MICHAEL N. FEUER, City Attorney (SBN 111529)
TERRY P. KAUFMANN MACIAS,
Assistant City Attorney (SBN 137182)
JOHN W. FOX, Deputy City Attorney (SBN 171426)
OSCAR MEDELLIN, Deputy City Attorney (SBN: 246357)
200 North Main Street, 701 City Hall East
Los Angeles, CA 90012
Telephone: (213) 978-8195 / Fax: (213) 978-8090
Email: john.fox@lacity.org

Amrit S. Kulkarni (SBN: 202786)
akulkarni@meyersnave.com
Julia L. Bond (SBN: 166587)
jbond@meyersnave.com
Shaye Diveley (SBN: 215602)
sdiveley@meyersnave.com
MEYERS, NAVE, RIBACK, SILVER & WILSON
707 Wilshire Blvd., 24th Floor
Los Angeles, California 90017
Telephone: (213) 626-2906 / Fax: (213) 626-0215

Attorneys for City of Los Angeles and Los Angeles City Council

[*Additional Counsel Listed After Caption*]

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SUSANNE MANNERS, SOLE TRUSTEE FOR MANNERS DECEDENTS TRUST,

Petitioner and Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation; LOS ANGELES CITY COUNCIL, a governmental entity; and DOES 1 through 100, inclusive,

Respondents.

CITY OF LOS ANGELES, a municipal corporation, and CITY OF WEST HOLLYWOOD, a municipal corporation, and DOES 1 through 100, inclusive,

Defendants,

TOWNSCAPE PARTNERS, AG-SCH 8150 SUNSET BOULEVARD OWNER, L.P., a limited partnership

Real Parties in Interest.

Case No. BS166528

Related to: Case Nos. BS166484, BS166487, BS166525

RESPONDENTS' AND REAL PARTY'S NOTICE OF MOTION AND MOTION FOR CLARIFICATION OR RECONSIDERATION OF THE ORDER ON THE MERITS

Environmental Leadership CEQA Challenge

Judge: Hon. Amy D. Hogue
Date: July 13, 2016
Time: 9:30 AM
Dept.: 86

Action Filed: December 1, 2016
Trial Date: July 13, 2018

PAUL HASTINGS LLP
GORDON E. HART (SBN: 173434)
JILL E.C. YUNG (SBN: 240894)
101 California Street
Forty-Eighth Floor
San Francisco, California 94111
Telephone: (415) 856-7000
gordonhart@paulhastings.com
jillyung@paulhastings.com

PAUL HASTINGS LLP
JEFFREY S. HABER (SBN: 131379)
515 South Flower Street
Twenty-Fifth Floor
Los Angeles, CA 90071-2228
Telephone: (213) 683-6000
Facsimile: (213) 627-0705
jeffreyhaber@paulhastings.com

Attorneys for Real Party in Interest
AG-SCH 8150 Sunset Boulevard Owner, L.P.

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NOTICE OF MOTION AND MOTION FOR CLARIFICATION OR RECONSIDERATION OF THE ORDER ON THE MERITS

TO PETITIONER AND ITS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on July 13, 2018, at 9:30 a.m., or as soon thereafter as the matter may be heard in Department 86 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California, Respondents CITY OF LOS ANGELES, CITY COUNCIL OF THE CITY OF LOS ANGELES (collectively, "City") and Real Party in Interest AG-SCH 8150 Sunset Boulevard Owner LLP ("Real Party"), pursuant to the Court's power derived from Article VI, Section 1, of the California Constitution to change its rulings at any time before final judgment, as reflected in the California Court of Appeal's decisions in *Bernstein v. Consolidated American Ins. Co.* (1995) 37 Cal.App.4th 763, 774 and *Scott Co. of California v. United States Fidelity & Guaranty Ins. Co.* (2003) 107 Cal.App.4th 197, 210-212, will and hereby do, move the Court as follows: (1) for clarification that the Court's April 25, 2017, Order ("Merits Order") will not govern the judgment ultimately issued in this proceeding and (2) for an order correcting and withdrawing the conclusions reached in the Merits Order regarding the law applicable to feasibility findings under the California Environmental Quality Act ("CEQA", Pub. Resources Code, §§ 21000-21189.57.). This Motion will be made on the grounds that:

(1) On March 23, 2018, the Court of Appeal issued a decision in two related cases that reversed this Court's grant of a writ of mandate, in the applicable Merits Order based on claims in which Petitioner had joined and reinstated the City's findings of infeasibility as to historic preservation alternatives; and

(2) On November 30, 2017, the Court of Appeal held that a public agency may, in the context of a final project approval decision, find that an alternative is "infeasible" if it determines, based upon the balancing of statutory factors, that an alternative (1) cannot meet project objectives, including the inability of the historic preservation alternatives to meet project objectives related to design and creating a pedestrian-friendly experience, or (2) "is impractical or undesirable from a policy standpoint." (*Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, quoting *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957,

(3) These opinions demonstrate a change in the law as applied by this Court in its Merits Order and warrant reconsideration prior to the Court's entry of judgment on the partially overruled order. (See Code of Civil Procedure section 1008, subd. (c).)

This motion is based upon this notice, the memorandum of points and authorities attached hereto, the exhibit attached thereto, all of the pleadings and documents contained in the file, and upon such other evidence and oral and written arguments as may be presented at or before the date of the hearing on this matter.

DATED: June 13, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____
Shaye Diveley
Attorneys for City of Los Angeles

DATED: June 13, 2018

PAUL HASTINGS LLP

By: _____
Jill E.C. Yung
Attorneys for AG-SCH 8150 SUNSET BOULEVARD OWNER, L.P.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This motion seeks to clarify the effect of new case law and a decision issued by the Court of Appeal on the April 25, 2017, Final Order Granting Petition for Writ of Mandate as to Rejection of Preservation Alternatives and otherwise Denying Petitions for Writ of Mandate ("Merits Order") issued in this case, which is still awaiting an entry of judgment by the Court.

On March 23, 2018, in response to appeals filed in two of the four cases filed in opposition to the 8150 Sunset Boulevard Project ("Project"), the Second District Court of Appeal overruled portions of the Merits Order. In particular, the Court of Appeal reversed this Court's determination that the findings made by Respondents City of Los Angeles and Los Angeles City Council (collectively, the "City") in approving the Project rather than an historic preservation alternative were not supported by substantial evidence. The Court of Appeal's decision was based on, among other things, the determination in a newly published case that the failure to meet project objectives, including the inability to meet project objectives related to design and creating a pedestrian-friendly experience, can serve as a basis for rejecting historic preservation alternatives. (*Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, rev. denied, 2018, S248584 citation pending (June 13, 2018)).

Due to procedural complexities, judgment has not yet issued in the instant case, which is premised on the same Merits Order that has been partially reversed. Judgment in this case with respect to the City will not issue until after this Court determines the outcome of a trial on the merits of Petitioner's Seventh, Eighth and Ninth Causes, set for July 13, 2018 and there is resolution of several non-writ claims. As a result of the aforementioned Court of Appeal decisions, however, the City and Real Party in Interest AG-SCH 8150 Sunset Boulevard Owner LLP ("Real Party") proffer that the judgment, when it does issue, should be modified to conform to new precedent by the Court of Appeal and, on that basis, respectfully request that this Court enter judgment in favor of the City and Real Party on the entirety of the Second Cause of Action of Petitioner Manners' Third Amended Petition.

II. PROCEDURAL BACKGROUND

On or before December 1, 2016, four different petitioners filed separate cases challenging the City's approvals of the Project, a mixed-use development comprised of 229 residential dwelling units, 65,000 square feet of commercial uses, and public spaces. These cases were: *Los Angeles Conservancy v. City of Los Angeles*, Case No. BS 166487 ("LAC"); *Fix the City, Inc. v. City of Los Angeles*, Case No. BS 166484 ("FTC"); *JDR Crescent v. City of Los Angeles*, Case No. BS 166525 ("JDR"); and the instant case, *Manners v. City of Los Angeles*, Case No. BS166528. On January 3, 2017, this Court ordered the four cases related, and the parties agreed to coordinate and consolidate their arguments as much as possible. At the hearing on April 19-20, 2017, Petitioner accordingly joined in and did not independently brief or argue the relevant portion of her Second Cause of Action, alleging that "The decision to approve Alternative 9 should be overturned because the finding that Alternative 6 is infeasible, an alternative that is environmentally superior, is not supported by substantial evidence." (Manners Pet., ¶ 49c; see also Manners Opening Br. at p. 21.)

Unlike the other petitioners in the related cases, Petitioner Manners' Petition and Complaint included claims that were outside the scope of this Court's assignment. Precisely which claims were outside that scope and which claims have already been adjudicated by the Court has been the subject of significant debate and disagreement among the parties that led to the Court's decision to hold an additional hearing on the merits, for the Seventh, Eighth and Ninth Causes of Action (set for July 13, 2018). Meanwhile, the Court issued judgment in favor of Petition LAC, partially in favor of Petitioner FTC and against Petitioner JDR, on July 21, 2017. Regarding the particular claim at issue here and judgment in favor of LAC and FTC on the same, the City and Real Party appealed the Court's judgment on July 28, 2017.

As a certified Environmental Leadership Development Project ("ELDP"), the Project was permitted according to rules that afforded greater public process and public benefits compared to a typical project permitted in accordance with CEQA. In exchange for these benefits, and significant additional filing fees, the City and Real Party were entitled to an expedited judicial process that should have resulted in a decision on all appeals within 270 days of certification of

the record of the administrative proceedings. (Rules of Court, rule 8.702.) Although the courts did not make this mark, the appeals in the LAC and FTC cases were nevertheless decided in a relatively short timeframe, with the Court of Appeal issuing another joint decision on March 23, 2018, and modified on April 18, 2018, rev. denied, S248584 citation pending (June 13, 2018.) See attached.

The Court of Appeal issued a decision reversing in part this Court's Merits Order before this Court issued judgment on in this case. As noted above, the decision to overturn parts of the Merits Order was based on new case law, among other things. Logically, the Court should not subsequently issue judgment in accordance with an order that has been overturned in relevant part.

III. LEGAL STANDARD

The Court's authority to clarify its order under the unusual circumstances presented by this case, in particular in light of new case law, is well established. "[A] court has power to construe and clarify its orders, in cases of uncertainty, in order to sustain rather than defeat them." (*Ballas v. Ballas* (1963) 217 Cal.App.2d 129, 132.) In addition, '[u]ntil entry of judgment, the court retains complete power to change its decision as the court may determine; it may change its conclusions of law or findings of fact." (*Bernstein v. Consolidated American Ins. Co.* (1995) 37 Cal.App.4th 763, 774.) "If a court at any time determines that there has been a change of law that warrants it to reconsider a prior order it entered, it may do so on its own motion and enter a different order." (Civ. Proc. Code, § 1008, subd. (c); see also *Bernstein v. Consolidated American Ins. Co.* (1995) 37 Cal.App.4th 763, 774 [recognizing authority derived from Article VI, Section 1, of the California Constitution to change its rulings at any time before final judgment]; *Scott Co. of California v. United States Fidelity & Guaranty Ins. Co.* (2003) 107 Cal.App.4th 197, 210-212 [same].)

IV. ARGUMENT

As explained in more detail below, the City and Real Party respectfully request that the Court reconsider its Merits Order in light of new case law and a Court of Appeal decision reinstating the City's CEQA findings rejecting the preservation alternatives.

