

Communication from Public

Name: Doug Haines

Date Submitted: 09/06/2022 12:41 PM

Council File No: 22-0023

Comments for Public Posting: Attached please find an objection letter from appellant representative Doug Haines of the La Mirada Ave. Neighborhood Association, for today's PLUM Committee hearing (agenda item number 5). The Case Numbers are APCC-2019-4338-SPE-CU-CUB-SPP-1A and ENV-2019-4339-MND.

September 4, 2022

Doug Haines
La Mirada Ave. Neighborhood Assn.
P.O. Box 93596
Los Angeles, CA 90093

Los Angeles City Council
200 N. Spring St.
Los Angeles, CA 90012

**Appeal of: Case Nos.: APCC-2019-4338-SPE-CU-CUB-SPP. ENV-2019-4339-MND.
Council File 22-0023.
Project Addresses: 1524-1530 N. Western Ave., 5446 Harold Way**

This letter addresses planning staff's response to our appeal of the Central Area Planning Commission's October 26, 2021 approval of a 60-foot-tall hotel on a 14,478 sq. ft. combined lot at the southeast intersection of Western Avenue and Harold Way in East Hollywood. The site is located in Subarea C of the Vermont/Western Transit Oriented District Specific Plan, also known the Station Neighborhood Area Plan (or "SNAP"). The site is immediately adjacent to Subarea A, designated in the Specific Plan as "Neighborhood Conservation," and its residentially zoned parcels.

The applicant received numerous discretionary entitlements in order to allow him to almost double the size of his existing 54-room Super 8 Motel, which was constructed in 1995 before the passage of the Specific Plan. The proposed project would add 36 guest rooms within the expanded project on floors three and four, and 10 "residential apartment units" on floor two. The underlying zoning of the project site however does not allow the proposed development. In order to evade the SNAP limitations, which were approved by the city council precisely to prevent such projects, the city granted the applicant the following entitlements:

1. A Conditional Use Permit to allow a hotel use otherwise prohibited from being within 500 feet of a Residential Zone;
2. A Specific Plan Exception from SNAP Section 9.A.1 to allow commercial uses above the ground floor;
3. A Specific Plan Exception from SNAP Section 9.C.1 to allow the project to be 60 feet in height, in lieu of the SNAP transitional height restrictions that would otherwise limit the height to 25 feet.

The City further approved the project's project permit compliance review, and its Mitigated Negative Declaration (MND). As noted in the appeal, neither approval is warranted.

When analyzing this case, it is important to remember that community plans like the SNAP represent the hard-fought compromise of competing interests. In this way, specific plans are like contracts upon which those competing interests rely when making decisions concerning their property in relation to other stakeholders in the community. While one stakeholder may desire increased density or height, another may be passionately committed to preserving the existing character of her neighborhood. Accordingly, when a developer and the City collaborate to single out one project for special privileges at the expense of others, they undermine the balance embodied in the Plan. This is why the law requires detailed and specific findings to support deviations from specific plans.

As noted by the California Supreme Court, “A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. If the interest of those parties in preventing unjustified variance awards for neighboring land is not sufficiently protected, the consequence will be the subversion of the critical reciprocity, upon which zoning regulation rests.” Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 517

LAMC § 11.5.7(F)(1)(a) further defines this rigid standard: “An exception from a specific plan shall not be used to grant a special privilege, nor to grant relief from self-imposed hardships.” Case authority is the same. The Supreme Court has held that “self-imposed burdens cannot legally justify the granting of a variance.” Broadway, Laguna, Vallejo Association v. Board of Permit Appeals of City and County of San Francisco (1967) 66 Cal.2d at 774, 778.

Yet here, the Applicant has created his own burdens by seeking to build a project prohibited by law and too large for his lot. The Applicant purchased the adjacent residential property fully aware of the applicable zoning laws and limitations of the site, and has claimed no special circumstances unique to the property itself. Instead, he asks you to grant him special privileges that would breach the agreement and compromises embodied in the Specific Plan.

The City claims in its findings that the grant of the specific plan exceptions and the conditional use permit will have no detrimental effects on surrounding properties, but the approved entitlements, -- especially the increased height -- establishes precedent for waivers of other projects and runs counter to the stated purpose of the Specific Plan to guide all development to assure compatibility of uses.

“A zoning variance, and by analogy a specific plan exception, must be ‘grounded in conditions peculiar to the particular lot as distinguished from other property’ in the specific plan area. Unnecessary hardship therefore occurs where the natural condition or topography of the land places the landowner at a disadvantage vis-à-vis other landowners in the area, such as peculiarities of the size, shape or grade of the parcel... Further, the special circumstances pertaining to the property must be such that the property is distinct in character from comparable nearby properties.” Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (2008) 161 Cal.App.4th 1168,1183.

Absent the rigorous application of these criteria, the danger is that the social contract between the people and their government would be subverted because the City’s leap from the raw evidence to unconnected and unsupportable ultimate conclusions would, *de facto*, result in the improper rezoning of property under the guise of granting a zoning variance or exceptions to a specific plan.

“In the absence of an affirmative showing that a particular parcel in a certain zone differed substantially and in relevant aspects from other parcels therein, a variance granted with respect to that parcel amounted to the kind of ‘special privilege’ explicitly prohibited by Government Code § 65906, establishing criteria for granting variances.” Topanga, supra, at 509.

The city provides no examples where the exceptions granted to the applicant are necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other properties in the same zone and vicinity, but which, because of special circumstances and practical hardships, is denied the property in question.

Instead of providing such examples of properties granted exceptions to the transitional height limitations and commercial use restrictions, the city findings state “*the SNAP did not take into consideration a non-traditional mixed-use building made up of a hotel use and residential units,*” and “*other lots within the vicinity that are within Subarea C and about a Subarea A lot, about the Subarea A lot to the rear.*” There is no proof or examples for either claim, and no explanation for how such factors would be relevant even if true.

The city further contends that the applicant’s expansion of his hotel onto his existing surface parking lot and the adjacent parcel creates an “*L-shaped design of the lot,*” and that this “*unusual design*” as the city describes it is an exceptional circumstance. Such claims are nonsense, particularly because it is the applicant himself who has created the lot configuration, and therefore any hardship is entirely self-imposed.

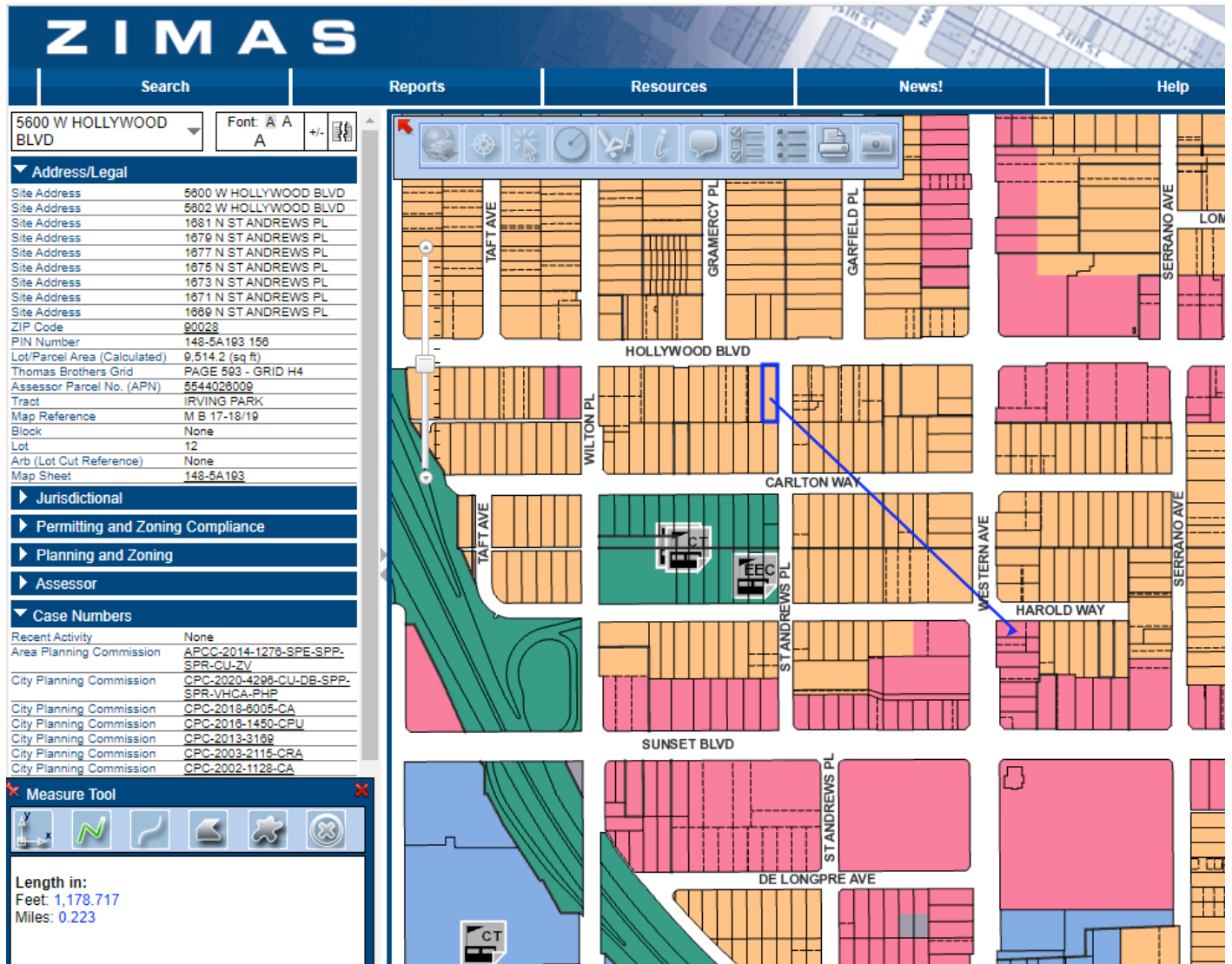
The purpose of an exception is to serve as a relief mechanism when the land itself would otherwise be unusable, not the improvements on that land. The hardship must be upon the property and not a financial hardship upon the property owner. The purpose of an exception is not to grant special privileges or to permit a use that is inconsistent with the underlying zoning. That’s why Los Angeles Municipal Code (LAMC) Section 11.5.7.F notes: “An exception from a specific plan shall not be used to grant a special privilege, or to grant relief from self-imposed hardships.”

In 2015, the city denied several SNAP exception requests and a conditional use permit for a proposed hotel development at 5600 Hollywood Blvd., three blocks northwest of the proposed Harold Way project. (See 2-25-2015 letter of determination at **Exhibit 1**).

In denying the requested entitlements for the 5600 Hollywood hotel project, which included a Specific Plan exception for a height increase, the city found that there were 1) no exceptional circumstances; 2) that the project was not in compliance with SNAP’s Purposes and goals; and 3) that the grant of the exceptions would be detrimental to the public welfare. As stated in the findings:

“The requested Specific Plan Exceptions are not necessary to make the site developable. The requested Specific Plan Exceptions appear to make an already developable site *more* developable. The site is afforded the same development rights as all adjacent parcels of land. The Exceptions are not necessary for the preservation of a property right that is possessed by adjacent properties but denied to this one.”

Note below the City’s ZIMAS map showing the proximity of the 5600 Hollywood proposed hotel project with the instant request. Note further that both hotel projects are located in SNAP Subarea C.



The city cannot speak out of both sides of its mouth, denying one applicant's request for a hotel use in Subarea C while approving similar SNAP exceptions to allow an expanded hotel use only three blocks away.

Furthermore, on July 17, 2014, the final decision was issued in the case of La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles City Council (Case No. BS140889), overturning the city's approval of numerous exceptions to the Specific Plan, including a height exception, for a proposed Target store at 5500 Sunset Blvd. (one block south of the proposed hotel expansion). (See **Exhibit 2**).

