it is in the middle of the street. The island has been present since the late 1960s when the Pandora's Box was wrongfully closed by the City of La during its tyrannical days which are continuing.

**=F. THE ISLAND HAS ITS OWN ADDRESS AND IS ZONED FOR AFFORDABLE HOUSING EVEN THOUGH IT IS IN THE MIDDLE OF CRESCENT HEIGHTS AND IS NOW DE FACTO PART OF THE STREET (CRESCENT HEIGHTS AND SUNSET) SINCE THE LATE 1960s. THE 9123 FEET CONSISTING OF THE ISLAND AND THE DEDICATED RIGHT HAND TURN LANE WHICH IS BEING VACATED IS ILLEGALLY BEEN USED AS FAR 3-1 BECAUSE ONE CANNOT MERGE A C4-1 INTO A HD-1D WITH A FAR OF 1-1.**

=31. The island is 8118 Sunset and it has a separate address even though it is part of the street area. The island is zone C4-1. It is zoned for affordable housing even though it is part of the street since late 1960s when the Pandoras Box was closed and torn down, and the island was placed in the middle of Crescent Heights as part of the street.

The Housing Element shows the island as a potential site for affordable housing. Assuming R-4 density (400 sf lot area of 9134 sq feet) in the C4 Zone, 22 units could be developed for low cost housing and eligible for 1818 incentives.

This area which is part of the 9134 feet which also includes the dedicated right hand turn lane has been improperly added to the FAR area, and it is illegal to try to merge C4-1 into HD-1D with a FAR of 1-1. The City contends it has not illegally been vacated and converted into off site open space. This is false but even if true, sorry City you can't have it both way.

c. Pursuant to LAMC Section 12.22-A,25(g)(3), an Off Menu Incentive to allow the lot area including any land **to be set side for street purposes to be included in calculating the maximum** allowable floor area, in lieu of as otherwise required by LAMC Section 17.05; and (Emp added.)

If it was for street purposes it could be included but not if it is for off site open space which the City claims it is. (Another example of the City's manipulation of the situation.)

## =G. THE ENTIRE PROCESS REFLECTS SPOT ZONING WHICH IS ILLEGAL

The grant of a FAR 3-1 out of the blue which violates the law reflects spot zoning which is illegal.

The ILLEGAL approval of FAR 3-1 is like giving the keys to the inmates in an insane asylum and unfettered right to regulate density bonuses. The City has abdicated its duties and instead has rolled over like a dog waiting to have its head rubbed by a Developer.

## CONCLUSION

The entire process is wrought with fraud and conflict by the City of Los Angeles, and illegality. The Decision must as a law be reversed on so many grounds.

=1. It illegally interferes with the Private Easement rights of Appellant and others,
=2. It violates the Brown Act,
=3. Fraudulent lack of notice,
=4. Illegal violation of the ELDP and the Project does not qualify for ELDP and must be removed;
=5. Illegal attempt to vacate the dedicated right hand turn lane and the traffic island,
=6. Illegal mickey mouse attempt re the use of the Tract Map maneuver and the B Permit,
=7. Illegal giving away of 9134 feet of property,
=8. Illegal grant of a FAR 3-1.
=9. Illegal grant of liquor license

In addition, there is the blatant abdication of a mandatory duty and the failure to follow and comply with CEQA re notice, and resolution of issues and alternatives.

Very Truly Yours,

Allan E. Wilion, Esq.
Attorney for Appellant
Susanne Manners

Cc:
Councilman Ryu
FixTheCity
All Appellants


NO PARKING
6PM - 8AM
2 HR PARKING
8AM - 6PM
1481
eightee
1 A 1


381
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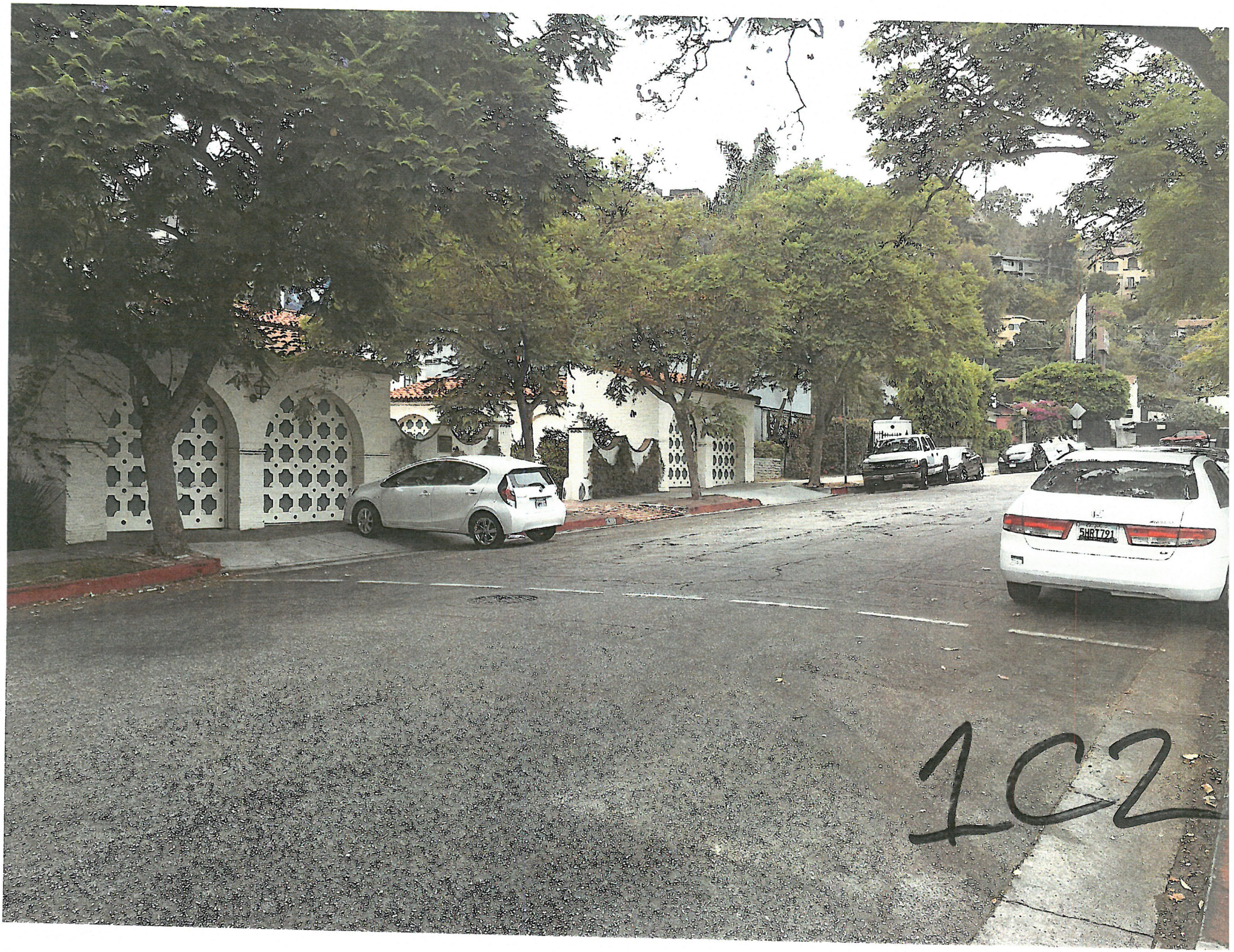
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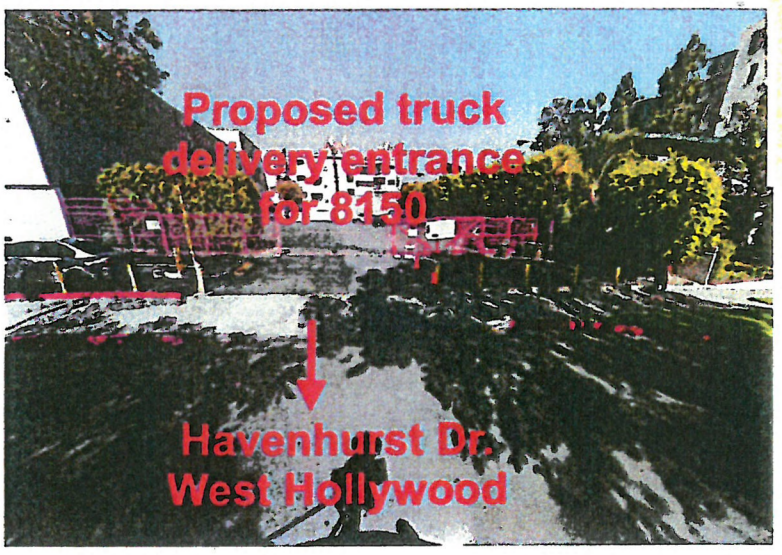
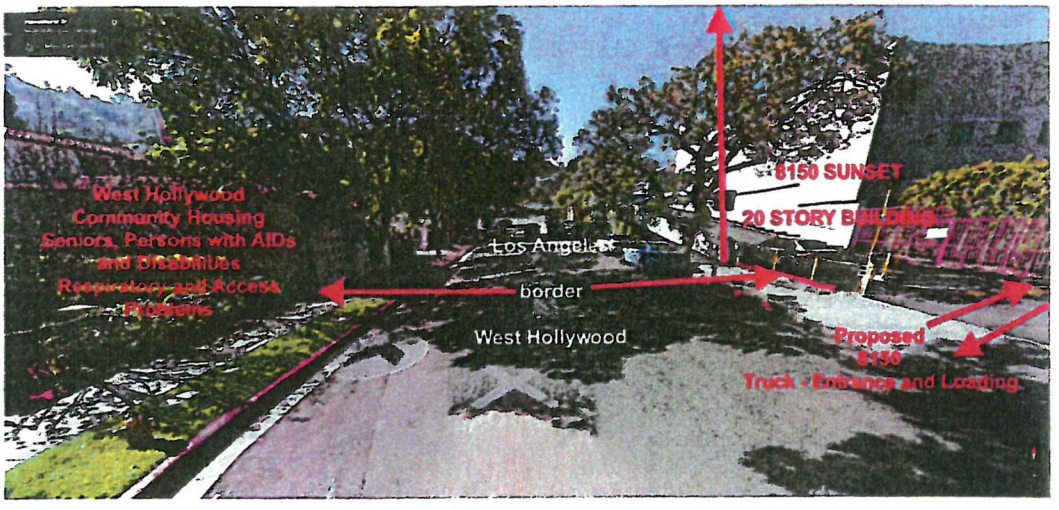
1D1

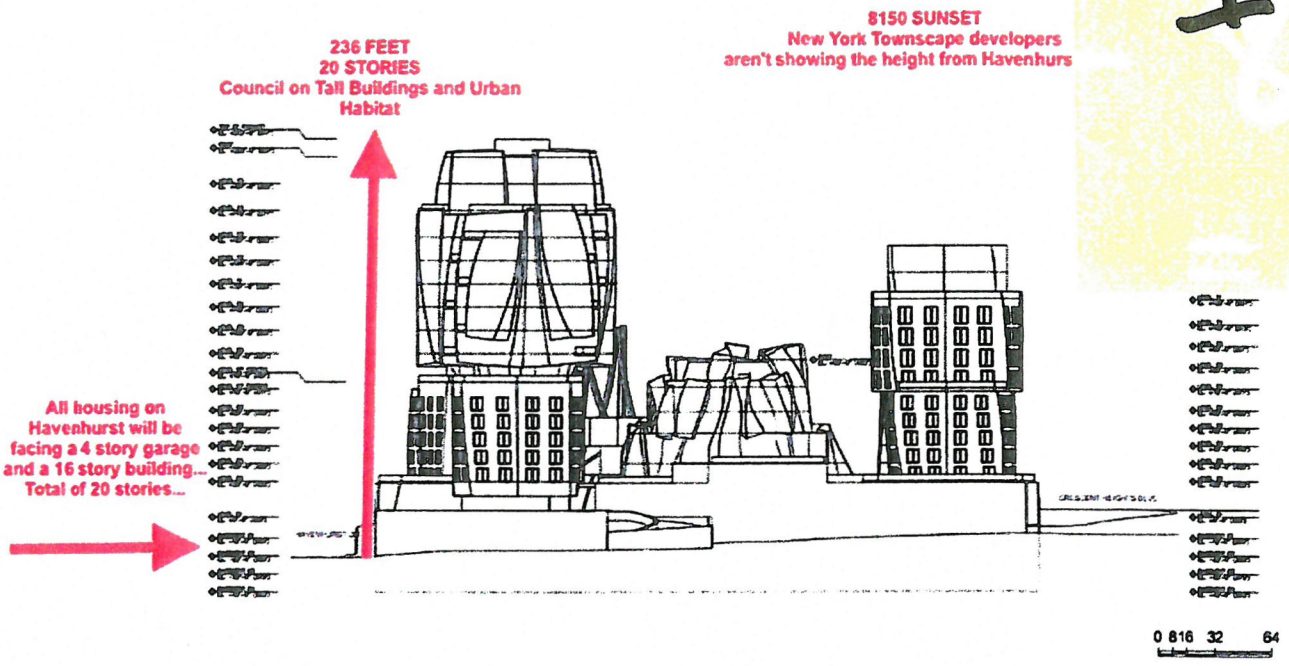
Truck Entrance on Havenhurst Drive

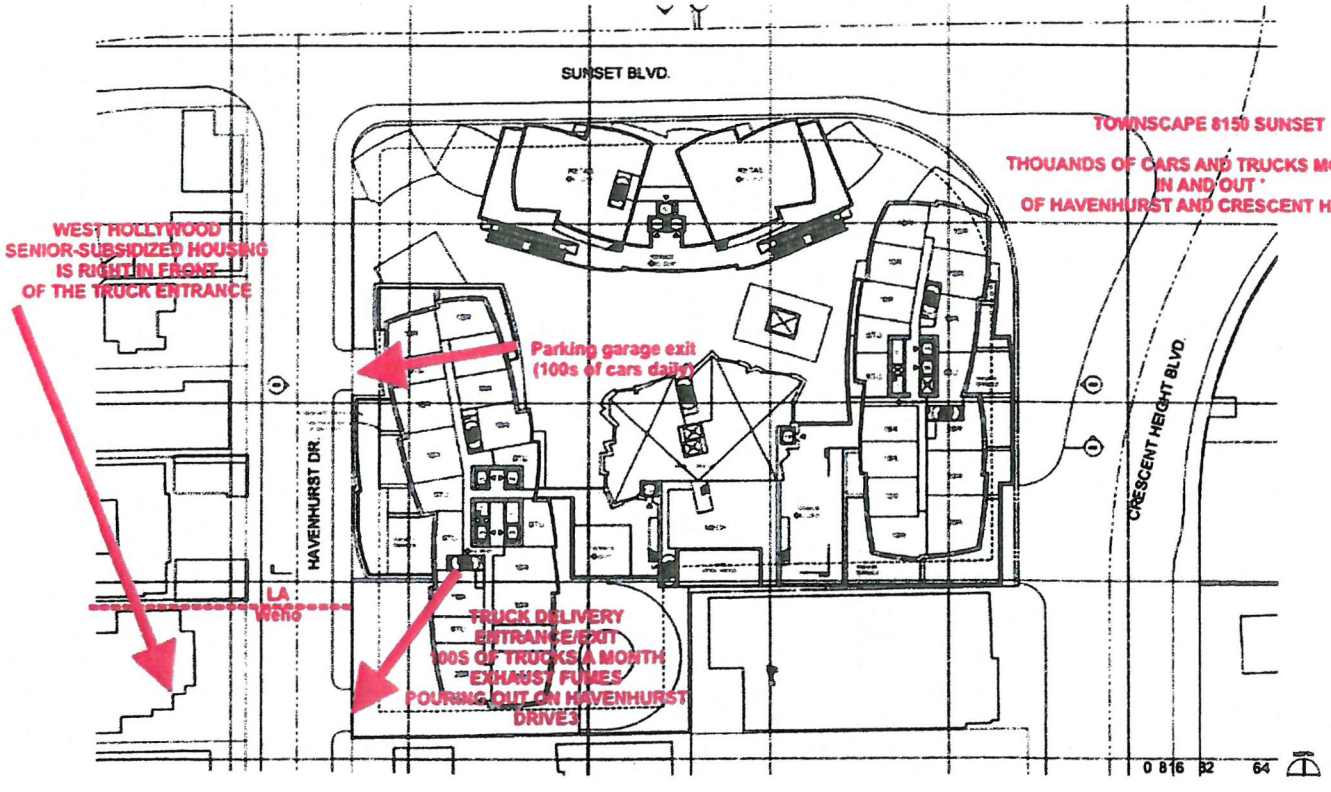


Townscape's media photo of Havenhurst Drive presenting the architect's design for the proposed 8150 Sunset apartment complex. The photo distorts the street to make 8150 Sunset look much smaller than the actual height and size.

1D2

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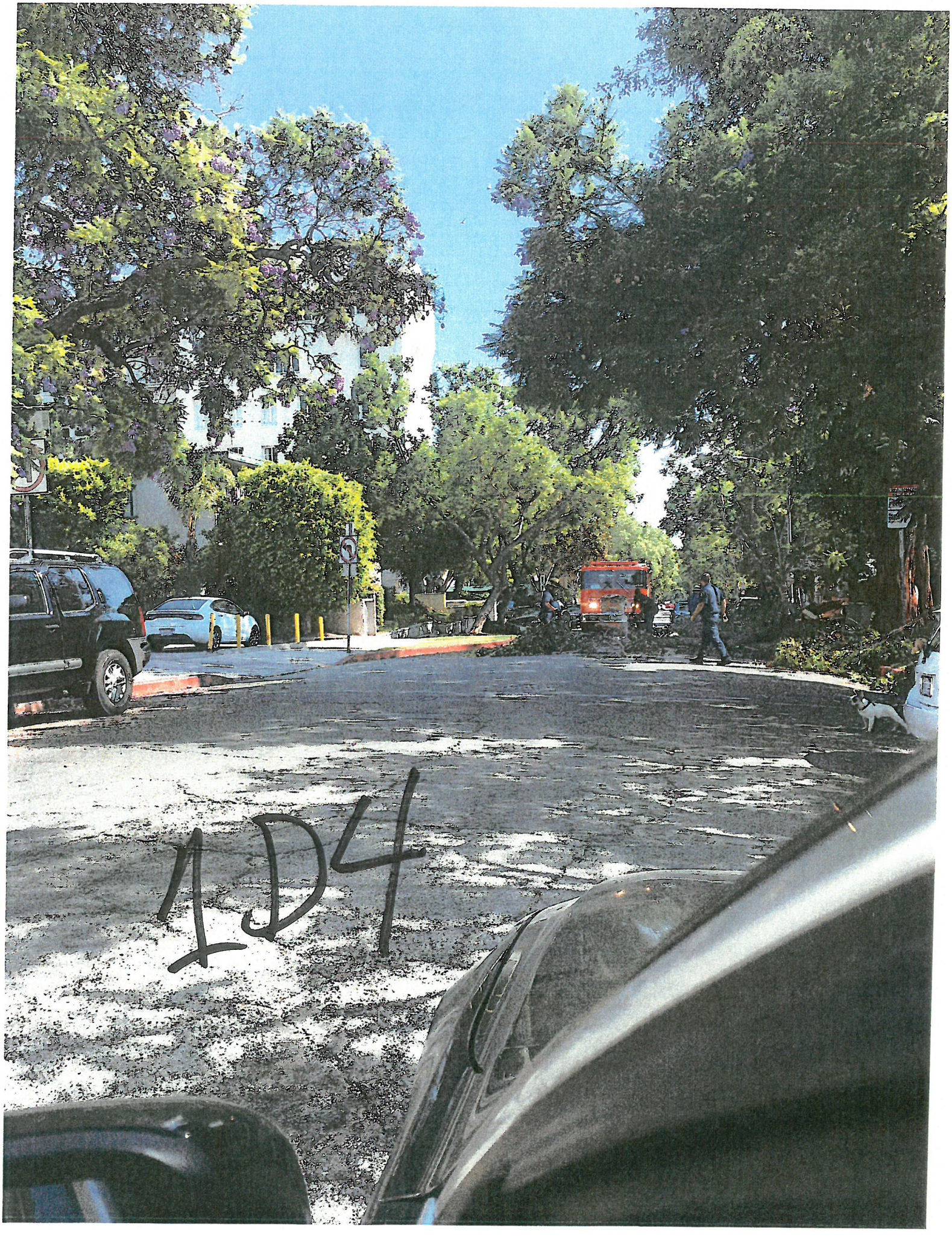
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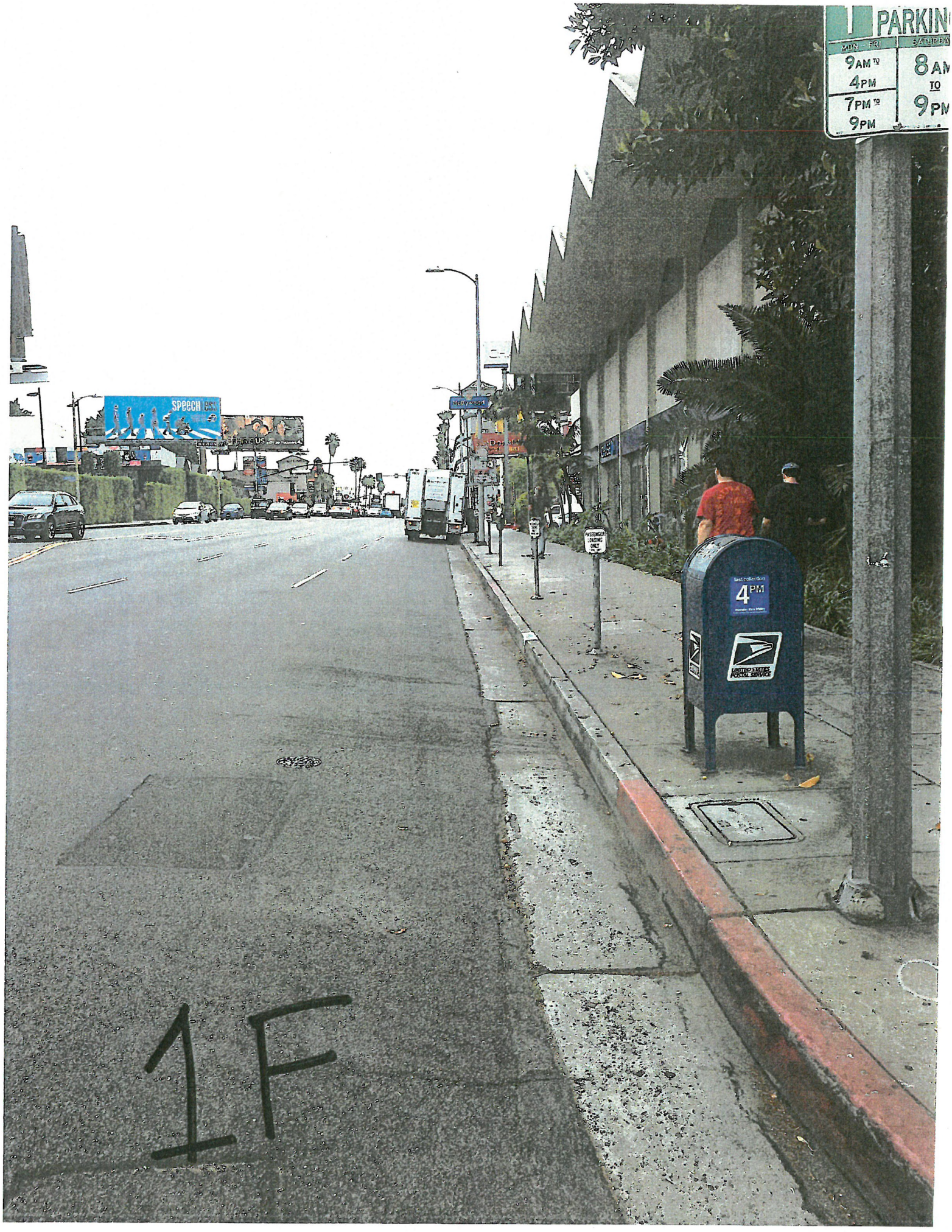
1E