A. A Change in the Law Warrants a New Order or Judgment Based on a Different Order

This Court concluded that the City's findings rejecting project alternatives that would preserve a mid-century bank building did not comply with CEQA and were not supported by substantial evidence. Specifically, the Court made the following determinations on its way to reaching this decision: (1) CEQA does not allow a lead agency to determine an alternative is infeasible based on failure to satisfy project objectives; a lead agency can only reject an alternative as "unreasonable" if it fails to meet "basic" project objectives (AJA349-58); (2) The City improperly relied on "non-basic" objectives for rejecting the preservation alternatives (AJA355-56); (3) The City's aesthetic considerations were not social or policy considerations justifying the rejection of the two preservation alternatives (AJA363-64); (4) The City's findings of infeasibility were based on aesthetic concerns that were not supported by substantial evidence (AJA364-65); (5) The City's pedestrian traffic considerations were not social or policy considerations justifying the rejection of the two preservation alternatives (AJA365-66); and (6) There was not substantial evidence to support the City's rejection of the preservation alternatives based on pedestrian traffic concerns (AJA366-67).

After this Court issued its Merits Order in April 2017, the Second District Court of Appeal decided a very similar case involving the alleged failure to consider and adopt preservation alternatives for a an in-fill development project, *LAC v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1041. In that case, the court held that "[i]n the context of project approval, a public agency may find that an alternative is 'infeasible' if it determines, based upon the balancing of the statutory factors, that an alternative cannot meet project objectives or ""'is impractical or undesirable from a policy standpoint.'""" (*LAC v. City of West Hollywood* (2017) 18 Cal.App.5th 1031, 1041, quoting *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001 and citing *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 948-949 [upholding a decision to reject a reduced project alternative that failed to meet a project objective to "[c]reate an opportunity for synergistic mix of retail and restaurant tenants"] and *City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 401, 417 [upholding an

infeasibility determination where general plan amendment alternatives would conflict with the city's growth management program, which embodied policy objectives and planning goals].) In addition, the court concluded that the evidence relied on by the City of West Hollywood when concluding that the preservation alternative would not meet project objectives, including "project development plans and photographs in the EIR," "testimony from an architect involved in the project," and "testimony from a 'Senior Planner' for the City," constituted substantial evidence. (*LAC v. City of West Hollywood*, *supra*, 18 Cal.App.5th at pp. 1042-1043.) These materials more specifically provided the city with sufficient information to conclude that a large, centrally located, mid-century building could not be accommodated by a project that was being undertaken to revitalize the community, serve specific commercial and recreational purposes, and "stand[] as an architectural gateway to the City." (*Id.* at p. 1042 [discussing project objectives]; see also Code of Regs., tit. 14, § 15204, subd. (a) ["[CEQA] does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentor" to produce substantial evidence].)

When considering this Court's Merits Order on appeal, the Court of Appeal applied the decision in *LAC v. City of West Hollywood* to conclude that a "lead agency may determine that an environmentally superior alternative is infeasible because it is inconsistent with the project's objectives." (Attach. A, p. 28.) Among other things, the court determined that "aesthetics constitutes a legitimate concern under CEQA," "is one of the 'other' considerations under section 21081 subdivision (a)(3) for purposes of an infeasibility finding," and evidence of aesthetic impacts can be, and in this case were, established by "testimony from residents of the area and an architect . . . ." (*Id.* at pp. 28-29.) Drawing several parallels to *LAC v. City of West Hollywood*, the court further concluded that substantial evidence supported the City's conclusion that "several conditions prevent[ed] the Preservation Alternatives from achieving the visually appealing, pedestrian-oriented, economically viable new development described in the project objectives," which "were worded properly" and "provided 'an appropriate frame of reference for intelligently comparing' the various alternatives identified as potentially feasible in the EIR." (*Id.* at pp. 29-43, quoting *California Oak Found. v. Regents of University of California* (2010) 188 Cal.App.4th 227,

274.)

B. This Court's Judgment Should Not Grant Petitioner Relief on Any Part of Her Second Cause of Action

Petitioner's second cause of action alleges numerous violations of CEQA and the Merits Order rejects all but one of these assertions. Specifically, the Merits Order holds that "Aside from concerns with the City's articulated findings addressing the rejection of preservation alternatives (and substantial evidence supporting such findings) addressed above, the Court rejects all challenges to the City's approvals of the project." (Merits Order at p. 54.) The Court of Appeal further considered this issue and reinstated the City's findings that the preservation alternatives are infeasible. (Slip Op. at 3.)

The Court of Appeal's decision was based, *inter alia*, on a newly published case that was not available to this Court at the time it issued its Merits Order. The petitioner that defended the Merits Order on appeal, LAC, is the only party that briefed or argued any aspect of this issue before this Court. Petitioner here simply joined in LAC's arguments, which the Court of Appeal found unpersuasive. The Merits Order overturned by the Court of Appeal is consequently identical to the Merits Order secured by Petitioner, who did not make any contributions to the arguments that supported the outcome. Whether based on the new case law or the Court of Appeal's reversal of the Order, or for both reasons, this Court should revise its Merits Order and deny Petitioner's CEQA claims entirely.

C. The Court Might Also Want to Reconsider its Order with Respect to Claims that the City must Hold a Street Vacation Proceeding

In addition to reversing this Court's decision regarding the sufficiency of certain findings made by the City, the Court of Appeal also held, contrary to this Court's determination, that claims that the City was required to hold a street vacation hearing before rerouting the right hand turn lane from Sunset Boulevard to Crescent Heights Boulevard were ripe for review. The Court of Appeal further held that "with regard to that dedicated right turn lane, a street vacation hearing consistent with Streets and Highways Code sections 8300, et. seq., must be held."

Notwithstanding this Court's limited direction for a second hearing on the merits, which

will be conducted concurrently with this motion, Petitioner requested in her opening brief that this Court not only change its Merits Order to hold that a street vacation was required, but that it also direct the City to deny any street vacation application submitted by Real Party on the grounds that, as a matter of law, a street vacation could never be not justified. Such revision is not warranted due to a change in law and exceeds the limited scope of the proceedings authorized by this Court when it ordered a second hearing on the merits. More importantly, however, such an order would exceed the authority of the Court, as it may not issue a writ of mandate to control the exercise of discretion or compel the City to exercise discretion in a particular manner. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) Indeed, the City has not even been afforded the opportunity to hear arguments and weigh evidence in the course of conducting its street vacation hearing. In addition, the factual premise presented by Petitioner is inaccurate, starting with the fact that the City has never proposed to transfer the property to Real Party.

Without waiving their rights to appeal any aspect of this Court's revised order and subsequent judgment, the City and Real Party do not object to amending the Merits Order to conform to the decision issued by the Court of Appeal. The City and Real Party strenuously object, however, to any revisions that go beyond or change in any way the decision of the Court of Appeal, especially if those changes direct the City to exercise its discretion in a particular way.

V. CONCLUSION

For the reasons set forth herein, the City and Real Party request that the Court reconsider its Merits Order and ultimately enter judgment in their favor on the Second Cause of Action.

DATED: June 13, 2018

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____
Shaye Diveley
Attorneys for City of Los Angeles

DATED: June 13, 2018

PAUL HASTINGS LLP

By: _____
Jill E.C. Yung
Attorneys for AG-SCH 8150 SUNSET BOULEVARD OWNER, L.P.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On June 13, 2018, I served true copies of the following document(s) described as **RESPONDENTS' AND REAL PARTY'SNOTICE OF MOTION FOR CLARIFICATION OR RECONSIDERATION OF THE ORDER ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY FEDEX: I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address CSauceda@meyersnave.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful

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

Executed on June 13, 2018, at Oakland, California.

Cynthia Sauceda

SERVICE LIST
Susanne Manners, et al. v. City of Los Angeles, et al
BS166528

Allan E. Wilion 8383 Wilshire Blvd, Suite 800 Beverly Hills, CA 90211 Telephone: (310) 435-7850 email: aew@aewlaw.net	*Attorney for Petitioner and Plaintiff Susanne Manners, Sole Trustee for Manners Decedents Trust*
Gregg Kettles Best, Best & Krieger, LLP 1230 Rosecrans Avenue, Suite 110 Manhattan Beach, CA 90266 Telephone: (310) 220-2175 email: gregg.kettles@bbklaw.com	*Attorneys for Defendant City of West Hollywood*
Jeffrey S. Haber Paul Hastings LLP 515 South Flower Street, 25th Floor Los Angeles, CA 90071 Telephone: (213) 683-6270 Facsimile: (213) 996-3270 jeffreyhaber@paulhastings.com	*Attorneys for Real Party in Interest* AG-SCH 8150 Sunset Boulevard Owner, L.P. and Townscape Partners
Gordon Hart Jill E.C. Yung Paul Hastings LLP 101 California Street 48th Floor San Francisco, CA 94111 Telephone: (415) 856-7017 Facsimile: (415) 856-7117 gordonhart@paulhastings.com jillyung@paulhastings.com	*Attorneys for Real Party in Interest* AG-SCH 8150 Sunset Boulevard Owner, L.P. and Townscape Partners

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ATTACHMENT 1

Court of Appeal

Second Appellate District

Los Angeles Conservancy v. City of Los Angeles et al.

B284089, B284093

March 23, 2018
With Modification
April 18, 2018

Filed 3/23/18

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LOS ANGELES CONSERVANCY, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Appellants; AG-SCH 8150 SUNSET BOULEVARD OWNER, Real Parties in Interest and Appellants.	B284089 (Los Angeles County Super. Ct. No. BS166487)
FIX THE CITY INC., Plaintiff and Appellant,	B284093 (Los Angeles County Super. Ct. No. BS166484)

v.

CITY OF LOS ANGELES et al.,

Defendants and Appellants;

AG-SCH 8150 SUNSET BOULEVARD OWNER et al.,

Real Parties in Interest and Appellants.

APPEALS from a judgment of the Superior Court of Los Angeles County, Amy D. Hogue, Judge. Affirmed in part and reversed in part.

Brandt-Hawley Law Group and Susan Brandt-Hawley for Plaintiff and Appellant Los Angeles Conservancy.

Strumwasser & Woocher, Fredric D. Woocher, Beverly Grossman Palmer and Dale K. Larson for Plaintiff and Appellant Fix the City.

Michael N. Feuer, City Attorney, Terry P. Kaufmann Macias, Assistant City Attorney and John W. Fox, Oscar Medellin, Deputy City Attorneys; Meyers, Nave, Riback, Silver & Wilson, Amrit S. Kulkarni, Julia L. Bond and Shaye Diveley for Defendants and Appellants City of Los Angeles, et al.

Paul Hastings, Gordon E. Hart, Jill E. C. Yung and Jeffrey Saul Haber for Real Parties in Interest and Appellants.

Fix The City, Inc. (FTC) and Los Angeles Conservancy (LAC) petitioned the superior court for a writ of mandate to set aside the approval by the City of Los Angeles (the City) of a real estate development known generally as the 8150 Sunset Boulevard Mixed Use Project (Project) in order to prevent the destruction of a bank building (the Lytton Building) that the parties stipulate has historical significance—acknowledging that the November 2014 Environmental Impact Report found that the destruction of the Lytton Building "would constitute a significant environmental impact under CEQA." The trial court granted the petition in part, allowing the Project to proceed but barring the proposed destruction of the Lytton Building. The trial court denied the balance of the petition.