In overturning the city's grant of an exception to SNAP's height limit, the Court found in part: *"The exception for Target's 74 foot, 4 inch design, if allowed, will become a precedent used by other applicants throughout SNAP to apply for height and bulk exceptions (variances) for commercial developments."* (Page 7).

As further noted by the Court, “*The height restriction codified in the SNAP presumably expressed the community’s standard for ‘public welfare’ with respect to commercial building height at the time when SNAP was adopted. Nothing in the evidence that is identified to support the finding suggests that a building that exceeds by double the SNAP height standard is in furtherance of public welfare or is not injurious to nearby properties. There is no substantial evidence to support the finding.*” (Page 8).

There are no practical difficulties or unnecessary hardships related to the subject property that cannot be relieved by changing the scope of the proposed project. There are no special circumstances that justify the second required finding, as nothing distinguishes the subject lot generally from other parcels in the same zone and vicinity. There is no precedent for exceeding the SNAP transitional height limitation or allowing commercial uses above the ground floor. The grant of the SNAP Exceptions is therefore illegal and must be overturned.

CEQA: The Mitigated Negative Declaration offers no substantial evidence for its conclusions.

The applicant failed to conduct any ambient noise analysis at the site to determine construction and operational noise impacts, meaning that no realistic noise and vibration mitigation measures have been conditioned to the project. The project is not subject to a categorical exemption, but required a Mitigated Negative Declaration (MND). Because the MND offers no substantial evidence to support its conclusions, it is inadequate.

It’s important to note that under CEQA, an agency may not ignore evidence of an unusual circumstance creating a reasonable possibility of a significant environmental impact. Committee to Save the Hollywoodland Specific Plan v City of Los Angeles (2008) 161 Cal.App.4th 1168, 1187 (city approval set aside because city failed to consider proffered evidence regarding historic wall).

Likewise, an agency may not avoid preparing an environmental analysis by failing to gather relevant data. The City argues that ambient noise analysis is unnecessary.

Yet in Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 311, the First District Court of Appeal warned against such a “mechanical application” of the “fair argument” rule in situations where agencies have failed to gather the data necessary for an informed decision. The court indicated that an EIR may be required even in the absence of concrete “substantial evidence” of potential significant impacts. The court explained that, because “CEQA places the burden of environmental investigation on government rather than the public,” an agency “should not be allowed to hide behind its own failure to gather relevant data.”

The notion that an agency “should not be allowed to hide behind its own failure to gather relevant data” (Sundstrom, *supra*, at 311) is consistent with the California Supreme Court’s statement in No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75, that an EIR should be prepared in “doubtful case[s],” so that agencies do not make decisions “without the relevant data or a detailed study of it.” “One of the purposes of the impact statement is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit...resources to the project.”

CEQA contains a strong presumption in favor of requiring preparation of an EIR. This presumption is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.

Under CEQA and CEQA Guidelines, if a project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project “may” have a significant effect on the environment if there is a “reasonable probability” that it will result in a significant impact. No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d at 83 n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

This standard sets a “low threshold” for requiring preparation of an EIR. Citizen Action To Serve All Students v. Thornley (1990) 222 Cal.App.3d 748, 754. If substantial evidence supports a “fair argument” that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. No Oil, Inc. v. City of Los Angeles, supra; Brentwood Association for no Drilling, Inc. v. City of Los Angeles (1982) 134 Cal.App.3d 491.

The CEQA Guidelines at 14 Cal. Code Regs. § 15384(a) define “substantial evidence” as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached...”

Under Pub. Res. Code §§ 21080(e), 21082.2(c), and CEQA Guidelines §§ 15064(f)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

“Under the fair argument approach, *any* substantial evidence supporting a fair argument that a project may have a significant environment effect would trigger the preparation of an EIR.” Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98, 113 (*italics in original*).

Communities for a Better Environment is also significant because it clarifies that agency “thresholds of significance” are not necessarily the threshold that may be used in determining the existence of a “significant” impact. A significant impact may occur even if the particular impact does not trigger or exceed an agency’s arbitrarily set threshold of significance. *Id.* at 114.

Whether the administrative record contains a fair argument sufficient to trigger preparation of an EIR is a question of law, not a question of fact. Under this unique test, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1318.

The Court in Stanislaus Audubon Society v. County of Stanislaus (1995) 33 Cal.App.4th 144, 151 also stressed the “low threshold” vis-à-vis the presence of a fair argument, noting that a lead agency should not give an “unreasonable definition” to the term substantial evidence, “equating it with overwhelming or overpowering evidence. CEQA does not impose such a monumental burden” on those seeking to raise a fair argument of impacts.

This principle is codified in California Code of Regulations, title 14, section 15064(h), which provides:

“In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environmental effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR.”

A significant construction noise impact occurs if construction activities that last more than one day would increase the ambient noise levels by 10 dBA or more at any off-site noise-sensitive location. Alternatively, construction activities lasting more than 10 days in a three-month period that increase the ambient noise levels by 5 dBA or more at any off-site noise-sensitive location are also considered a significant impact. The proposed Project has an approximately 2-year construction schedule. The construction site borders a quiet, restricted density residential neighborhood, with NO SETBACK requirement from the property line (Condition 68).

68. Setback. No front, side or rear yard setbacks shall be required.

Under typical geometrical spreading loss, the predicted noise level at 10 feet is 14 dBA higher than at 50 feet. That would raise the reference noise level to at least 89 dBA when operating close to the site boundary. If a distance adjustment is correctly applied, residential uses listed as “adjacent” would in fact experience a 50+ dBA increase. Any conclusions based upon a 75 dBA reference noise level are therefore invalid when equipment operates near the site boundary.

The proposed project would be 60 feet tall, making fencing and curtains infeasible, and the determination letter contains no construction noise mitigation measures because no significant noise and vibration impacts were acknowledged in the MND, precluding the city from imposing any such requirements. A significant construction noise impact is unavoidable.

The City proposes that construction noise reduction measures consist of scheduling, off-site staging, and retrofitting equipment with adequate mufflers. None of these measures will buffer the noise and vibration generated by building a 60-foot-tall structure zero feet from the property line and adjacent residential apartments.

Unless a mitigation measure is included that completely restricts equipment operation closer than 50 feet, and would wrap the structure in a 70-foot-tall noise reduction blanket, the city’s conclusions related to health and safety impacts cannot be supported. There is therefore no basis for the city and the applicant to contend that there will be no significant noise and vibration impacts.

INDEPENDENT - EASY SAVINGS - EXCELLENT SUPPORT



Super 8 by Wyndham Hollywood/LA Area

★ ★ 1536 N Western Ave, Los Angeles, CA 90027 US

[See Map](#)

ReservationCounter.com: 844-201-6277



Above: advertisement for the existing Super 8 Motel

THE CITY HAS NOT REVISED EXHIBIT A TO CONFORM WITH SNAP

The commission approved "Exhibit A" as attached to the staff recommendation report, which is the building design plans. However, as noted in the appeal, on determination letter page F-17, the SNAP Development Standards require that no portion of any structure exceed 30 feet in height within 15 feet of the front property line, and that the second floor must be set back at least 10 feet from the first floor. As also noted on page F-18, the Development Standards require that all rooflines in excess of 40 feet be broken up. The project as designed violates both of these requirements.

The City states that the error will be corrected during the clearance process, yet the City and applicant have had ample opportunity to correct the error now by changing the project's plans. As things currently stand, Condition #71, "Building Stepback," includes no reference to the violation. Condition #75, which deals with the rooflines, acknowledges that the plans do not comply with SNAP.

For these and other reasons detailed above, the Project as proposed would create a myriad of significant adverse impacts upon this neighborhood. It is respectfully submitted that the Project's approvals lack justification and must be overturned.

Thank you for your courtesy and attention to this matter.

A handwritten signature in black ink, appearing to read "H. Ham", with a long horizontal line extending to the right.

September 4, 2022

**Appeal of Case Nos. APCC-2019-4338-SPE-CU-CUB-SPP;
ENV-2019-4339-MND.; Council File 22-0023.**

Project Addresses: 1524-1530 N. Western Ave., 5446 Harold Way

EXHIBIT 1



CENTRAL AREA PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012, (213) 978-1300
www.planning.lacity.org

DETERMINATION MAILING DATE FEB 25 2015

CASE: APCC-2014-1276-SPE-SPP-SPR-CU-CUB-ZV

CEQA: ENV-2014-1277-MND

Location: 5600, 5602 W. Hollywood Boulevard and 1669, 1671, 1673, 1675, 1677, 1679 and 1681 North St. Andrews Place

Council District: 13 – O'Farrell

Plan Area: Hollywood

Zone: [Q]R5-2, SNAP Subarea C Community Center

APPLICANT: Mark Vaghei, Atelier V, Inc.
Representative: Bill Christopher, Urban Concepts

At its meeting on **February 10, 2015**, the following action was taken by the Central Area Planning Commission:

1. **Did not Adopt** Mitigated Negative Declaration ENV-2014-1277-MND for the above referenced project pursuant to Section 21082.1(c)(3) of the California Public Resources Code.
2. **Denied Specific Plan Exceptions** from the Vermont/Western Transit Oriented District Specific Plan / Station Neighborhood Area Plan (SNAP), Ordinance 173,749, as follows:
 - A. From Section 9.A. to allow 80 guest rooms in lieu of 47 guest rooms allowed for R4 Zone uses.
 - B. From Section 9.B.1. to allow a 2.8:1 Floor Area Ratio (FAR) in lieu of 1.5 FAR maximum for commercial developments, and a building height of 75 feet in lieu of 35 feet for commercial developments.
 - C. From Section 9.E.3. to allow 31 parking spaces in lieu of the required 45 parking spaces.
 - D. From Section 9.1. and Section V. Development Standard No. 6 as follows:
 - (a) Building Design – Stepbacks. To allow a structure that is 75 feet in height within three-feet of the front property line in lieu of the requirement that no portion of any structure exceed more than 30 feet within 15 feet of the front property line, and a three-foot building stepback along Hollywood Boulevard in lieu of the required ten-foot stepback of the second floor from the first floor.
 - (b) Building Design – Transparent Building Elements. To allow less than 50 percent transparent elements on the exterior wall surface of the ground floor facades of the side elevations and no transparent elements on the exterior wall surface of the ground floor façade of the rear elevation.
3. **Denied a Project Permit Compliance Review** with the Vermont/Western Transit Oriented District Specific Plan / Station Neighborhood Area Plan (SNAP), Ordinance 173,749.
4. **Denied without prejudice a Conditional Use** to permit a hotel with 80 guestrooms in the [Q]R5-2 Zone and that is located within 500 feet of an R Zone pursuant to LAMC Section 12.24 W.24 of the Municipal Code.
5. **Denied without prejudice a Conditional Use** to permit the sale of a full line of alcoholic beverages for on-site consumption in the attached restaurant and as part of the room service function within the guest rooms pursuant to LAMC Section 12.24 W.1 of the Municipal Code.

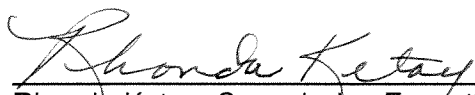
6. **Denied as not necessary a Zone Variance** to permit the sale and dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with a restaurant that is located within a hotel in the [QJR5-2 Zone pursuant to LAMC Section 12.27 A. of the Municipal Code.
7. **Denied a Site Plan Review** for a project which creates, or results in an increase of 50 or more guest rooms pursuant to LAMC Section 16.05 of the Municipal Code.
8. **Adopted** the Staff Findings.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Commissioner Millman
Seconded: Commissioner Chemerinsky
Ayes: Commissioners Brogdon, Chung Kim, and Lopez

Vote: 5 – 0


Rhonda Ketay, Commission Executive Assistant
Central Area Planning Commission

Effective Date/Appeals: Any aggrieved party may appeal the decision of the Central Area Planning Commission to the City Council within **15 days** of the date of this determination. Any appeal not filed within the **15-day period** shall not be considered by the Council. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys, CA 91401.