PARKIN
MON - FRI
9AM TO 4PM
7PM TO 9PM
8 AM TO 9 PM
SPEECH
Hollywood
PASSENGER LOADING ONLY
4PM
UNITED STATES POSTAL SERVICE
1F


PET GROOMING
OASIS RELAX SPA
Foot Massage
El Pollo Loco
Johnnie's
BOX & SHIP
OVER 6000 POUNDS
RIGHT LANE ENDS
The UPS Store
Cadogan Tate Fine Art


< The Eye (1)
< The Virgin
Megastore
here Schwab's
ore once stood
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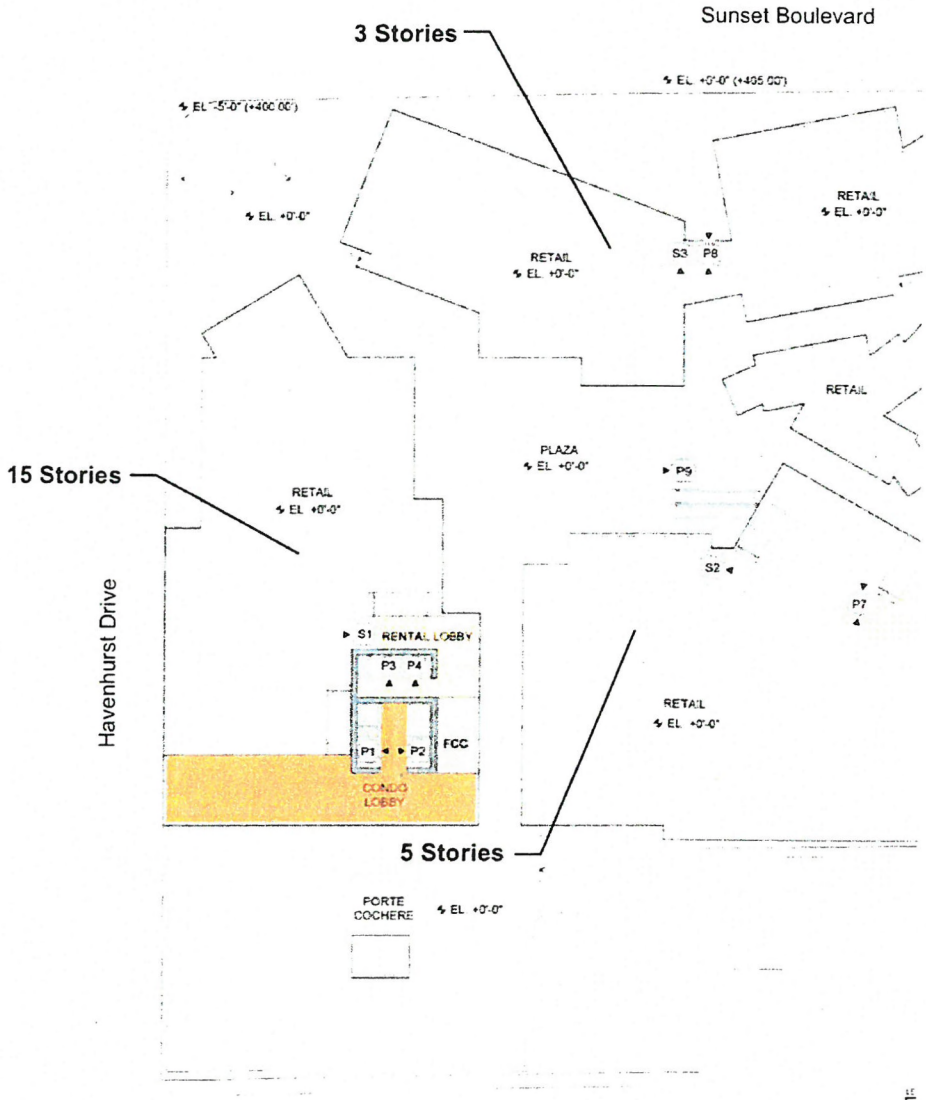
162

pandora's box sunset strip
Pandora's Box
e of the "Garden of Allah" (3)

1H1

442




PCR

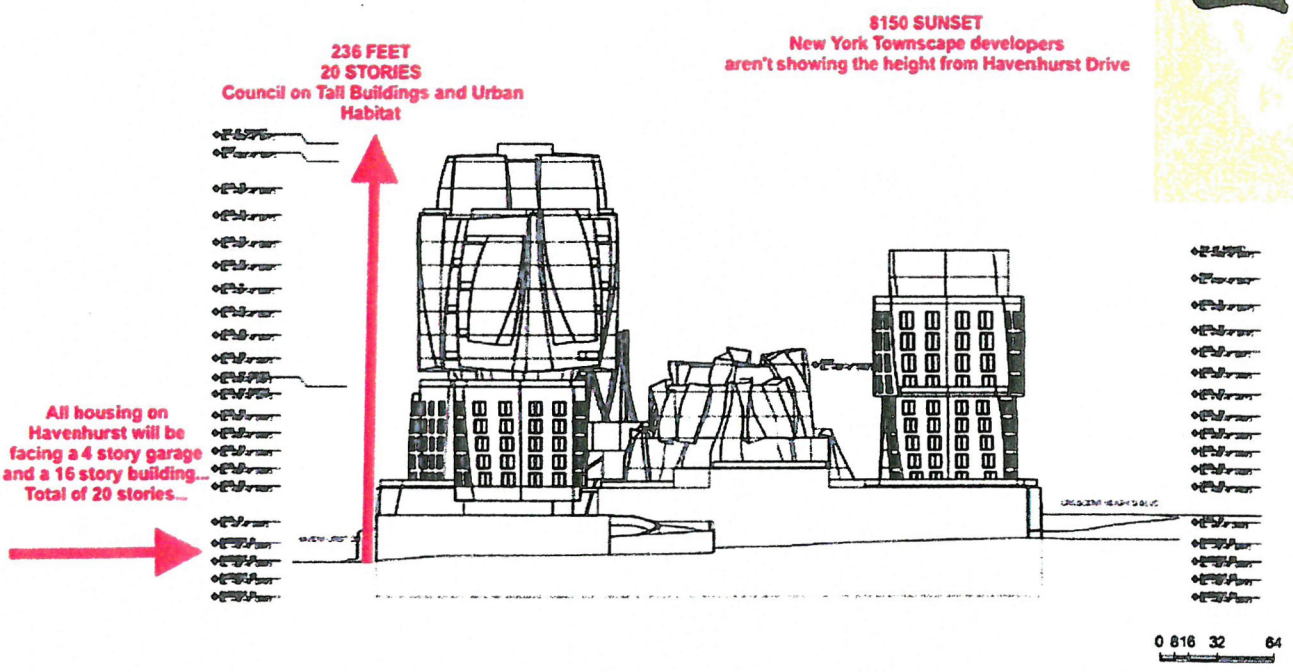
2.0 Alternative 9: Enhanced View Corridor and Additional Underground Parking Alternative

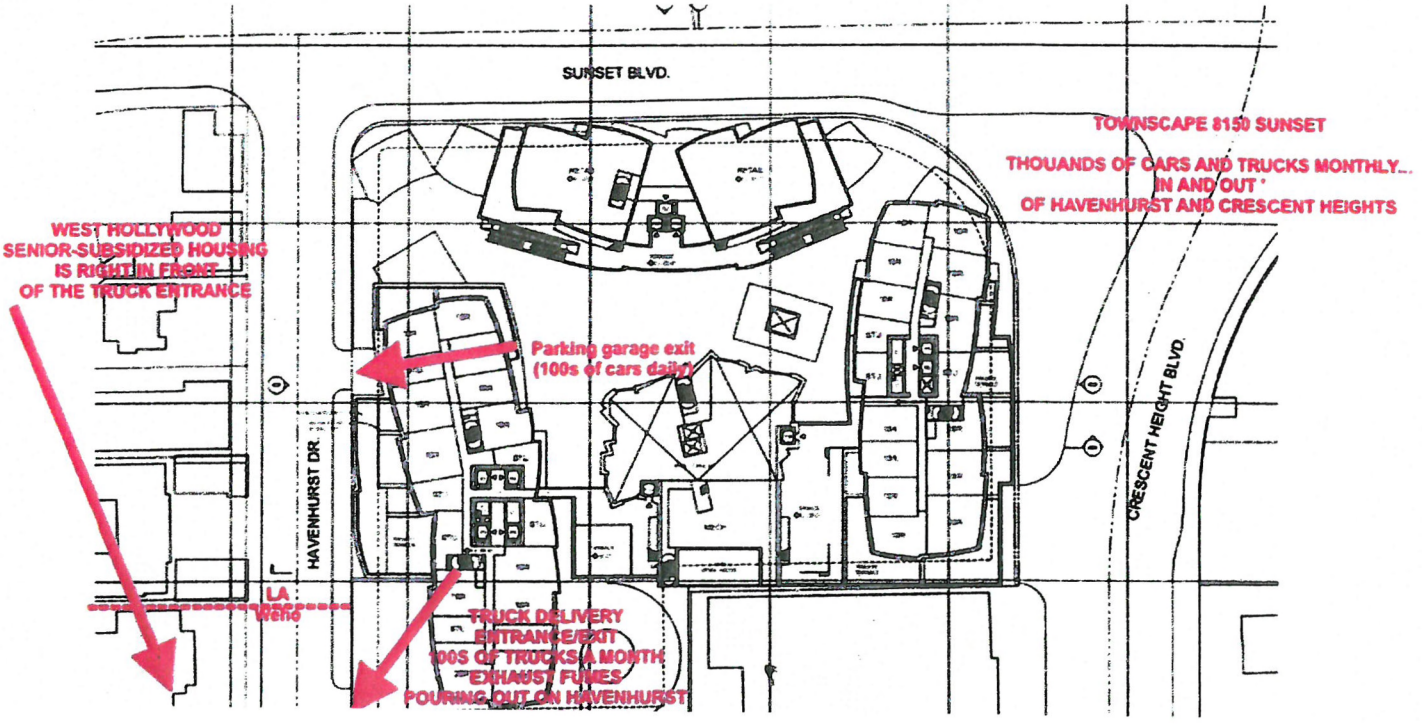
2A

2

Townscape's media photo of Havenhurst Drive presenting the architect's design for the proposed 8150 Sunset apartment complex. The photo distorts the street to mak 8150 Sunset look much smaller than the actual height and size.

2A1



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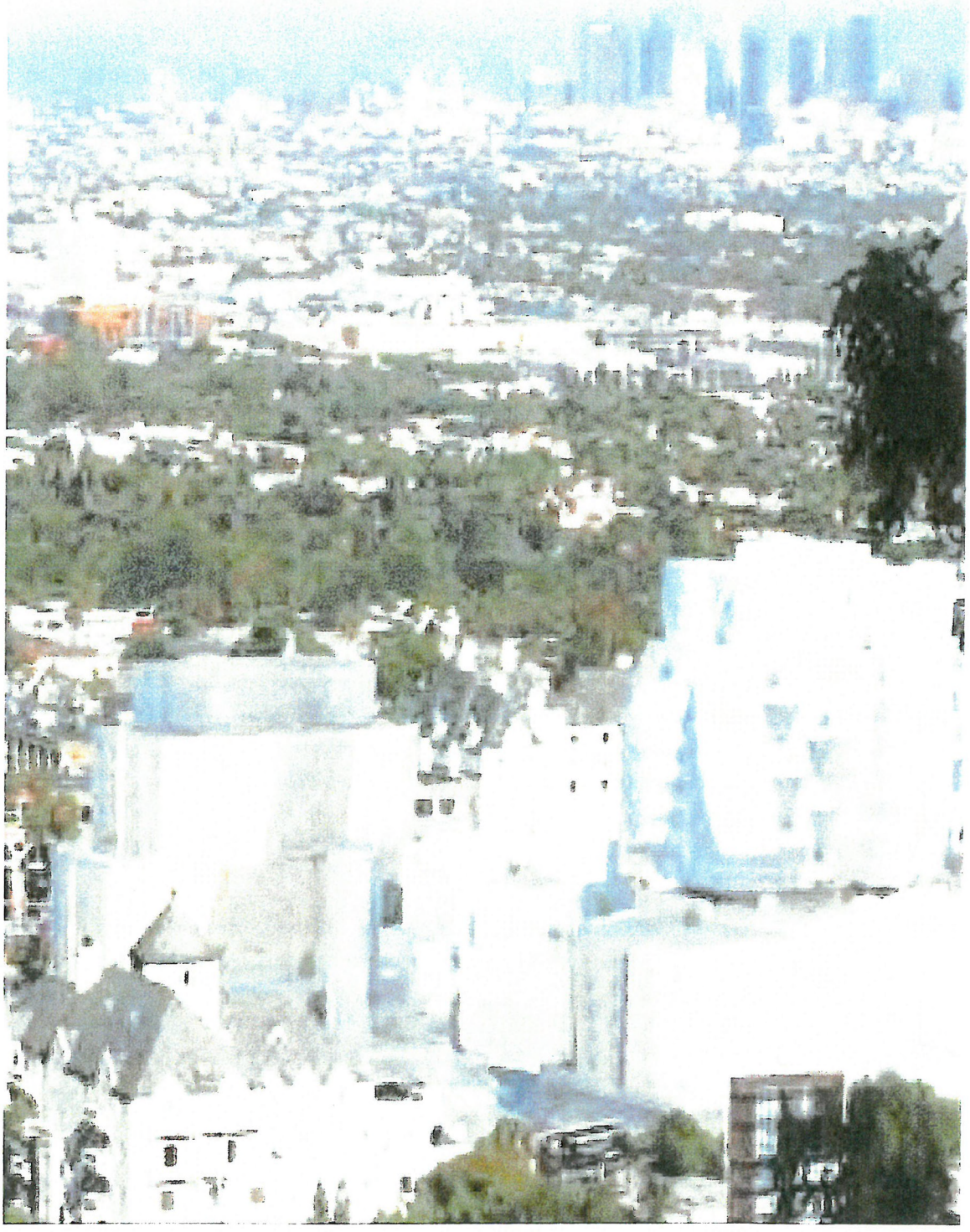

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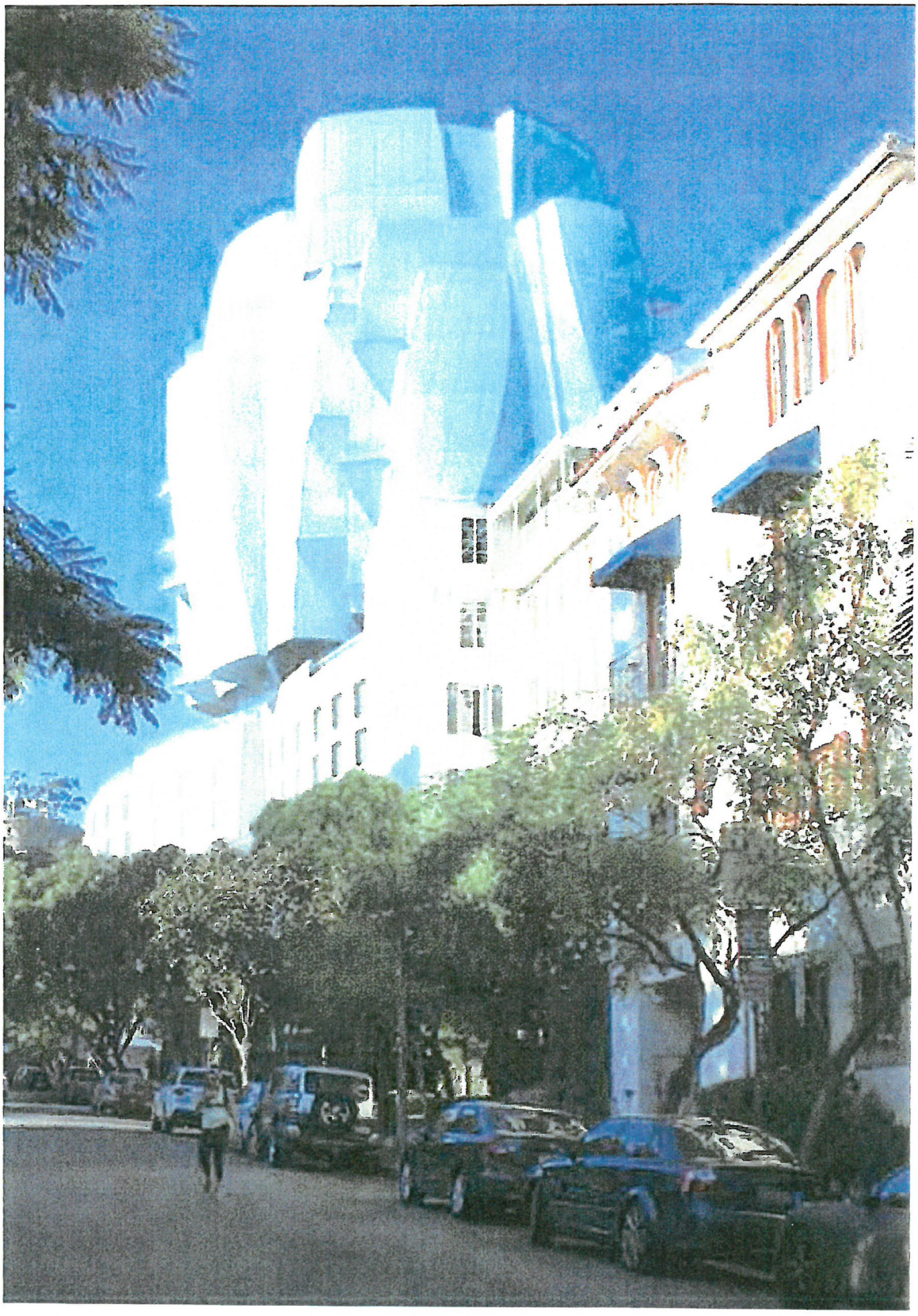
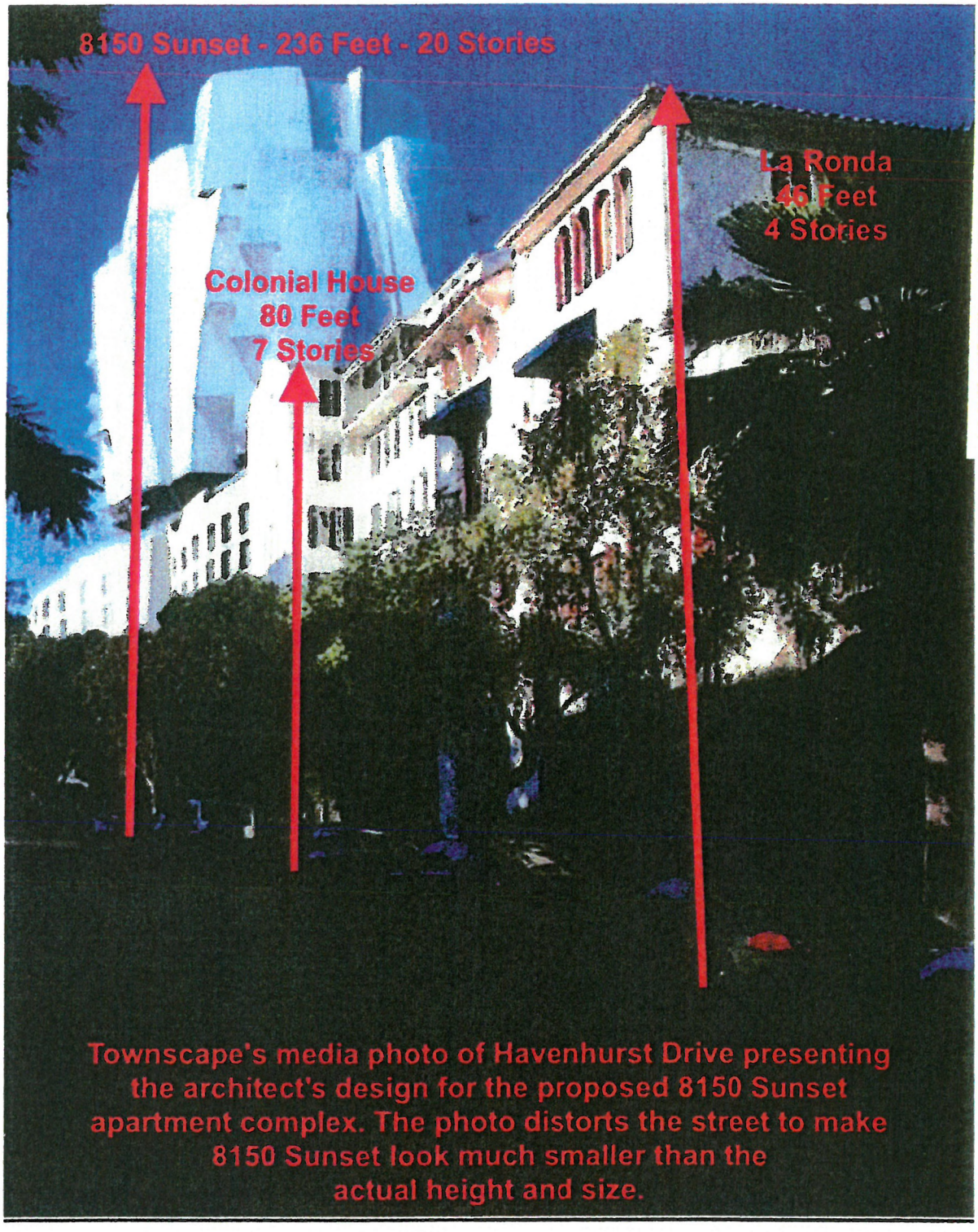
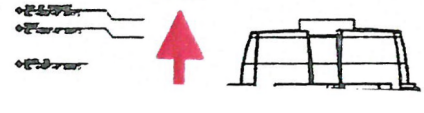