In its appeal, the City seeks to set aside the trial court's issuance of a writ of mandate precluding approvals that would result in the destruction of the Lytton Building. The City contends that in issuing the writ, the trial court erred in finding that it failed to comply with the California Environmental Quality Act (CEQA)[1] in rejecting as infeasible the three so-called Preservation Alternatives (alternatives 5, 6, and 7) that would have preserved the Lytton Building. We agree and reinstate the City's findings that the Preservation Alternatives are infeasible.

In the cross-appeal, FTC and LAC challenge the trial court's denial of a writ of mandate to the extent it allows the Project to proceed. FTC and LAC make the following contentions: (1) the EIR does not disclose relevant baseline information; (2) approval of the Project was inconsistent with the

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[1] Public Resources Code sections 21000 et seq.; further unspecified statutory references are to the Public Resources Code.

general plan, zoning, and affordable housing ordinances; (3) conversion to non-vehicle use of a traffic lane currently dedicated to right turns for vehicles traveling east on Sunset Boulevard onto southbound Crescent Heights Boulevard requires a street vacation hearing under the Streets and Highway Code; (4) approval allows construction in violation of the required 50-foot setback for seismic safety in violation of the Alquist-Priolo Act; (5) approval violates mandatory policies in the Hollywood Community Plan regarding density increases by subdivision; and, (6) approval of the Vesting Tentative Tract Map must be set aside because the Project is inconsistent with the general plan, zoning, and nondisclosures.

We disagree with all of these contentions in the cross-appeal except the third. We therefore reverse the trial court's denial of a writ of mandate insofar as the court did not require a street vacation hearing regarding the conversion to non-vehicle use of the traffic lane dedicated to right turns for vehicles traveling east on Sunset Boulevard onto southbound Crescent Heights Boulevard. In that regard, we issue a peremptory writ of mandate: (1) remanding the case to the City, (2) directing the City to vacate the November 1, 2016 approvals of the Project on the sole ground that, with regard to the right turn lane from Sunset Boulevard onto southbound Crescent Heights Boulevard, a street vacation hearing consistent with Streets and Highways Code sections 8300, et. seq., must be held, and (3) directing the City conduct a such a hearing.

In all other respects, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Introduction

This appeal involves a 2.56 acre property consisting of two parcels on Sunset Boulevard between Havenhurst Drive and North Crescent Heights Boulevard in the City of Los Angeles (the property). The owner, AG-SCH 8150 Sunset Boulevard Owner L.P. (Real Party), proposes to build a $200 million mixed-use retail-commercial property.

The land has a history. According to the November 2014 draft environmental impact report (November 2014 DEIR), a silent movie actress lived there early in the last century. Built in 1918, her home later became known as the Garden of Allah, "a hotel for the stars." The Garden of Allah was demolished in 1959 to make way for, among other things, the Lytton Building which housed Lytton Savings. Kurt Meyer, a known architect, designed the Lytton Building, and it was constructed in 1960. Currently it houses a Chase Bank branch.

Before the proposed project at issue in this appeal, the Lytton Building was altered and some features removed to make way for a commercial strip mall and a parking lot. According to the November 2014 DEIR, the site's commercial facilities now include "fast food restaurants, check cashing facility, dry-cleaners (off-site dry cleaning), ice cream shop, walk-in bank facility, fitness, massage parlor, pet grooming services, storage facility and dental office[,] coffee shops, an ice cream shop, pet grooming services, fitness studio, a massage parlor, a dental office, a storage facility, and associated parking." The zoning is C4-1D[2]

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[2] According to the City Planning Commission's July 28, 2016 Appeal Recommendation Report, C4-1D is one of the zones

and the site is subject to a 45-foot height limit. Its location is within the Hollywood Community Plan Area in the City of Los Angeles and lies two miles west of the boundary of the Regional Center as defined within the Hollywood Community Plan.

The Initial Events

On August 19, 2013, Real Party AG-SCH 8150 Sunset Boulevard Owner submitted to the City a Master Land Use Permit Application to build on the site. The original application proposed to demolish the Lytton Building (along with the strip mall) in order to make way for the construction of 249 rental apartments—28 of which would be set aside for Very-Low Income Households—111,000 square feet of commercial retail space, and 849 parking spaces.[3] This initial version of the Project would have had a maximum of 16 stories, with an overall height of 216 feet. The original project included both subterranean, semi-subterranean, and above-grade structured parking.

On October 2, 2013, the City held a "scoping meeting" to collect public input. At the meeting, 70 commenters expressed concerns about vacating the turn lane onto Crescent Heights Boulevard, the height of the proposed project, the demolition of the Lytton Building, the ability of infrastructure to support the Project, the existence of the Hollywood Fault line, and the compatibility of the design with the neighborhood.

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used within the Hollywood Community Plan for "Neighborhood Office Commercial" land uses.

[3] The Real Party also proposed to eliminate the right turn lane from Sunset Boulevard onto Crescent Heights Boulevard.

Project Fast Tracked

On April 8, 2014, Governor Brown determined that the Project was eligible for streamlined judicial review under the Job and Economic Improvement Act, Public Resources Code sections 21178 to 21184; thus designating it as an Environmental Leadership Development Project ("ELDP").

The First Environmental Impact Report

The City undertook an environmental review and circulated the November 20, 2014 DEIR. This first DEIR discussed the impacts of the various alternatives on the area's aesthetics, air quality, biological resources, geology, hazards and hazardous materials, hydrology, water quality, fire and police protection, land use, noise, public services and utilities, recreation and traffic.

Project Objectives Identified in the DEIR

The November 2014 DEIR identified 15 "Project Objectives," which had been originally formulated by the Real Party.

- Redevelop and revitalize an aging and underutilized commercial site and surface parking lot with a more efficient and economically viable mix of residential and commercial uses
- Provide housing to satisfy the varying needs and desires of all economic segments of the community, including very low-income households, maximizing the opportunity for individual choices and contributing to Hollywood's housing stock

- Increase the number of affordable rental housing units in the westernmost area of Hollywood
- Capitalize on the site's location in Hollywood by concentrating new housing density and commercial uses, thereby supporting regional mobility goals to encourage development around activity centers, promote the use of public transportation and reduce vehicle trips and infrastructure costs
- Build upon the existing vitality and diversity of uses in Hollywood by providing a vibrant urban living development along a major arterial and transit corridor
- Create new living opportunities in close proximity to jobs, public transit, shops, restaurants and entertainment uses
- Provide high quality commercial uses to serve residents of the westernmost area of Hollywood in a manner that contributes to a synergy of uses and enhances the character of the area
- Bring convenient neighborhood-serving commercial uses within walking distance of numerous apartments and single-family residences in the westernmost area of Hollywood
- Create a development that complements and improves the visual character of the westernmost area of Hollywood and promotes quality living spaces that effectively connect with the surrounding urban environment through high quality architectural design and detail
- Enhance pedestrian activity and neighborhood commercial street life in the westernmost area of Hollywood
- Provide an attractive retail face along street frontages

- Provide improvements that support and encourage the use of nearby public transit lines and promote the use of bicycles as well as walking
- Improve the energy efficiency of on-site uses by creating a master planned development that meets the standards for Leadership in Energy and Environmental Design (LEED) certification
- Provide housing that supports the economic future of the region in an area in which the necessary infrastructure is already in place
- Maintain and enhance the economic vitality of the region by providing job opportunities that attract commercial and residential tenants

Comments in the DEIR About the Lytton Building

In its analysis of the historical resources at the site, the November 2014 DEIR described the Lytton Building as "an eclectic example of California Mid-Century Modern architecture reflecting influences of New Formalism in its glass walls, travertine cladding, and concrete columns, and Googie architecture in its zigzag folded plate roof." It also noted that "the Project Site has been conservatively determined eligible as an early example in Southern California of the Mid-Century Modern Bank building type and as an early example of Kurt Meyer's work that may have been instrumental in his success as a S & L architect for Lytton Savings and American Savings, as discussed below. Therefore, the Assessment Report found the Project Site eligible for designation as a local Historic Cultural Monument." The Lytton Building's "Character-Defining Features" include its "[r]ectangular massing and plan," a

"cantilevered second floor finished with travertine veneer squares extending past the east and west elevations," its "[f]olded plate concrete roof with plastic coating and soffit," and "[f]alse clerestory windows (Enamel Glass) below folded plate roof."

The November 2014 DEIR found that "[i]mplementation of the Project would require the demolition and removal of the Bank building in order to construct subterranean parking levels, the proposed supermarket, and commercial retail and restaurant uses within the western portion of the North Building.[4] However, two extant pieces of art associated with the Lytton Savings Hollywood home branch, including a sculpture (David Green's *The Family*) and a stained glass piece (Roger Darricarrere's *Screen*), would be incorporated into the Project design or preserved at an off-site location in accordance with CEQA." The November 2014 DEIR concluded, "[t]he Project would demolish the Bank such that it would be rendered ineligible for the National Register, California Register, or as a City Monument. Therefore, Project impacts on the Bank structure would be significant and unavoidable."

Areas of Controversy the DEIR Identifies

The November 2014 DEIR identified 30 Areas of Controversy/Issues to be Resolved with respect to the Project. They include:

- Traffic impacts on local streets, intersections, and freeways

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[3] Every version of the proposed project requires the demolition of the other existing structures on the property, including the strip mall and surface parking lot. However, the November 2014 DEIR does not find that any of the other structures are of historical significance, and no party opposes the demolition of anything other than the Lytton Building.

- Effect of traffic island conversion on traffic flow, safety, and access to public transit
- Cumulative impacts associated with other development projects in the area
- Setbacks and consistency with zoning requirements
- Effects on views from hillsides and surrounding neighborhoods
- Height of proposed structures and associated impacts related to visual character and compatibility with surrounding development
- Project Alternatives to be considered
- Impacts related to emergency vehicle access and response times
- Glare effects from building surfaces and glass
- Health effects of parking garage exhaust and air pollutant emissions from additional traffic on local streets
- Risks to life and property from earthquake faults
- Inducement of population growth in the area and demands for public services and infrastructure

Project Alternatives Which the DEIR Identifies

Contained in the November 2014 DEIR were eight alternatives to the original project, three of which (alternatives 5, 6, and 7, also known as the "Preservation Alternatives") would prevent the Lytton Building from being torn down.

1. Preservation Alternative 5

Bank Preservation Alternative 5 would generally "include the development of a mixed-use residential/commercial project on the Project Site at the same overall intensity" as the originally proposed Project. This alternative would "preserve the on-site

Chase Bank building at its current location." Alternative 5 would have a total of 291 residential units, 32 of which would be designated "affordable," slightly more units than the 249 (with 28 affordable) of both the Original Project and Alternative 9, which was submitted later and is discussed below in connection with the September 2015 DEIR. Alternative 5 would only have 62,231 square feet of commercial uses, as compared to the Original Project's 111,339 square feet, similar to Alternative 9's 5,000 square feet. This alternative would include "two tower elements," one along Havenhurst at 16 stories, and another along Crescent Heights Boulevard at eight stories. However, "[p]reservation of the Bank building under this Alternative would increase the depth of excavation necessary to construct below-grade parking since the area under the Bank building would not be used for parking, as it would be under the Project." Because of these changes to the parking structure, the "parking podium would extend 3 levels above ground" as measured "from grade at Sunset Boulevard . . . . ." There would also be alterations to the bank building as a result of the overall development, including "replacement of the existing non-original ground floor windows and replacement of exterior ground floor walls on the south and east elevations with new compatible windows, to improve transparency and views through the building." Additionally the stained glass art work *Screen* would need to be relocated.