FINAL APPEAL DATE: MAR 12 2015

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Findings

cc: Notification List
Blake Lamb, City Planner

FINDINGS

Entitlement Findings

1. Specific Plan Exception Findings

- a. **The strict application of the policies, standards and regulations of the specific plan to the subject property will NOT result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Plan.**

The Vermont/Western Specific Plan consists of five Subareas that include:

- Subarea A (Neighborhood Conservation)
- Subarea B (Mixed Use Boulevard)
- Subarea C (Community Center)
- Subarea D (Light Industrial/Commercial)
- Subarea E (Community Facilities)

As discussed in the Vermont/Western Development Standards and Design Guidelines, the purpose of Subarea A is to preserve the prevailing density and character of the existing neighborhoods. The purpose of Subarea B is to create a low density mix of town homes, small offices, live/work spaces, workshops and neighborhood serving retail. The purpose of Subarea C is create a denser, livelier pedestrian environment along the major commercial and transit corridors with a mix of uses that include multi-family residences, community serving retail, workshops and. The purpose of Subarea D is to preserve industrial areas and regulate transitional treatments where industrial sites abut residential. Subarea E includes current school sites, City owned land and the Caltrans right-of-way and to recommend criteria for public projects.

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site. The project would provide 31 parking spaces and 68 bicycle parking spaces that are located at-grade and within a subterranean parking level. Vehicular access to the parking area would be provided from St. Andrews Place along the east property line. Pedestrian access would be provided on Hollywood Boulevard along the north property line.

The site is located in Subarea C Community Center of the SNAP. Commercial only projects are allowed a maximum building height of 35 feet and a maximum FAR of 1.5:1. Mixed-use projects with a residential component (and commercial uses limited to the ground floor) are allowed a maximum building height of 75 feet and a maximum FAR of 3.0:1. As previously mentioned, pursuant to Section 6.H of the SNAP, floor area associated with a hotel is to be counted as commercial floor area. Therefore, while the project consists of guest rooms and a restaurant it is not considered a mixed-use project per the SNAP. It is therefore limited to 35 feet in height and a 1.5:1 FAR. The project is requesting a 2.8:1 FAR and a height of 75 feet and has thus requested a Specific Plan Exception. The SNAP Subarea C allows guest rooms to be built to the R4 density, which is one guest room per each 200 square feet of lot area. This amounts to 47 units, while the project proposes 80 units. The project is also requesting reduced parking, from the required 45 parking spaces to 31 parking spaces. It is also requesting deviations from the Design Standards for transparency and building heights within the required setbacks.

The SNAP provides the following purposes which are intended to guide appropriate development in the SNAP. Adhering to the SNAP regulations does not create practical difficulties or unnecessary hardships inconsistent with the following purposes of the SNAP:

- Guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space and the economic and social well-being of area residents;
- Preserve the quality of existing residential neighborhoods by limiting new residential development which would exceed the prevailing density of such neighborhoods, and establish standards for new construction in such neighborhoods to conform to the existing neighborhood character;
- Create a transit friendly area by requiring conformance to pedestrian oriented design guidelines that establish building facade treatments, landscape standards, criteria for shade-producing building overhangs and awnings, street lighting and security lighting for streets, alleys, sidewalks and other pedestrian areas that adjoin new development;

The SNAP establishes a density gradation for the Subareas based on the proximity to Red Line Stations. The SNAP is designed with Subarea A and B not as intensive as Subarea C. There is a progression of the uses and intensity of development between Subarea A and C. Of all the Subareas in the SNAP, Subarea C permits the greatest development potential and density. These regulations were specifically tailored to allow for additional growth while still maintaining community compatibility.

All properties surrounding the proposed site are located in Subarea C and are permitted to develop to the same regulations. The project is requesting an intensity of development that is not permitted anywhere in the SNAP, in direct conflict with the above Purposes of the plan. Adhering to the regulations of Subarea C would not result in practical difficulties inconsistent with the plan; in contrast, granting the requested Exceptions would be inconsistent with the Plan Purposes.

b. There are NOT exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not generally apply to other properties within the specific plan area.

The applicant is requesting a Specific Plan Exception from Section 9.B.1 of the SNAP to allow a 2.8:1 Floor Area Ratio (FAR) in lieu of a 1.5 FAR required for commercial developments, and a building height of 75 feet in lieu of 35 feet for commercial developments. The applicant is requesting a Specific Plan Exception from Section 9.A of the SNAP to permit 80 guest rooms in lieu of the 47 otherwise permitted. The project is also requesting reduced parking, from the required 45 parking spaces to 31 parking spaces. It is also requesting deviations from the Design Standards for transparency and building heights within the required setbacks.

The project site is comprised of a vacant lot that is rectangular-shaped, relatively level and contains approximately 9,514 square feet of lot area. According to building permits, the last building to exist on the project site was constructed in 1922 and demolished in 1995 as a result of the Northridge Earthquake. While the site is not exceptionally large it is of a comparable size with many adjacent Subarea C lots including the lot next door (which measures 9,514.2 square feet), to the south (which measures 8,602 square feet).

The site is a corner lot, so while access on Hollywood Boulevard is restricted it is able to easily take access of St. Andrews Place, which affords this lot better access than many of the interior lots along Hollywood Boulevard. During the course of the Environmental Review, no special environmental conditions were uncovered that were unique to the site. The site is vacant and is not constrained by existing development. The site is required to provide a dedication of land along Hollywood Boulevard which increases development constraints; however, all other lots in this vicinity would likewise provide such dedications at the time they are redeveloped.

There are no exceptional circumstances or conditions that specifically apply to this lot and do not apply to other properties within the Specific Plan.

- c. The requested exception is NOT necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone and vicinity but which, because of such special circumstances and practical difficulties or unnecessary hardships is denied to the property in question.**

The applicant is requesting a Specific Plan Exception from Section 9.B.1 of the SNAP to allow a 2.8:1 Floor Area Ratio (FAR) in lieu of a 1.5 FAR required for commercial developments, and a building height of 75 feet in lieu of 35 feet for commercial developments. The applicant is requesting a Specific Plan Exception from Section 9.A of the SNAP to permit 80 guest rooms in lieu of the 47 otherwise permitted. The project is also requesting reduced parking, from the required 45 parking spaces to 31 parking spaces. It is also requesting deviations from the Design Standards for transparency and building heights within the required setbacks.

The applicant has the right to build a 35 foot tall building, at a 1.5:1 FAR, and with 47 hotel rooms. If the applicant constructed this conforming project, the project's parking requirements would be reduced. In addition, by reducing the building size, the applicant could more easily comply with the Design Standard requirements for transparency and setbacks. A project of this type would not need Specific Plan Exceptions and could be processed by the Planning Department as a Project Permit Compliance. The requested Specific Plan Exceptions are not necessary to make the site developable. The requested Specific Plan Exceptions appear to make an already developable site *more* developable. This site is afforded the same development rights as all adjacent parcels of land. The Exceptions are not necessary for the preservation of a property right that is possessed by adjacent properties but denied to this one.

- d. The granting of the exception WILL be detrimental to the public welfare and injurious to property or improvements adjacent to or in the vicinity of the subject property.**

As described above, the project is not in compliance with SNAP Purposes that are intended to guide development in a way that is compatible with adjacent properties:

- Guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space and the economic and social well-being of area residents;
- Preserve the quality of existing residential neighborhoods by limiting new residential development which would exceed the prevailing density of such

neighborhoods, and establish standards for new construction in such neighborhoods to conform to the existing neighborhood character;

- Create a transit friendly area by requiring conformance to pedestrian oriented design guidelines that establish building facade treatments, landscape standards, criteria for shade-producing building overhangs and awnings, street lighting and security lighting for streets, alleys, sidewalks and other pedestrian areas that adjoin new development;

Not only does the proposed project not achieve these goals, but it runs contrary to them. The project proposes to increase density, height, and floor area above and beyond what is permitted. The SNAP establishes a density gradation for the Subareas based on the proximity to Red Line Stations. The SNAP is designed with Subarea A and B not as intensive as Subarea C. There is a progression of the uses and intensity of development between Subarea A and C. Of all the Subareas in the SNAP, Subarea C permits the greatest development potential and density. These regulations were specifically tailored to allow for additional growth while still maintaining community compatibility. The project is also requesting reduced parking, from the required 45 parking spaces to 31 parking spaces. It is also requesting deviations from the Design Standards for transparency and building heights within the required setbacks.

Granting these Exceptions would be detrimental to the public welfare and injurious to property and improvements. The Exceptions are contrary to regulations specifically tailored to ensure public welfare and appropriate development.

e. The granting of the exception is NOT consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.

The applicant is requesting a Specific Plan Exception from Section 9.B.1 of the SNAP to allow a 2.8:1 Floor Area Ratio (FAR) in lieu of a 1.5 FAR required for commercial developments, and a building height of 75 feet in lieu of 35 feet for commercial developments. The applicant is requesting a Specific Plan Exception from Section 9.A of the SNAP to permit 80 guest rooms in lieu of the 47 otherwise permitted. The project is also requesting reduced parking, from the required 45 parking spaces to 31 parking spaces. It is also requesting deviations from the Design Standards for transparency and building heights within the required setbacks.

The SNAP provides the following purposes which are intended to guide appropriate development in the SNAP. Adhering to the SNAP regulations does not create practical difficulties or unnecessary hardships inconsistent with the following purposes of the SNAP:

- Guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space and the economic and social well-being of area residents;
- Preserve the quality of existing residential neighborhoods by limiting new residential development which would exceed the prevailing density of such neighborhoods, and establish standards for new construction in such neighborhoods to conform to the existing neighborhood character;
- Create a transit friendly area by requiring conformance to pedestrian oriented design guidelines that establish building facade treatments, landscape standards,

criteria for shade-producing building overhangs and awnings, street lighting and security lighting for streets, alleys, sidewalks and other pedestrian areas that adjoin new development;

2. Project Permit Compliance Findings

- a) The project does NOT substantially comply with the applicable regulations, findings, standards and provisions of the Specific Plan.**

As found above, the proposed project does not comply with the SNAP regulations regarding height, density, floor area ratio, or the Design Standards regarding transparency and building heights within setbacks. The project requests 2.8:1 FAR when only 1.5:1 is permitted; requests a height of 75 feet when only 35 feet is permitted; requests a density of 80 guest rooms when only 47 are permitted; and does not meet two of the required Development Standards. Therefore, the project does not substantially comply with the regulations of the Specific Plan and is thus denied.

- b) The project does NOT incorporate mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.**

A Mitigated Negative Declaration (ENV-2014-1277-MND) was prepared for the proposed project. The Mitigated Negative Declaration was prepared and circulated for public review on October 3, 2014 and the circulation period ended on November 3, 2014. On the basis of the whole of the record before the lead agency including any comments received, the lead agency finds that, with imposition of the mitigation measures described in the MND, there is no substantial evidence that the proposed project would have a significant effect on the environment. The attached Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. The records upon which this decision is based are with the Environmental Review Section of the Planning Department in Room 750, 200 North Spring Street. Given that the project is recommended for denial, the Environmental Findings cannot be made.

3. Site Plan Review Findings

- a. The project is NOT in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan.**

The project is not in substantial conformance with the SNAP Specific Plan. As found above, the proposed project does not comply with the SNAP regulations regarding height, density, floor area ratio, or the Design Standards regarding transparency and building heights within setbacks. The project requests 2.8:1 FAR when only 1.5:1 is permitted; requests a height of 75 feet when only 35 feet is permitted; requests a density of 80 guest rooms when only 47 are permitted; requests 31 parking spaces where 45 are required; and does not meet two of the required Development Standards. Therefore, the project does not substantially comply with the regulations of the Specific Plan, Site Plan Review findings cannot be made, and the project is thus denied.