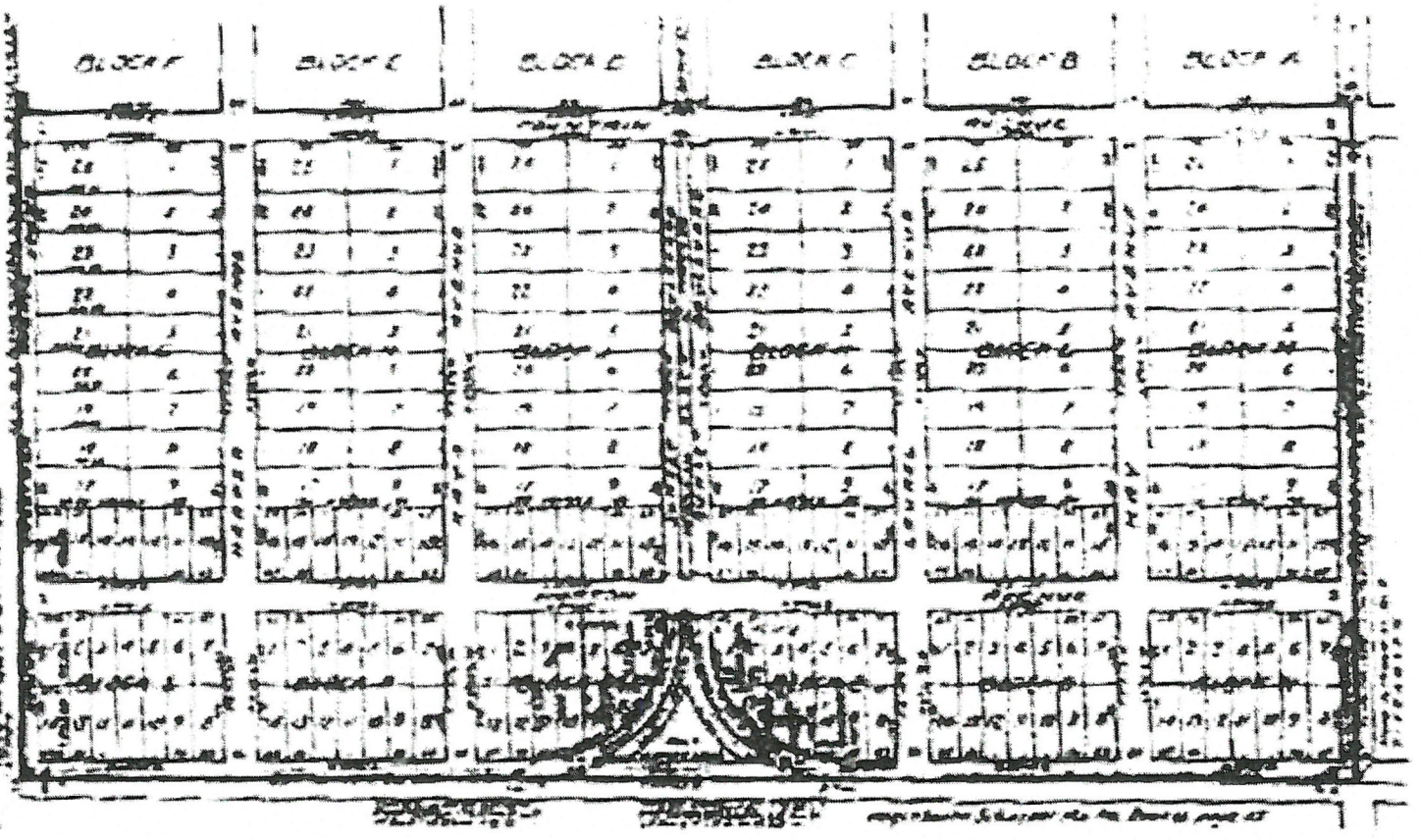



Townscape's media photo of Havenhurst Drive presenting the architect's design for the proposed 8150 Sunset apartment complex. The photo distorts the street to make 8150 Sunset look much smaller than the actual height and size.

2T




8150 SUNSET
New York Townscape developers aren't showing the height from Havenhurst Drive




Sunset Blvd changed to Crescent Heights Blvd D-13-20
Knus Ave - Hayvenhurst Drive D-13-20

Owner Title Insurance & Trust Co
by C. E. Grant Vice Pres
E. O. Clark Sec.

Recorded Jan. 31st 1925
Scale reduced to 1"=300'

34

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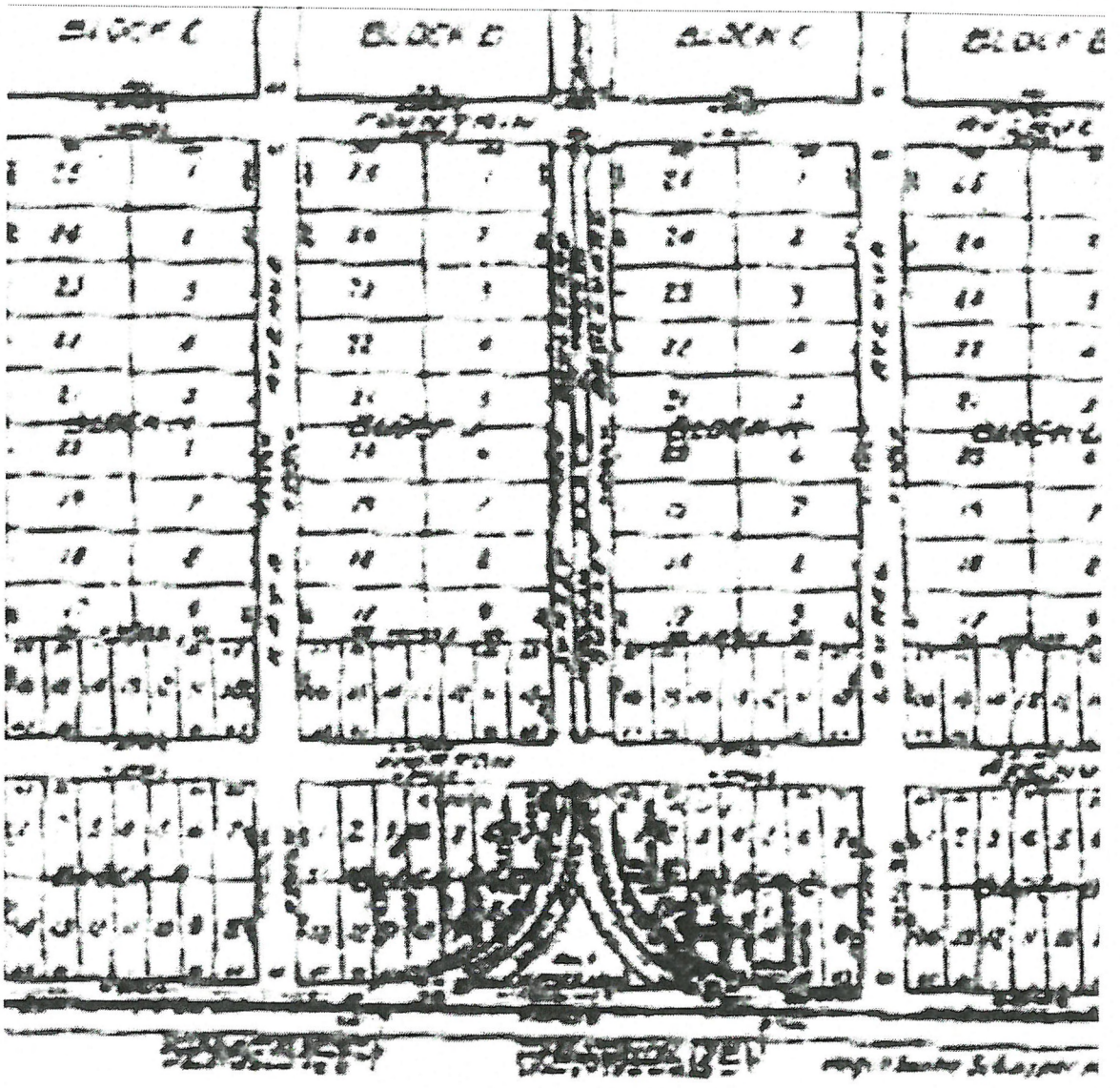

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C.O. Clark Sec.

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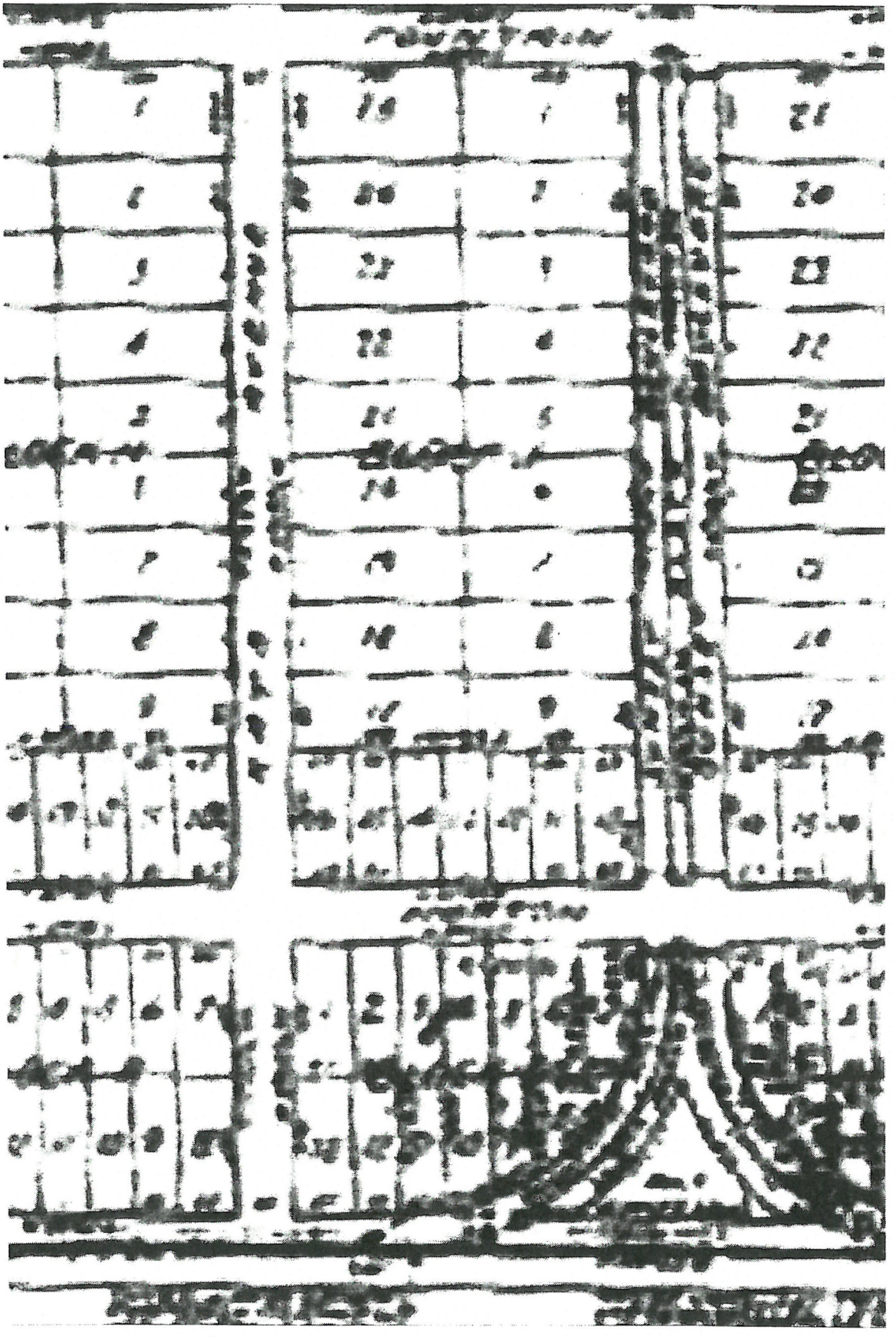
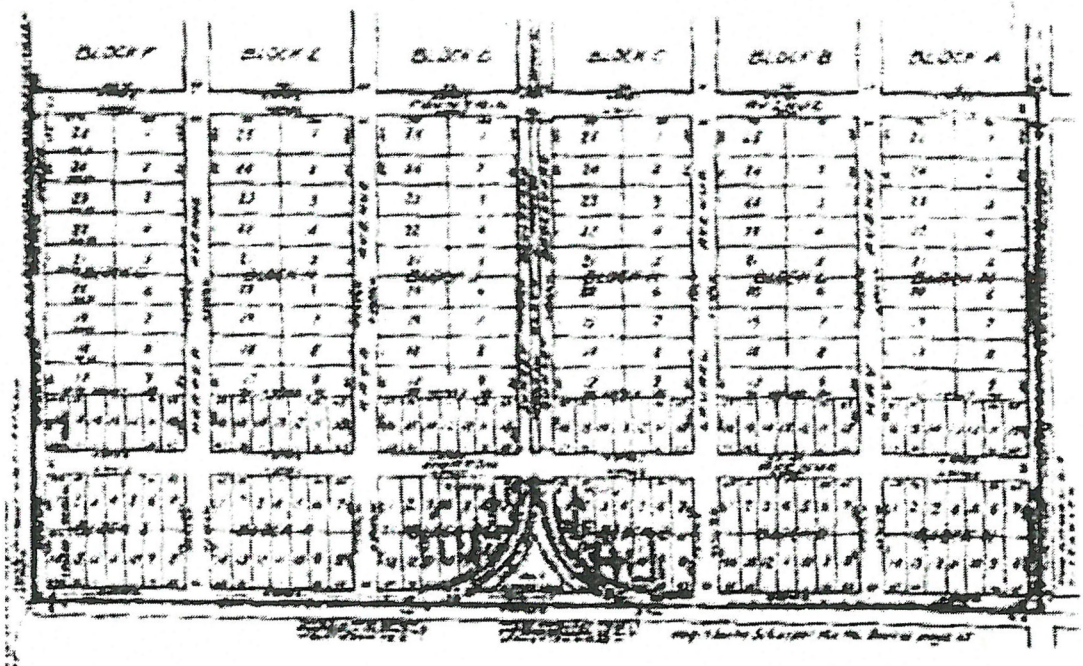





Sunset Blvd changes to Crescent Heights Blvd D13 20
Knus Ave " " Hollywood Drive D13 20

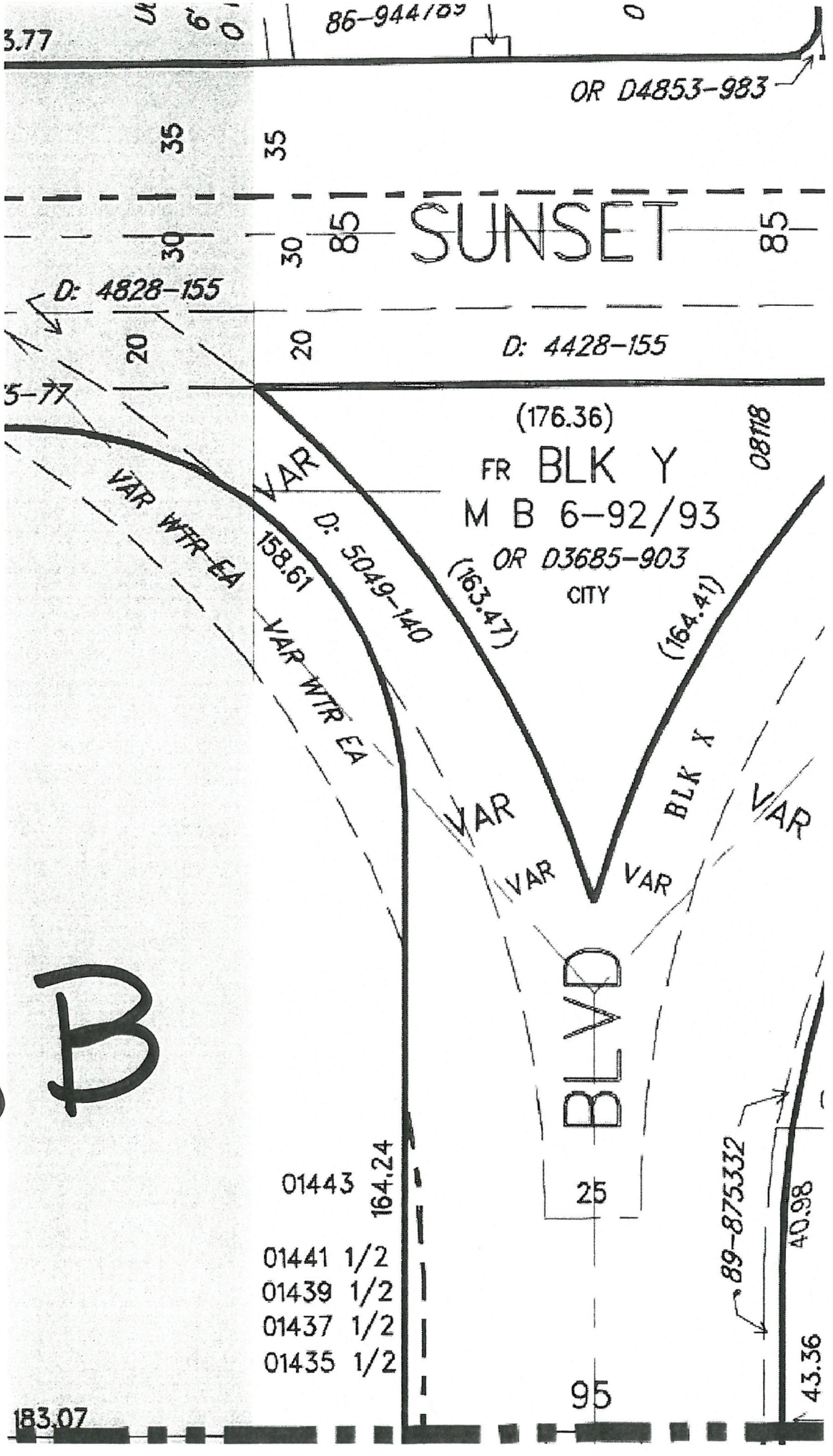
Title Insurance & Trust Co
by E.E. Elliott Vice Pres
C.O. Black Sec.

Recorded Jan. 31st 1905
Scale reduced to 1"=300

3B-3C


PET GROOMING
OASIS RELAX SPA
Foot Massage
Pollo Loco
Johnnie's
BOX&SHIP
OVER 8000 POUNDS
RIGHT LANE ENDS
The UPS Store
Cadogan Tate Fine Art