2. Preservation Alternative 6

Bank Preservation Alternative 6 would involve an increase in residential units and decrease in commercial floor area as compared with the original project, but would also preserve the Lytton building. Alternative 6 would have a total of 291

residential units, 32 of which would be designated "affordable," slightly more units than the 249 (with 28 affordable) of both the Original Project and Alternative 9. Alternative 6 would only have 62,231 square feet of commercial uses, as compared to the Original Project's 111,339 square feet, and similar to the Alternative 9's 65,000 square feet. This alternative would have two main towers, a 14-story tower along Havenhurst and a 12-story tower along Crescent Heights Boulevard. Like Alternative 5, Alternative 6 would increase the depth and size of the excavation necessary to construct below-grade parking. Because of these changes to the parking structure, the parking podium, according to the Vesting Tentative Tract Map, "would extend 3 levels above ground" as measured "from grade at Sunset Boulevard . . . ." Similar alterations would be done to the Lytton Building as in Alternative 5.

The November 2014 DEIR notes that Alternative 6: ". . . would only partially meet three of the key Project objectives related to provision of commercial uses for on-site residents and the surrounding community and increasing economic activity and employment opportunities. Specifically, the Reduced Height and Bank Preservation Alternative would provide convenient and high quality commercial uses to serve both Project residents and the surrounding community, and also enhance the character of the neighborhood, but it would not contribute to a synergy of site uses at the level the Project would due to the reduced commercial floor area. Further, this Alternative would maintain and enhance the economic vitality of the region by providing job opportunities associated with the construction and operation of proposed uses, and would attract commercial and residential tenants to the Project, but would provide fewer job opportunities

and reduced on-site economic activity due to the reduction in commercial uses. However, this Alternative would achieve the remaining Project objectives."

3. Preservation Alternative 7

Alternative 7, the On-Menu Alternative, would include the construction of a 28-story residential condominium tower, but would retain a number of existing structures, including the Bank Building. The Bank Building would be "retained and rehabilitated for commercial use in conformance with the Secretary of the Interior's Rehabilitation Standards (Standards), as under Alternatives 5 and 6 . . . . However, this alternative's total commercial square footage would be reduced by 57-percent as compared to the original project. There would be a total of 146 residential units, 30 of which would be designated as "affordable."

Alternative 6 Picked as the Environmentally Superior Alternative

The primary alternative the City considered after the November 2014 DEIR was Alternative 6, because it was found to be environmentally superior.[5] Alternative 5 was rejected because

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[5] According to the November 14 DEIR, Alternative 6 "would eliminate a significant unavoidable impact to historical resources through preservation and reuse of the Bank building, would reduce but not eliminate a significant unavoidable temporary impact associated with construction-related noise, and would otherwise reduce the majority of Project-related impacts to some degree. More specifically, this Alternative would result in reduced impacts associated with views, shade/shadow, operational air quality, historical resources, greenhouse gas emissions, land use compatibility, construction noise, local intersection traffic, neighborhood roadway segment traffic and

it would have a greater height, and therefore would not result in the "reduced impacts associated with the views [and] shade/shadow" associated with Alternative 6. Alternative 7 was rejected in part because it had substantially fewer residential units than the other alternatives.

The City Receives Comments Critical of the Project

The City received 975 comment letters about the November 2014 DEIR, many of which criticized the Project. There were concerns that it would "obstruct views, impair overall visual quality, inflict potential operational air quality impacts, increase traffic, and provide insufficient on-site parking."

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solid waste. The Reduced Height and Bank Preservation Alternative would result in similar impacts regarding visual character, light and glare, AQMP consistency, construction air quality, geology and soils, consistency with GHG reduction plans, land use plan consistency, construction vibration, operational noise and vibration, population growth, housing supply, fire protection, and police protection. This Alternative would result in incrementally greater impacts for other topics due [to] increased excavation and an increase of 42 residential units. As with the Project, and with the exception of construction traffic, these impacts associated with employment, libraries, water supply and wastewater would be less than significant and impacts associated with archaeological and paleontological resources and parks and recreation would be less than significant with mitigation. As such, the Reduced Height and Bank Preservation Alternative is considered environmentally superior among the various build Alternatives."

Alternative 9 and the September 2015 DEIR

In response to public criticism, Real Party engaged architect Frank Gehry to propose a completely new design for the Project. Gehry's work, now embodied in Alternative 9, was vetted in a new DEIR (the "September 2015 DEIR")[6]

Gehry's design called for demolishing the Lytton Building, as well as the strip mall. His version of the Project would contain 65,000 square feet of retail and commercial uses—compared to 111,339 square feet originally—and 249 total residential units, the same as the original project. There would be a 27,000 square foot central plaza. The building's height would be 15 stories, but by using three main tower elements, Gehry's version would create "an approximately 150-foot-wide, open north-south-oriented view corridor between the taller East and West tower elements that provides views southward across the Project Site from locations to the north and vice-versa." Additionally, "[p]arking would be reconfigured such that the above-grade structured parking in the southwest portion of the property would be eliminated, and would be provided largely underground which is intended to address concerns raised in the Draft EIR comment letters regarding potential noise and air quality impacts resulting from the above-grade and open parking structure proposed under the Project."

The September 2015 DEIR was re-circulated for public review. It concluded that although the "no project" alternative was the "environmentally superior alternative," the Gehry version "is the superior Alternative for reducing a number of impacts that were of concern to the public (including, but not

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[6] Alternative 9 is also referred to as the "Enhanced View Corridor and Additional Underground Parking Alternative."

limited to, aesthetic/visual, parking and traffic impacts). The Enhanced View Corridor and Additional Underground Parking Alternative would also provide more commercial/retail space (and associated jobs) compared to the Reduced Height and Bank Preservation Alternative."

The Final Environmental Impact Report

On May 13, 2016, the City issued its Final EIR (FEIR). The FEIR included public comments about the Project generally as well as the City's responses. Most of the comments were unclear as to whether the individuals were commenting about the original project, any of the alternatives including Gehry's Alternative 9, or all of them. Whatever the case the following comments are illustrative. One commenter stated that "[t]he current design will have a disastrous effect on the historical nature of the immediate surroundings" by demolishing the Lytton Building and by "blocking the light and views of" several historic neighboring buildings, including the Chateau Marmont. Others asked the City Council to oppose the Project, stating *inter alia*, "[l]ets [*sic*] not destroy the view of the hills," "[l]et's keep the beautiful views of our mountain," "why build another high-rise to block the views from people who can actually afford to live here," and "I'm not opposed to new construction, but the height of this building is obscene! Much of LA's beauty lies in the views of the hills. Let's not obstruct that view of the hills as we travel north to Sunset with a building of this height." Another stated, "[t]his structure will impact the value of our homes. It will block views we have spent millions to have and will make our traffic situation, which is already terrible, impossible." Still others

stated that "[t]his will cover our open skyline . . . ."[7] With respect to expressed concerns regarding the height of the design and obstruction of views, we note that the Preservation Alternatives envision buildings that are essentially the same height as Gehry's version.[8]

The Approval Process

Approximately 90 people attended a public hearing on May 24, 2016. According to the Department of City Planning's Appeal Recommendation Report, 46 members of the public "spoke in support of the project; 25 in opposition to the project; and 2 with general comments and concerns." That same day, the Deputy Advisory Agency and Hearing Officer recommended approval of the "Vesting Tentative Tract Map." On June 23, 2016, the Advisory Agency certified the EIR for the Project and approved the Vesting Tentative Tract Map.

An appeal to the City Planning Commission followed.

The Planning Commission held a public hearing on July 28, 2016, and voted unanimously to confirm certification of the Final

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[7] Some commenters supported the Gehry version. One stated that "[w]e all know what sits in the current site. It's a strip mall. It's pretty much an eyesore. It's been there for about 60 years. The proposed building, proposed project promises to be just beautiful . . . [w]ith affordable housing and 28 units for very low-income housing which the City of L.A. desperately needs, for real." Another individual noted that he had gathered 800 signatures "against the original cookie-cutter high-rise that was meant to be built," but now supported Alternative 9.

[8] The city also made a finding that the Preservation Alternatives were economically infeasible, but because we resolve the appeal on other grounds, we need not discuss this topic.

EIR, to proceed with construction of Alternative 9, and to deny certain appeals. It voted to condition the Project with 4 percent affordable housing (workforce housing) on top of the 11 percent that already had been incorporated into the Project.

Next, the City Council's Planning and Land Use Management (PLUM) Committee held an appeal hearing on October 25, 2016. The PLUM Committee unanimously recommended that the City Council deny the appeal and adopt the findings of the Planning Commission, approving the Project as modified to reduce the residential unit count from 249 to 229.

The PLUM Committee made the following findings: "The record includes numerous public comments raising concerns about the overall massing and design concept of the original project and its alternatives on the grounds that it would not enhance the quality of the neighborhood, would be visually unappealing, would obstruct views, would not be pedestrian-friendly. As shown in Draft EIR Figures 5.E-2 through 5.E-5, 5.F-2 through 5.F-5, and 5.G-2 through 5.G-5, the three bank Preservation Alternatives would result in a design that would concentrate development of the remaining project site and would create a large and flat monolithic design that would not allow for views through the project site, which were a primary concern from the public. Moreover, they would result in a disjointed design to sidewalks, project accessibility and would not be as visually appealing or pedestrian friendly compared to Alternative 9."

The PLUM Committee also recommended the adoption of a Statement of Overriding Considerations regarding Alternative 9's environmental effects.

The City adopted a Statement of Overriding Considerations under CEQA, stating that the Project's benefits outweighed the significant unmitigated impacts on, inter alia, cultural and historic resources.

The City found that the Preservation Alternatives would *not* achieve the following Project objectives:

- Provide an attractive retail face along street frontages
- Redevelop and revitalize an aging, and underutilized commercial site
- Build upon the existing vitality and diversity of uses in Hollywood by providing a vibrant urban living development along a major arterial and transit corridor
- Provide high-quality commercial uses to serve residents of the westernmost area of Hollywood in a manner that contributes to a synergy of uses and enhances the character of the area
- Create a development that complements and improves the visual character of the westernmost area of Hollywood and promotes quality living spaces that effectively connect with the surrounding urban environment through high quality architectural design and detail
- Enhance pedestrian activity and neighborhood commercial street life in the westernmost area of Hollywood

The City Acts and Litigation Ensues

On November 1, 2016, the City Council adopted the PLUM Committee's recommendations and findings and unanimously approved Alternative 9.

A month later, on December 1, 2016, four lawsuits were filed, including the two from which this consolidated appeal has been taken.

The four cases were related and proceeded to two days of hearings at which the trial judge allotted six hours for argument. In a thorough 54-page order, the trial court made the following rulings:

1. It granted a petition for writ of mandate as to rejection of the Preservation Alternatives and otherwise denied the petitions for writs of mandate. The trial court ruled that the city's findings supporting its rejection of the Preservation Alternatives were not supported by substantial evidence.

2. The trial court rejected 24 allegations of noncompliance with the law, including challenges to the EIR.

Judgment was entered on July 21, 2017. This appeal followed on July 28. The City has appealed the court's ruling granting the Petition for Writ of Mandate with respect to the Bank Preservation Alternatives, and FTC and the LAC have cross-appealed with respect to six of the remaining rulings.