- b. The project does NOT consist of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that**

is or will be compatible with existing and future development on adjacent properties and neighboring properties.

The purpose of the SNAP is to guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space and the economic and social well-being of area residents.

As found above, the proposed project does not comply with the SNAP regulations regarding height, density, floor area ratio, or the Design Standards regarding transparency and building heights within setbacks. The project requests 2.8:1 FAR when only 1.5:1 is permitted; requests a height of 75 feet when only 35 feet is permitted; requests a density of 80 guest rooms when only 47 are permitted; requests 31 parking spaces where 45 are required; and does not meet two of the required Development Standards. Therefore, the project is not compatible with existing and future development on adjacent properties and is thus denied.

- c. The residential project does NOT provide recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties.**

Hotels are not required to provide recreational and service amenities for guests; therefore this finding is not applicable.

4. Conditional Use Findings – Hotel Use

- a. The project will NOT 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.**

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Hotels within 500 feet of a residential zone site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Hotel use may be reconsidered.

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

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not

approved, the Conditional Use Permit for Hotels within 500 feet of a residential zone site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Hotel use may be reconsidered.

- c. The project does NOT substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.**

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Hotels within 500 feet of a residential zone site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Hotel use may be reconsidered.

5. Conditional Use for Alcohol Permit Findings

- a. The project will NOT 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.**

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

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

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As found above, the proposed project's location, size, height, and other significant features will adversely affect the surrounding neighborhood and is therefore denied. As the building itself is not

approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

c. The project does NOT substantially conform with the purpose, intent and provisions of the General Plan, the applicable community plan, and any specific plan.

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

Additional Findings for Alcohol Permits

d. The proposed use WILL adversely affect the welfare of the pertinent community.

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

e. The granting of the application WILL result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, including beer and wine, in the area of the City involved, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control's guidelines for undue concentration; and also giving consideration to the number and proximity of these establishments within a one thousand foot radius at the site, the crime rate in the area (especially those crimes involving public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct), and whether revocation or nuisance proceedings have been initiated for any use in the area.

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories,

75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

- f. **The proposed use WILL detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration of the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds, and other similar uses, and other establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine.**

The project is the construction, use and maintenance of a boutique hotel with 80 guestrooms and 867 square feet of restaurant space. The new hotel would be six-stories, 75 feet in height (with a roof structure up to 79 feet) and consist of 26,671 square feet of floor area on an approximately 9,514-square-foot site.

As previously found, the proposed project's Specific Plan Exceptions, Project Permit, and Site Plan Review are denied as the findings cannot be made. As the building itself is not approved, the Conditional Use Permit for Alcohol sales and consumption on the site is denied without prejudice. The proposed project may refile a new entitlement application with the Planning Department with an alternative building design; at such time, the request for the Conditional Use Permit for on-site sales and consumption of alcohol use may be reconsidered.

6. **Zone Variance Findings.** The applicant has requested a Variance Pursuant to LAMC Section 12.27 A. of the Municipal Code to permit the sale and dispensing of a full line of alcoholic beverages for on-site consumption in conjunction with a restaurant that is located within a hotel in the [Q]R5-2 Zone.

The Hollywood Community Plan Map designates the subject property as High Density Residential with corresponding zone of [Q] R5-2. The SNAP designates this property within Subarea C, Community Center. Subarea C allows the use and area regulations of the R4 and C4 zone to apply to all lots in Subarea C, regardless of the underlying zoning designation. Therefore, the SNAP permits the site to have the alcohol use without requiring a variance. In addition, the SNAP includes the following language:

*Whenever this Specific Plan contains provisions which require or **permit greater or lesser setbacks, street dedications, open space, densities, heights, uses, parking, or other controls on development than would be allowed or required pursuant to the provisions contained in Chapter 1 of the Code, the Specific Plan shall prevail and supersede the applicable provisions of the Code.***

Therefore, while the underlying Zone is [Q]R5, the SNAP permits C4 uses on the site and the Variance is denied as not necessary.

September 4, 2022

**Appeal of Case Nos. APCC-2019-4338-SPE-CU-CUB-SPP;
ENV-2019-4339-MND.; Council File 22-0023.**

Project Addresses: 1524-1530 N. Western Ave., 5446 Harold Way

EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

HONORABLE RICHARD FRUIN

JUDGE

E. GARCIA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. BARRERAS, C.A.

Deputy Sheriff

NONE

Reporter

BS140889

Plaintiff

Counsel

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES ET AL
['CEQA' CASE ASSIGNED TO SE,
NORWALK, DEPT G, JUDGE TORRIBIO

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW;

The Court having reviewed the case file, and having considered the oral arguments presented by all sides, now issues the following ruling:

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

Clerk to give notice, and provide a copy to all sides of the said ruling.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and order dated 7/17/14 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

HONORABLE RICHARD FRUIN

JUDGE

E. GARCIA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. BARRERAS, C.A.

Deputy Sheriff

NONE

Reporter

BS140889

Plaintiff

Counsel

LA MIRADA AVENUE NEIGHBORHOOD
ASSOCIATION OF HOLLYWOOD

NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES ET AL
['CEQA' CASE ASSIGNED TO SE,
NORWALK, DEPT G, JUDGE TORRIBIO

NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

By:

E. GARCIA, DEPUTY CLERK

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MICHAEL N. FEUER, CITY ATTORNEY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

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JUDGE

E. GARCIA

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ELECTRONIC RECORDING MONITOR

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Deputy Sheriff

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NO APPEARANCES

VS

Defendant

Counsel

CITY OF LOS ANGELES ET AL
['CEQA' CASE ASSIGNED TO SE,
NORWALK, DEPT G, JUDGE TORRIBIO

NATURE OF PROCEEDINGS:

200 N. MAIN STREET CITY HALL EAST
6TH FLOOR
LOS ANGELES, CA 90012

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

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E. GARCIA

DEPUTY CLERK

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ELECTRONIC RECORDING MONITOR

P. BARRERAS, C.A.

Deputy Sheriff

NONE

Reporter

BS140930

Plaintiff
Counsel

CITIZENS COALITION LOS ANGELES
VS
CITY OF LOS ANGELES ET AL

NO APPEARANCES

Defendant
Counsel

['CEQA' CASE TRANSFERRED TO SE,
NORWALK, DEPT G-JUDGE TORRIBIO]

NATURE OF PROCEEDINGS:

NON-APPEARANCE CASE REVIEW;

The Court having reviewed the case file, and having considered the oral arguments presented by all sides, now issues the following ruling:

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

Clerk to give notice, and provide a copy to all sides of the said ruling.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order and order dated 7/17/14 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/17/14

DEPT. 15

HONORABLE RICHARD FRUIN

JUDGE

E. GARCIA

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

P. BARRERAS, C.A.

Deputy Sheriff

NONE

Reporter

BS140930

Plaintiff

Counsel

CITIZENS COALITION LOS ANGELES

NO APPEARANCES

VS

Defendant

CITY OF LOS ANGELES ET AL

Counsel

['CEQA' CASE TRANSFERRED TO SE,
NORWALK, DEPT G-JUDGE TORRIBIO]

NATURE OF PROCEEDINGS:

Sherri R. Carter, Executive Officer/Clerk

By:

E. GARCIA, DEPUTY CLERK

Silverstein, Robert P., Esq.
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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NONE

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Plaintiff

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CITIZENS COALITION LOS ANGELES

NO APPEARANCES

VS

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CITY OF LOS ANGELES ET AL

Counsel

['CEQA' CASE TRANSFERRED TO SE,
NORWALK, DEPT G-JUDGE TORRIBIO]

NATURE OF PROCEEDINGS:

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LOS ANGELES, CA 90012

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 17 2014

Sherri R. Carter, Executive Officer/Clerk
By E. Garcia, Deputy

FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS

LA MIRADA AVENUE NEIGHBORHOOD ASSOCIATION OF HOLLYWOOD v.
CITY OF LOS ANGELES, CITY OF LOS ANGELES CITY COUNCIL (ex. rel.
TARGET CORPORATION), Case No. BS140889.

CITIZENS COALITION LOS ANGELES V. CITY OF LOS ANGELES, et al, Case No.
BS140930.

Petitioners challenge the actions of the Los Angeles City Council in approving exceptions to a Specific Plan, the Vermont/Western Station Neighborhood Plan (abbreviated as “SNAP”), to permit the construction of a three-level structure to contain a 163,862 sq. ft. Target store on the southwest corner of Sunset Boulevard and Western Avenue (the “Project”). The real party in interest is Target Corporation.

The Project, as approved, is a three-level structure with the Target store as the top floor, two levels of parking (458 spaces) below the store, with about 30,887 sq. ft. of retail and restaurant space on the ground level fronting on Sunset and Western. There is a 11,000 sq. ft. landscaped entry space (called a “plaza”) on Sunset at the corner with Western. The Project is sited on block-size parcel of approximately 168,869 sq. ft. The three level structure, plus the ground level retail/restaurant space, will cover 97.5% of the parcel. (See, EIR, 55/AR 01767-01779; for floor plans and elevations, see 607/AR 16436-16450 and 55/AR 01771-01773.)

The City Council approved eight exceptions to SNAP to permit the Project. The exception that has excited the most controversy was the Council’s approval of a height exception. The Project will stand 74 feet, 4 inches above grade, while SNAP limits the height of commercial structures to 35 feet above grade.

Petitioners contend that the City Council’s findings, required by the Municipal Code section 11.5.7 F.2, do not support the exceptions and are without substantial evidence.

Petitioners further argue that the Environment Impact Report (EIR) for the Project does not contain the information required by the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA").

THE PARTIES:

Petitioners are La Mirada Avenue Neighborhood Association and the Citizens Coalition Los Angeles. La Mirada and Citizens Coalition are both unincorporated community associations whose members, according to the petitions, advocate for residential quality of life issues in Hollywood. They filed separate verified petitions in December, 2012 and amended petitions in May 2013. Both amended petitions allege these causes of action: (1) that the manner of the preparation of the EIR violates CEQA and CEQA Guidelines; (2) that the findings in the EIR violate CEQA and CEQA Guidelines; and (3) that exceptions to the specific plan approved by the City Council do not comply with Los Angeles Municipal Code section 11.5.7 F.2. La Mirada's amended petition additionally alleges: (4) deprivation of a fair hearing relating to the City Council's action April 3, 2013; and (5) a sham cure and correction of a Brown Act violation.¹

The City of Los Angeles and City Council and the Real Party in Interest filed answers to the amended petitions and denied the charging allegations in December, 2013

The Writ Trial for both actions was conducted on February 27, 2014, with a transcript of the trial provided to the court on March 21. Robert Silverstein argued the variance issues and Brad Trogan the CEQA issues for petitioners. Richard A. Schulman argued for respondent City of Los Angeles and Real Party in Interest Target Corporation. Deputy City Attorneys Mary S. Decker and Kenneth T. Fong appeared for respondent City of Los Angeles.

COURT CONCLUSIONS RE SUFFICIENCY OF THE CITY COUNCIL'S FINDINGS IN APPROVING EXCEPTIONS TO THE SPECIFIC PLAN:

SNAP is the specific plan for the Vermont/Western Station Neighborhood Area.

¹ The court understands that La Mirada is no longer pursuing any claim under the Brown Act (Government Code section 54950 et seq.) After the City and Target argued that any Brown Act violation was not prejudicial and, in any event, was time-barred, La Mirada did not respond in its reply brief. Brown Act violations were not mentioned in the Writ Trial. The court does not discuss further any Brown Act issue.

The Project is within its boundaries. (See 464/AR 14635-14694 for relevant parts of SNAP and its Guidelines.)