PET GROOMING
OASIS RELAX SPA
Foot Massage
El Pollo Loco
Johnnie's
OVER 6000 POUNDS
RALPH LANE ENDS
The UPS Store
Cadogan Tate Fine Art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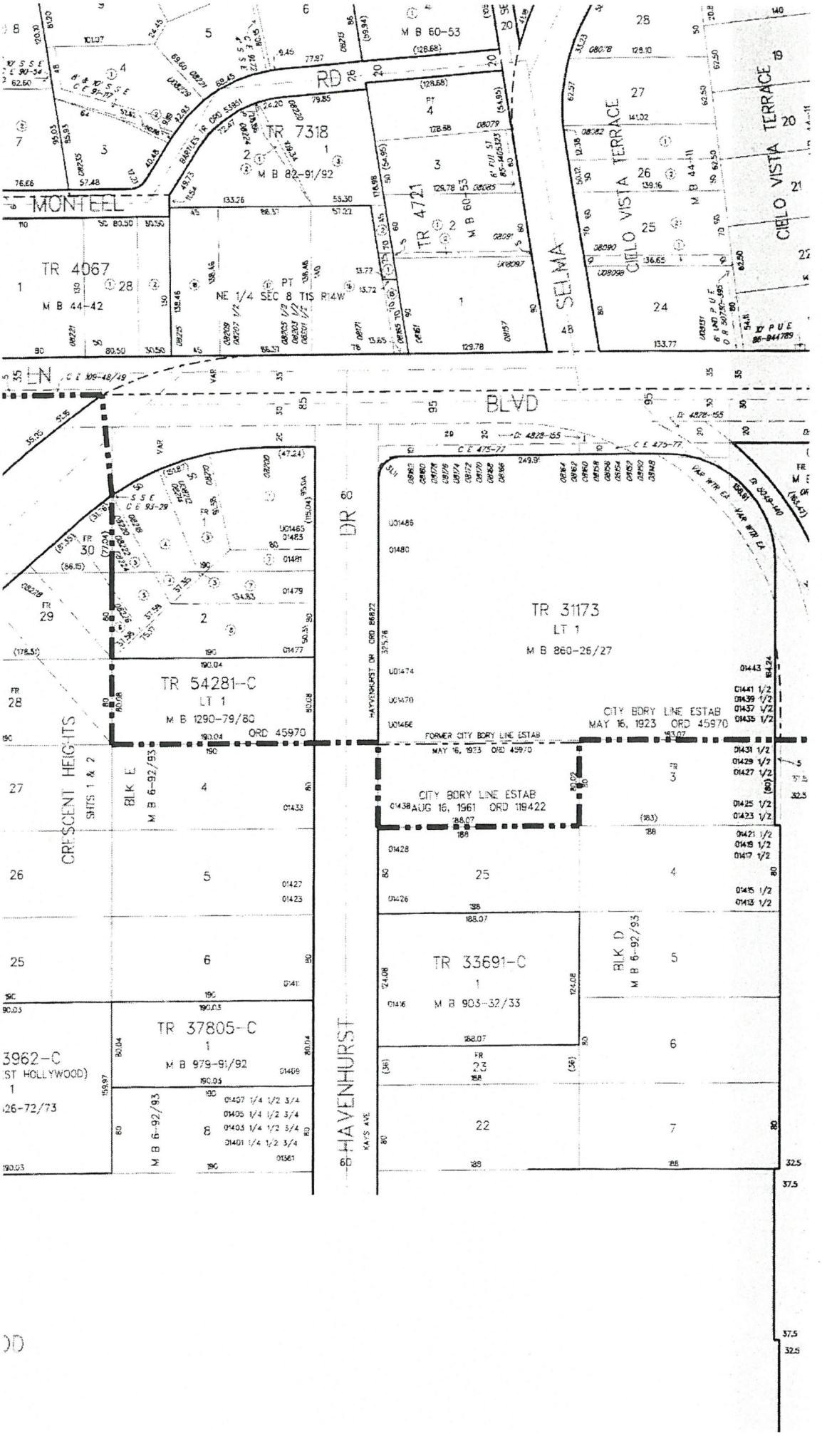
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ORD 45970
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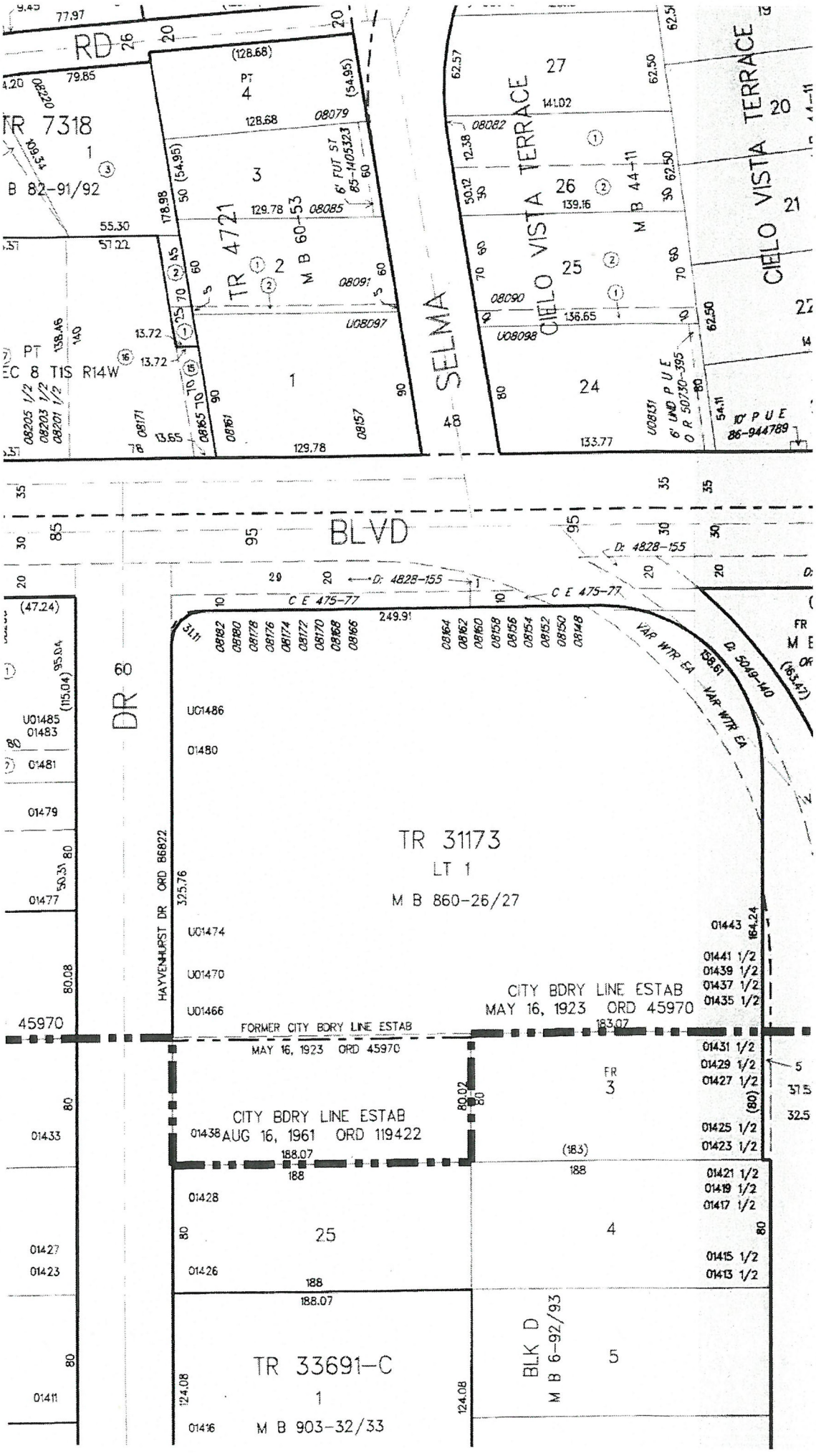
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10' P U E 86-944789
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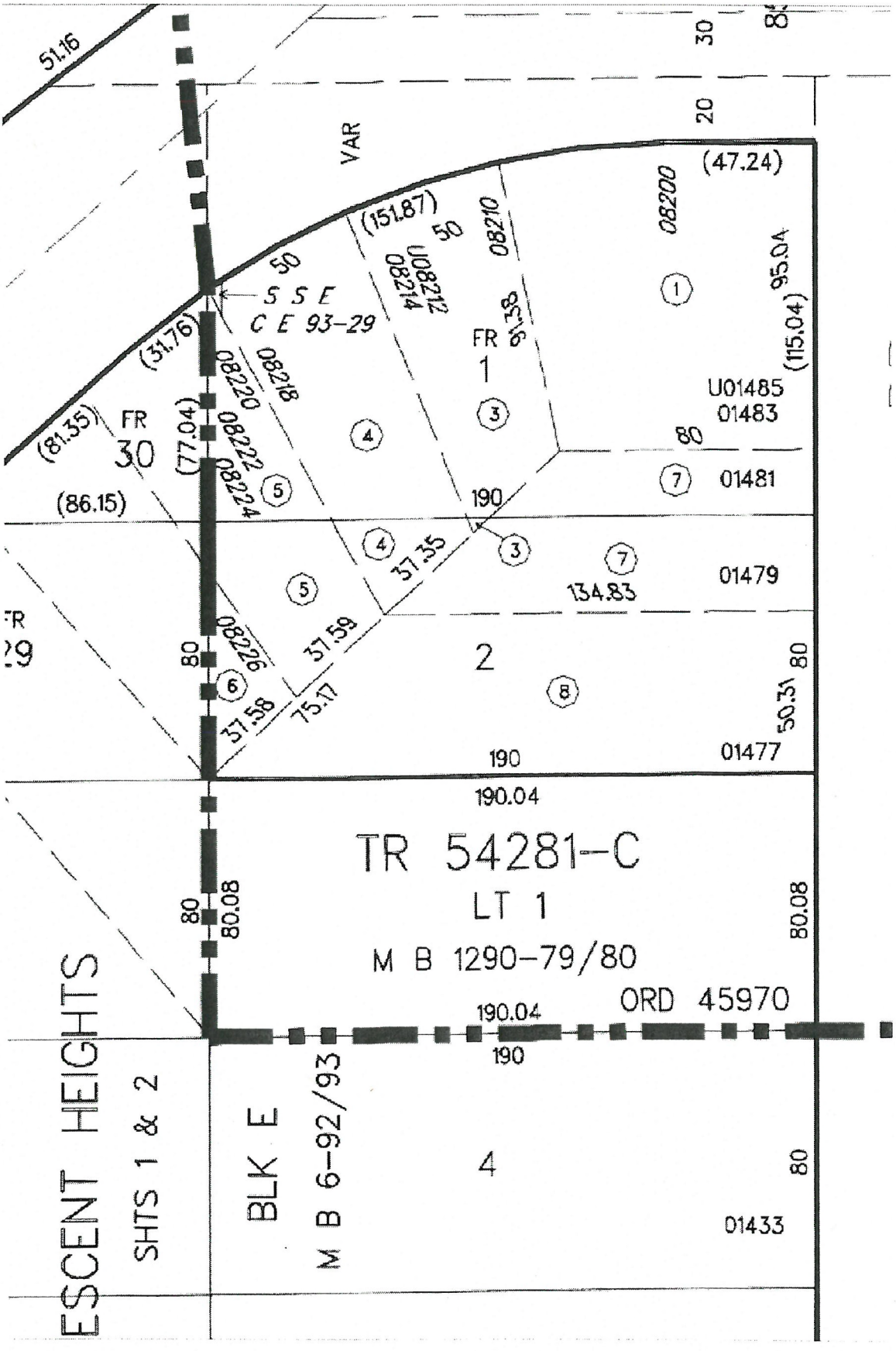
# Done 8150 project map with lot cuts.pdf



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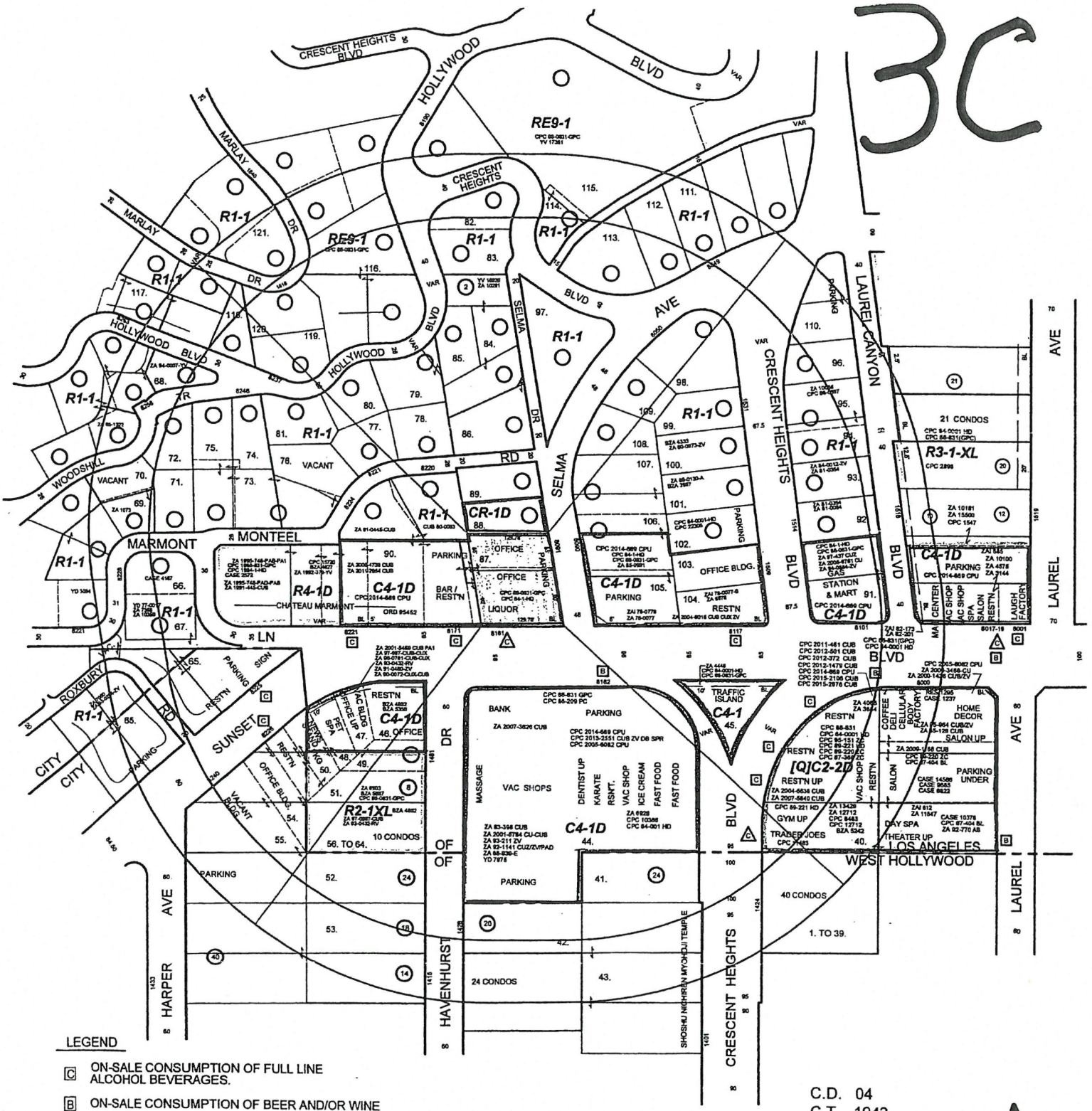


LEGEND

- [C] ON-SALE CONSUMPTION OF FULL LINE ALCOHOL BEVERAGES.
- [B] ON-SALE CONSUMPTION OF BEER AND/OR WINE
- [A] OFF-SALE CONSUMPTION OF FULL LINE ALCOHOL BEVERAGES
- [A] OFF-SALE CONSUMPTION OF BEER AND/OR WINE

C.D. 04
C.T. 1942
P.A. HOLLYWOOD
N.C. HOLLYWOOD HILLS WEST

N

# CONDITIONAL USE - ALCOHOL BEVERAGES & ZONE VARIANCE

0.44 NET AC.


**RADIUS MAPS ETC.**
3544 PORTOLA AVENUE
LOS ANGELES CA 90032
TEL/OFF: (323) 221-4555
*radiusmapsetc@sbcglobal.net*


**SITE LOCATION:**
8091 W. SELMA AVENUE
LOS ANGELES CA 90046

**LEGAL DESCRIPTION:**
LOT 1 AND LOT 2 (ARB 1 & 2),
TRACT NO. 4721. M.B. 60-53.

CASE NO.:

DATE: 12 - 31 - 2015
SCALE: 1" = 100'
USES: FIELD
D.M.: 147 B 173
T.B. PAGE: 593 GRID: A-4,5

City of West Hollywood
California 1984

# CITY OF WEST HOLLYWOOD

CITY HALL
8300 SANTA MONICA BLVD.
WEST HOLLYWOOD, CA
90069-6216
TEL: (323) 848-6475
FAX: (323) 848-6575

TTY: For hearing impaired
(323) 848-6496

**COMMUNITY DEVELOPMENT DEPARTMENT**

July 5, 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

The City of West Hollywood appeals the Advisory Agency decision to certify the Final Environmental Impact Report (FEIR) for the 8150 Sunset Boulevard Mixed-Use Project (Project) given the following outstanding issues regarding key items within the Letter of Determination (LOD):

**MITIGATION MEASURE TR-1**

Mitigation Measure TR-1, involving the signalization of the intersection of Fountain Avenue and Havenhurst Drive, must be removed from the list of mitigation measures in the FEIR and must be replaced with a substitute feasible mitigation measure to eliminate the traffic impact at this intersection. The City of West Hollywood objects to the installation of a traffic signal at this location and has reported to the City on numerous occasions that it will not approve the installation of a traffic signal at this intersection under any circumstances.

Including this mitigation measure in the Final EIR and CEQA Findings in the Letter of Determination (LOD) is misleading to the public, the applicant and the City's decision makers and therefore violates CEQA's mandate to provide a meaningful analysis of the project's impact on the environment. The vast majority of the EIR and CEQA findings suggest that the traffic impact at Fountain and Havenhurst will be mitigated through installation of the new traffic signal. One has to read through hundreds of pages and find buried in the statement of overriding consideration that there will be an un-mitigatable impact at this intersection if West Hollywood does not approve the signal.

There is evidence in the record that this mitigation measure will never be completed. Thus it is misleading to the public to maintain this as a required mitigation measure and to suggest that the impact is capable of being mitigated to a level of insignificance. This error is fatal to the EIR and deprives the public, applicant and decision makers of a meaningful description of the project impacts. It also leaves the applicant in an untenable situation of being required to comply with a condition for which it cannot comply. Including the mitigation measure as a condition of approval in several sections of the CEQA findings in the Letter of Determination, (including the references in public safety, emergency response times and traffic) also creates an ambiguity that obfuscates the Project's traffic impacts relative to future project review and implementation.

Pursuant to CEQA Section 15126.4.a.2, mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments in order to be viable. Given that the City of West Hollywood does not support and will not approve said traffic signal installation, mitigation measure TR-1

is unenforceable. Therefore, the FEIR inadequately addresses a known significant traffic impact, and the EIR should not be certified without revision.

Additionally, the City of Los Angeles has a duty to identify all feasible mitigation measures that could mitigate or reduce this impact. 14 Cal. Code Regs. 15126. 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. Further, the City's finding XI.6 in the Letter of Determination is not supported by substantial evidence because the traffic impact at Havenhurst and Fountain has not been mitigated to the extent feasible. There is no evidence that the City has explored any other feasible means of mitigating this impact to the environment, notwithstanding that the West Hollywood has repeatedly reported that the traffic signal is objectionable and will not be approved. Contrary to the statement in Los Angeles' response letter dated June 21, 2016, it is not the City of West Hollywood's role to identify feasible mitigation measures for this project.

**PROJECT DESIGN FEATURE PDF-WW-1**

Although the City of Los Angeles has acknowledged that the Project must be subject to the same fair-share contribution as other projects which use City of West Hollywood sewers, the language as written for PDF-WW-1 is vague and ambiguous and does not address the City's main concern. Specifically, the measure must make clear that the applicant is responsible for its fair share of operation and maintenance of the sewer system. As drafted, PDF-WW-1 suggests that the developer must pay for a proportional share of future sewer upgrades. However, this is not the case; the developer must pay its fair share for costs for ongoing operation and maintenance of the existing sewer system.

If this was an identical project within West Hollywood, the property owner would be paying an annual City Sewer Service charge on their property tax bill that is not applicable to this project in the City of Los Angeles. Since West Hollywood does not have a mechanism to collect sewer usage fees on properties outside of the City boundary, we recommend the developer make a one-time payment to cover the equivalent of 50 years of City Sewer Service charge. The City Sewer Service Charge is based on the concept of the Equivalent Sewer Unit (ESU). A single family residential property's City Sewer Service Charge is 1 ESU. The City Sewer Service Charge rates for all other land uses are based on the proportional use of the sewer system, in multiples of the ESU. The formula for calculation of the City Sewer Service Charge remains unchanged from the method of calculation adopted by the City Council in 1997. 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-WW-1 be revised as follows:

- **PDF-WW-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~~.

There is a less expensive alternative to paying the above stated $1,244,691.30 to the City of West Hollywood. The City of Los Angeles could require the developer to design and construct a new 8-inch diameter sewer to be aligned in Crescent Heights

Boulevard. The proposed sewer would flow south from the project site to connect to an 8-inch diameter sewer in Crescent Heights Boulevard, just south of Santa Monica Boulevard. This new 8-inch diameter sewer would be owned and maintained by the City of Los Angeles, similar to other sewers owned and maintained by City of Los Angeles that pass through West Hollywood elsewhere. The construction would need to be completed prior to issuance of the certificate of occupancy for the proposed development. The City of West Hollywood would be willing to issue the necessary Encroachment Permits for construction of the new sewer. By building this new sewer, the proposed project would no longer utilize the City of West Hollywood sewer system, and would not need to pay for their fair-share of the cost of on-going operation and maintenance of the City of West Hollywood sewer system.

Under either approach, the language of PDF-WW-1 is incorrect and must be revised to more accurately reflect how the project will address its impact on the West Hollywood sewer system.

**Additional Issues:**

The City raised the following issues in its comment letter dated May 23, 2016 and the planning staff and Advisory Agency did not resolve these issues.

Elimination of Site Access on Havenhurst Drive

The current version of the Project proposes removal of driveway access to the site along Sunset Boulevard. The LOD 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 the LOD and FEIR be revised, and 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).

Traffic Impacts Along Havenhurst Drive

The proposed traffic signal at Sunset Boulevard and Havenhurst Drive along with the proposed signalizing the intersection at Fountain Avenue and Havenhurst Drive would effectively make Havenhurst Drive a cut-through route, generating additional traffic congestionand 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. To the contrary, this will only slow down the increased traffic going through this segment of Havenhurst Drive and cause more traffic congestion, rather than lessen the anticipated impacts. Thus, the FEIR must be revised to address these impacts, and have an added project alternative with no vehicular access off Havenhurst Drive.

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 condition to upgrade the current crosswalk to a mid-block pedestrian signal. Pedestrian visibility enhancements should also be incorporated into the signalization of this crosswalk (i.e. sidewalk bulb-outs, refuge island, reflective markings, etc.).

The above comments in this appeal are related to the certification of the EIR. The City of West Hollywood reserves the right to, and will, raise additional issues pertaining to the project at subsequent public hearings.

Sincerely,

Scott Lunceford, AICP
Associate Planner
Current and Historic Preservation Planning
City of West Hollywood

CITATION 48 CAL.2D 628

# Neff v. Ernst



## Neff v. Ernst , 48 Cal.2d 628

[L. A. No. 23988. In Bank. May 31, 1957.]

DENNIS S. NEFF et al., Respondents, v. CLEMENT L. ERNST, as Administrator, etc., Appellant.

COUNSEL

Caryl Warner for Appellant.

William G. Bolton and John A. Michael for Respondents. [48 Cal.2d 631]

OPINION

SHENK, J.

The defendant appeals from a judgment entered April 20, 1955, declaring that the plaintiffs have a private right of way and easement in, to and across the vacated portion of Bard Street adjoining their property in Hermosa Beach. The defendant also appeals from a judgment entered on June 10, 1955, pursuant to section 662 of the Code of Civil Procedure on the denial of his motion for new trial, which adjudicated that the plaintiffs have a fee title interest in one-half of vacated Bard Street and in one-half of vacated Oak Street which adjoins their property, and that they have easements in the other one-half of these streets. The defendant contends that the trial court had no jurisdiction to modify the first judgment while his appeal therefrom was pending; that it erred in construing the plaintiffs' deed to grant by implication either a fee title or a private easement in these vacated streets, and that it erred in holding that the noncompliance by the plaintiffs with the recordation requirements of section 812 of the Civil Code did not extinguish any easement they might own in these streets.

The common predecessor in title of the property involved in this action was the California Bank which acquired title in 1932 from Benjamin Hiss, the original subdivider. In 1938 the bank conveyed a portion of this property to the plaintiffs by a deed referring to a recorded subdivision map. This map showed that this parcel was bounded by public streets designated thereon as Pier Avenue (to the south), Bard Street (to the west), Oak Street (to the north), and Railroad Street (now Valley Drive) to the east; that Bard and Oak Streets terminated at their common intersection; and that a public alley bisected this parcel in an east-west direction between Bard and Railroad Streets. The surrounding property to the west and the north was then owned by the bank and is the property now owned by the defendant. fn. *

The deed to the plaintiffs stated that it was made "subject to ... matters of record." There was of record at that time the vacation in 1926 of the public easements in Oak Street, in the northerly portion of Bard Street, and in the alley above mentioned. A visual inspection at the time the plaintiffs acquired this property indicated that the whole of Bard Street was a continuous public street; that it had a hard dirt surface which had been oiled from time to time, and that it [48 Cal.2d 632] was being used for purposes of ingress and egress to this property and to the building located thereon. This building had been erected by Hiss in 1927, after the vacation of these streets. It had three garage doors which opened out over vacated Bard Street and a loading dock in the rear which abutted on vacated Oak Street, and it spanned the westerly portion of the alley. The plaintiffs' deed specifically conveyed to them the title to the "vacated alley" but made no reference to the vacated streets. After they acquired this property it

was necessary for them to use both of these vacated streets, but principally Bard Street, for access to their property and these streets have been continuously so used by them, their friends, licensees and invitees.

In 1943 the defendant acquired title to the remaining Hiss property by a deed which specifically conveyed to him the fee title to "vacated Oak Street" and "vacated Bard Street." In June, 1953, he commenced the construction of a permanent building and a six foot wall along the westerly line of the plaintiffs' real property which interfered with their access to the garages on vacated Bard Street and to the loading dock on vacated Oak Street. Their objections to this construction proved futile and they commenced this action, seeking preliminary and permanent injunctions, damages and other relief. Their application for a temporary injunction was denied and the defendant continued with the construction pending the outcome of this suit.

The deeds by which the parties acquired title were in evidence at the trial. There was substantial evidence that the construction commenced by the defendant interfered with the plaintiffs' use of vacated Bard and vacated Oak Streets for purposes of access to their property, and also that it had resulted in an impairment of the normal flow of surface waters from the northwesterly corner of their land. Judgment was entered permanently enjoining interference by the defendant with these easements and awarding $650 damages for the temporary loss of use by the plaintiffs of their garages.

On the motion for new trial there was raised for the first time the question whether under the language of the plaintiffs' deed the fee title to the center of the vacated streets had been conveyed to them in addition to the easements claimed at the trial. On May 31 the court took the motion under submission, including the determination whether, pursuant to the provisions of section 662 of the Code of Civil Procedure, the pleadings, findings and judgment could be amended without [48 Cal.2d 633] reopening the proceedings to adjudicate the issue of fee title. On June 5 the defendant filed a notice of appeal from the judgment. On June 10 the court ordered the plaintiffs to amend their pleadings to conform to the proof. The court revised its findings and conclusions of law, entered a modified judgment adjudicating the issue of fee title in favor of the plaintiffs, and directed the clerk not to perform any further function in perfecting the prior appeal. The defendant appealed from this modified judgment.