DISCUSSION

The City's Appeal

The City contends that the trial court erred in finding that it failed to comply with CEQA by rejecting as infeasible the three Preservation Alternatives which would have prevented the

Lytton Building from being torn down. We agree. The evidence supports the City's determination that these alternatives were infeasible.[9]

1. *Standard of Review*

"'In reviewing compliance with CEQA, we review the agency's action, not the trial court's decision. [Citation.] In doing so, our "inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' [Citation.]" [Citation.] Abuse of discretion is established "if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." [Citation.] Substantial evidence in this context means "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."' [Citation.]" (*City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 474; "Guidelines for Implementation of the California Environmental

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[9] The City contends that FTC and LAC failed to exhaust their arguments during the administrative proceedings. We do not agree. LAC presented its arguments in a letter to the City. Although the issues relating to their sufficiency were not articulated in as much depth as in this appeal, the objections to the City's finding that the Preservation Alternatives were "infeasible" sufficed for exhaustion

FTC claims that the City has forfeited its right to raise exhaustion arguments because the City failed to raise them in the trial court. Since we find that LAC and FTC satisfied CEQA's administrative exhaustion requirements, FTC's argument is moot.

Quality Act." Cal. Code Regs., tit. 14, §§ 15000 et seq. [cited hereafter as Guidelines] 15384, subd. (a).)

Our goal in interpreting CEQA is to adopt the construction that best gives effect to the Legislature's intended purpose. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 45 (*Committee for Green Foothills*).) Consistent with that purpose, we interpret CEQA to afford the most thorough possible protection to the environment that fits reasonably within the scope of its text. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (*Laurel Heights*); *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 381.)

The agency is the finder of fact, and a court must indulge all reasonable inferences from the evidence that would support the agency's determinations and resolve all conflicts in the evidence in favor of the agency's decision. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) "'Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure.' [Citation.]" (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 836 (*Concerned Citizens*).) "A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so." (*Laurel Heights*, *supra*, 47 Cal.3d at p. 393.) "[T]he relevant inquiry here is not whether the record

establishes compliance but whether the record contains evidence [the agency] *failed* to comply with the requirements of its . . . regulatory program. In the absence of contrary evidence, we presume regular performance of official duty. (Evid. Code, § 664.)" (*City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 976.)

2. *Relevant Aspects of CEQA*

a. Historical Structures

While CEQA is directed primarily to ecological concerns and preservation of the environment, section 21001, subdivision (c) declares it also is the policy of the state to "preserve . . . examples of the major periods of California history." It follows, as our colleagues in Division 1 recently said, that "[a] project that involves the destruction of a building that is eligible for listing in the California Register of Historical Resources will have 'a significant effect on the environment' for purposes of CEQA (§ 21084.1; see *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1352–1353 (*Preservation Action*).) An EIR for such a project must consider and discuss feasible alternatives that would avoid or lessen any significant adverse environmental impact. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 123; § 21000, subd. (b)(4); Cal. Code Regs., tit. 14 (Guidelines) § 15126.6.) The discussion of alternatives 'must be specific enough to permit informed decision making and public participation.' (*Laurel Heights*[, *supra,*] 47 Cal.3d 376, 406. . . .)" (*Los Angeles Conservancy v. City of West Hollywood* (2017)18 Cal.App.5th 1031, 1038 (*West Hollywood*).)

Here, no party disputes that the Lytton Building has historical significance, thus invoking CEQA. In this connection, CEQA is designed not necessarily to ensure environmental

preservation so much as to ensure transparency in decisions that impact the environment. "CEQA does not compel retention of old buildings in the name of historical preservation." *(Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1043.)

b. Statement of Objectives

According to section 15124 of the Guidelines, an EIR "shall contain" "(b) [a] statement of the objectives sought by the proposed project. The statement of objectives should include the underlying purpose of the project." (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1163.)

While "[a] lead agency may not give a project's purpose an artificially narrow definition," an agency "may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal. For example, if the purpose of the project is to build an oceanfront resort hotel [citation] or a waterfront aquarium [citation], a lead agency need not consider inland locations. [Citation.]" (*In re Bay-Delta, supra*, 43 Cal.4th at p. 1166; see also *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 668.)

The decision in *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 272–273 (*California Oak*) is illustrative. The case dealt with a large, multiple-phase stadium project at the University of California, Berkeley. The EIR at issue identified seven primary objectives of the project: (1) to provide seismically safe facilities for students, staff and visitors; (2) to promote and inspire relationships vital to the health of the University: between athletics and academics, among academic units, and between the University and the public, including community and neighbors, alumni, prospective students and donors; (3) to enhance remarkable historic places

and create extraordinary new spaces in the southeast campus; (4) to facilitate access to, between, and through the Integrated Projects for vehicles, transit, bicycles, pedestrians, disabled persons and emergency services and vehicles; (5) to increase the functionality of existing spaces and facilities in the southeast campus; (6) to consolidate parking and reduce the prevalence of surface parking in the southeast campus; and (7) to implement policies of the 2020 LRDP EIR, including those related to seismic safety, collaboration and interaction among different disciplines, parking, stewardship, and access to all users at all levels of mobility.

The Court of Appeal held that while some of the objectives were stated broadly, "when considered as a whole, we conclude the objectives chosen by the University do in fact serve the requisite purpose of assisting in the development and evaluation of a reasonable range of alternatives to the Integrated Projects . . . [W]hile perhaps stated more broadly than necessary, the objectives of creating extraordinary new spaces and increasing functionality of existing spaces in the southeast campus do provide an appropriate frame of reference for intelligently comparing the Stadium project to its proposed alternatives . . . This is just what CEQA requires. [Citation.]" (*California Oak, supra*, 188 Cal.App.4th at pp. 273–274; also see *Surfrider Foundation v. California Regional Water Quality Control Bd.* (2012) 211 Cal.App.4th 557, 582.)

c. Feasibility

This dispute focuses mainly on the City's finding that the Preservation Alternatives were infeasible.

Two distinct steps are involved in approving a project with environmental impacts and rejecting alternatives addressing

those impacts as "infeasible." "The agency must first make a finding of infeasibility.[10] (§ 21081, subd. (a); Guidelines, § 15091, subd. (a)(3).) This determination necessarily entails an evaluative process, since statutory 'considerations' are involved. (§ 21081, subd. (a)(3).)[11] In this first step, the positive and

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[10] According to the section 15364 of the Guidelines, "'[f]easible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors."

[11] Section 21081: "Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) With respect to significant effects which were subject to a finding under paragraph (3) of (subdivision (a), the public agency finds that specific overriding economic, legal, social,

negative aspects of each alternative are evaluated. [Citation]" (*California Native Plant Society v. City of Santa Cruz* (*CNPS*) (2009) 177 Cal.App.4th 957, 1002.) As long as substantial evidence supports an agency's finding of actual infeasibility, an EIR which finds an alternative to be potentially feasible is not dispositive. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 368–369; *San Diego Citizenry Group v. County of San Diego* (2013) 219 Cal.App.4th 1, 18.)

If the agency makes a finding of infeasibility, the agency may, but is not required, to make a finding "that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (§ 21081, subd. (b).)

During the second feasibility determination, which is the final stage of project approval, "[b]roader considerations of policy thus come into play when the decision-making body is considering actual feasibility than when the EIR preparer is assessing potential feasibility of the alternatives." (*CNPS, supra*, 177 Cal.App.4th at p. 1000.) The lead agency may determine that an environmentally superior alternative is infeasible because it is inconsistent with a project's objectives. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899 (*Rialto*); *CNPS* at pp. 1001–1002; 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2d ed. 2011) § 17.30, pp. 17-30–17-31.)

Furthermore, aesthetics constitutes a legitimate concern under CEQA and, for that reason, is one of the "other"

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technological, or other benefits of the project outweigh the significant effects on the environment."

considerations under section 21081 subdivision (a)(3) for purposes of an infeasibility finding. An agency has a right to ensure that aesthetic and visual considerations are incorporated into its planning decisions. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (*Pocket Protectors*).) In *Pocket Protectors*, the court noted that "the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required . . . ." (*Id.* at p. 937.) Such substantial evidence was established by testimony from residents of the area and an architect who said that a project would create a "'tunnel or canyoning effect of wide houses on small lots,'" that it would be difficult to install adequate landscaping, and that some of the houses would open their front doors onto a greenbelt. (*Id.* at pp. 920, 937; also see *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402, 403.)

3. Los Angeles Conservancy v. West Hollywood.

The decision in *West Hollywood, supra,* 18 Cal.App.5th 1021, 1034 is particularly instructive for this case. There, real parties applied to West Hollywood to develop a three-acre site ("'the Melrose Triangle'") on which there was a building ("the 9080 Building") built in 1928 and remodeled in 1938 based on designs by "'notable Los Angeles architects whose works included . . . many important examples of Mid-century Modern architecture.'" (*Id.* at p. 1034.) Unlike the Lytton Building, this structure "may be eligible for listing on the California Register of Historical Resources." (*Ibid.*) West Hollywood's general plan provided development incentives for the Melrose Triangle site which would encourage "'exemplary architectural design

elements, with a significant portion of open space maintained as pedestrian walk-throughs open to the sky.'" (*Ibid.*) West Hollywood wanted "'an iconic "Gateway" building, welcoming visitors, residents, and passersby to the City of West Hollywood.'" (*Ibid.*)

Among the project objectives were the following, several of which resemble the objectives in the appeal before us: "'2. Provide a modern, high-quality design that complements surrounding uses and contributes to a sense of community, yet stands as an architectural gateway to the City; 5. Create a consistent pattern of development and uses along Santa Monica Boulevard that serves project residents and the surrounding community by redeveloping an underutilized site; 8. Enhance the intersection of Santa Monica Boulevard, Melrose Avenue, and Doheny Drive so that it may serve as a recognizable entrance to the City through: [¶] the location, form and architectural elements of structures; [¶] landscaped open spaces; [¶] public art and/or other appropriate design techniques; 9. Develop and encourage pedestrian-oriented uses, making the area more pedestrian friendly; and 14. Provide adequate common open space and internal access within the project site to meet the needs of the proposed uses and users.'" *(West Hollywood, supra,* 18 Cal.App.5th at p. 1042.)

The plans called for demolishing the existing buildings, including the 9080 Building, in favor of a new structure fronting Santa Monica Boulevard and Almont Drive. "There would be an internal courtyard and pedestrian paseo connecting Santa Monica Boulevard and Melrose Avenue." (*West Hollywood, supra,* 18 Cal.App.5th at p. 1034.)

West Hollywood prepared a draft EIR identifying the demolition of the 9080 Building as a "'significant and unavoidable'" adverse impact of the project. The EIR offered three alternatives: 1) no project/no new development, 2) a reduction of office space from 137,064 square feet to approximately 102,000 square feet, and 3) preserving the 9080 Building by reducing and redesigning the project. (*West Hollywood*, *supra*, 18 Cal.App.5th at p. 1035.) Alternative 3 would reduce retail and restaurant space by about 20,000 square feet and office space from 137,064 square feet to 86,571 square feet. (*Ibid.*) Residential space and shared space would stay the same.

The EIR concluded that Alternative 3 would achieve many of the project objectives but would not utilize the existing parcels to their full extent. "In addition, Alternative 3 would not result in a cohesive site design and would not create a unified gateway design for the project site . . ." (*West Hollywood*, *supra*, 18 Cal.App.5th at p. 1035.) It would "'not result in a cohesive site design and would not enhance the intersection . . . to create a unified design for the western gateway to the City of West Hollywood.'" (*Ibid.*) Designing the project around the 9080 Building "'would result in an interrupted design frontage along Santa Monica Boulevard' and 'would necessitate construction of smaller, disjointed structures on the site to accommodate the existing building.'" (*Id.* at p. 1037) Therefore, this "[a]lternative would meet some of the project objectives, but not to the same degree as the proposed project." (*Id.* at p. 1035.)