SNAP identifies 20 purposes of the specific plan (AR 14638-39), among them to:

C. Establish a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in;

E. Guide all development, including use, location, height and density, to assure compatibility of uses...;

H. Promote increased flexibility in the regulation of the height and bulk of buildings ... in order to ensure a well-planned combination of commercial and residential uses with adequate open space.

SNAP imposes height and floor area restrictions on new commercial developments. "Projects comprised exclusively of commercial uses (not Hospital and Medical Uses) shall not exceed a maximum building height of 35 feet and a maximum FAR of 1.5." AR14660. Greater height is allowed for a hospital (100 feet) or a mixed-use project (75 feet). AR 14661. A mixed-use project is "any project which combines a commercial use with a residential use, either in the same building or in separate buildings on the same lot or lots in a unified development." AR 14641.

If a new development requires exceptions from the SNAP design specifications, such exceptions must be applied for from the Planning and Land Use Management Committee (PLUM). PLUM must consider and decide the application in a noticed public hearing. A disappointed applicant or objector may appeal to the City Council, and the City Council must then consider and decide the appeal in a noticed public hearing.

There is a governing ordinance for exceptions (also called variances) to a specific plan. The Los Angeles Municipal Code section 11.5.7 F.2 (464/AR14744-45) provides that the Area Planning Commission "may permit an exception from a specific plan if it makes all the following findings:

(a) That strict application of the regulations of the specific plan would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;

(b) That there are exceptional circumstances or conditions applicable to the subject property that do not apply generally to other property in the

specific plan area;

(c) That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;

(d) That the granting of an exception will not be materially detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and

(e) That the granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.”

The edited findings that were prepared after PLUM approval and then approved by the City Council (5/AR 00136-00138) are found in the Administrative Record at Tab 22/AR00596-00712.² The court, in discharge of its responsibility to review vigorously any exceptions to the specific plan, has examined those findings against the requirements imposed by LAMC section 11.5.7.F.2. The findings must demonstrate the “exceptional circumstances” and must be supported by substantial evidence to justify a variance to the specific plan. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 517-518.

I. EXCEPTION APPROVED FOR PROJECT HEIGHT:

1. The City’s evidence and findings (22/AR 00607) do not provide substantial evidence to support a conclusion that enforcement of the specific plan “will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan’s] general purpose and intent” for Target. The finding does not satisfy subdivision (a) of LAMC 11.5.7 F.2.

The height variance is the principal exception that the applicant was required to justify under the LAMC. The structure stands 74 feet, 4 inches above grade in a zone imposing 35 foot maximum for commercial structures. The Project thus is more than

² The parties in their briefs usually refer to the PLUM findings that are contained in the Administrative Record at 23/AR732-747, 820-837.

twice the permitted height maximum.

The City's findings re "practical difficulties or unnecessary hardships" consists of three paragraphs. Paragraph 1 states that "[o]ne of the goals of the SNAP is to promote flexibility in the regulation of height and massing in order to achieve a balanced mix of uses within the SNAP." The finding notes that the Project includes "a variety of smaller neighborhood serving ground level floor retail establishments. There are a variety of uses proposed at the site." And Paragraph 2 states "in addition, ... to promote the SNAP goal of providing for lively pedestrian uses and a walkable environment, the mix of retail and service spaces, the pedestrian plaza, open areas and other amenities would be concentrated along Sunset Boulevard and Western Avenue on the ground level."

The finding does not identify any "practical difficulties or unnecessary hardships" to which the applicant Target would be subject. The broader record indicates that such "practical difficulties or unnecessary hardships" refer to the expense to which the applicant would be put to comply with the height limit by constructing underground parking in order to reduce Project height by eliminating two levels of above ground parking. The parties concede that the applicant may develop the property for a full-sized Target store within near compliance with SNAP if it constructs underground parking. The applicant, moreover, originally suggested (to the council member's office) a different design that complied with the specific plan. The applicant's former counsel in a November 1, 2012 letter to the PLUM Committee said: "The Applicant initially planned a stand-alone Target storeThe initial concept would have complied with the SNAP height requirements and many other SNAP requirements." A.R. 11813. The applicant, thus, is seeking a variance to avoid a zoning restriction that would increase the cost of the development. (It is conceded that undergrounding the parking would increase the development costs by at least \$5 million.) That additional cost is self-imposed by the applicant's present development plan. The LAMC does not permit the justification for a structural exception to a specific plan to depend upon an additional expense that is imposed by an applicant's design choice. "An exception from a specific plan shall not be used to grant a special privilege, nor to grant relief from self-imposed hardships." LAMC 11.5.7 F.3(a). The City's finding provides no substantial evidence to support an exception for greater height because of "practical difficulties or unnecessary hardships" due to the features of the property. See *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 916, 926.

The City's overall finding may be characterized, not unfairly, as deciding that in order to achieve one of the purposes of the specific plan--a lively shopping area--the Target development should be excepted from the SNAP height limitation. The City's finding that the design will provide a lively shopping area does not constitute substantial

evidence that a height exception is needed to overcome “practical difficulties or unnecessary hardships.” Our appellate courts tell us:

[D]ata focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Orinda Association v. Board of Supervisors of Contra Costa (1986) 182 Cal.App.3d 1145, 1166.

The City’s final paragraph in support of the finding advises that while the structure is 74 feet, 4 inches from the lowest grade (along De Longpre Avenue), the building height is 61 feet, 6 inches along Sunset Boulevard; and that the Target store on the third level will be set back 16 feet from the face of the building at ground level. “Thus, from the Sunset Boulevard street level view, the impact of the additional building height would be minimized.” It notes too that “[t]he project incorporates facade treatments on all four sides consisting of varying elements such as display windows, balconies, overhangs, landscaping and vine treatments and the use of colors and material to provide a pleasing and varied design.” This paragraph also does not identify any “practical difficulties or unnecessary hardships” that can support an exception to SNAP. This paragraph suggests only that the appearance of the nonconforming height and bulk of the structure can be mitigated by architectural features

2. The City’s evidence and findings (22/AR 00608) do not contain substantial evidence to support a conclusion that “there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area.” The finding does not satisfy subdivision (b) of LAMC 11.5.7 F.2.

Paragraph 1 of this finding provides in part:

Although this type of use is allowed per the SNAP, and is encouraged in a major commercial corridor, the unique characteristics and area limitations of the site create exceptional circumstances, which necessitate the height

exception, that do not apply to other properties which can accommodate large structures in the SNAP area. Larger commercial-only projects in the SNAP consist of large, big-box type of design that do not meet SNAP goals and were constructed prior to the adoption of the SNAP

This City finding appears to assert that new construction “big box stores” such as a Target store cannot be accommodated within the limitations imposed by the specific plan, at least on a parcel of the size owned by Target, and for that reason an exception must be made to the specific plan. This argument may support a legislative change to the specific plan but it does not provide evidence, let alone substantial evidence, for an exception to the specific plan based on a finding of “exceptional circumstances or conditions ... that do not apply to other properties within the specific plan area.”

Paragraphs 2 for this finding points out that, if this project was a mixed-use project, that is, including residential use, its maximum height could be 75 feet. This statement does not support an exception because for this “commercial only” Project SNAP imposes a 35 foot height maximum.

Paragraph 3 discusses whether it would be feasible to put the parking underground. The finding concludes that subterranean parking would still require a lesser height exception, would require a “loud and expensive ventilation system,” would impose “approximately 22,000 cubic yards of soil export, thereby causing ... air quality impacts” and would “eliminate the ability for any green space to meet landscape requirements by removing the community gathering areas.” This Council finding suggests that the proposed project may not be suitable for the site, if the requirements of the specific plan are applied, but it does not support a conclusion that there are “exceptional circumstances” that would **not** apply to other sites of similar size within the SNAP boundaries.

The exception for Target’s 74 foot, 4 inch design, if allowed, will become a precedent used by other applicants throughout SNAP to apply for height and bulk exceptions (variances) for commercial developments.

3. The City’s evidence and findings (22/AR 00609) do not contain substantial evidence to support a conclusion that “the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone....” The finding fails to satisfy subdivision (c) of LAMC 11.5.7 F.2.

The key finding made by the City reads as follows: “For a Target or other similar

type retail use to be developed within the SNAP without a height limitation would require a larger lot” This assertion does not support a height exception because it concedes that every property owner within SNAP would require exceptions to build out the Project on a similarly dimensioned lot. The sentence continues: “and would not provide a mix of retail types and uses envisioned by the SNAP.” The benefits to the public do not provide substantial evidence to override the height restrictions that are imposed by SNAP for commercial developments. See, *Orinda Association v. Board of Supervisors of Contra Costa* quoted above. There is no provision in the SNAP which provides that if the decision-makers decide that a development has sufficient public amenities they may grant an exception to the SNAP zoning requirements for that reason alone.

4. The City’s evidence and findings (AR 00609) do not contain substantial evidence to support a conclusion that “the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property.” The finding does not satisfy subdivision (d) of LAMC 11.5.7 F.2.³

The finding advises that “the proposed project would be buffered from low-rise commercial land uses by the intervening streets. The setbacks created by the intervening streets and the transitional heights created by the project’s design would reduce the effects of the contrasting building heights created by the project’s design between the proposed building and existing off-site buildings.” The evidence which is offered for the finding suggests that the appearance of the Project’s height and bulk will be mitigated by the “transitional heights” of nearby buildings. But such evidence offers no support for a finding that the building of a nearly 75 foot building will not be detrimental to the public welfare and/or injurious to nearby properties. The height restriction codified in the SNAP presumably expressed the community’s standard for “public welfare” with respect to commercial building height at the time when SNAP was adopted. Nothing in the evidence that is identified to support the finding suggests that a building height that exceeds by double the SNAP height standard is in furtherance of public welfare or is not injurious to nearby properties. There is no substantial evidence to support the finding.

³ La Mirada rather than Citizens Coalition provides the more extensive briefing for the argument that the City’s findings do not satisfy LAMC 11.5.7 F.2. Yet La Mirada does not discuss the findings required for the Project exceptions under subsections 11.5.7 F.2(d) and (e). The court nonetheless has addressed the findings required under these subsections.

5. The City's evidence and findings do not contain substantial evidence "the granting of the exception is consistent with the principles, intent and goals of the specific plan." AR 00610. The finding does not satisfy subdivision (e) of LAMC 11.5.7 F.2.

The City's findings (AR 00610) provides in part:

The proposed project was designed to be consistent with the goals of the SNAP. The SNAP was "implemented to make the neighborhood more livable, economically viable, as well as pedestrian and transit friendly ... and achieves a maximum benefit from the subway stations."... As recommended for approval, the project proposes a height similar in scale and massing to that envisioned by the SNAP. The SNAP promotes flexibility in the regulation of the height and buildings in order to ensure a well-planned mix of uses. The proposed project would provide a mix of different retail use, including ground floor neighborhood serving retail and a larger Target that would be accessible from public transit opportunities along Sunset Boulevard.

This finding states that an exception from the specific plan--an exception that permits a doubling of the height restriction--has substantial evidence if the project has amenities ("a well planned mix of uses") wanted by the City's decision-makers. The reasoning is ad hoc and circular: the City is reciting the goals of the specific plan to overthrow the limitations of the specific plan. SNAP itself does not contain a provision that authorizes exceptions from its limitations because the decision-makers believe that a particular project is consistent with or in furtherance of its goals. The benefits of a development cannot justify a substantial deviation from the specific plan absent such authorization in the specific plan itself.

II. DESIGN EXCEPTIONS RELATING THE PROJECT'S SIZE AND PROPORTIONS:

The SNAP Guidelines provide other building restrictions for which the City approved exceptions. These exceptions all relate to the Project's appearance--the exceptions are for setbacks, stepbacks, roof lines and the percentage of ground level wall space that is used for windows and doors or constructed of transparent elements (22/AR 14693)--and the court refers to these exceptions as "facade exceptions."

The facade exceptions are intended to mitigate the appearance of bulk in the Project. The facade exceptions, thus, are derivative of the height exception that the City

Council approved for the Project.