The question is: which appeal is properly before this court. Obviously it is one or the other and cannot be both. Section 662 provides: "In ruling on ... [a motion for new trial] in a cause tried without a jury, the court may, on such terms as may be just, change or add to the findings, modify the judgment, in whole or in part, vacate the judgment, in whole or in part, and grant a new trial on all or part of the issues, or, in lieu of granting a new trial, may vacate and set aside the findings and judgment and reopen the case for further proceedings and the introduction of additional evidence with the same effect as if the case had been reopened after the submission thereof and before findings had been filed or judgment rendered. Any judgment thereafter entered shall be subject to the provisions of section 657 and 659 of this code [referring to motion for new trial]."

It is the position of the defendant that after he filed his notice of appeal from the original judgment the trial court was divested of jurisdiction to later modify its judgment, even though the modification came about as a part of the proceedings in ruling on a motion for new trial. In this he is supported by the rule stated in Wagner v. Shapona (1954), 123 Cal.App.2d 451, 464 [267 P.2d 378]. An opposite result was reached in Rutledge v. Rutledge (1953), 119 Cal.App.2d 112, 113 [259 P.2d 78], upon which the trial court relied in directing the clerk to disregard the prior appeal. This question has not heretofore been determined by this court and, as appears by the Wagner and Rutledge cases, a conflict appears in the decisions of the District Courts of Appeal.

Prior to 1929, when section 662 was enacted, the trial court had no power to make substantial modifications in its findings or in its judgment after judgment was entered. This section grants new and specific powers to that court in the new trial proceedings. [1] A duly perfected appeal usually divests the trial court of further jurisdiction in the cause and of the power to act other than with respect to specified excepted or [48 Cal.2d 634] collateral matters. (Sacks v. Superior Court, 31 Cal.2d 537, 540 [190 P.2d 602].) [2] A motion for new trial is recognized to be a matter collateral to the judgment and the trial court retains jurisdiction to hear and determine a motion for new trial

after an appeal has been taken from the judgment. (City of Vallejo v. Superior Court, 199 Cal. 408 [249 P. 1084, 48 A.L.R. 610]; Estate of Waters, 181 Cal. 584, 585, 588 [185 P. 951].) It is not inconsistent nor improper to file both a notice of appeal and a motion for a new trial. The time limit prescribed by law for each of these motions is jurisdictional. (Code Civ. Proc. § 936; rules 2, 3, Rules on Appeal.) [3] If the motion for new trial be granted the judgment is vacated and the appeal therefrom becomes ineffective. (Lantz v. Vai, 199 Cal. 190 [248 P. 665].) An appeal may of course be taken from the order granting a new trial (Code Civ. Proc. § 963, subd. 2). [4] When the court denies a motion for new trial and, as authorized by section 662 of the Code of Civil Procedure, enters a substantially modified judgment, that judgment becomes the final judgment of that court and the appeal from the prior judgment becomes ineffective. The conclusion reached in Rutledge v. Rutledge, supra, 119 Cal.App.2d 112, 113, appears to be in accordance with the intended purpose of section 662 and is approved. Anything to the contrary in Wagner v. Shapona, supra, 123 Cal.App.2d 451, 464, is disapproved. The appeal from the judgment of April 20, 1955, is therefore nonoperative. The appeal from the judgment of June 10, 1955, entered pursuant to the court's powers under section 662 in ruling on the motion for new trial, is properly before us.

[5] The defendant urges that the judgment embraces an issue upon which there was neither pleading nor proof at the trial, and that under principles of due process he is entitled to a jury trial on the issue of fee simple title and on various affirmative defenses including estoppel, mutual boundary agreement and adverse possession. A review of the record indicates that the original pleadings raise the general issue that the defendant was interfering or threatening to interfere with the plaintiffs' "property rights, easements and rights of way described in paragraph IV" of the complaint. While paragraph IV refers specifically to the rights of the parties in vacated Bard Street, there was evidence before the court upon which it could adjudicate the rights of the parties in vacated Oak Street. There was also evidence upon which findings adverse to the defendant could be made on the affirmative [48 Cal.2d 635] defenses of estoppel, mutual boundary agreement and adverse possession asserted on this appeal. It does not appear that the proceedings should be reopened for the taking of further evidence on these issues.

The plaintiffs' deed was in evidence and the determination whether by its terms a fee simple title or an easement was conveyed to the plaintiffs was properly before the court.

[6] The transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant. (Civ. Code, § 1112; Moody v. Palmer, 50 Cal. 31.) In case of doubt, the deed must be construed in favor of the grantee. (Civ. Code, § 1069.) [7] It is the general rule that it will be presumed that where property is sold by reference to a recorded map the grantee takes to the center of the street or streets shown on the map as bounding the property, even though the streets shown therein appear to have been vacated or abandoned or the deed itself refers to the streets as having been vacated or abandoned. The presumption continues to apply in the absence of a clear expression in the deed not to convey title to the center line. (Anderson v. Citizens Sav. etc. Co., 185 Cal. 386 [197 P. 113]; Pinsky v. Sloat, 130 Cal.App.2d 579 [279 P.2d 584].) [8] Here the reference in the deed to "matters of record" is sufficient to give constructive notice of the vacation of the public easements in the streets shown on the map. However, it is not sufficient, of itself, to indicate that the grantor intended to convey title only to the side and not to the center line of those streets.

[9] An ambiguity may be said to appear on the face of the deed as to the intention of the grantor by reason of the express conveyance of title to the vacated alley, and the failure to expressly convey title to the vacated streets. Evidence of the circumstances under which the agreement was made could be considered by the court in determining this ambiguity and parol evidence was admissible for that purpose. [10] There was evidence as to the appearance of Bard as a public street and as to the use made of both Bard and Oak Streets for access to the plaintiffs' property. This evidence would support the determination that the presumption should apply that the grantor intended to convey title to the center of the street, and that the grantor and those claiming through him should be estopped to claim otherwise.

[11] In determining the intent of the parties, consideration [48 Cal.2d 636] may be given not only to actual uses being made at the time of the grant, but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance. (Fristoe v. Drapeau, 35 Cal.2d 5, 10 [215 P.2d 729].) [12] It was reasonable to conclude that the grantor intended that the fee title should pass to the center of the street and as appurtenant thereto that there should pass to the plaintiffs easements in these streets for use as private ways. (Danielson v. Sykes, 157 Cal. 686 [109 P. 87, 28 L.R.A. N.S. 1024]; Prescott v. Edwards, 117 Cal. 298 [49 P. 178, 59 Am.St.Rep. 186]; Day v. Robison, 131 Cal.App.2d 622, 624 [281 P.2d 13].)

The amendments ordered and made by the court were therefore within the general issues framed by the pleadings and the proof, and the adjudication of fee title was properly made without reopening the proceedings for further evidence.

One further question remains to be considered. That is the applicability of section 812 of the Civil Code. This section, enacted in 1949, provides: "The vacation or abandonment, pursuant to law, of streets ... shall extinguish all private easements therein claimed by reason of the purchase of any lot by reference to a map or plat upon which such streets ... are shown, other than a private easement necessary for the purpose of ingress and egress to any such lot from or to a public street ... except as to any person claiming such easement who, within two years from the effective date of such vacation or abandonment or within two years from the date of the enactment of this section, whichever is later, shall have recorded in the office of the recorder of the county ... a verified notice of his claim to such easement. ..." It is not disputed that the plaintiffs did not file a verified claim to a private easement in either vacated Bard Street or vacated Oak Street. The court concluded, insofar as the plaintiffs' easement in vacated Bard Street was concerned, that it came within the exception stated in section 812 but also concluded that if the section were given retroactive effect and be deemed applicable to any easement theretofore vested in the plaintiffs it was void in contravention of a vested right and an impairment of a contract right as prohibited by sections 13 and 16 of article I of the state Constitution.

[13] The rule has always been that although the public use ceases on the vacation of a public street, rights acquired by grant or otherwise by an abutting owner to a private easement in such streets are not affected. (See Danielson v. Sykes, [48 Cal.2d 637] supra, 157 Cal. 686; Leverone v. Weakley, 155 Cal. 395 [101 P.304]; Severo v. Pacheco, 75 Cal.App.2d 30 [170 P.2d 40]; Cohn v. San Pedro etc. R. R. Co., 103 Cal.App. 496, 501 [284 P. 1051]; 39 C.J.S., p. 1064; 150 A.L.R. 652.) No relinquishment of the private easements in these streets by the plaintiffs or their grantor was shown, and the private rights of these parties therefore continued. Section 812 obviously is not designed nor could it be applied to divest the plaintiffs of their fee title to one-half of vacated Bard Street or to one-half of vacated Oak Street. The easements enjoyed by the plaintiffs in the one-half of these vacated streets owned by the defendant are not only necessary to their use of their property, and so come within the exception stated in section 812, they are also private easements appurtenant to their property of which they could not be divested except by purchase or agreement or by compensation from the sovereign. The trial court properly refused to hold that the noncompliance by the plaintiffs with the recording provisions of section 812 divested them of their rights in these vacated streets and the section is not applicable to them under the circumstances here shown.

The appeal from the judgment of April 20, 1955, is dismissed. The judgment of June 10, 1955, is affirmed.

Gibson, C.J., Carter, J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.

FN *. During the progress of this action the defendant Daniel L. Ernst died and an administrator with the will annexed was substituted as defendant- appellant. The decedent will be referred to as the defendant.

CITATION 48 CAL.2D 628

# Neff v. Ernst



## Neff v. Ernst , 48 Cal.2d 628

[L. A. No. 23988. In Bank. May 31, 1957.]

DENNIS S. NEFF et al., Respondents, v. CLEMENT L. ERNST, as Administrator, etc., Appellant.

COUNSEL

Caryl Warner for Appellant.

William G. Bolton and John A. Michael for Respondents. [48 Cal.2d 631]

OPINION

SHENK, J.

The defendant appeals from a judgment entered April 20, 1955, declaring that the plaintiffs have a private right of way and easement in, to and across the vacated portion of Bard Street adjoining their property in Hermosa Beach. The defendant also appeals from a judgment entered on June 10, 1955, pursuant to section 662 of the Code of Civil Procedure on the denial of his motion for new trial, which adjudicated that the plaintiffs have a fee title interest in one-half of vacated Bard Street and in one-half of vacated Oak Street which adjoins their property, and that they have easements in the other one-half of these streets. The defendant contends that the trial court had no jurisdiction to modify the first judgment while his appeal therefrom was pending; that it erred in construing the plaintiffs' deed to grant by implication either a fee title or a private easement in these vacated streets, and that it erred in holding that the noncompliance by the plaintiffs with the recordation requirements of section 812 of the Civil Code did not extinguish any easement they might own in these streets.

The common predecessor in title of the property involved in this action was the California Bank which acquired title in 1932 from Benjamin Hiss, the original subdivider. In 1938 the bank conveyed a portion of this property to the plaintiffs by a deed referring to a recorded subdivision map. This map showed that this parcel was bounded by public streets designated thereon as Pier Avenue (to the south), Bard Street (to the west), Oak Street (to the north), and Railroad Street (now Valley Drive) to the east; that Bard and Oak Streets terminated at their common intersection; and that a public alley bisected this parcel in an east-west direction between Bard and Railroad Streets. The surrounding property to the west and the north was then owned by the bank and is the property now owned by the defendant. fn. *

The deed to the plaintiffs stated that it was made "subject to ... matters of record." There was of record at that time the vacation in 1926 of the public easements in Oak Street, in the northerly portion of Bard Street, and in the alley above mentioned. A visual inspection at the time the plaintiffs acquired this property indicated that the whole of Bard Street was a continuous public street; that it had a hard dirt surface which had been oiled from time to time, and that it [48 Cal.2d 632] was being used for purposes of ingress and egress to this property and to the building located thereon. This building had been erected by Hiss in 1927, after the vacation of these streets. It had three garage doors which opened out over vacated Bard Street and a loading dock in the rear which abutted on vacated Oak Street, and it spanned the westerly portion of the alley. The plaintiffs' deed specifically conveyed to them the title to the "vacated alley" but made no reference to the vacated streets. After they acquired this property it

was necessary for them to use both of these vacated streets, but principally Bard Street, for access to their property and these streets have been continuously so used by them, their friends, licensees and invitees.

In 1943 the defendant acquired title to the remaining Hiss property by a deed which specifically conveyed to him the fee title to "vacated Oak Street" and "vacated Bard Street." In June, 1953, he commenced the construction of a permanent building and a six foot wall along the westerly line of the plaintiffs' real property which interfered with their access to the garages on vacated Bard Street and to the loading dock on vacated Oak Street. Their objections to this construction proved futile and they commenced this action, seeking preliminary and permanent injunctions, damages and other relief. Their application for a temporary injunction was denied and the defendant continued with the construction pending the outcome of this suit.

The deeds by which the parties acquired title were in evidence at the trial. There was substantial evidence that the construction commenced by the defendant interfered with the plaintiffs' use of vacated Bard and vacated Oak Streets for purposes of access to their property, and also that it had resulted in an impairment of the normal flow of surface waters from the northwesterly corner of their land. Judgment was entered permanently enjoining interference by the defendant with these easements and awarding $650 damages for the temporary loss of use by the plaintiffs of their garages.

On the motion for new trial there was raised for the first time the question whether under the language of the plaintiffs' deed the fee title to the center of the vacated streets had been conveyed to them in addition to the easements claimed at the trial. On May 31 the court took the motion under submission, including the determination whether, pursuant to the provisions of section 662 of the Code of Civil Procedure, the pleadings, findings and judgment could be amended without [48 Cal.2d 633] reopening the proceedings to adjudicate the issue of fee title. On June 5 the defendant filed a notice of appeal from the judgment. On June 10 the court ordered the plaintiffs to amend their pleadings to conform to the proof. The court revised its findings and conclusions of law, entered a modified judgment adjudicating the issue of fee title in favor of the plaintiffs, and directed the clerk not to perform any further function in perfecting the prior appeal. The defendant appealed from this modified judgment.

The question is: which appeal is properly before this court. Obviously it is one or the other and cannot be both. Section 662 provides: "In ruling on ... [a motion for new trial] in a cause tried without a jury, the court may, on such terms as may be just, change or add to the findings, modify the judgment, in whole or in part, vacate the judgment, in whole or in part, and grant a new trial on all or part of the issues, or, in lieu of granting a new trial, may vacate and set aside the findings and judgment and reopen the case for further proceedings and the introduction of additional evidence with the same effect as if the case had been reopened after the submission thereof and before findings had been filed or judgment rendered. Any judgment thereafter entered shall be subject to the provisions of section 657 and 659 of this code [referring to motion for new trial]."

It is the position of the defendant that after he filed his notice of appeal from the original judgment the trial court was divested of jurisdiction to later modify its judgment, even though the modification came about as a part of the proceedings in ruling on a motion for new trial. In this he is supported by the rule stated in Wagner v. Shapona (1954), 123 Cal.App.2d 451, 464 [267 P.2d 378]. An opposite result was reached in Rutledge v. Rutledge (1953), 119 Cal.App.2d 112, 113 [259 P.2d 78], upon which the trial court relied in directing the clerk to disregard the prior appeal. This question has not heretofore been determined by this court and, as appears by the Wagner and Rutledge cases, a conflict appears in the decisions of the District Courts of Appeal.

Prior to 1929, when section 662 was enacted, the trial court had no power to make substantial modifications in its findings or in its judgment after judgment was entered. This section grants new and specific powers to that court in the new trial proceedings. [1] A duly perfected appeal usually divests the trial court of further jurisdiction in the cause and of the power to act other than with respect to specified excepted or [48 Cal.2d 634] collateral matters. (Sacks v. Superior Court, 31 Cal.2d 537, 540 [190 P.2d 602].) [2] A motion for new trial is recognized to be a matter collateral to the judgment and the trial court retains jurisdiction to hear and determine a motion for new trial

after an appeal has been taken from the judgment. (City of Vallejo v. Superior Court, 199 Cal. 408 [249 P. 1084, 48 A.L.R. 610]; Estate of Waters, 181 Cal. 584, 585, 588 [185 P. 951].) It is not inconsistent nor improper to file both a notice of appeal and a motion for a new trial. The time limit prescribed by law for each of these motions is jurisdictional. (Code Civ. Proc. § 936; rules 2, 3, Rules on Appeal.) [3] If the motion for new trial be granted the judgment is vacated and the appeal therefrom becomes ineffective. (Lantz v. Vai, 199 Cal. 190 [248 P. 665].) An appeal may of course be taken from the order granting a new trial (Code Civ. Proc. § 963, subd. 2). [4] When the court denies a motion for new trial and, as authorized by section 662 of the Code of Civil Procedure, enters a substantially modified judgment, that judgment becomes the final judgment of that court and the appeal from the prior judgment becomes ineffective. The conclusion reached in Rutledge v. Rutledge, supra, 119 Cal.App.2d 112, 113, appears to be in accordance with the intended purpose of section 662 and is approved. Anything to the contrary in Wagner v. Shapona, supra, 123 Cal.App.2d 451, 464, is disapproved. The appeal from the judgment of April 20, 1955, is therefore nonoperative. The appeal from the judgment of June 10, 1955, entered pursuant to the court's powers under section 662 in ruling on the motion for new trial, is properly before us.

[5] The defendant urges that the judgment embraces an issue upon which there was neither pleading nor proof at the trial, and that under principles of due process he is entitled to a jury trial on the issue of fee simple title and on various affirmative defenses including estoppel, mutual boundary agreement and adverse possession. A review of the record indicates that the original pleadings raise the general issue that the defendant was interfering or threatening to interfere with the plaintiffs' "property rights, easements and rights of way described in paragraph IV" of the complaint. While paragraph IV refers specifically to the rights of the parties in vacated Bard Street, there was evidence before the court upon which it could adjudicate the rights of the parties in vacated Oak Street. There was also evidence upon which findings adverse to the defendant could be made on the affirmative [48 Cal.2d 635] defenses of estoppel, mutual boundary agreement and adverse possession asserted on this appeal. It does not appear that the proceedings should be reopened for the taking of further evidence on these issues.

The plaintiffs' deed was in evidence and the determination whether by its terms a fee simple title or an easement was conveyed to the plaintiffs was properly before the court.

[6] The transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof, unless a different intent appears from the grant. (Civ. Code, § 1112; Moody v. Palmer, 50 Cal. 31.) In case of doubt, the deed must be construed in favor of the grantee. (Civ. Code, § 1069.) [7] It is the general rule that it will be presumed that where property is sold by reference to a recorded map the grantee takes to the center of the street or streets shown on the map as bounding the property, even though the streets shown therein appear to have been vacated or abandoned or the deed itself refers to the streets as having been vacated or abandoned. The presumption continues to apply in the absence of a clear expression in the deed not to convey title to the center line. (Anderson v. Citizens Sav. etc. Co., 185 Cal. 386 [197 P. 113]; Pinsky v. Sloat, 130 Cal.App.2d 579 [279 P.2d 584].) [8] Here the reference in the deed to "matters of record" is sufficient to give constructive notice of the vacation of the public easements in the streets shown on the map. However, it is not sufficient, of itself, to indicate that the grantor intended to convey title only to the side and not to the center line of those streets.

[9] An ambiguity may be said to appear on the face of the deed as to the intention of the grantor by reason of the express conveyance of title to the vacated alley, and the failure to expressly convey title to the vacated streets. Evidence of the circumstances under which the agreement was made could be considered by the court in determining this ambiguity and parol evidence was admissible for that purpose. [10] There was evidence as to the appearance of Bard as a public street and as to the use made of both Bard and Oak Streets for access to the plaintiffs' property. This evidence would support the determination that the presumption should apply that the grantor intended to convey title to the center of the street, and that the grantor and those claiming through him should be estopped to claim otherwise.

[11] In determining the intent of the parties, consideration [48 Cal.2d 636] may be given not only to actual uses being made at the time of the grant, but also to such uses as the facts and circumstances show were within the reasonable contemplation of the parties at the time of the conveyance. (Fristoe v. Drapeau, 35 Cal.2d 5, 10 [215 P.2d 729].) [12] It was reasonable to conclude that the grantor intended that the fee title should pass to the center of the street and as appurtenant thereto that there should pass to the plaintiffs easements in these streets for use as private ways. (Danielson v. Sykes, 157 Cal. 686 [109 P. 87, 28 L.R.A. N.S. 1024]; Prescott v. Edwards, 117 Cal. 298 [49 P. 178, 59 Am.St.Rep. 186]; Day v. Robison, 131 Cal.App.2d 622, 624 [281 P.2d 13].)

The amendments ordered and made by the court were therefore within the general issues framed by the pleadings and the proof, and the adjudication of fee title was properly made without reopening the proceedings for further evidence.

One further question remains to be considered. That is the applicability of section 812 of the Civil Code. This section, enacted in 1949, provides: "The vacation or abandonment, pursuant to law, of streets ... shall extinguish all private easements therein claimed by reason of the purchase of any lot by reference to a map or plat upon which such streets ... are shown, other than a private easement necessary for the purpose of ingress and egress to any such lot from or to a public street ... except as to any person claiming such easement who, within two years from the effective date of such vacation or abandonment or within two years from the date of the enactment of this section, whichever is later, shall have recorded in the office of the recorder of the county ... a verified notice of his claim to such easement. ..." It is not disputed that the plaintiffs did not file a verified claim to a private easement in either vacated Bard Street or vacated Oak Street. The court concluded, insofar as the plaintiffs' easement in vacated Bard Street was concerned, that it came within the exception stated in section 812 but also concluded that if the section were given retroactive effect and be deemed applicable to any easement theretofore vested in the plaintiffs it was void in contravention of a vested right and an impairment of a contract right as prohibited by sections 13 and 16 of article I of the state Constitution.

[13] The rule has always been that although the public use ceases on the vacation of a public street, rights acquired by grant or otherwise by an abutting owner to a private easement in such streets are not affected. (See Danielson v. Sykes, [48 Cal.2d 637] supra, 157 Cal. 686; Leverone v. Weakley, 155 Cal. 395 [101 P.304]; Severo v. Pacheco, 75 Cal.App.2d 30 [170 P.2d 40]; Cohn v. San Pedro etc. R. R. Co., 103 Cal.App. 496, 501 [284 P. 1051]; 39 C.J.S., p. 1064; 150 A.L.R. 652.) No relinquishment of the private easements in these streets by the plaintiffs or their grantor was shown, and the private rights of these parties therefore continued. Section 812 obviously is not designed nor could it be applied to divest the plaintiffs of their fee title to one-half of vacated Bard Street or to one-half of vacated Oak Street. The easements enjoyed by the plaintiffs in the one-half of these vacated streets owned by the defendant are not only necessary to their use of their property, and so come within the exception stated in section 812, they are also private easements appurtenant to their property of which they could not be divested except by purchase or agreement or by compensation from the sovereign. The trial court properly refused to hold that the noncompliance by the plaintiffs with the recording provisions of section 812 divested them of their rights in these vacated streets and the section is not applicable to them under the circumstances here shown.