In mitigation, unlike our case, the architects prepared a design that would incorporate the entry facade of the 9080 Building as the main entry to the Gateway Building offices from

the pedestrian paseo. (*West Hollywood, supra,* 18 Cal.App.5th at p. 1036.) They also planned to set up a kiosk near the entrance containing information regarding the 9080 Building. Otherwise, the building would be demolished.

West Hollywood adopted the mitigation measures and adopted a statement of overriding considerations. It found Alternative 3 "'infeasible as an alternative or a mitigation measure because it is inconsistent with the project objectives.'" (*West Hollywood, supra,* 18 Cal.App.5th at p. 1036.)

The objections to the Preservation Alternative in *West Hollywood, supra,* all but track the City's findings in our appeal. Although West Hollywood's Preservation Alternative would have avoided the loss of the building in question, it: 1) would not have fully enhanced the area's overall urban character; 2) would not have resulted in a cohesive site design; 3) would not have created a unified gateway design for the project site, which was the western gateway to the City of West Hollywood; 4) would not have resulted in a cohesive site design; and 5) would not have enhanced the intersection of Santa Monica Boulevard/Melrose Avenue/Doheny Drive to create a unified design for the western gateway to the City of West Hollywood. As such, they were inconsistent with the project objectives.

The trial court denied LAC's petition, and the Court of Appeal affirmed. Most important to our case[12] is the holding that the evidence sufficed to support the finding of infeasibility of Alternative 3. (*West Hollywood, supra,* 18 Cal.App.5th at pp. 1041–1043.) The court found enough information in the

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[12] The court turned back the Conservancy's criticisms of the EIR and held that the EIR responded adequately to public comments to the draft EIR.

record to support a holding that Alternative 3 was inconsistent with the project objectives. In support of its conclusion, the court relied in part on photographs in the EIR and arguments that the 9080 Building's architectural style was neither "'modern' nor 'consistent'" with the pattern of development along Santa Monica Boulevard. (*Id.* at p. 1043.) The court said that Alternative 3 would not enhance the intersection as provided in objective No. 8. The court also noted with approval opinion testimony from "an architect involved in the project that incorporating the 9080 Building into the project 'compromise[d] the ability to create . . . a more iconic really strong gateway element into the city,' and the EIR's conclusion that 'Alternative 3 would not enhance the Santa Monica Boulevard Corridor to the same degree as the proposed project since there would not be a cohesive site design for the entire project site.'" (*Ibid.*)

4. Substantial Evidence Exists that the Preservation Alternatives Are Infeasible

For reasons similar to West Hollywood's rejection of the Preservation Alternative in its EIR, we uphold the findings of the City of Los Angeles that the alternatives which preserve the Lytton Building are infeasible.

FTC challenges the existence of substantial evidence to support the City's infeasibility findings. "Evidence for such findings may be contained anywhere in the administrative record." (*CNPS, supra*, 177 Cal.App.4th at p. 1003, citing *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1401.) As in *CNPS, supra*, the extensive record in the case before us "reflects careful consideration of the alternatives' feasibility, and the City's policy choices were backed by substantial evidence. The ultimate decision to proceed with

the project 'is a discretionary one, and will be upheld so long as it is based upon findings supported by' substantial evidence." (*CNPS,* at p. 1003.)

The record contains a number of facts that constitute substantial evidence that the Preservation Alternatives would not fulfill the objectives of the Project, among which was a call for vibrant buildings that draw people in, create new economic opportunities, and preserve view corridors.

As stated earlier, the City found that the Preservation Alternatives would not meet almost half of the Project's objectives. Embedded in those findings is the conclusion that the Preservation Alternatives are not consistent with the social considerations contained in the City's general plan and supporting policies.

a. The Objectives of the Project Were Properly Stated, and the Preservation Alternatives Fail to Fulfill Many of Them

FTC correctly points out that our task is to focus on the feasibility of the Preservation Alternatives, not Alterative 9 alone. To that end, we may consider policy objectives in determining whether substantial evidence exists with respect to the infeasibility of a Preservation Alternative.

FTC and the LAC argue that in its EIR's, the City has drawn its objectives so narrowly that a failure to meet some of the objectives cannot support a finding that the entire alternative is "infeasible." We conclude otherwise. Based on the cases we discussed earlier in this opinion, neither the City nor the Real Party has given the Project purposes an artificially narrow definition such as, hypothetically, one that calls for a mixed-use development designed by Frank Gehry.

Here, and like *West Hollywood, supra*, both Alternative 5 and Alternative 6 were found not to meet the following objectives:

- Provide an attractive retail face along street frontages
- Redevelop and revitalize an aging, and underutilized commercial site
- Build upon the existing vitality and diversity of uses in Hollywood by providing a vibrant urban living development along a major arterial and transit corridor
- Provide high-quality commercial uses to serve residents of the westernmost area of Hollywood in a manner that contributes to a synergy of uses and enhances the character of the area
- Create a development that complements and improves the visual character of the westernmost area of Hollywood and promotes quality living spaces that effectively connect with the surrounding urban environment through high quality architectural design and detail, and
- Enhance pedestrian activity and neighborhood commercial street life in the westernmost area of Hollywood

These objectives were worded properly. They provided "an appropriate frame of reference for intelligently comparing" the various alternatives identified as potentially feasible in the EIR. (*California Oak, supra*, 188 Cal.App.4th at p. 274.) For example, the objective to "[e]nhance pedestrian activity and neighborhood commercial street life" provided a basis for the City to conclude that Alternatives 5 and 6 would not be "pedestrian-friendly" and would result in "a disjointed design to sidewalks [and] project accessibility."

In *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 44 [disapproved of on other grounds by *Western States*

Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 570, fn. 2; 576, fn. 6], the court decided that alternatives with respect to a proposed housing project were infeasible in light of the city's need for more housing. The City had pointed to several facts which constituted substantial evidence that the Preservation Alternatives were not practical from a policy standpoint. For example, one alternative called for 50 percent fewer dwelling units, one would reduce open space, and another would have additional impacts on agriculture and farmland. (*Sierra Club,* at p. 44.)

Here, the City refers to policies in its General Plan, the Hollywood Community Plan, and its Design Guidelines that, inter alia, recommend that physical projects "[e]ncourage . . . pathways and connections that may be improved to serve as neighborhood landscape and recreation amenities," "[i]mplement streetscape amenities that enhance pedestrian activity," "incorporate passageways or paseos into mid-block developments, particularly on through blocks, that facilitate pedestrian and bicycle access to commercial amenities from adjacent residential areas," "use the design of visible building facades to create-reinforce neighborhood identity and a richer pedestrian environment," and "contribute to the environment, add beauty, increase pedestrian comfort, add visual relief to the street, and extend the sense of the public right-of-way."

b. The City Properly Considered Architecture and Aesthetics, and Properly Found the Preservation Alternatives Fell Short

The City found several conditions preventing the Preservation Alternatives from achieving the visually appealing, pedestrian-oriented, economically viable new development

described in the project objectives. To quote from the Vesting Tentative Tract Map:

> "Alternative 6 would result in a disjointed design to sidewalks, project accessibility, and would not be as visually appealing or pedestrian friendly compared to the proposed project. The retention of the Bank building would impede on the quality of the proposed pedestrian-level amenities, including the plaza entries proposed at the northwest and northeast corners of the project site. Conversely, Alternative 9 incorporates strong pedestrian scale elements by orienting the lower-scale commercial uses to the street front along Sunset Boulevard and locating the taller structural elements to the rear of the project site. Alternative 9 provides an active street front with direct access from the sidewalks of all three adjoining streets, and also incorporates a Central Plaza, providing a continuous street-to-street pedestrian linkage across the site. Under Alternative 6, the South Building would have tower components of 12 and 14 stories, compared to 9 and 16 stories under the original project, and 11 and 15 stories under Alternative 9. Given that Alternative 6 would have nearly the same floor area as the original project, but a lower building height (two-story overall reduction) for the South Building western tower component, the bulk of other building components would be increased relative to both the original project and to the proposed project/Alternative 9. Most notably, the eastern tower component of South Building would be increased in height to 12 stories. The footprint of the South Building tower would also be slightly increased in a north-south dimension and setbacks of the

> 14-story component from Havenhurst Drive and the south boundary would be reduced. As shown in Draft EIR Figures 5.F-2 through 5.F-5, Alternative 6 would result in a design that would concentrate development of the remaining project site and would create a large and flat monolithic design that would not allow for views through the project site, which was a primary concern from the public. Alternative 6 would result in similar impacts to the original project associated with setbacks and massing and would not provide the varied massing or the 150-foot wide view corridor associated with the proposed project."

From a structural point of view, the City noted that by keeping the Lytton Building, Preservation Alternative 6 "would increase the depth of excavation necessary to construct below-grade parking since the area under the Bank Building would not be used for parking, as it would under the proposed project/Alternative 9. Similar to the original project, Alternative 6 would have a parking podium with three subterranean levels, and would extend 3 levels above ground (as measured from grade at Sunset Boulevard), a point of contention in comments received, which took issue with the air quality implications of open parking lots near residences. In contrast, the proposed project's enclosed parking structure is entirely subterranean or semi-subterranean, providing an aesthetic benefit that is especially pronounced given the project's proximity to multi-family residential uses to the south and to the west, and improving the pedestrian experience in the surrounding area."

The City reached the same conclusion with respect to Alternative 5. These conclusions come from solid evidence in the form of project layouts (and accompanying text) for the

Preservation Alternatives. We find no basis to disturb the City's findings.

We next consider whether Frank Gehry's letter dated October 24, 2016[13] constitutes substantial evidence that Alternatives 5 and 6 are infeasible. FTC and the Conservancy insist that the letter presents nothing more than his unsubstantiated opinion. We do not agree.

Section 15384 of the Guidelines states that substantial evidence includes "expert opinion supported by facts." What follows is a list of the facts and expert opinions Mr. Gehry's letter contains:

- The Lytton Building "turns its back" to Havenhurst Drive.
- The Lytton Building's size and layout limits the number and types of tenants who can occupy the space.
- The Lytton Building consumes a sizeable portion of the site.
- Gehry designed Alternative 9 with a goal of inviting and drawing people into the public plaza.
- The Lytton Building has a non-porous facade.
- The Lytton Building extends up to the existing narrow sidewalk on Sunset Boulevard.
- The Lytton Building belongs to an outdated commercial real estate model.
- The Lytton Building does not provide street-front engagement along Sunset Boulevard.
- Gehry made efforts to try to incorporate the Lytton Building into his design but concluded it was not physically

[13] Frank Gehry wrote a second letter, on March 24, 2016, to Townscape Partners LLC, saying essentially what he wrote in his October 24 letter.

possible while also ensuring a pedestrian friendly design that extends the landscape of the hills and preserves the view corridor.

The facts and expert opinions in this letter constitute substantial evidence that the Preservation Alternatives are infeasible.

While it is true that the FEIR concludes that the Preservation Alternatives would meet or partially meet all of the Project's objectives, this does not undermine the presence of substantial evidence to support City's ultimate conclusion to the contrary. "A court may not set aside an agency's approval of an EIR on ground that an opposite conclusion would have been equally or more reasonable. [Citation.]" (*Laurel Heights, supra*, 47 Cal.3d 376, 393.)

c. The City Properly Considered Public Comments, a Substantial Number of Which Did Not Approve the Preservation Alternatives

In *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 466 , the court said that the lead agency must, among other things, prepare a draft EIR and make "all documents referenced in it available for public review, and respond to comments that raise significant environmental issues. (§§ 21092, 21091, subds. (a), (d); Guidelines, §§ 15087, 15088.)"