The City made findings to justify these facade exceptions from the SNAP Guidelines as a group (and combined them with a discussion of another exception for hours of operation). 22/AR 00611-00616. That is, the City did not apply the five-part test of LAMC section 11.5.7 F.2 to each facade exception. Petitioners object to the failure of the City to make findings that are individual to each of the facade exceptions. This objection has merit: the court cannot review the City's findings made under LAMC section 11.5.7 F.2 if the City did not provide individual findings for each exception. The court determines the findings are without substantial evidence for that reason.

The City refers to the facade exceptions from SNAP as "Building Design" because they are all design-related. The City justifies the Building Design by referring to the Project's amenities or by making other generalizations.

Under the "practical difficulties or unnecessary hardships" test, the City notes that the Guidelines seek "to ensure that a project avoids large blank expanses of building walls," harmonizes "with the surrounding neighborhood, and contributes to a lively pedestrian atmosphere." Having said that, the City finds, in another example of result-oriented reasoning, that "[a]lthough the proposed project requests deviations from the building design standards it meets the intent of them." AR 00612. Referring to design features that require an exception, the City's finding explains that the features are required by the applicant's design: "Such features do not exist in other projects in the area and are unique to this project." This finding demonstrates that any difficulty or hardship is imposed by the applicant's chosen design. The City's finding does not provide substantial evidence to support an exception under the "practical difficulties or unnecessary hardships" test for the Building Design (or facade) exceptions.

Under the "exceptional circumstances or conditions" test, the City's finding highlights the amenities the Project will provide, saying, for instance, "[t]he project will incorporate landscaping and architectural design that will promote an attractive streetscape and transit friendly development." 22/AR 00614. Such findings are irrelevant to the legal justification for a zoning exception. *Orinda Association, supra*. The City's finding does not provide substantial evidence to support an exception under the "exceptional circumstances or conditions" test for the building design (or facade) exception.

Under the "preservation and enjoyment of a substantial property right or use generally possessed by other property owners" test, the City's finding is that "[o]ther properties in this area are either commercial only projects built prior to the adoption of

the SNAP or contain smaller scale retail or mixed use projects that do not have the similar building and parking structure constraints.” The City further states: “The Exception is necessary to address changing design vernaculars that were not anticipated at the time the SNAP was adopted.” 22/AR 00615. Nothing in this finding supports a conclusion that the facade exceptions are necessary because other properties that are limited by SNAP already have similar design features.

The City’s findings do support a conclusion that the facade exceptions will not be detrimental to the public welfare. The facade exceptions raise only aesthetic considerations. The City’s finding, in this regard, does comply with LAMC 11.5.7 F.2(d).

The City’s findings do provide substantial evidence that, if a project of the size and proportions of the Target Project is approved to proceed, the granting of exceptions for the facade elements to mitigate its bulk “is consistent with the principles, intent and goals of the specific plan.” The finding does satisfy LAMC 11.5.7 F.2(e).

III. THREE REMAINING EXCEPTIONS APPROVED FOR THE PROJECT:

Petitioners, particularly La Mirada, attack the three remaining SNAP exceptions approved for the Project by the City Council, to wit. (1) an exception to eliminate free home delivery to local residents; (2) an exception to increase parking authorized for the Project from 390 to 468 spaces; and (3) an exception for the hours of operation for deliveries to the service bays. La Mirada’s challenge to these exceptions, however, was largely saved for its 32-page reply, so that respondents did not have an opportunity to respond.

The court, therefore, issued its initial decision as a tentative decision under Code of Civil Procedure section 632. The parties argued their respective positions as to these remaining exceptions to the SNAP at a hearing on June 30, 2014. The court has placed its rulings as to whether these three remaining exceptions comply with LAMC 11.5.7 F.2 in the Appendix to this Final Decision.

COURT CONCLUSIONS RE SUFFICIENCY OF THE THE ENVIRONMENTAL IMPACT REPORT:

Petitions challenge the EIR (55/AR 01691-02245) on three grounds: (1) that the cumulative impacts section is deficient because the EIR does not analyze the potential impacts of an envisioned Hollywood CAP Park; (2) that the range of alternatives section is deficient in failing to include a single store possibility; and (3) that its baseline analysis

is deficient because the EIR did not include a newly inaugurated charter school across De Longpre Avenue from the site.

(1) Hollywood Central (“CAP”) Park.

CEQA requires an EIR to discuss significant cumulative impacts to which a project contributes an incremental amount. 14 Cal. Code Regs (“CEQA Guidelines”) section 15130(a). A cumulative impact consists of an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. Guidelines 15130(a)(1). “The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” Guidelines 15355(b).

The List of Related Projects in Target’s EIR does not include Hollywood CAP Park. See, DEIR 55/AR01790-01794. Hollywood CAP Park is a proposal that envisions a structure being built over a one mile segment of the 101 Freeway that would provide a surface for a greenbelt and park uses. The most recent cost estimate is \$725 million, none of which has been committed or raised. The City has allocated \$2 million for initial design studies and the preparation of an EIR; the court is unaware of what portion of that amount has been expended.

Whether Hollywood CAP Park should be included as a “related project” in the EIR depends on three issues: whether CAP Park is a “reasonably foreseeable” project, and a “related” project and a project that would produce impacts that would combine with those of the project under review. The court finds that on all of these issues there is substantial evidence to support the City’s decision.

The City published its Notice of EIR Preparation on December 6, 2010, setting the date for the City to evaluate the Project’s impacts. See, *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270. The Hollywood CAP Park as of that date (and now) had no design, no start date, no governmental approvals and, decisively under the reasonably foreseeable test, no funding source. The Park is a dream, and, while it has community supporters, public funds would be required to realize the project. There is, given the State’s still weak economic recovery, substantial evidence to support the City’s conclusion that the Park is not a project that can come to fruition in the reasonably foreseeable future.

(2) Sufficient Alternatives.

“An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects ...”
Guidelines 15126.6(a)

Citizens Coalition argues that the EIR is deficient because it did not consider a smaller Target store, one purportedly similar in size to other nearby Target stores, while retaining adjacent retail/restaurant space. Citizens’ brief, p. 13, identifies three other existing Target stores, one being approximately 150,000 sq. ft. and two others being approximately 104,000 sq. ft., although they are tenants in previously built shopping malls with an existing customer base and parking. (The proposed Target store has 163,862 sq. ft. with additional retail/restaurant space at street level).

The EIR did consider a range of alternatives including a 149,400 square foot Target store “with two levels of underground parking.” This Reduced Project Alternative was deemed not to eliminate the view obstruction and to have the disadvantage of not providing “retail shopping and dining opportunities.” 55/AR 02244. The EIR analyzed other SNAP-compliant alternatives. 55/AR 2232 et seq. The issue is whether the EIR considered a reasonable range of alternatives to permit the decision-makers an ability to evaluate the proposed project. *Jones v. Regents of the University of California* (2010) 183 Cal.App.4th 818, 826-828. The court finds the EIR was not deficient in this respect.

(3) New School Use.

La Mirada argues, independently of co-petitioner Citizens Coalition, that the signing of a lease agreement for the operation of a 390-student Charter Elementary School, the playing fields (and parking facilities) of which are across DeLongpre Avenue from the Project, require a recirculation of the EIR. Re-circulation is required only when “significant new information” is available after the public comment period begins but before an agency decision on an EIR. Public Resources Code section 21092.1. Re-circulation is not necessary if the new information would make “insignificant modifications” to an EIR. An agency’s decision not to re-circulate the draft EIR must be supported by substantial evidence.

The City makes a persuasive argument that the siting of a charter school as a new tenant in the DeLongpre property is not information that requires further analysis in the EIR. The charter school will replace a “children’s club and daycare facility in a building having a maximum capacity of 974 persons.” 298/AR 10773. The existence of a “learning center” in the location was noted in the EIR (AR 55/1784) and its impacts were studied (55/AR 2089 for air quality) and found to be insignificant (55/2091-2094) or

mitigated (AR 55/2064, IV.H 7 - IV.H.10).

Citizens Coalition argues, independently of La Mirada, that the City committed to the project before the completion of environmental review. Target and the City refuted his argument with record-based evidence (Opp. Br., pp. 11-12), to which Citizens Coalition did not respond in its reply brief. The court regards the issue as abandoned.

COURT'S CONCLUSIONS ON THE RIGHT TO FAIR HEARING ISSUE:

La Mirada asks the court to vacate the action of the City Council in approving the Project on April 3, 2013 on the ground that its representative, Douglas Haines, was given inadequate notice of an amendment to Condition 133 to the Project before the City Council voted to approve the Project.

Condition 133 was imposed as a condition to the Project approval. It required Target to provide space for child care in the Project or pay an in lieu fee instead. Condition 133 originally required Target to pay the in lieu fee before the City issued building permits. The amendment to Condition 133 permitted Target to pay the in lieu fee before the issuance of the Certificate of Occupancy. The amendment was significant because it permitted Target, once the City issued building permits, to commence construction even before the amount of the in lieu fee was determined by the Parks & Recreation Committee and, thus, before Target was obliged to make the in lieu payment. The amendment, if adopted (and it was adopted), removed an obstacle to Target obtaining building permits and beginning construction.

The issue is whether the amendment to Condition 133 was publicly posted in a manner that allowed sufficient time for La Mirada to learn of and comment about the amendment before the City Council voted on the Project. Douglas Haines, La Mirada's representative, testified that he attended the April 3, 2013 City Council hearing for the purpose of offering public comment in opposition to the Target Project and that he first learned of the amendment when then Council Member Eric Garcetti introduced the agenda item and stated: "there's an amendment correcting Condition 133 to reflect the intent of the SNAP." Haines decl., para. 17.⁴ Each speaker was allowed only one minute to make comments, and there were 10 speakers. [Pet. Ob., 4/3/13 Transcript, p. 29.] Haines was called as the first speaker, and, as he walked to the podium, he saw a staff

⁴ The Haines declaration was submitted as an attachment to La Mirada's Petitioner's Memorandum filed on December 20, 2013. The court will receive the Haines declaration into evidence.

person “pinning a paper to the posting board.” He introduced his remarks by saying he would like to read the amendment “before I speak” and asking the City Attorney “do I have the opportunity to do that?” The City Attorney “stated for the record that the amendment ‘should have been posted.’” *Id.*, paras 18-19. Haines said “it wasn’t posted when I checked.” [Trans., p. 30.] The Council President said “[T]hen go and talk to them. But don’t give up your time.” Haines gave brief comments, and he then walked to the posting board and “for the first time read the amended Childcare Facility requirement.”

The court views the situation as analogous to facts in *BreakZone Billards v. City of Torrance* (2000) 81 Cal.App.4th 1205. The appellate court in *BreakZone* rejected appellant’s argument that it was denied a fair hearing because matters had been raised at the hearing that had not been disclosed earlier. *Id.* at 1242-1243. La Mirada argues *BreakZone* may be distinguished because the appellant was offered an opportunity for a hearing continuance but declined that opportunity. Haines was La Mirada’s designated speaker to oppose the Target Project--his declaration states that he had spoken at other public hearings on the subject-- and he was sufficiently experienced to know that he could have asked the presiding officer to reserve part of his allocated time for later comment to allow him to review the amendment that he had seen being posted on the notice board. The Council President did not refuse Haines an opportunity to read the posting before he spoke (as Haines did not specifically make that request), he merely told Haines “But don’t give up your time.” If Haines had made a request to view the posted amendment before concluding his turn to speak, and it had been refused, the court could decide that an opportunity to rebut new information was denied to La Mirada. Without having made such request, La Mirada’s argument is not persuasive.

PREPARATION OF JUDGMENT:

The court served and filed its Tentative Decision on Petitions for Writ of Mandamus on June 23, 2014, permitting the parties to file objections or requests for modification. CCP section 632 and CRC 3.1590. Petitioners filed Objections to Ambiguities and Omissions on July 1. Real Party filed Objections on July 10. This Final Statement has been revised to accommodate certain of the parties’ objections.