The appeal from the judgment of April 20, 1955, is dismissed. The judgment of June 10, 1955, is affirmed.

Gibson, C.J., Carter, J., Traynor, J., Schauer, J., Spence, J., and McComb, J., concurred.

FN *. During the progress of this action the defendant Daniel L. Ernst died and an administrator with the will annexed was substituted as defendant- appellant. The decedent will be referred to as the defendant.

# STREETS AND HIGHWAYS CODE
# SECTION 8300-8309

8300. This part may be cited as the Public Streets, Highways, and Service Easements Vacation Law.

8301. Unless the provision or context otherwise requires, the definitions in this chapter shall govern the construction of this part.

8302. "Adoption" of a resolution includes passage or enactment of a resolution.

8303. "Clerk" includes a person or officer who is the clerk of a legislative body.

8304. "Legislative body" means:
(a) In the case of a county or city and county, the board of supervisors.
(b) In the case of a city, the city council or other body which, by law, is the legislative body of the government of the city.
(c) In the case of the California Transportation Commission, the commission.

8305. "Local agency" means a county, city, or city and county.

8305.5. "Public entity" means a local agency or the California Transportation Commission.

8306. "Public service easement" includes all or part of, or any right in:
(a) A right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, polelines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, water transmission lines, light and air, and other limited use public easements other than for street or highway purposes.
(b) An easement or right of a type described in Section 8340.

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8306.5. "Public utility" means a public utility as defined in

Section 216 of the Public Utilities Code.

8307. "Resolution" includes an ordinance.

8308. "Street" and "highway" include all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway.

8309. "Vacation" means the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.

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# STREETS AND HIGHWAYS CODE
# SECTION 8320-8325

8320. (a) The legislative body of a local agency may initiate a proceeding under this chapter in either of the following ways:

(1) On its own initiative, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter.

(2) Upon a petition or request of an interested person, at the discretion of the legislative body, except as provided in subdivision (e) of Section 8321, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter.

(b) The notices required by this chapter shall contain both of the following:

(1) A description of the street, highway, or public service easement proposed to be vacated and a reference to a map or plan, that shows the portion or area to be vacated and includes a statement that the vacation proceeding is conducted under this chapter. In the case of a street or highway, the description shall include its general location, its lawful or official name or the name by which it is commonly known, and the extent to which it is to be vacated. In the case of a public service easement, the description shall identify it with common certainty. The map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this paragraph.

(2) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall not be less than 15 days after the initiation of proceedings.

8321. (a) Ten or more freeholders may petition the board of supervisors to vacate a street or highway under this chapter. At least two of the petitioners shall be residents of the road district in which some part of the street or highway proposed to be vacated is situated and shall be taxable therein for street or highway purposes.

(b) Five or more freeholders may petition the board of supervisors to vacate a public service easement under this chapter. At least one of the petitioners shall be a resident of the township in which the public service easement proposed to be vacated is situated.

(c) The residence address of each petitioner shall be set forth in the petition.

(d) The board of supervisors may require the payment of a fee for filing a petition to defray the expenses of investigations, mailings, publications, and postings under this chapter.

(e) Upon the filing of a petition and the making of the deposit, if any, required under this section, the board of supervisors, by order, shall fix the date, hour, and place of the hearing on the petition. At least two weeks before the day set for the hearing, the clerk of the board shall mail a notice of the date, hour, and place of the hearing to each of the petitioners at the address set forth in the petition.

(f) Nothing in this section shall affect the right of a legislative body to initiate a proceeding under this chapter upon its own initiative, or upon petition or request of an interested person, or prevent the board of supervisors from vacating a street, highway, or public service easement without charging costs if the board determines it is in the public interest to do so.

8322. (a) Except as provided in subdivisions (b) and (c), notice of the hearing on the proposed vacation shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper published and circulated in the local agency conducting the proceeding and which is selected by the legislative body for that purpose or by the clerk or other officer responsible for the publication where the legislative body has not selected any newspaper for that purpose.

(b) If the proceeding is conducted by a city and there is no daily, semiweekly, or weekly newspaper published and circulated in the city, the notice shall be published in some newspaper published in the county in which the city is located.

(c) Notice need not be published under this section where there is no daily, semiweekly, or weekly newspaper published and circulating in the county in which the local agency conducting the proceeding is located.

8323. At least two weeks before the day set for the hearing, the legislative body shall post conspicuously notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices shall be posted not more than 300 feet apart, but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of another street or highway with the street, highway, or public service easement to be vacated and at one point approximately midway between each intersection, but at least three notices shall be posted.

8324. (a) At the hearing, the legislative body shall hear the evidence offered by persons interested.

(b) If the legislative body finds, from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use, the legislative body may adopt a resolution vacating the street, highway, or public service easement. The resolution of vacation may provide that the vacation occurs only after conditions required by the legislative body have been satisfied and may instruct the clerk that the resolution of vacation not be recorded until the conditions have been satisfied.

8325. (a) The clerk shall cause a certified copy of the resolution of vacation, attested by the clerk under seal, to be recorded without acknowledgment, certificate of acknowledgment, or further proof in the office of the recorder of the county in which the property is

# STREETS AND HIGHWAYS CODE
# SECTION 8350-8353

8350. Except as provided in Chapter 5 (commencing with Section 8340), the vacation of a street, highway, or public service easement extinguishes all public easements therein.

8351. Except as otherwise provided in Chapter 5 (commencing with Section 8340) or in this chapter, upon the vacation of a street, highway, or public service easement:

(a) If the public entity owns only an easement for the street, highway, or public service purpose, title to the property previously subject to the easement is thereafter free from the easement for use for street, highway, or public service purposes, but not from any easement for vehicular or nonvehicular trail use that the public entity has previously granted to any other state or local public agency. If the easement is abandoned by resolution of the state or local public agency that was granted an easement for vehicular or nonvehicular trail use, the title to the property previously subject to the vehicular or nonvehicular easement is thereafter clear of the easement.

(b) If the public entity owns the title, the legislative body may dispose of the property as provided in this chapter.

8352. (a) Except as provided in Section 8353, vacation of a street, highway, or public service easement pursuant to this part does not affect a private easement or other right of a person (including, but not limited to, a public utility, the state, a public corporation, or a political subdivision, other than the local agency adopting the resolution of vacation) in, to, or over the lands subject to the street, highway, or public service easement, regardless of the manner in which the private easement or other right was acquired.

(b) A private easement or other right described in subdivision (a) is subject to extinguishment under the laws governing abandonment, adverse possession, waiver, and estoppel.

8353. (a) Except as provided in subdivision (b), the vacation of a street or highway extinguishes all private easements therein claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown, other than a private easement of ingress and egress to the lot from or to the street or highway.

(b) A private easement claimed by reason of the purchase of a lot by reference to a map or plat upon which the street or highway is shown is not extinguished pursuant to subdivision (a) if, within two years after the date the vacation is complete, the claimant records a verified notice that particularly describes the private easement that is claimed in the office of the recorder of the county in which the vacated street or highway is located.

(c) Nothing in this section shall be construed to create a private easement, nor to extend a private easement now recognized by law,

nor to make the rights of the public in or to a street or highway subordinate to a private easement. Nothing in this section affects the right of the owner of property that was subject to the vacated street or highway to commence an action to quiet title as against any claim of a private easement of any type, whether before or after recordation of a verified notice pursuant to this section.

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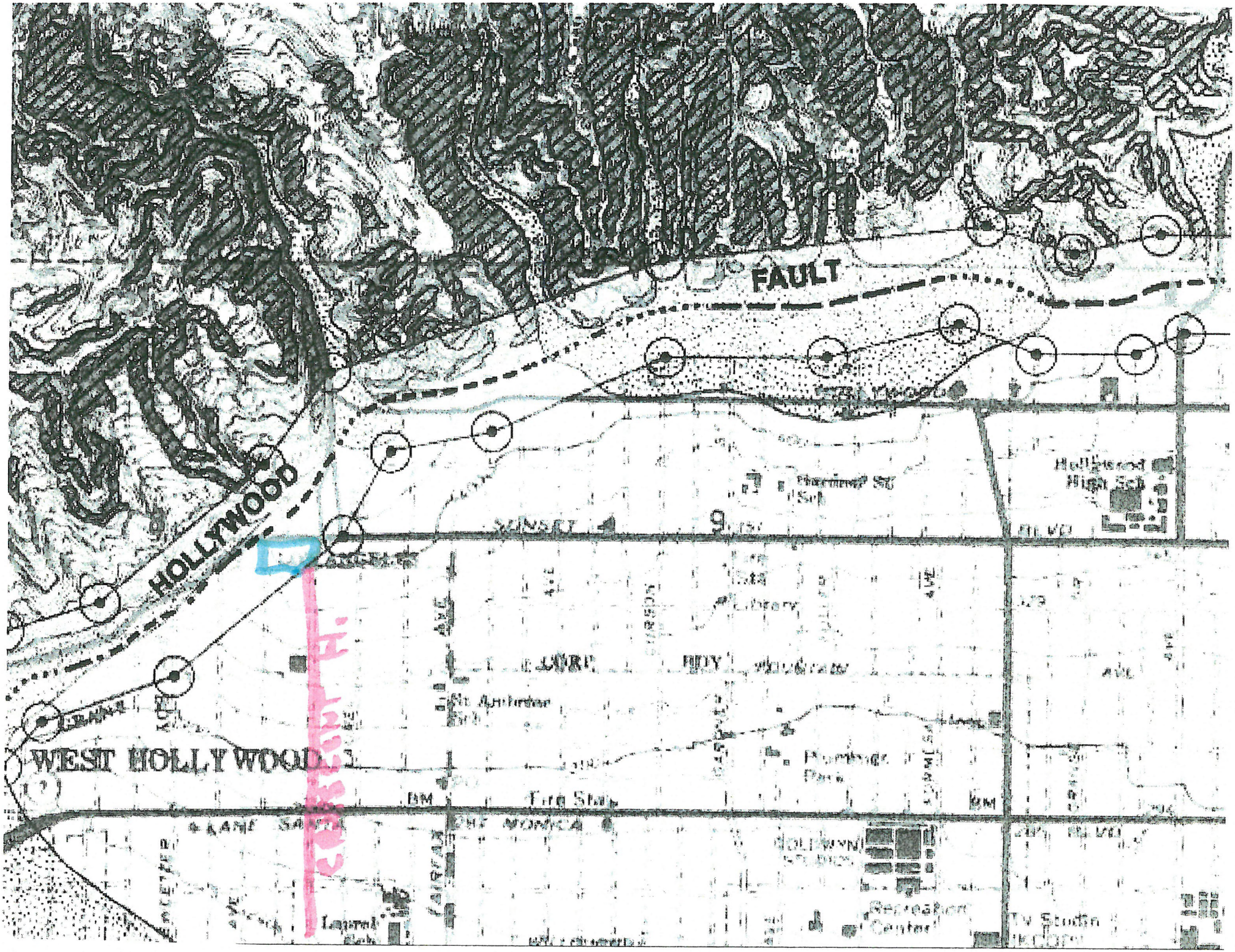
HOLLYWOOD
CRESCENT HEIGHTS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Fairfax Hi
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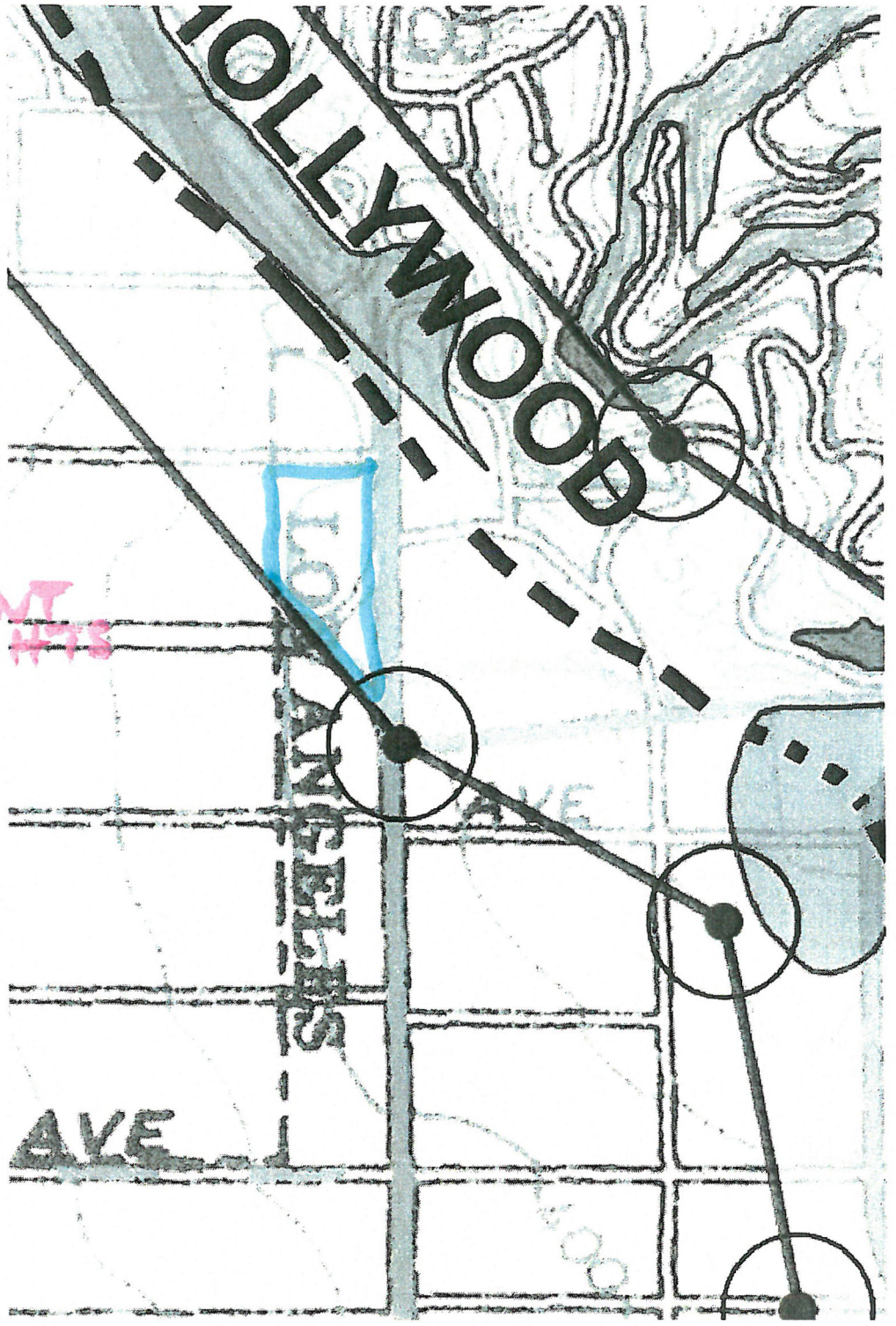
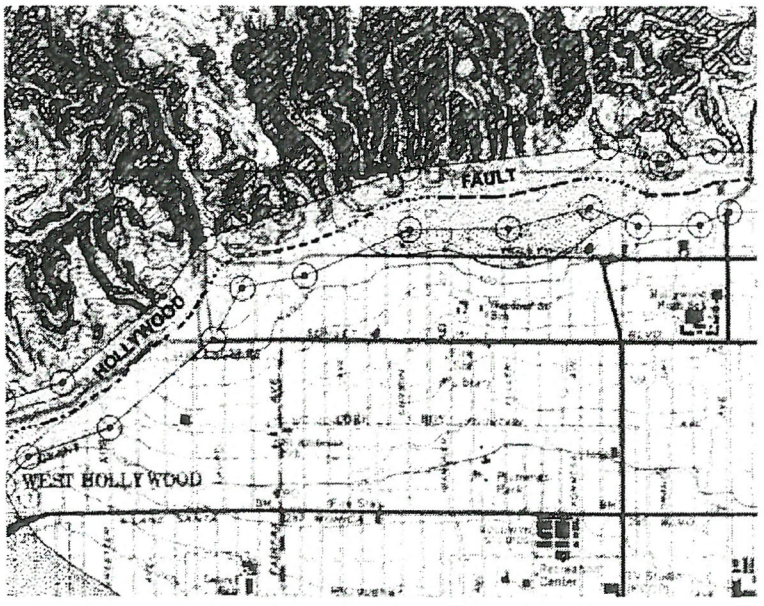
Library
Plummer Park
Fire Stn
Recreation Center
TV Studios



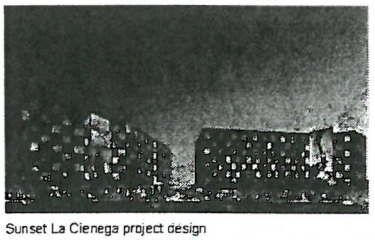

CRESCENT HEIGHTS

# State Map Shows Sunset Boulevard Projects Along Active Earthquake Fault

Wed, Jan 08, 2014 By Stevie St. John 3 Comments




Maps released today by the California Geologic Survey show an active earthquake fault running along Sunset Boulevard in West Hollywood from North La Cienega Boulevard on the west to Sunset's intersection with Havenhurst and North Kilkea drives on the east. The fault moves north of Hollywood Boulevard after its intersection with La Cienega.



Sunset La Cienega project design

The earthquake fault zone identified by the map lies beneath or near several major projects approved or under construction in Hollywood and West Hollywood. The fault zone covers about 500 feet around the fault line. Developers in established fault zones must do studies to ensure they don't build directly on a fault. Since the new map is preliminary, and won't be officially adopted until around early July, the City of West Hollywood doesn't have to require these studies.

In West Hollywood, the biggest project potentially affected by the fault is the Sunset LaCienega, formerly known as the Sunset Millenium project, on which construction is underway.

The project was approved by the City Council in 1999 but lay fallow because of problems the original owner of the property, Sunset Millennium Associates, had in funding it. In 2011, Sunset Millennium sold the land to CIM Group, which also owns the Lot movie studio on Formosa Avenue and the Hancock Lofts at 901 Santa Monica Blvd. at Hancock.

It spans three pieces of land – the southeast corner of Sunset and La Cienega, the southwest corner of Sunset and La Cienega and the southwest corner of Sunset and Alta Loma. The Sunset / Alta Loma corner project has been completed and consists of 100,000 square feet of retail space and a 10-story office building. CIM plans to build two 10-story towers with 296 hotel rooms and 15,000 square feet of retail space on the southeast corner of Sunset and La Cienega. The middle parcel will have two eight-story towers with 190 residential units and 55,000 square feet of retail space.

Another major project in the at-risk area is one at 8150 Sunset Blvd. at Crescent Heights, on the fringe of West Hollywood. It is being developed by Townscape Partners, developers of the controversial 8899 Beverly project in West Hollywood. Townscape plans one nine-story and one 16-story building with a total of 249 apartment units along with 111,000 square feet of commercial space to house restaurants, a grocery store, retail shops, a fitness center and a bank.

Residents of adjacent West Hollywood neighborhoods objected to the project at a public meeting in September, with some raising questions about its location near the 10-mile earthquake fault. California law bans building directly on top of active earthquake faults capable of rupturing the surface, but until today state geologists hadn't mapped the Hollywood fault, leaving officials to rely on older, less-detailed maps.

The map issued today shows the fault stretching beyond West Hollywood, stoping abruptly just before La Cienega on the west and just before San Fernando Road on the east. The La Cienega boundary indicates not the end of the fault area but merely the end of the mapped area. The area to the west of the newly mapped zone—i.e., the map that would show where the fault is to the west of La Cienega—is the next one the California Geologic Survey wants to map.

Whether CGS proceeds or not depends on funding, Tim McCrick of the California Geologic Survey explained. He hopes that the governor's budget will allocate enough general fund money for a person to work on that map this year. *(UPDATE 1/10: Jerry Brown wants more funding to go toward mapping, the L.A. Times has reported; the governor's proposed budget includes about $1.5 million in new funding for for the next fiscal year.)*

"It's been pretty tough economic times for a lot of us. We're doing what we can with what we've got," McCrick said.

Since the map is preliminary, its implications for Sunset Strip developments isn't clear. Its release sets into motion a 90-day review process, during which members of the public (and particularly those with expertise on earthquakes) can submit feedback. The review process will be followed by a 90-day revision process. Finally, the process will culminate with the release of an official area map in about six months (circa July 8).

Only after the map is finalized will cities be compelled to require developers within the zone to do seismic studies. However, the cities in question —including West Hollywood—could mandate these studies right away.

"That seems like the prudent thing to do," McCrick said.

He noted that the purpose of fault line mapping is avoiding or mitigating earthquake dangers. Within a fault zone, that can mean developing building codes that address the risk of shaking. But if a proposed development is right on the fault line, it means not building at all. If an earthquake tears apart the ground beneath a structure, McCrick said, it might collapse and endanger the lives of those inside.

"It's very much a life safety issue," he said.

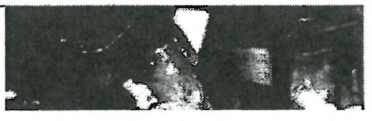
John Keho, West Hollywood's assistant community development director, declined to comment on whether West Hollywood would take any specific action as a result of the map. He said that the city contracts with a geologist, who needs time to review the information.

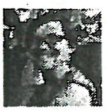


Tagged earthquake, hollywood earthquake fault, hollywood millennium project, sunset la cienega project, Townscape Partners, west hollywood development







About Stevie St. John

Stevie St. John, a freelance writer and publicist, is the editor of www.SpectrumLosAngeles.com.

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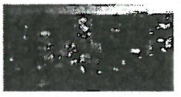

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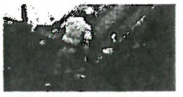


WeHo Launches Seismic Retrofit Initiative to Prepare for an Earthquake


Group Organized to Lobby for Integrated Affordable Housing in WeHo

## 3 Comments

**Larry Block** Thu, Jan 09, 2014 at 3:36 am

A disaster waiting to happen. its not a question or if but when a large earthquake occurs.. all these development.. if the world trade center can burn down and collagse we can have a few of those also in a large earthquake..... imagine trying to get emergency vehicles in or out .. or have an evacuation with all the cars backed up on the streets.. thanks for the article. I hope the public can speak up against building at the expense of public safety and our quality of life. There is so much building going on the city had to create a new position in planning to handle all this construction .. so we have a bulging bureaucracy... in a city built out.. so they can only go up up up... years ago we had a moratorium on issuing construction permits.. maybe its time to do the same and slow down the building so we can absorb the results of what is already in process

**luca d** Mon, Jan 20, 2014 at 4:24 pm

you are so right larry, tear it all down and we can start with your underpants emporium.
enough already.
I get the point about overbuilding west hollywood. I agree. and yes, you want to be a councilmember. but to piggyback on this state report and play chicken little, is a bore. if and when the big one comes, we all better be prepared to go it alone and thus, all the encouragement about preparedness.
larry, how about using your underpants store to sell earthquake preparedness kits, promoting awareness.
a basic kit would have seven days of boy panties, in rainbow colors and a bottle of water.
I can hear your poem now about bulging bureaucracy,
or panties, or something like that.
good luck with the fear mongering.