Not only may the public comment on the draft (§ 21091, subd. (a); *West Hollywood, supra*, 18 Cal.App.5th at p. 1039), the public must be given an adequate opportunity to do so before the decision to go forward is made. "'[P]ublic participation is an "essential part of the CEQA process." [Citations.]' [Citation.] 'The EIR's function is to ensure that government officials who

decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.]'" (*Ballona Wetlands Land Trust v. City of Los Angeles, supra,* 201 Cal.App.4th at p. 467.)

An approving agency may consider adverse public reaction. This makes sense in light of section 21081's provision that specific "social" considerations render formal alternatives identified in the environmental impact report infeasible.[14]

Pursuant to section 21081, subdivision (b), "[S]ocial . . . benefits" of a project constitute one of the factors the agency must find outweigh the "significant effects on the environment" (i.e., here, keeping the Lytton Building). Public opinion constitutes one of the "social . . . considerations" which a public agency must consider and make findings about in order to discharge its obligations under section 21081, subdivision (a)(3). Were it otherwise, there would be no reason to require agencies to include public comments in their EIR's, along with their responses to the public's comments. (Guidelines §§ 15089(a), 15132.)

In light of the foregoing, the reactions by commenters to the project contain substantial evidence of the infeasibility of the Preservation Alternatives. They constitute one of the "social conditions" that justify such a finding. As the City explained in its reply brief, "The social impact is grounded in the public's

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[14] Section 21082.2 subdivision (c) says that evidence of "social . . . impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence." The social impact here would be caused by a physical impact on the environment, to wit, the proposed mixed-use project that would replace the Lytton Building and the strip mall.

perception of the Project, and there is ample evidence that the public rejected the original project designs."

The Legislature enacted CEQA as it did partly to make decisionmakers consider and address the consequences of their proposed actions. Listening to their constituents is part of that process. Thus, in *Pocket Protectors*, *supra*, 2124 Cal.App.4th at p. 928, the court held that "[r]elevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument. [Citations.]"[15]

As stated by the PLUM Committee in its October 25, 2016 approval of the Vesting Tentative Tract Map, "The record includes numerous public comments raising well-founded concerns about the overall design concept of the original project and its alternatives on the grounds that it would not enhance the quality of the neighborhood, would be visually unappealing, by virtue of massing and obstruction of views, and would not achieve a comparable pedestrian-friendly design."

The City considered a number of comments from members of the community. The original proposal, which was not designed by Gehry but would require the demolition of the Lytton

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[15] In a footnote, FTC asserts that the Legislature has forbidden reliance upon public controversy to determine whether a project has significant environmental effects. (§ 21082.2, subd. (b).) FTC is paraphrasing that statute out of context, because it only pertains to the requirement to prepare an EIR. The statute's full wording reads, "The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment."

Building, drew significantly negative reviews. One called it a "disgusting mass." Many complained that the original proposal would block light and views of the hills and "cover our open skyline."

After Mr. Gehry submitted Alternative 9, a number of critics changed their views, as evidenced at a public hearing before the City Council's PLUM committee.

Our Supreme Court has made it clear in *Laurel Heights*, *supra*, 47 Cal.3d. at pp. 412–413, that in connection with a CEQA analysis, we do not ask whether the negative comments about the Gehry Project constitute substantial evidence in favor of FTC and LAC's contentions, but whether substantial evidence supports the lead agency's decision. "By noting the Association's concerns, . . . we are not engaging in the weighing process we have described as inappropriate under CEQA. As we have explained, the issue is not whether there is evidence to support the Association's objections to the EIR, but only whether those objections show there is not substantial evidence to support the Regents' finding of mitigation." (*Ibid.*) The concerns regarding the Preservation Alternatives constitute additional substantial evidence supporting the City's infeasibility findings on the basis of policy considerations.[16]

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[16] Because we conclude that substantial evidence supports the City's determination that the Preservation Alternatives are infeasible because they failed to meet the Project objectives, we find it unnecessary, and thus decline, to discuss whether the Preservation Alternatives are infeasible from an economic perspective.

FTC's and LAC's Cross-Appeal

FTC and LAC (jointly, FTC) have cross-appealed from six of the trial court's rulings. With the exception of the need for a street vacation hearing, we affirm.

1. The Trial Court Ruled Correctly With Respect to the Failure to Disclose Relevant Baseline Information Pursuant to CEQA

FTC claims that the EIR omitted "baseline information" regarding the Project by failing to set forth a number of conditions, including failure to accurately describe 1) the current conditions on the site; 2) the prior planning approval; 3) a 45-foot height limit; 4) an 80,000 square foot total buildable area limit; and 5) restrictions on the Havenhurst driveway. These omissions stem from the fact that the EIR did not mention or disclose a 45-foot height limitation imposed on the current strip-mall project at the site as recorded in a 1986 covenant that "runs with the land." The trial court ruled that the City did not abuse its discretion in calculating the allowable baseline density for the project or in approving the density bonuses.

We affirm the trial court's ruling for two reasons. First, the 45-foot height limitation will not apply with respect to the Project. Second, under CEQA, baseline information does not include recorded documents such as those FTC claims were omitted.

Because this cross-appeal is based on an alleged failure to comply with CEQA, the same standard of review we described in connection with the City's appeal applies here. The court reviews the City's decision de novo as to whether there "was a prejudicial

abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*In re Bay–Delta Etc.*, *supra*, 43 Cal.4th 1143, 1161–1162, quoting § 21168.5.)

a. The Covenant is No Longer Relevant

The covenant at issue here (the covenant), recorded on November 7, 1986, and running with the land[17], imposes a 45-foot height limitation on the Project site.[18] The covenant was issued by the Los Angeles City Planning Department and is titled as a "Zone Change, Commission Conditional Use, Zone Boundary Adjustment Specific Plan Exception Covenant and Agreement Form."

FTC relies on the provision at paragraph 7 to the effect that: "No new structure shall exceed 45 feet in height measured from grade on the south side of such new structure and no pole signs shall exceed 50 feet in height measured from the grade on the south side of the southernmost structure."

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[17] The 1986 covenant provides that "[t]his covenant and agreement shall run with the land and shall be binding upon any future owners, encumbrancers, their successors, heirs or assigns and shall continue in effect until the Planning Department of the City of Los Angeles approves its termination."

[18] Although it is not part of the administrative record, the court takes judicial notice of the covenant's existence and recordation. Because FTC's argument is based on the nondisclosure of this covenant, its argument is timely and has not been waived.

FTC overlooks language in paragraph 1 which states: "The conditions shall cease to apply if (i) construction of the project is not commenced prior to expiration of the permit, or (ii) a new or different project is filed with the City, and the Planning Commission or City Council determine that such new or different project is consistent with the General Plan, including the Hollywood Community Plan, and the intent of both without such conditions." The Project suffices to cancel the covenant's effect. If the Project is approved, then by its own terms, the 1986 covenant and any restrictions it contains will no longer apply.

The absence of the covenant from the EIR is not prejudicial. As FTC acknowledges in its reply brief, "CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. [Citation.] Although disagreement among experts does not render an EIR inadequate, the report should summarize the main points of disagreement. [Citation.] The absence of information in an EIR, or the failure to reflect disagreement among the experts, does not per se constitute a prejudicial abuse of discretion. [Citation.] A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. [Citation.]" (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) In addition, the EIR did disclose the only potentially relevant provision of the covenant–the 45-foot height limit. The original November 2014 DEIR contains the following passages: "The Project Site is zoned C4-1D and has a General Plan land use designation of Neighborhood Office Commercial with corresponding zones of C1, C2, C4 and P Zones in the

Hollywood Plan. . . . The Commercial Corner standards set forth in the Los Angeles Municipal Code . . . including the 45-foot height limit, are not applicable to the Project, since qualified mixed use development projects, such as the proposed Project, are exempt from these provisions pursuant to [the] LAMC . . . ."

For these reasons, the EIR sufficiently disclosed that the site was subject to a 45-foot height limit because its current use was strictly commercial, not mixed-use. The City's failure to disclose the 1986 covenant and its duplicative height limitation did not preclude informed decision-making and public participation. To include the covenant would have added nothing new or different about the existing conditions at the site.

b. Recorded Documents Like the Covenant Need not be Included in Baseline Information

Section 15125 of the Guidelines provides in pertinent part:

"(a) An EIR must include a description of the *physical environmental conditions* in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. *This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.*" (Italics added.)

Our research has found no definitive explanation of "physical," but some cases refer to physical environmental conditions as "the real conditions on the ground." (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1374 overruled on other grounds, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457.) In *Communities for a*

Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 320–323, the unsuccessful party argued that the analytical baseline for a project employing existing equipment should be the equipment's maximum permitted operating capacity, even if the equipment was operating below those levels at the time the environmental analysis began. The plaintiffs maintained the Air Quality Management District was required to use the actual existing levels of operation as a baseline and treat anything over that baseline as a project impact. The court said that the impacts of a proposed project ordinarily are compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework. The court noted several earlier decisions in each of which, ". . . the appellate court concluded the baseline for CEQA analysis must be the 'existing physical conditions in the affected area' [Citation], that is, the '"real conditions on the ground"' [citations], rather than the level of development or activity that *could* or *should* have been present according to a plan or regulation." (*Id.* at pp. 320–322.)

These cases—coupled with the rule that words should be interpreted according to their ordinary meaning (*Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 128 ["[w]e generally assign statutory terms their ordinary meaning."]) support a conclusion that there was no need for the EIR to refer to recorded documents, including but not limited to the covenant. Such documents merely describe the type or conditions of development permitted in the vicinity of the project; they are not physical environmental conditions that actually exist there. The trial court ruled correctly in this regard.

2. The Trial Court Ruled Correctly With Respect to Issues About Inconsistency with the General Plan

FTC contends that approval of the Project was inconsistent with the general plan, zoning, and affordable housing ordinances. We find otherwise. The approval of the project was consistent with these provisions.

As an initial matter, we note that FTC does not specifically address this court's standard of review on the issue. Courts have held, however, that "a governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion. 'An abuse of discretion is established only if the [governing body] has not proceeded in a manner required by law, its decision is not supported by findings, or the findings are not supported by substantial evidence.' [Citation.]" (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 357.)

We review the agency's decision regarding consistency with the general plan "directly" and we "are not bound by the trial court's conclusions. [Citations.]" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) "A city's findings that the project is consistent with its general plan can be reversed only if it is based on evidence from which no reasonable person could have reached the same conclusion. [Citation.]" (*A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.) "Thus, the party challenging a city's determination of general plan consistency has the burden to show why, based on all of the evidence in the record, the determination was unreasonable. [Citation.]" (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.)

a. The Hollywood Community Plan

The Hollywood Community Plan (HCP) consists of a map that includes far more area than Hollywood itself. The HCP reaches west to Bel-Air Beverly Crest, northwest to Universal City in the San Fernando Valley, and east to the Golden State Freeway (Interstate 5). The map is color-coded to reflect zoning designations, and a table explains each hue, but the explanatory footnotes contain the clarification that "[o]nly those zones indicated in the table are *recommended* in Hollywood." (Italics added.) With that caveat in mind, we note that the "[n]eighborhood office commercial zoning" designation runs along Sunset Boulevard and includes the site. Across the street to the northeast of the Project is multiple family medium zoning and, to the northwest, low density residential. The block to the south is zoned for neighborhood office commercial. The streets immediately south of that block are not included in the HCP.