On the First Amended Petition for Writ of Mandamus filed by petitioner La Mirada Avenue Neighborhood Association of Hollywood the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first, second, fourth and fifth causes of action on La Mirada’s amended petition.

On the First Amended Petition for Writ of Mandamus filed by petitioner Citizens Coalition Los Angeles the court shall grant judgment for petitioner on its third cause of action for violation of LAMC section 11.5.7 F.2 resulting in an improper grant of exceptions to the Specific Plan for the Target Project. The court shall grant judgment for respondents on the first and second causes of action on Citizens' amended petition.

The court in its Tentative Decision requested petitioners to submit a form of judgment. Petitioners lodged and served a (proposed) Joint Judgment Granting Peremptory Writ of Mandate and a (proposed) Peremptory Writ of Mandamus. Real Party in its Objections, filed July 10, urged the court to defer the entry of judgment as the Project is under construction and Real Party is seeking an amendment of the Specific Plan so as to "render the exceptions unnecessary." Real Party also advised "Target (and probably the City) would be certain to appeal the Judgment, at which point Code of Civil Procedure section 916 would automatically stay both this Court's Judgment and Writ, and Code of Civil Procedure section 1094.5(g) would stay the City's decision granting the exceptions."

The court nonetheless intends to enter judgment forthwith. The court, however, is not satisfied with the proposed Judgment and proposed Peremptory Writ suggested by petitioners.

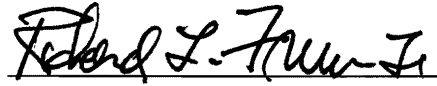
The court requests petitioners to submit a simplified Judgment reciting that for reasons stated in the court's Final Decision, petitioners shall have judgment against respondents and Real Party in Interest; that judgment is entered in favor of petitioners on their causes of action to vacate and set aside the actions approving six of the Specific Plan exceptions for the Project (specifying which particular City Council actions are set aside); that a Peremptory Writ of Mandate shall issue under the seal of the court in a form that is attached to the Judgment as Exhibit A; that the court enters judgment for respondents on the other causes of action (specifying them) pled in the amended petitions; that petitioners upon motion may seek their costs and reasonable legal fees; and that the court shall retain jurisdiction to enter injunctive relief and until such time as respondents file a return evidencing compliance with the Peremptory Writ of Mandate.

Petitioners are also to submit a proposed Peremptory Writ of Mandate (a copy of which is to be attached to the Judgment).

The court asks that the proposed Judgment and proposed Peremptory Writ of Mandate be lodged (and served) within five calendar days. The parties are directed to retrieve the administrative record exhibits and exhibit binders that have been retained by the Clerk promptly after the court signs and enters the Judgment.

The Clerk is directed to serve this FINAL DECISION ON PETITIONS FOR WRIT OF MANDAMUS on the parties by U.S. Mail this date..

Dated: July 17, 2014

A handwritten signature in black ink, appearing to read "Richard L. Fruin, Jr.", written over a horizontal line.

RICHARD L. FRUIN, JR.
Superior Court of California,
County of Los Angeles

APPENDIX TO STATEMENT OF FINAL DECISION

I. EXCEPTION APPROVED TO ELIMINATE FREE HOME DELIVERIES FOR PROJECTS OVER 40,000 SQUARE FEET TO LOCAL RESIDENTS:

1. The City's evidence and findings (22/AR 606) do not provide substantial evidence to support a conclusion that enforcement of the specific plan "will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan's] general purpose and intent" for Target. The finding does not satisfy subdivision (a) of LAMC 11.5.7 F.2.

The SNAP, section 6.N, requires projects containing 40,000 square feet or more of retail commercial floor area to provide free delivery of purchases made at the site by residents living in the Specific Plan Area. (22/AR 606). The City approved an exception for the proposed Target store. The City's findings for this exception include a sequence of overlapping rationales. (22/AR 606-607):

One of the goals of the SNAP is to create more livable residential neighborhoods. The requirement for stores to provide free delivery of purchases made at the site by residents living in the SNAP boundaries would be inconsistent with this goal, and would create difficulties and hardships inconsistent with the purpose and intent of the SNAP. A free delivery program for Target could significantly increase the number of truck trips from the store that would deliver purchased goods to adjacent residential neighborhoods. The anticipated high volume of purchases made by nearby residents would result in large trucks traveling many times a day through residential neighborhoods. These neighborhoods lack adequate unloading areas and trucks delivering goods would likely temporarily park within public right-of-ways of neighborhood streets. A free delivery program would have the unintended consequence of making local neighborhoods less safe with numerous daily trucks coming from Target into the neighborhood.

This finding does not identify any "practical difficulties or unnecessary hardships" to which the Target store would be uniquely subject from the free delivery mandate. The assertion there would be a high volume of trucks traveling through neighborhoods that lack adequate unloading areas and the reference to "unintended consequences" relating to neighborhood safety would apply to all stores that are required to make free home deliveries within the SNAP. No data is provided as to the number of retail stores within SNAP that are presently providing free home delivery (or any home delivery) nor the number of home delivery trips that are made as a result. The City's findings, in the

absence of a comparative baseline analysis, do not constitute substantial evidence to support the City's findings.

The City's findings also include a letter by Target consultant Greenberg Farrow ("Farrow letter") (300/AR 10948):

Target already offers free delivery through its online service. Using this service, ... free delivery of online items is available two ways. Shipping is free to holders of "REDcards," which can be a Target Credit Card, Target branded Visa card, or a Debit Card linked to a standalone checking account.... In addition, most purchases of \$50 or more ... are eligible for free shipping.

Using the advantages of central warehousing and an advanced logistical network provided by common carriers such as the United States Postal Service (USPS), the United Parcel Service (UPS), and Federal Express (FedEx), Target is able to quickly and efficiently distribute packages to those who might otherwise shop at the proposed Target Sunset Project. Taking advantage of these common carriers reduces costs for customers while also reducing traffic impacts through planned distribution by experts instead of local delivery drivers. Further, such direct delivery is superior to a system where goods are first delivered to the store and then delivered to the customers.

This finding too does not identify any "practical difficulties or unnecessary hardships" that should exempt Target from a requirement imposed on other retailers (having 40,000 or more square feet). Target may be arguing that, as its internet purchases can be delivered efficiently by private carriers, it is an "unnecessary hardship" for Target to make home deliveries for store purchases, but, if so, the Farrell letter does not cite to any evidence that the use of private carriers would reduce traffic into the neighborhoods or reduce costs to customers. Target's online purchase delivery options, moreover, do not satisfy the requirement of SNAP section 6.N: the Target internet program only applies to purchases of \$50 or more or purchases using specific credit cards, while SNAP requires free delivery for all purchases made at the store site by SNAP residents.

The City further makes a finding at 23/AR 00824 that a deviation from Target's national distribution business model on an ad-hoc basis to provide free delivery would be a practical difficulty or unnecessary hardship. There is no substantial evidence supporting this contention such as by reference to any impact on Target's revenues, logistics, etc.

2. The City's evidence and finding (22/AR 606) do not provide substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does not satisfy subdivision (b) of LAMC 11.5.7 F.2.

The City's finding provides (22/AR 606):

The proposed project is unique in that most of the properties in the SNAP are small lots owned individually that would be developed with smaller retail uses that would not require free delivery. The proposed Target would be unique in that it would attract patrons from the immediate area as well as the larger community. The site could be developed with a large number of smaller stores that would not require the free delivery program. Target is a discount department store, and no other retail use recently developed in the SNAP offers the diverse amount of goods and services that Target would offer. The store would provide residents within the SNAP a unique one-stop experience rather than traveling to a number of stores and thereby increasing trips.

The City finds the property to be "unique" only because there are no other retail properties of its size that would be subject to the free delivery requirement. Target did not become subject to SNAP's provisions because of the size of the proposed store; Target became subject to SNAP because of the location it selected to build its store, namely within the SNAP, and that resulted in the application of SNAP's zoning laws. In any event, the City's findings that the Target store will attract customers from the larger community, will decrease shopping trips for area residents or will be a more diverse development than other properties do not provide substantial evidence for "exceptional circumstances or conditions" that justify an exception from the free delivery requirement imposed by the specific plan.

The City's evidence also includes the Farrow letter (300/AR 10948):

[N]o other local retailer offers free local delivery. Many retailers offer local delivery, however, through common carriers.... Local grocery stores, such as Vons, also provide delivery services using individual delivery service vehicles. However, Vons charges for this service and requires a minimum delivery of \$50.00.

The statement that no other local retailer offers free delivery suggests that there is no retailer within the SNAP is large enough to be subject to the free delivery requirement. That fact would not provide substantial evidence to support an exception for a retail store of sufficient size to be subject to the SNAP-imposed obligation.

3. The City's evidence and finding (22/AR 607) do provide substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City's finding includes citation to the nearby Home Depot and Food 4 Less, which are not required to provide free delivery and are over 40,000 feet. It is irrelevant that those stores were built before SNAP. The City's finding at 23/AR 00825 states that the "substantial property right" test refers to "existing uses." Although this interpretation may be disputed, deference must be given to the inference made by the City. *Steve P. Rados v. California Occupational Safety & Health App. Bd.* (1979) 89 C.A.3d 590, 594. There is, therefore, substantial evidence that other properties in the SNAP area possess a substantial property right (not having a free delivery obligation) that Target would not possess.

4. The City's evidence and finding (22/AR 607) do not provide substantial evidence to support a conclusion that "the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property." The finding does not satisfy subdivision (d) of LAMC 11.5.7 F.2.

The City's finding provides (22/AR 607):

Residents living within the SNAP would have the option to either drive to the store for convenience to purchase larger merchandise, or to utilize public transit opportunities to purchase smaller items that do not require delivery. Patrons could also use the Target website to purchase items and have them delivered at a low cost. Moreover, granting the exception would have the benefit of not generating unnecessary additional truck trips that would not only use major commercial arteries but local streets as well.

This finding is not supported by substantial evidence. The finding asserts that the elimination of free home delivery will not be detrimental to public welfare. The City does not define "public welfare." Presumably that all customers living in SNAP may obtain free home delivery for their store purchases is in furtherance of public welfare because the community included that requirement in SNAP. The elimination of this free service available to all area shoppers, therefore, would not result in a gain in public welfare. There is no factual support for the contention that because area customers can instead use the website to purchase items or take public transit or drive to the store to obtain their purchases--an alternate they would have anyway—that public welfare is not decreased by the elimination of the free service required in the Area Specific Plan.

5. The City's evidence and finding (22/AR 607) do not provide substantial evidence to support a conclusion that "the granting of the exception is consistent with the principles, intent and goals of the specific plan." The finding does not comply with subdivision (e) of LAMC 11.5.7 F.2.

The finding for the exception (exemption from the free delivery requirement)

rests upon this single sentence: “Granting the exception would lessen potential impacts of traffic (truck trips), noise, air quality, and safety from a large number of trucks delivering goods daily throughout residential neighborhoods in the SNAP area.” This is a curious finding because there cannot be a free delivery program without delivery trucks traveling into residential neighborhoods. The community in adopting this provision in SNAP made a value judgment that free delivery justified the impacts that were imposed on its neighborhoods. The City, to overturn this SNAP provision, has made the opposite value judgment. Various arguments perhaps could be made to justify the exception but on this record the City has not shown substantial evidence to support the variance under subdivision (e) of LAMC 11.5.7 F. 2.

II. EXCEPTION APPROVED TO PERMIT 458 PARKING SPACES INSTEAD OF THE MAXIMUM PERMITTED 390 SPACES:

1. The City’s finding (22/AR 610) does provide substantial evidence to support a conclusion that enforcement of the specific plan “will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan’s] general purpose and intent” for Target. The finding does comply with subdivision (a) of LAMC 11.5.7 F.2.