**John Mackey** Tue, Mar 18, 2014 at 12:49 pm

The Creative City Should Build Parks On Roofs. I promoted that notion in 1984 & I'm still for it. Sunset Blvd is up on rock foundations, as opposed to Beverly, which trails through a Swamp ( La Cienega means: The Swamp ). All that below Melrose will simply subside, while the Towers on Sunset will merely sway.

## Leave a Comment

Enter your comment here...

ORDINANCE NO. 179681

An ordinance amending Sections 12.22, 12.24, 14.00 and 19.01 of the Los Angeles Municipal Code to implement a Density Bonus program, as required by State law.

**THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:**

Section 1. Subdivision 25 of Subsection A of Section 12.22 of the Los Angeles Municipal Code is amended to read:

**25. Affordable Housing Incentives – Density Bonus**

(a) **Purpose.** The purpose of this subdivision is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies.

(b) **Definitions.** Notwithstanding any provision of this Code to the contrary, the following definitions shall apply to this subdivision:

**Affordable Housing Incentives Guidelines** – the guidelines approved by the City Planning Commission under which Housing Development Projects for which a Density Bonus has been requested are evaluated for compliance with the requirements of this subdivision.

**Area Median Income (AMI)** – the median income in Los Angeles County as determined annually by the California Department of Housing and Community Development (HCD) or any successor agency, adjusted for household size.

**Density Bonus** – a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and/or specific plan granted pursuant to this subdivision.

**Density Bonus Procedures** – procedures to implement the City's Density Bonus program developed by the Departments of Building and Safety, City Planning and Housing.

**Disabled Person** – a person who has a physical or mental impairment that limits one or more major life activities, anyone who is regarded as having that type of an impairment or, anyone who has a record of having that type of an impairment.

**Floor Area Ratio** – The multiplier applied to the total buildable area of the lot to determine the total floor area of all buildings on a lot.

**Housing Development Project** – the construction of five or more new residential dwelling units, the addition of five or more residential dwelling units to an existing building or buildings, the remodeling of a building or buildings containing five or more residential dwelling units, or a mixed use development in which the residential floor area occupies at least fifty percent of the total floor area of the building or buildings. For the purpose of establishing the minimum number of five dwelling units, Restricted Affordable Units shall be included and density bonus units shall be excluded.

**Incentive** – a modification to a City development standard or requirement of Chapter I of this Code (zoning).

**Income, Very Low, Low or Moderate** – annual income of a household that does not exceed the amounts designated for each income category as determined by HCD or any successor agency.

**Residential Hotel** – Any building containing six or more Guest Rooms or Efficiency Dwelling Units, which are intended or designed to be used, or are used, rented, or hired out to be occupied, or are occupied for sleeping purposes by guests, so long as the Guest Rooms or Efficiency Dwelling Units are also the primary residence of those guests, but not including any building containing six or more Guest Rooms or Efficiency Dwelling Units, which is primarily used by transient guests who do not occupy that building as their primary residence.

**Residential Unit** – a dwelling unit or joint living and work quarters; a mobilehome, as defined in California Health and Safety Code Section 18008; a mobile home lot in a mobilehome park, as defined in California Health and Safety Code Section 18214; or a Guest Room or Efficiency Dwelling Unit in a Residential Hotel.

**Restricted Affordable Unit** – a residential unit for which rental or mortgage amounts are restricted so as to be affordable to and occupied by Very Low, Low or Moderate Income households, as determined by the Los Angeles Housing Department.

**Senior Citizens** – individuals who are at least 62 years of age, except that for projects of at least 35 units that are subject to this subdivision, a threshold of 55 years of age may be used, provided all applicable City, state and federal regulations are met.

**Senior Citizen Housing Development** – a Housing Development Project for senior citizens that has at least 35 units.

**Specific Adverse Impact** – a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

**Transit Stop/Major Employment Center** – Any one of the following:

(1) A station stop for a fixed transit guideway or a fixed rail system that is currently in use or whose location is proposed and for which a full funding contract has been signed by all funding partners, or one for which a resolution to fund a preferred alignment has been adopted by the Los Angeles County Metropolitan Transportation Authority or its successor agency; or

(2) A Metro Rapid Bus stop located along a Metro Rapid Bus route or, for a Housing Development Project consisting entirely of Restricted Affordable Units, any bus stop located along a Metro Rapid Bus route; or

(3) The boundaries of the following three major economic activity areas, identified in the General Plan Framework Element: Downtown, LAX and the Port of Los Angeles; or

(4) The boundaries of a college or university campus with an enrollment exceeding 10,000 students.

(c) **Density Bonus.** Notwithstanding any provision of this Code to the contrary, the following provisions shall apply to the grant of a Density Bonus for a Housing Development Project:

(1) **For Sale or Rental Housing with Low or Very Low Income Restricted Affordable Units.** A Housing Development Project that includes 10% of the total units of the project for Low Income households or 5% of the total units of the project for Very Low Income households, either in rental units or for sale units, shall be granted a minimum Density Bonus of 20%, which may be applied to any part of the Housing Development Project. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

| Percentage Low Income Units | Percentage Density Bonus |
|---|---|
| 10 | 20 |

| | |
|---|---|
| 11 | 21.5 |
| 12 | 23 |
| 13 | 24.5 |
| 14 | 26 |
| 15 | 27.5 |
| 16 | 29 |
| 17 | 30.5 |
| 18 | 32 |
| 19 | 33.5 |
| 20 | 35 |

| Percentage Very Low Income Units | Percentage Density Bonus |
|---|---|
| 5 | 20 |
| 6 | 22.5 |
| 7 | 25 |
| 8 | 27.5 |
| 9 | 30 |
| 10 | 32.5 |
| 11 | 35 |

(2) **For Sale or Rental Senior Citizen Housing (Market Rate).** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 shall be granted a minimum Density Bonus of 20%.

(3) **For Sale or Rental Senior Citizen Housing with Low or Very Low Income Restricted Affordable Units.** A Senior Citizen Housing Development or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Sections 798.76 or 799.5 and includes at least 10% of the total units for Low Income households or 5% of the total units for Very Low Income households shall be granted an additional Density Bonus of 15% more than that permitted in Subparagraph (2) of this paragraph, to a maximum of 35%.

(4) **For Sale Housing with Moderate Income Restricted Affordable Units.** A for sale Housing Development Project that includes at least 10% of its units for Moderate Income households shall be granted a minimum Density Bonus of 15%. The bonus may be increased according to the percentage of affordable housing units provided, as follows, but shall not exceed 35%:

| Percentage Moderate Income Units | Percentage Density Bonus |
|---|---|
| 10 | 15 |
| 11 | 16 |
| 12 | 17 |
| 13 | 18 |
| 14 | 19 |
| 15 | 20 |
| 16 | 21 |
| 17 | 22 |
| 18 | 23 |
| 19 | 24 |
| 20 | 25 |
| 21 | 26 |
| 22 | 27 |
| 23 | 28 |
| 24 | 29 |
| 25 | 30 |
| 26 | 31 |
| 27 | 32 |
| 28 | 33 |
| 29 | 34 |
| 30 | 35 |

(5) **Land Donation.** An applicant for a subdivision, parcel map or other residential development approval that donates land for housing to the City of Los Angeles satisfying the criteria of California Government Code Section 65915(h)(2), as verified by the Department of City Planning, shall be granted a minimum Density Bonus of 15%.

(6) **Child Care.** A Housing Development Project that conforms to the requirements of Subparagraphs (1), (2), (3), (4) or (5) of this paragraph and includes a child care facility located on the premises of, as part of, or adjacent to, the project, shall be granted either of the following:

(i) an additional Density Bonus that is, for purposes of calculating residential density, an increase in the floor area of the project equal to the floor area of the child care facility included in the project.

(ii) An additional Incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(7) **Fractional Units.** In calculating Density Bonus and Restricted Affordable units, any number resulting in a fraction shall be rounded up to the next whole number.

(8) **Other Discretionary Approval.** Approval of Density Bonus units shall not, in and of itself, trigger other discretionary approvals required by the Code.

(9) **Other Affordable Housing Subsidies.** Approval of Density Bonus units does not, in and of itself, preclude projects from receipt of other government subsidies for affordable housing.

(10) **Additional Option for Restricted Affordable Units located near Transit Stop/Major Employment Center.**

In lieu of providing the requisite number of Restricted Affordable Units in a Housing Development Project located in or within 1,500 feet of a Transit Stop/Major Employment Center that would otherwise be required under this subdivision, an applicant may opt to provide a greater number of smaller units, provided that:

(i) the total number of units in the Housing Development Project including Density Bonus units does not exceed the maximum permitted by this subdivision;

(ii) the square footage of the aggregate smaller Restricted Affordable units is equal to or greater than the square footage of the aggregate Restricted Affordable Units that would otherwise be required under this subdivision;

(iii) the smaller Restricted Affordable units are distributed throughout the building and have proportionally the same number of bedrooms as the market rate units; and

(iv) the smaller Restricted Affordable Units meet the minimum unit size requirements established by the Low Income Housing Tax Credit Program as administered by the California Tax Credit Allocation Committee (TCAC).

(11) **Common Interest Development with Low or Very Low Income restricted Affordable Units for Rent.**

In a common interest development as defined in California Government Code Section 1351, such as a condominium, Restricted Affordable Units may be for sale or for rent.

(12) **Condominium Conversion.**

A Housing Development Project that involves the conversion of apartments into condominiums and that includes 33 percent of its units restricted to households of Low or Moderate income or 15 percent of its units restricted to households of Very Low Income shall be granted a Density Bonus of 25 percent or up to three incentives as provided in Paragraph (e) of this subdivision.

(d) **Parking in a Housing Development Project.** Required parking spaces for a Housing Development Project that is for sale or for rent and qualifies for a Density Bonus and complies with this subdivision may be provided by complying with whichever of the following options requires the least amount of parking: applicable parking provisions of Section 12.21 A 4 of this Code, or Parking Option 1 or Parking Option 2, below. Required parking in a Housing Development Project that qualifies for a Density Bonus may be sold or rented separately from the dwelling units, so that buyers and tenants have the option of purchasing or renting a unit without a parking space. The separate sale or rental of a dwelling unit and a parking space shall not cause the rent or purchase price of a Restricted Affordable Unit (or the parking space) to be greater than it would otherwise have been.

(1) **Parking Option 1.** Required parking for all residential units in the Housing Development Project (not just the restricted units), inclusive of handicapped and guest parking, shall be reduced to the following requirements:

(i) For each Residential Unit of 0-1 bedroom: 1 on-site parking space.

(ii) For each Residential Unit of 2-3 bedrooms: 2 on-site parking spaces.

(iii) For each Residential Unit of 4 or more bedrooms: 2½ on-site parking spaces.

(2) **Parking Option 2.** Required parking for the Restricted Affordable Units only shall be reduced as set forth in Subparagraphs (i) and (ii) below. Required parking for all other non-restricted units in the Housing Development Project shall comply with applicable provisions of Section 12.21 of this Code.

(i) One parking space per Restricted Affordable Unit, except:

a. 0.5 parking space for each dwelling unit restricted to Low or Very Low Income Senior Citizens or Disabled Persons; and/or

b. 0.25 parking space for each Restricted Affordable Unit in a Residential Hotel.

(ii) Up to 40% of the required parking for the Restricted Affordable Units may be provided by compact stalls.

(e) **Incentives.**

(1) In addition to the Density Bonus and parking options identified in Paragraphs (c) and (d) of this subdivision, a Housing Development Project that qualifies for a Density Bonus shall be granted the number of Incentives set forth in the table below.

| Number of Incentives | Required Percentage* of Units Restricted for Very Low Income Households | | Required Percentage* of Units Restricted for Low Income Households | | Required Percentage* of Units Restricted for Moderate Income Households (For Sale Only) |
|---|---|---|---|---|---|
| One Incentive | 5% | or | 10% | or | 10% |
| Two Incentives | 10% | or | 20% | or | 20% |
| Three Incentives | 15% | or | 30% | or | 30% |

* Excluding Density Bonus units.

(2) To be eligible for any on-menu incentives, a Housing Development Project (other than an Adaptive Reuse project) shall comply with the following:

(i) The facade of any portion of a building that abuts a street shall be articulated with a change of material or with a break in plane, so that the facade is not a flat surface.

(ii) All buildings must be oriented to the street by providing entrances, windows, architectural features and/or balconies on the front and along any street-facing elevations.

(iii) The Housing Development Project shall not be a contributing structure in a designated Historic Preservation Overlay Zone and shall not be on the City of Los Angeles list of Historical-Cultural Monuments.

(iv) The Housing Development Project shall not be located on a substandard street in a Hillside Area or in a Very High Fire Hazard Severity Zone as established in Section 57.25.01 of this Code.

(f) **Menu of Incentives.** Housing Development Projects that meet the qualifications of Paragraph (e) of this subdivision may request one or more of the following Incentives, as applicable:

(1) **Yard/Setback.** Up to 20% decrease in the required width or depth of any individual yard or setback except along any property line that abuts an R1 or more restrictively zoned property provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(2) **Lot Coverage.** Up to 20% increase in lot coverage limits, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(3) **Lot Width.** Up to 20% decrease from a lot width requirement, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(4) **Floor Area Ratio.**

(i) A percentage increase in the allowable Floor Area Ratio equal to the percentage of Density Bonus for which the Housing Development Project is eligible, not to exceed 35%; or

(ii) In lieu of the otherwise applicable Floor Area Ratio, a Floor Area Ratio not to exceed 3:1, provided the parcel is in a

commercial zone in Height District 1 (including 1VL, 1L and 1XL), and fronts on a Major Highway as identified in the City's General Plan, and

a. the Housing Development Project includes the number of Restricted Affordable Units sufficient to qualify for a 35% Density Bonus, and

b. 50% or more of the commercially zoned parcel is located in or within 1,500 feet of a Transit Stop/Major Employment Center.

A Housing Development Project in which at least 80% of the units in a rental project are Restricted Affordable Units or in which 45% of the units in a for-sale project are Restricted Affordable Units shall be exempt from the requirement to front on a Major Highway.

(5) **Height.** A percentage increase in the height requirement in feet equal to the percentage of Density Bonus for which the Housing Development Project is eligible. This percentage increase in height shall be applicable over the entire parcel regardless of the number of underlying height limits. For purposes of this subparagraph, Section 12.21.1 A 10 of this Code shall not apply.

(i) In any zone in which the height or number of stories is limited, this height increase shall permit a maximum of eleven additional feet or one additional story, whichever is lower, to provide the Restricted Affordable Units.

(a) No additional height shall be permitted for that portion of a building in a Housing Development Project that is located within fifteen feet of a lot classified in the R2 zone.

(b) For each foot of additional height the building shall be set back one horizontal foot.

(ii) No additional height shall be permitted for that portion of a building in a Housing Development Project that is located within 50 feet of a lot classified in an R1 or more restrictive residential zone.

(iii) No additional height shall be permitted for any portion of a building in a Housing Development Project located on a lot sharing a common lot line with or across an alley from a lot classified in an R1 or more restrictive zone. This prohibition shall not apply if the lot on which the Housing Development Project is

located is within 1,500 feet of a Transit Stop but no additional height shall be permitted for that portion of a building in the Housing Development Project that is located within 50 feet of a lot classified in an R1 or more restrictive residential zone.

(6) **Open Space.** Up to 20% decrease from an open space requirement, provided that the landscaping for the Housing Development Project is sufficient to qualify for the number of landscape points equivalent to 10% more than otherwise required by Section 12.40 of this Code and Landscape Ordinance Guidelines "O."

(7) **Density Calculation.** The area of any land required to be dedicated for street or alley purposes may be included as lot area for purposes of calculating the maximum density permitted by the underlying zone in which the project is located.

(8) **Averaging of Floor Area Ratio, Density, Parking or Open Space, and permitting Vehicular Access.** A Housing Development Project that is located on two or more contiguous parcels may average the floor area, density, open space and parking over the project site, and permit vehicular access from a less restrictive zone to a more restrictive zone, provided that:

(i) the Housing Development Project includes 11% or more of the units as Restricted Affordable Units for Very Low Income households, 20% of the units for Low Income households, or 30% of the units for Moderate Income households; and

(ii) the proposed use is permitted by the underlying zone(s) of each parcel; and

(iii) no further lot line adjustment or any other action that may cause the Housing Development Project site to be subdivided subsequent to this grant shall be permitted.

(g) **Procedures.**

(1) **Density Bonus and Parking.** Housing Development Projects requesting a Density Bonus without any Incentives (which includes a Density Bonus with only parking requirements in accordance with Paragraphs (c) and (d) of this subdivision) shall be considered ministerial and follow the Affordable Housing Incentives Guidelines and the Density Bonus Procedures. No application for these projects need be filed with the City Planning Department.

(2) **Requests for Incentives on the Menu.**

(i) The applicant for Housing Development Projects that qualify for a Density Bonus and that request up to three Incentives on the Menu of Incentives in Paragraph (f) of this subdivision, and which require no other discretionary actions, the following procedures shall apply:

a. **Application.** The request shall be made on a form provided by the Department of City Planning, as set forth in Section 11.5.7 B 2(a) of this Code, accompanied by applicable fees.

b. **Director's Authority.** The Director shall have the initial decision-making authority to determine whether an application for Density Bonus is consistent with this subdivision and the Affordable Housing Incentives Guidelines.

c. **Action.** The Director shall approve a Density Bonus and requested Incentive(s) unless the Director finds that:

(i) The Incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or Section 50053 for rents for the affordable units; or

(ii) The Incentive will have a 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 and for which there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact without rendering the development unaffordable to Very Low-, Low- and Moderate-Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

d. **Transmittal of Written Decision.** Within three business days of making a decision, the Director shall transmit a copy by First Class Mail to the applicant and to all owners of properties abutting, across the street or alley from,

or having a common corner with the subject property, and to the local Certified Neighborhood Council.

e. **Effective Date of Initial Decision.** The Director's decision shall become effective after an elapsed period of 15 calendar days from the date of the mailing of the written decision unless an appeal is filed to the City Planning Commission.

f. **Appeals.** An applicant or any owner or tenant of a property abutting, across the street or alley from, or having a common corner with the subject property aggrieved by the Director's decision may appeal the decision to the City Planning Commission pursuant to applicable procedures set forth in Section 11.5.7 C6 of this Code that are not in conflict with the provisions of this paragraph (g)(2)(i). The appeal shall include a filing fee pursuant to Section 19.01 B of this Code. Before acting on any appeal, the City Planning Commission shall set the matter for hearing, with written notice of the hearing sent by First Class Mail at least ten days prior to the meeting date to: the applicant; the owner(s) of the property involved; and interested parties who have requested notice in writing. The appeal shall be placed on the agenda for the first available meeting date of the City Planning Commission and acted upon within 60 days from the last day of the appeal period. The City Planning Commission may reverse or modify, in whole or in part, a decision of the Director. The City Planning Commission shall make the same findings required to be made by the Director, supported by facts in the record, and indicate why the Director erred making the determination. The appellate decision of the City Planning Commission shall be final and effective as provided in Charter Section 245.

(ii) For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests up to three Incentives listed in Paragraph (f), above, and that require other discretionary actions, the applicable procedures set forth in Section 12.36 of this Code shall apply.

a. The decision must include a separate section clearly labeled "Density Bonus/Affordable Housing Incentives Program Determination."

b. The decision-maker shall approve a Density Bonus and requested Incentive(s) unless the decision-maker,

based upon substantial evidence, makes either of the two findings set forth in Subparagraph (2)(i)(c), above.

(3) **Requests for Waiver or Modification of any Development Standard(s) Not on the Menu.**

(i) For Housing Development Projects that qualify for a Density Bonus and for which the applicant requests a waiver or modification of any development standard(s) that is not included on the Menu of Incentives in Paragraph (f), above, and that are not subject to other discretionary applications, the following shall apply:

a. The request shall be made on a form provided by the Department of City Planning, accompanied by applicable fees, and shall include a pro forma or other documentation to show that the waiver or modification of any development standard(s) are needed in order to make the Restricted Affordable Units economically feasible.

b. Notice and Hearing. The application shall follow the procedures for conditional uses set forth in Section 12.24 D of this Code. A public hearing shall be held by the City Planning Commission or its designee. The decision of the City Planning Commission shall be final.

c. The City Planning Commission shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the Commission, based upon substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)(c), above.

(ii) For Housing Development Projects requesting the waiver or modification of any development standard(s) not included on the Menu of Incentives in Paragraph (f) above, and which include other discretionary applications, the following shall apply:

a. The applicable procedures set forth in Section 12.36 of this Code shall apply.

b. The decision must include a separate section clearly labeled "Density Bonus/Affordable Housing Incentives Program Determination."

c. The decision-maker shall approve a Density Bonus and requested waiver or modification of any development standard(s) unless the decision-maker, based upon

substantial evidence, makes either of the two findings set forth in Subparagraph (g)(2)(i)(c), above.

(h) **Covenant.** Prior to issuance of a Building Permit, the following shall apply:

(1) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Senior Citizens, a covenant acceptable to the Los Angeles Housing Department shall be recorded with the Los Angeles County Recorder, guaranteeing that the occupancy restriction to Senior Citizens shall be observed for at least 30 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.

(2) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Low or Very Low Income households, a covenant acceptable to the Los Angeles Housing Department shall be recorded with the Los Angeles County Recorder, guaranteeing that the affordability criteria will be observed for at least 30 years from the issuance of the Certificate of Occupancy or a longer period of time if required by the construction or mortgage financing assistance program, mortgage assistance program, or rental subsidy program.

(3) For any Housing Development Project qualifying for a Density Bonus and that contains housing for Moderate Income households for sale, a covenant acceptable to the Los Angeles Housing Department and consistent with the for sale requirements of California Government Code Section 65915(c)(2) shall be recorded with the Los Angeles County Recorder guaranteeing that the affordability criteria will be observed for at least ten years from the issuance of the Certificate of Occupancy.

(4) If the duration of affordability covenants provided for in this subdivision conflicts with the duration for any other government requirement, the longest duration shall control.

(5) Any covenant described in this paragraph must provide for a private right of enforcement by the City, any tenant, or owner of any building to which a covenant and agreement applies.

(i) **Fee Deferral.** At the option of the applicant, payment of fees may be deferred pursuant to Sections 19.01 O and 19.05 A 1 of this Code.

(j) **Applicability.** To the extent permitted under applicable State law, if a conflict arises between the terms of this subdivision and the terms of the City's Mello Act Settlement Agreement, Interim Administrative Procedures for

Complying with the Mello Act or any subsequent permanent Mello Ordinance, Procedures or Regulations (collectively "Mello Terms"), the Mello Terms preempt this subdivision.

Sec. 2. The title of Section 12.24 U 26 of the Los Angeles Municipal Code is amended to read:

26. **Density Bonus for a Housing Development Project in which the density increase is greater than the maximum permitted in Section 12.22 A 25.**

Sec. 3. Subparagraph (4) of Paragraph (a) of Subdivision 2 of Subsection V of Section 12.24 of the Los Angeles Municipal Code is amended to read:

(4) that the developer has agreed, pursuant to Government Code Sections 65915-65918, to construct the development with the number of Restricted Affordable Units sufficient to qualify for a 35% Density Bonus, pursuant to Section 12.22 A 25 of this Code.