The City to support an increase in the number of parking spaces to 458 (from the 390 parking spaces required by SNAP, section 9.E), makes the following finding (22/AR 610):

Per the SNAP, the maximum number of off-street parking spaces that may be provided for non-residential uses is limited to two parking spaces for each 1,000 square feet of combined floor area of non-residential uses contained within all buildings on a lot. Given the projects total floor area of 197,149 square feet, a maximum of 390 parking spaces are allowed. The applicant proposes to provide 458 parking spaces in a two level structure, which are 68 more spaces than allowed. One of the goals of the SNAP is to guide all development, including use, location, height and density, to assure compatibility of uses and to provide for the consideration of transportation and public facilities, aesthetics, landscaping, open space, and the economic and social well-being of area residents. The major tenant of this project would be the Target store, which typically requires a higher parking percentage to meet demand compared to smaller retailers. A typical Target project elsewhere would provide a higher parking ratio, but due to the site’s proximity to transit facilities and various constraints related to urban design and site planning, a significantly lowered parking ratio is proposed in order to promote pedestrian uses compared to a typical Target store. The requested increase in parking is necessary to provide convenience for patrons using the site. The strict application of this requirement

would reduce shopping convenience and would therefore not meet a major goal of the SNAP to provide for viable and successful retail uses.

The City further cites to the EIR at 26/AR 1016-1017 that peak parking demand on a typical shopping Saturday would be 531 spaces. If Target was required to adhere to the 390 parking spot limit, then spillover would inevitably occur. Although the 531-space estimate does not factor in decreased demand from nearby public transit, the reduction to 458 spaces was found to be reasonable by the EIR and is entitled to deference. *Steve P. Rados*, 89 Cal.App.3d 590, 594.

There is substantial evidence that there would likely be “practical difficulties or unnecessary hardships” on Target and the surrounding area to meet the projected demand of patrons.

2. The City’s finding (22/AR 610) does provide substantial evidence to support a conclusion that “there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area.” The finding does comply with subdivision (b) of LAMC 11.5.7 F.2.

The City cites findings to the same EIR section at 26/AR 1016-1017 that demonstrate the increased parking demand, which indicate substantial evidence of exceptional circumstances of parking spillover. The City also cites to the Property Detail Report at 332/AR 11640 that gives the square footage of Home Depot as 231,188 sq. ft. with 530 parking spaces for a parking ratio of 2.29 parking stalls per 1,000 sq. ft. This demonstrates that the exceptional circumstance of parking spillover (which would occur if there were only 390 spaces) do not apply to Home Depot which has a parking ratio over the SNAP limit. Although there is conflicting evidence as to the exact size of Home Depot, the court “must resolve all conflicts in the evidence” in the light most favorable to the City. *Steve P. Rados*, 89 Cal.App.3d 590, 594. There is substantial evidence present for this finding.

3. The City’s finding (22/AR 611) does provide substantial evidence to support a conclusion that “the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone....” The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City cites to the same Property Detail Report at 332/AR 11640 that gives the square footage of Home Depot as 231,188 sq. ft. with 530 parking spaces for a parking ratio of 2.29 parking stalls per 1,000 sq. ft. This demonstrates that Home Depot has a substantial property right of a parking ratio over the SNAP limit. Although there is conflicting evidence as to the exact size of Home Depot, again the court “must resolve all

conflicts in the evidence” in the light most favorable to the City. *Steve P. Rados*, 89 C.A.3d 590, 594. There is substantial evidence present for this finding.

4. The City’s finding (22/AR 611) does provide substantial evidence to support a conclusion that “the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property.” The finding does comply with subdivision (d) of LAMC 11.5.7 F.2.

The City cites findings to the same EIR section at 26/ AR 1016-1017 to demonstrate the benefits of decreased spillover if the exception in question were granted. As mentioned previously, this record reflects substantial evidence.

5. The City’s finding (22/AR 611) does provide substantial evidence to support a conclusion that “the granting of the exception is consistent with the principles, intent and goals of the specific plan.” The finding does comply with subdivision (e) of LAMC 11.5.7 F.2.

The City cites findings to the same documents previously mentioned, and it is for that reason that there is substantial evidence to support the findings. The project has reduced the number of parking spaces to remain consistent with one of the SNAP goals of maintaining a transit friendly area. Although Petitioner argues that there is in fact an increase in parking, this misses the point because there is a decrease commensurate with the actual projected demand.

III. EXCEPTION APPROVED TO PERMIT DELIVERY OF MERCHANDISE BETWEEN 5 AM AND MIDNIGHT DAILY, INSTEAD OF LIMITING DELIVERIES BETWEEN 7 AM AND 8 PM WEEKDAYS AND 10 AM AND 4 PM ON WEEKENDS:

1. The City’s finding (23/AR 739) does provide substantial evidence to support a conclusion that enforcement of the specific plan “will result in practical difficulties or unnecessary hardships inconsistent with the [specific plan’s] general purpose and intent” for Target. The finding does comply with subdivision (a) of LAMC 11.5.7 F.2.

SNAP, section V.19, limits the hours during which deliveries may be made to a retail store. The City’s findings to support an exception to this limitation may be found in specific paragraphs at 23/AR 739-743. The City’s findings to justify the exception under LAMC 11.5.7 F.2 include:

A majority of deliveries would occur during the hours of 6:00 a.m. to 10:00 p.m., Monday through Sunday, which is beyond the SNAP requirements of 7:00 a.m. to 8:00 p.m. Monday through Friday and 10:00 a.m. to 4:00 p.m. on Saturdays

and Sundays. Some deliveries could occur after 10:00 p.m. Due to site constraints, some flexibility is necessary to ensure smooth operation and success of the retail uses, ensure that the store has products available to serve the community needs, and that certain deliveries could occur after hours to reduce conflicts with customers and traffic using the center. The flexibility would allow certain after hour deliveries for retail uses to occur within the parking structures. Such deliveries would not necessarily pose an immediate impact to adjacent properties because it would be within an enclosed structure and would allow restocking when customers are not on the site.

The City's findings further cite to the Farrow letter at 300/AR 10949:

Targets deliveries arrive into the City from their distribution center in the Inland Empire and Target's distribution system needs the flexibility to avoid or work around peak freeway rush hours, therefore requiring a larger window for deliveries.

SNAP Guideline V.19 provides that parking lot cleaning and sweeping, trash collections and deliveries to or from a building should occur no earlier than 7:00 a.m. and no later than 8:00 p.m., Monday through Friday, and no earlier than 10:00 a.m., and no later than 4:00 p.m. on Saturdays and Sundays. Strict compliance with SNAP Guideline V.19 would require that Target all deliveries when customers are present, and would also result in Target delivery trucks contributing to surrounding traffic conditions.

As set forth in the Target Sunset Project's EIR, peak traffic hours are 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., Monday through Friday. The SNAP's limitation on deliveries to the hours of 7:00 a.m. to 8:00 p.m. on weekdays would force deliveries to occur during peak traffic periods. The delivery hours proposed by Target would enable Target to schedule deliveries in the early morning or at night when traffic is light.

The City's findings to allow an exception to permit longer delivery hours than permitted by SNAP, section V.9, are supported by substantial evidence. The exception is specific to the site and specific to a retail enterprise having the store size and carrying the variety and volume of merchandise envisioned for the Target store.

The City's findings note the existence of "site constraints" that impose "practical difficulties" that are not found at other locations. The site constraints include that Target's delivery bays are accessed from DeLongpre Avenue, a small street, and that will require that delivery trucks to queue to access the delivery bays. Across DeLongpre there is a charter school. Extending the delivery hours will permit Target to schedule the deliveries into the evening hours and to spread out any congestion and reduce any

interference with the operation of the charter school (particularly at times when children are picked up or dropped off). As there are no residences on DeLongpre opposite the Target site, longer delivery hours will not cause disturbances in a residential area. DeLongpre is accessed directly from Sunset Blvd., so Target's delivery trucks will not be traveling through residential areas to reach Target. The second practical difficulty arises from the fact that Target receives deliveries of store merchandise from distribution centers in the Inland Empire. If all deliveries must be made between 7 a.m. in the morning and 8 p.m. in the evening it will increase road congestion. The City, therefore, has permitted Target to schedule its deliveries within a longer time window to reduce road congestion along the route and at the DeLongpre destination.

2. The City's finding (23/AR 740) does provide substantial evidence to support a conclusion that "there are exceptional circumstances or conditions that are applicable to the subject property or to the intended use or development of the subject property that do not apply to other properties within the specific plan area." The finding does comply with subdivision (b) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 740):

There are exceptional circumstances and conditions applicable that do not apply to other property in the Specific Plan Area. The project is unique in nature to the Specific Plan area as it is the largest national retail use proposed since SNAP was adopted. Most of the properties in the SNAP are smaller lots owned individually and would likely be developed with smaller retail uses that would not require free delivery [sic]. The proposed Target would be a larger store that would attract patrons from the immediate area as well as from the broader community, making it unique to the area.

The City's finding, quoted above, although it refers to "free delivery" when discussing extended delivery hours, is supported in the whole record by substantial evidence. The City has extended the delivery hours because otherwise the volume of merchandise coming to Target's delivery bays would impose unnecessary burdens on Target and, thus, on the streets over which the Target deliver trucks must traverse. This is an exceptional circumstance that would not apply to other commercial locations within the SNAP.

3. The City's finding (23/AR 741) does provide substantial evidence to support a conclusion that "the requested exception is necessary for the preservation ... of a substantial property right or use generally possessed by other property within the geographically specific plan in the same zone...." The finding does comply with subdivision (c) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 741):

There are other businesses in the immediate area that likely have earlier and later delivery hours than prescribed by the SNAP. The Food 4 Less store located at 5420 Sunset Boulevard operates 24 hours a day, seven days a week. Grocery stores typically have early morning deliveries to ensure products are available to customers on a daily basis. Likewise, other stores such as Home Depot and also large hospital facilities in the area likely have early and late deliveries similar to that requested by Target. Due to the site constraints, some flexibility is necessary to ensure the smooth operation and success of the store, to ensure that the store has available products to serve the community's needs, and to reduce potential conflicts with customers and trucks making deliveries to the store.

This finding is supported by substantial evidence, as indicated above.

4. The City's finding (23/AR 742) does provide substantial evidence to support a conclusion that "the granting of the exception will not be detrimental to the public welfare and injurious to property ... adjacent to or in the vicinity of the subject property." The finding does comply with subdivision (d) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 742):

The expansion of delivery hours is reflective of the business operations anticipated for this project and would not apply to other projects in the area. The major tenant, Target, would experience a majority of deliveries from its distribution center during business hours but is requesting an exception to allow the store to receive some deliveries and allow stocking after business hours. In addition, restaurant or food uses may require the flexibility of deliveries or services to occur after business hours. The project is located along two major commercial corridors and is not immediately adjacent to uses that might be sensitive to noise commonly associated with truck deliveries, trash collections or parking lot cleaning.

This finding is supporting by substantial evidence, as indicated above. The finding briefly explains that the project's truck delivery ports are positioned in a way that would not significantly affect adjacent properties. This supports the City's conclusion that the truck deliveries to the project would not affect adjacent properties due to a change in hours.

5. The City's finding (23/AR 743) does provide substantial evidence to support a conclusion that "the granting of the exception is consistent with the principles, intent and goals of the specific plan." The finding does comply with subdivision (e) of LAMC 11.5.7 F.2.

The City's finding provides (23/AR 743):

A major goal of the SNAP is to establish a clean, safe, comfortable and pedestrian oriented community environment for residents to shop in and use the public community services in the neighborhood. Allowing some deliveries to occur outside the permitted hours per the SNAP could help reduce truck trips to the store during peak traffic times and also create a safer environment.

The City's findings are supported by substantial evidence, as discussed above.