Sec. 4. The title of Subdivision 2 of Subsection A of Section 14.00 of the Los Angeles Municipal Code is amended to read:

2. **Density increase for a Housing Development Project to provide for additional density in excess of that permitted in Section 12.22 A 25.**

Sec. 5. Subsection O of Section 19.01 of the Los Angeles Municipal Code is amended to read:

O. **DENSITY INCREASE/AFFORDABLE HOUSING INCENTIVES.**

| **Type of Application** | **Filing Fee** |
|---|---|
| Application for a Density Bonus including a request for one or more Incentives included in the Menu of Incentives pursuant to Section 12.22 A 25(e). | $1,065.00* |
| Application for a Density Bonus pursuant to Section 12.22 A 25 including a request for an Incentive not included in the Menu of Incentives pursuant to Section 12.22 A 25(e). | $3,742.00* |
| Application for a density increase in excess of that permitted by Section 12.22 A 25 pursuant to Section 12.24 U 25 and Section 14.00 A 2. | $3,742.00* |

Payment of the filing fee may be deferred until prior to the issuance of any Certificate of Occupancy, or until two years after the City's final decision granting or denying the application, whichever comes first. Moreover, the payment may be deferred only if a covenant and agreement is recorded with

the County Recorder, to the satisfaction of the Housing Department, which covenant and agreement preserves the affordability of the restricted units in the event that the application is granted. No Building Permit for the development project may be issued unless the developer presents evidence that the fee has been paid and all other requirements for its issuance have been met.

Sec. 6. Chapter I of the Los Angeles Municipal Code is amended by adding a new Section 19.14 to read:

**SEC. 19.14. FEES FOR ENFORCEMENT OF HOUSING COVENANTS.** The following fees shall be charged and collected by the Los Angeles Housing Department for the preparation and enforcement of the affordable housing covenants described in Section 12.22 A 25(h)(1) through (3) of this Code.

Sec. 7. Statement of Intent. It is the intent of the City Council that the provisions of this ordinance shall apply to applications filed on or after the effective date of this ordinance, except that for sale Housing Development Projects with tract or parcel maps that have not been recorded as of the effective date of this ordinance are subject to the provisions of this ordinance regardless of language in tract or parcel map conditions or previously recorded covenants.

M:\Real Prop_Env_Land Use\Land Use\Kenneth Fong\SB 1818 Ordinance\City Attorney amended db ord post Jan. 7, 2008, version E2.doc

Sec. 8. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles FEB 13 2008 and was passed by a vote of not less than two-thirds of all of its members, at its meeting of FEB 20 2008.

FRANK T. MARTINEZ, City Clerk

By _____
Deputy

Approved FEB 28 2008

_____
Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By _____
KENNETH T. FONG
Deputy City Attorney

Date February 13, 2008

File No. Council File No. 05-1345

Pursuant to Charter Section 559, I **disapprove** this ordinance on behalf of the City Planning Commission and recommend that it not be adopted .....

February 13, 2008

See attached report.

_____ for 66
S. Gail Goldberg
Director of Planning

**DECLARATION OF POSTING ORDINANCE**

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

**Ordinance No. 179681 - Amending Sections 12.22, 12.24, 14.00 and 19.01 of the Los Angeles Municipal Code to implement a Density Bonus program, as required by State law** - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **February 20, 2008**, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **March 6, 2008** I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on **March 6, 2008** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **6th** day of **March 2008** at Los Angeles, California.

Maria C. Rico, Deputy City Clerk

**Ordinance Effective Date:** **April 15, 2008** **Council File No.** **05-1345**

Rev. (2/21/06)

**SEC. 12.37 – HIGHWAY AND COLLECTOR STREET DEDICATION AND IMPROVEMENT.**

A. **Requirement.** No building or structure shall be erected or enlarged, and no building permit shall be issued therefor, on any lot in any R3 or less restrictive zone (as such order of restrictiveness is set forth in Subsection B of Section 12.23); or on any lot in the RD1.5, RD2 or RD3 Zones; if such lot abuts a major or secondary highway or collector street unless the one-half of the highway or collector street which is located on the same side of the center of the highway or collector street as such lot has been dedicated and improved for the full width of the lot so as to meet the standards for such highway or collector street provided in Subsection H of this section; and further provided that in the case of either a corner lot or an L-shaped interior lot abutting a major or secondary highway and a local street which intersect, that one-half of the local street on the same side of the center of said local street as such lot, has been dedicated and improved for that portion of said lot or lots within 300 feet of the ultimate property line of said highway so as to meet the standards for local streets provided in Subsection H of this section and provide adequate right-turn ingress to and egress from the highway; or such dedication and improvement has been assured to the satisfaction of the City Engineer. As used in this section, the center of the highway or collector street shall mean the center of those highways or collector streets as are shown on the Highways and Freeways maps of the Transportation Element of the General Plan or, with respect to collector streets, on the adopted community plans of the Land Use Element of the General Plan on file in the offices of the Department of City Planning. Centers of streets other than those designated as highways or collector streets shall be determined by the City Engineer. *(Amended by Ord. No. 152,425, Eff. 6/29/79, Oper. 7/1/79.) (Second sentence was amended by Ord. No. 172,840, Eff. 11/4/99.)*

1. The maximum area of land required to be so dedicated shall not exceed 25 percent of the area of any such lot which was of record on March 1, 1962, in the Los Angeles County Recorder's Office. In no event shall such dedication reduce the lot below a width of 50 feet or an area of 5,000 square feet.

2. No such dedication for any highway, collector street or any other street shall be required with respect to those portions of such a lot occupied by a legally existing main building which is to remain.

3. No additional improvement shall be required on such a lot where complete roadway, curb, gutter and sidewalk improvements exist within the present dedication contiguous thereto.

4. No building or structure shall be erected on any such lot after March 1, 1962, within the dedication required by Subsection H of this section.

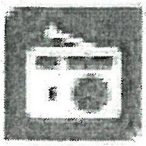
*(Amended by Ord. No. 150,799, Eff. 6/5/78.)*

5. No such dedication for any highway, collector street, or any street shall be required when the City Engineer, based on guidelines established by the Streets Standards Committee, finds that any additional dedication is not necessary to meet the mobility needs for the next twenty years.

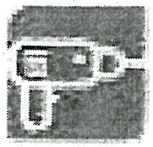
10

## EXTREMELY LOUD

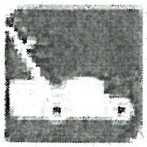
110 dB = rock music, model airplane



100 dB = snowmobile, chain saw, pneumatic drill

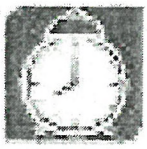


90 dB = lawnmower, shop tools, truck traffic, subway

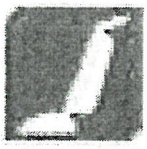


## VERY LOUD

80 dB = alarm clock, busy street



70 dB = busy traffic, vacuum cleaner



60 dB = conversation, dishwasher

## MODERATE

50 dB = moderate rainfall

40 dB = quiet room

## FAINT

30 dB = whisper, quiet library

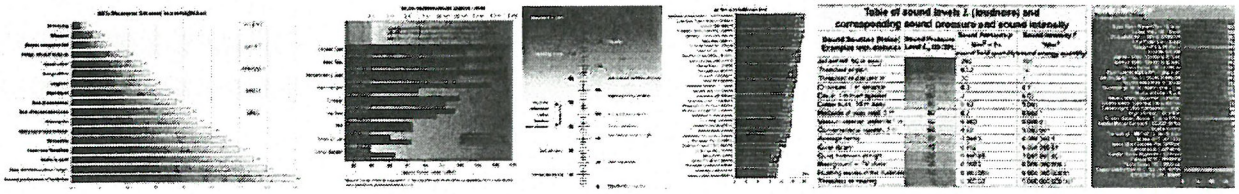
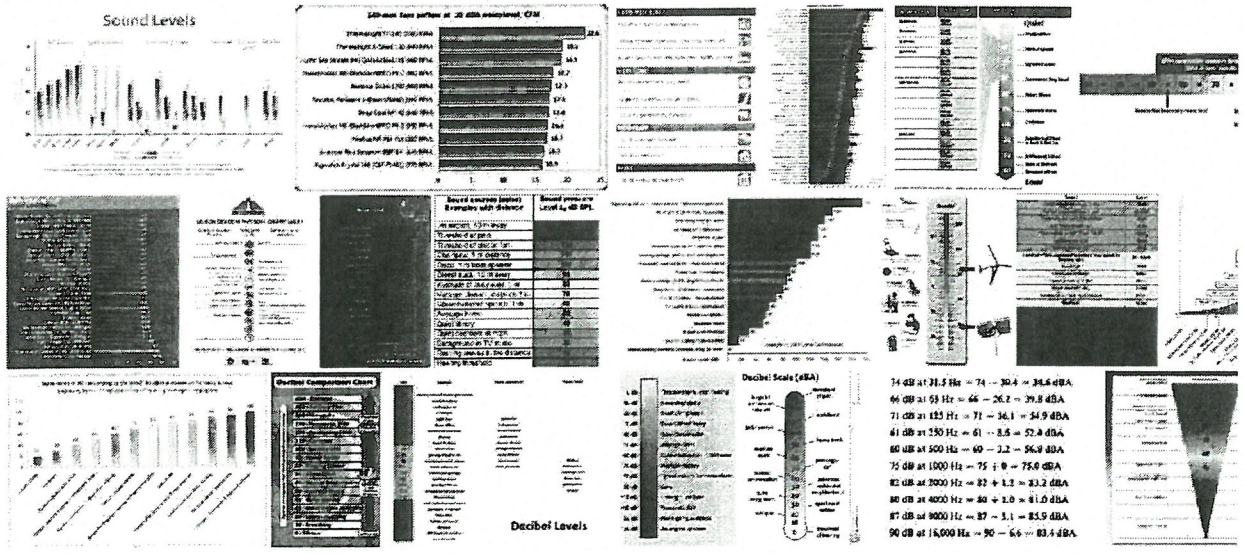


**Table of sound levels *L* (loudness) and corresponding sound pressure and sound intensity**

| Sound Sources (Noise) Examples with distance | Sound Pressure Level $L_p$ dB SPL | Sound Pressure $p$ $N/m^2 = Pa$ sound field quantity | Sound Intensity $I$ $W/m^2$ sound energy quantity |
|---|---|---|---|
| Jet aircraft, 50 m away | 140 | 200 | 100 |
| Threshold of pain | 130 | 63.2 | 10 |
| Threshold of discomfort | 120 | 20 | 1 |
| Chainsaw, 1 m distance | 110 | 6.3 | 0.1 |
| Disco, 1 m from speaker | 100 | 2 | 0.01 |
| Diesel truck, 10 m away | 90 | 0.63 | 0.001 |
| Kerbside of busy road, 5 m | 80 | 0.2 | 0.000 1 |
| Vacuum cleaner, distance 1 m | 70 | 0.063 | 0.000 01 |
| Conversational speech, 1 m | 60 | 0.02 | 0.000 001 |
| Average home | 50 | 0.006 3 | 0.000 000 1 |
| Quiet library | 40 | 0.002 | 0.000 000 01 |
| Quiet bedroom at night | 30 | 0.000 63 | 0.000 000 001 |
| Background in TV studio | 20 | 0.000 2 | 0.000 000 000 1 |
| Rustling leaves in the distance | 10 | 0.000 063 | 0.000 000 000 01 |
| Threshold of hearing | 0 | 0.000 02 | 0.000 000 000 001 |





## 5. MAJOR STREET CONSTRUCTION – The B-Permit

### 5.1. B-Permit Description and Purpose

The B-Permit is required for major street construction in the public right-of-way. This includes the widening of streets, the changing of existing street grade, and the installation of sewers, storm drains, street lights, and traffic control signals. Street widening generally includes construction of new street pavement, gutter, curb and sidewalk, and the relocation of obstructing structures. B-Permit construction plans are often complex and prepared by an Engineer hired by the B-Permit Applicant.

The B-Permit is issued for both the design and the construction of major street improvements. The primary purpose of a "design" B-Permit (BD-Permit) is to manage the City's engineering plan-check of construction plans prepared by the Applicant's Engineer. In addition to engineering plan-check, the BD-Permit process includes estimation of construction costs, preparation of a bond estimate, and under certain conditions, clearance of City Planning conditions. At the end of the BD-Permit process, construction plans for major street improvements are approved by the City and ready for construction.

The "construction" B-Permit (BC-Permit) process normally follows the completion of the design B-Permit process. The primary purpose of a BC-Permit is to manage the City's inspection of major street construction work. In addition to the City's construction inspection, work change orders, construction plan revisions, and field testing work are all managed by the BC-Permit process.

The B-Permit, both design and construction, is the City's process of ensuring that major street construction meets the City's design, materials, bonding, liability, construction, and inspection specifications. The B-Permit ensures that the Applicant is receiving a quality construction product.

The B-Permit is most frequently issued for major street improvements adjacent to land under private development. In these instances, the extent and type of major street improvements is contained in conditions determined by the City Council, Department of City Planning, the BOE (the City Engineer), or some other jurisdictional body in accordance with the Los Angeles Municipal Code, City Charter, State Law, or City Ordinance.

**City's Authority for B-Permit**

Los Angeles Municipal Code (LAMC), Section 62.105, requires a permit be obtained for construction in the public right-of-way.

LAMC, Section 62.106 determines the class of construction permit based on the scope of construction work. There are two classes of construction permits: the A-Permit and the B-Permit. The City's authority for the B-Permit is based on LAMC, Section 62.106(a) and (b) as follows:

(a) Class "A" shall include only the repair, construction or reconstruction of curbs, sidewalks, driveway approaches, or gutters and work appurtenant to the foregoing, or work within a public easement, where, in the opinion of the City Engineer, the work contemplated is so limited in extent and such simplicity of design that the deposit of those fees provided herein for Class "A" permits will with reasonable certainty compensate and reimburse the City for the costs of inspection and supervision entailed.

(b) Class "B" shall include all permits for work not included in Class "A" except for work for which a revocable permit is issued pursuant to Section 62.118.2 of this Code.

(Please note: LAMC, Section 62.118.2 refers to the issuance of a revocable permit for private use of the public right-of-way. Please go to Chapter 8, Private Use of the Public Right-of-Way – The Revocable Permit, for more information.)

**How long does it take to start the BD-Permit process?**

The BD-Permit for engineering plan-check of construction plans will be opened when a completed application package is submitted and the fee deposit paid. This transaction usually takes about 20 minutes at our Public Counters.

**How long does it take to complete the BD-Permit process?**

The time length depends on the complexity of the construction improvements, the size of the construction improvements, the quality of the Applicant's plans, the ability of the Applicant to satisfy the City's design standards, and the work-load of City staff. The plan-check process is interactive and therefore, somewhat difficult to predict. In general, simple design BD-Permits are completed in about 2 months.

**How long does it take to start the BC-Permit process?**

The BC-Permit may be started as soon as the BD-Permit process is completed and the Applicant has secured the required bond and liability insurance requirements. This process in generally initiated by the Applicant's Engineer and can be started as soon as requested by the Applicant.

**How long does it take to complete the BC-Permit?**

The BC-Permit process occurs at the same time as the major street construction work. In general, the length of the BC-Permit process is as long as it takes the Applicant's contractor to complete the major street construction and to complete the As-Builts of the drawings.

**How long is a B-Permit valid?**

The BD-Permit and BC-Permit is valid for six months after the date of payment and issuance of the permit, but may be extended at the request of the applicant. The applicant must have a valid reason to extend the permit or show that there is work activity on the permit.

**When does a B-Permit expire?**

According to the LAMC, the BD-Permit and BC-Permit technically expire six months after date of issuance. But, the LAMC allows for permit extensions if the Permittee has a good reason. In practice, if no work activity occurs, and no extension is requested, the BD-Permit expires one year after issuance. The BC-Permit expires two years after issuance, if no work activity occurs.

**B-Permit Extension**

If you are proceeding in a positive manner toward completion of your design or construction, the appropriate District Office may grant you an extension.

## 5.2. General Conditions or Requirements for a B-Permit

**Permittee's Obligations**

The Applicant for a BC-Permit must be the owner of the affected property. There are exceptions, such as when another governmental agency has a contract requiring a permit, in which case the Contractor may be the Applicant. If the property is owned by a corporation, the application must be signed by an officer(s) of the corporation and have the corporate seal affixed.

**Permittee's Purpose**

Listed here are some common cases where an Applicant may be required to obtain a B-Permit:

1) Tract and Parcel Map Approvals.

Department of Alcoholic Beverage Control

# STATEMENT RE: RESIDENCES
## (Rule 61.4)

State of California
Edmund G. Brown Jr., Governor

Applicant: Please complete left side of form, then sign. List addresses of all residences within 100 feet of your proposed premises. If there are none, write "None." Measure all distances by direct line from the closest edge of the residential structure to the closest edge of your structure or parking lot, whichever is closer. Your "parking lot" includes any area that is maintained for the benefit of your patrons or operated in conjunction with your premises. Continue on reverse if needed.

1. APPLICANT NAME

2. PREMISES ADDRESS *(Street number and name, city, zip code)*

| 3. RESIDENCES WITHIN 100' | DEPARTMENT USE ONLY | | | |
|---|---|---|---|---|
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 1. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 2. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 3. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 4. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 5. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 6. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 7. | NAME | | | |
| | LTR ☐ PERS ☐ | DATE | DISTANCE ft. | SEPARATION FACTORS |
| 8. | NAME | | | |

NON-INTERFERENCE (For Department Use Only)

*I acknowledge that any false, misleading or omitted information required in this statement may constitute grounds for denial of application for the license, or if the license is issued in reliance upon information in this statement which is offered, false or misleading, then such misinformation or omission will constitute grounds for revocation of the license so issued.*

4. APPLICANT SIGNATURE | DATE SIGNED

## INFORMATION AND INSTRUCTIONS

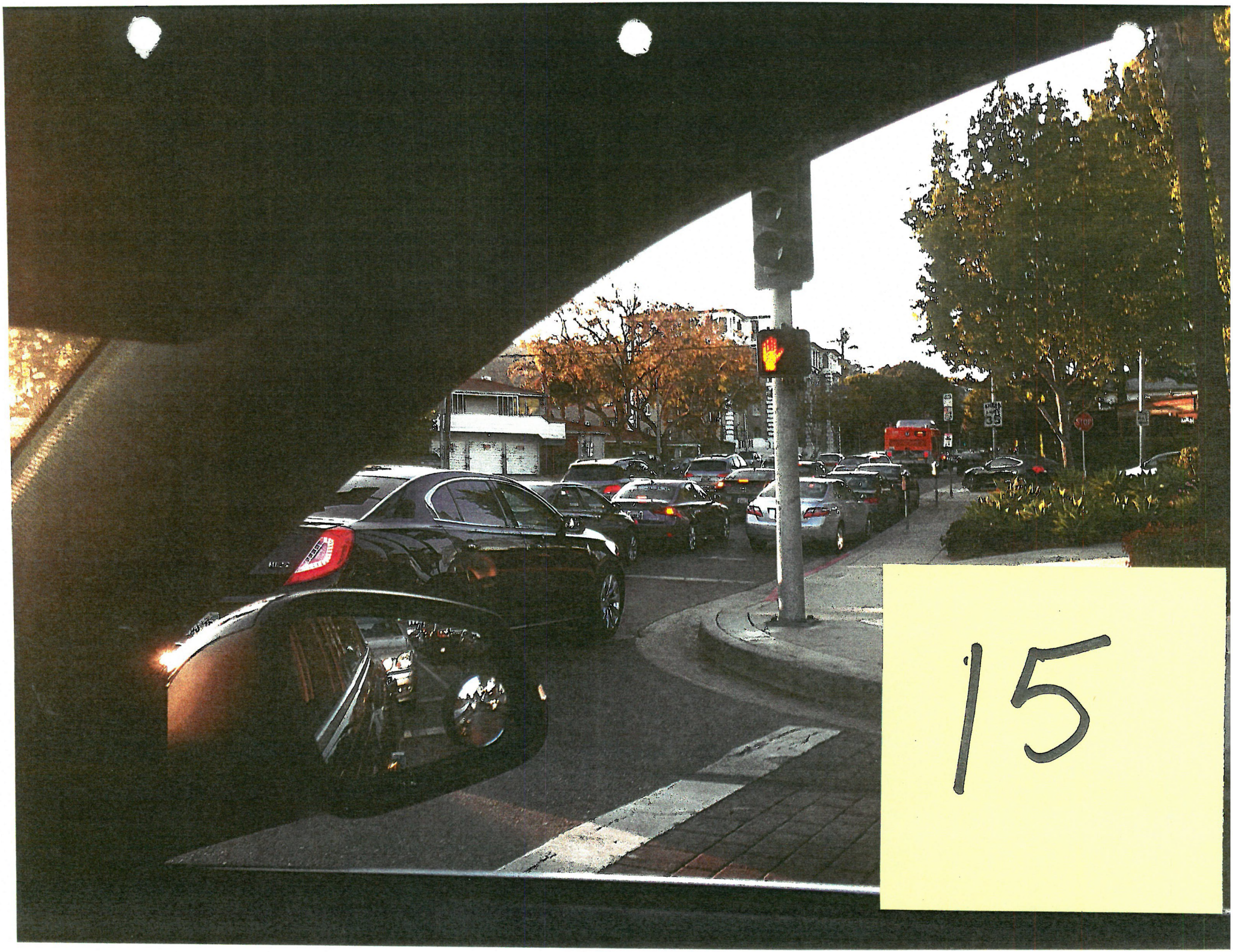
Rule 61.4, Chapter 1, Title 4, California Code of Regulations states:

> No original issuance of a retail license or premises-to-premises transfer of a retail license shall be approved for premises at which either of the following conditions exist:
>
> (a) The premises are located within 100 feet of a residence.
> (b) The parking lot or parking area which is maintained for the benefit of patrons of the premises, or operated in conjunction with the premises, is located within 100 feet of a residence. Where the parking lot is maintained for the benefit of patrons of multiple businesses in the vicinity of the premises, the parking area considered for the purpose of this rule shall be determined by the area necessary to comply with the off-street parking requirements as mandated by the local ordinance, or if there are no local requirements for off-street parking, then the area which would reasonably be necessary to accommodate the anticipated parking needs of the premises, taking into consideration the type business and operation contemplated.
>
> Distances provided for in this rule shall be measured by airline from the closest edge of any residential structure to the closest edge of the premises or the closest edge of the parking lot or parking area, as defined herein above, whichever distance is shorter.
>
> This rule does not apply where the premises have been licensed and operated with the same type license within 90 days of the application.
>
> Notwithstanding the provisions of this rule, the department may issue an original retail license or transfer a retail license premises-to-premises where the applicant establishes the operation of the business would not interfere with the quiet enjoyment of the property by residents.

A residence is defined as a place where people actually live, such as a single family home, condo, residential hotel or motel, or mobile home.

A determination must be made as to whether or not your proposed premises is located in an area as described above. In order to make such determination, it will be necessary for you to complete the front of this form, to be submitted at the time you file a formal application.

If you can establish that your business will not disturb the residents, your license may be issued subject to appropriate conditions.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