Either FTC is reading more into the HCP than it should, or FTC has misread the plan, starting with overlooking the "recommended" nature of the zoning areas. For example, FTC maintains that the HCP limits residential density to "medium-density RAS3 and height to 45 feet." FTC then argues that these restrictions would translate to a lower baseline density (102 units) than the 204 units the City utilized. FTC goes on to say that the alleged 45-foot height limit allegedly traceable to the HCP and the 1986 covenant also undermine the approval.

The current HCP does not contain these limitations. They appeared in the 1988 Hollywood Community Plan's EIR as recommendations, but were never adopted. The 1988 Hollywood Community Plan's EIR provided in its "Mitigation Measures" section: "In order to address the urban design impacts expected to occur as a result of development permitted by the Proposed

Plan Revision, the following programs and development standards should be implemented through inclusion in the zoning Code or other enforceable means." However, FTC has not pointed us to any implemented enforceable zoning code that includes the mitigation proposals from 1988's EIR. That EIR merely suggests mitigation measures and is not by itself an enforceable document. It follows that the zoning code does not support FTC's arguments that the 1988 Hollywood Community Plan's EIR limits the density and height of the Project.

FTC argues that the City misrepresents the project location as being within the Hollywood Regional Center, and for that reason, improperly set the baseline density. Actually, the project description in the Final Environmental Impact Report (FEIR) does not claim that the property falls within the Hollywood Regional Center. The FEIR actually reads as follows: "The Project Site, with frontage on Sunset Boulevard, lies in the more active regional center of Hollywood[19] with its mixed-use blend of commercial, restaurant, bars, studio/production, office, entertainment and high density residential uses." The EIR does not calculate the baseline density by improperly relying on the Project's inclusion within the Hollywood Regional Center.

FTC argues further that the City improperly ignored density and height limitations. However, as pointed out by the City in its Reply, FTC is relying only on *proposed* limitations set forth in the EIR for the 1988 Hollywood Community Plan.

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[19] The court does not interpret this wording as meaning the Hollywood Regional Center per se. Later, on the same page, the November 2014 EIR states, "[t]he project site is not located in any Specific Plan area and is not subject to any interim control ordinances."

It is true that the 1988 EIR provides that areas zoned "Neighborhood-Oriented Commercial," such as the project site, "shall" require building areas "devoted to commercial use . . .[to] . . . be no more than 1 times lot area; additional building area up to a total of 2 times lot area may be devoted to residential use," and that "[n]o building shall exceed 45 feet in height or three stories." However, this language appears only in the "Mitigation Measures" section of the 1988 Hollywood Community Plan EIR, which, as the City points out, is preceded by the following passage: "In order to address the urban design impacts expected to occur as a result of development permitted by the Proposed Plan Revision, the following programs and development standards *should* be implemented through inclusion in the zoning Code or other enforceable means." (Italics added.) FTC has not shown us an implemented enforceable zoning provision that includes the mitigation proposals from the 1988 Hollywood Community Plan EIR. The 1988 EIR only suggests mitigation measures. It is not by itself an enforceable document limiting the Project's density and height.

The City properly calculated the density "baseline" and height restrictions based on the site's current zoning. The HCP designates the property as "Neighborhood Office Commercial," which has allowable zoning codes of "C1, C2, C4, P, RAS3, [and] RAS4." The project site itself is designated C4-1D. The "C4" zoning designation provides that a parcel may have "[a]ny use permitted in the C2 Zone, provided that all regulations and limitations of said C2 Commercial Zone are complied with," and that the "lot area requirements of the R4 Zone . . . shall apply to all portions of buildings erected and used for residential purposes." (Los Angeles Municipal Code (LAMC) § 12.16.C.3.)

R4 density is 400 sq. ft. of lot per dwelling unit. (LAMC § 12.11.C.4.)

The EIR also notes that the project sits on an area designated as a "Commercial Corner Development" on which LAMC section 12.22.A.23, subd. (a)(1) limits buildings to 45 feet in height. However, mixed-use projects like this one are specifically exempted from this height provision. (LAMC § 12.22.A.23, subd. (d)(1) [providing that for "Commercial Corner Development" sites, "[b]uildings or structures located in Height District Nos. 1 and 1-L shall not exceed a maximum height of 45 feet," but that "[t]he following Projects shall not be subject to this subdivision: . . . A Mixed Use Project"].

FTC argues that the project is actually zoned for an "R3" maximum density, and in support, FTC cites the "Summary of Residential Plan/Zoning Designations for the Hollywood Community Plan Revision Area" included in the 1988 Hollywood Community Plan EIR. As discussed above, the 1988 Hollywood Community Plan EIR is not, by itself, an enforceable document. Regardless, while the table on that page indicates a maximum "plan designation" of "Medium" for *residential* uses—which would permit a maximum density of 40 units per acre—the site is zoned C4, a *commercial* and mixed-use designation, and is therefore not a "residentially" zoned parcel. Under the City's enforceable zoning regulations, a parcel zoned C4 permits residential density consistent with an "R4 Zone." (LAMC § 12.16.C.3.) Therefore, the current HCP's 40 units per acre limit for purely residential parcels does not appear in the enforceable zoning codes. Had the City intended mixed-use parcels to be so limited, it would have provided in its Municipal Code that a C4 zoned parcel would have a lower density for its residential component.

Regardless of the foregoing, the project proponents used a conservative estimate of 40 units per acre for a total of 204 units; then they requested and obtained a density bonus to cover the difference between the 204 units it could build by right without the bonuses and the 229 approved units.

FTC then argues that another aspect of the 1988 Hollywood Community Plan's EIR contains enforceable limitations. The 1988 Hollywood Community Plan EIR provides as a mitigation that with respect to C4 "Neighborhood-Oriented Commercial" zoned areas, " [n]o building shall exceed 45 feet in height or three stories." However, as discussed above, that section of the 1988 Hollywood Community Plan EIR is part of the "Mitigation Measures," which explains that "[i]n order to address the urban design impacts expected to occur as a result of development permitted by the Proposed Plan Revision, the following programs and development standards *should* be implemented through inclusion in the Zoning Code or other enforceable means." (Italics added.) This language on its face shows that the proposed mitigation measures in the 1988's EIR are not enforceable, because they suggest that the mitigation measures be adopted by the "Zoning Code or other enforceable means." (Italics added.)

FTC has pointed to no provision of the Zoning Code—or any other enforceable code or regulation—that would limit the Project's buildings to 45 feet in height. Accordingly, FTC has failed to show that the City erred in approving the project with respect to height.

FTC argues in its reply brief[20] that the City's claim of unlimited height for the project violates LAMC section 12.22.A.25 subdivision (f)(5)(i)(a).[21] However, FTC has not shown any evidence in the administrative record to indicate that Alternative 9, i.e., the Gehry Project, includes any building located within 15 feet of a lot zoned R2. According to the HCP map, the project area is bordered almost entirely by other properties which are zoned Neighborhood Office Commercial. A small plot of land directly to the west of the project site appears to be zoned R2, but FTC has failed to show that this plot, which is separated from the site by Havenhurst, lies 15 feet from any of the proposed Alternative 9 buildings that exceed 45 feet. Therefore, even assuming LAMC section 12.22.A.25 subdivision (f)(5)(i)(a) applies to the property, there is no evidence that approving Alternative 9 violates this code section.

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[20] The argument which follows appeared for the first time in FTC's reply brief. While this is improper, we choose to decide the issue on its merits.

[21] "A percentage increase in the height requirement in feet equal to the percentage of Density Bonus for which the Housing Development Project is eligible. This percentage increase in height shall be applicable over the entire parcel regardless of the number of underlying height limits. For purposes of this subparagraph, Section 12.21.1.A.10. of this Code shall not apply. [¶] (i) In any zone in which the height or number of stories is limited, this height increase shall permit a maximum of eleven additional feet or one additional story, whichever is lower, to provide the Restricted Affordable Units. [¶] (a) No additional height shall be permitted for that portion of a building in a Housing Development Project that is located within fifteen feet of a lot classified in the R2 Zone."

Even assuming some ambiguity over whether the density and height limitation determinations set forth in the EIR complied with the General Plan and zoning codes, as discussed above, courts give great deference to a city's interpretation of its own general plan. In *Pfeiffer v. City of Sunnyvale City Council*, *supra*, 200 Cal.App.4th 1552, 1563, the Palo Alto Medical Foundation (PAMF) proposed to demolish an existing medical office building, a parking lot, and three single-family residences, and replace them with a larger medical office building, a parking garage, and a storage and waste management area. After preparing an environmental impact report concerning PAMF's proposed project and evaluating the public comments, the city council certified the EIR and approved the project. Two neighboring homeowners challenged the city's certification of the EIR and approval of PAMF's project, claiming that that the EIR was inadequate and the proposed project was inconsistent with Sunnyvale's general plan. The homeowners alleged that the three single-family residences to be demolished and replaced with a storage and waste management area were located on land that had to be used exclusively for single-family detached homes. The trial court denied their petitions for writ of mandate.

The Court of Appeal affirmed, because appellants "failed to show that the city council did not consider '"the applicable policies and the extent to which the proposed project conforms with those policies." [Citation.]' [Citation.]" *(Pfeiffer*, *supra,* 200 Cal.App.4th at p. 1565.) The Court noted that "the city council determined, among other things, that the PAMF project was consistent with the City's general plan with respect to the plan's community character, neighborhood, and land use goals. Appellants make no showing that the city council's determination

of consistency with respect to these general plan goals was unreasonable. Instead, appellants merely make the conclusory argument that the city council erred by not making any express findings regarding the . . . property. We emphasize that appellants, as the parties challenging a city's determination of general plan consistency, have the burden to show why, based *on all of the evidence* in the record, the determination of general plan consistency was unreasonable. [Citation.]" (*Ibid.*)

In our case, assuming either (1) some discrepancy between the proposed mitigation measures in the 1988 Hollywood Community Plan EIR and the subsequent zoning adopted by the City, or (2) ambiguity as to whether a mixed-use project is exempt from the height limitations of purely commercial properties and the density limitations of neighboring, purely residential areas, the fact remains that FTC fails to make a showing that the City's interpretation of its zoning provisions was unreasonable. As stated by the Court of Appeal in *Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719, "[i]t is, emphatically, *not* the role of the courts to micromanage these development decisions."

The trial court ruled correctly with respect to this issue.

3. A Street Vacation Hearing Is Necessary

Next to the proposed project is a traffic lane dedicated to permitting right turns for vehicles traveling east on Sunset Boulevard onto southbound Crescent Heights Boulevard. FTC argues that converting this lane to non-vehicle use requires a street vacation under the Streets and Highway Code. We agree.

The City approved converting most of the space that lane occupies into a 9,134 square foot "public space" that would

become essentially part of the project.[22] Referred to as the "plaza area" and the "Corner Plaza," the November EIR describes the space as creating "opportunities for outdoor activities, visual connections to the surrounding area from within the Project, and pedestrian connections to the three surrounding streets." According to the November 2014 project description, "[t]his improvement would not require the dedication of an easement or purchase of the traffic island property; rather, the existing travel lane and traffic island would remain under the ownership and control of the City, but would be improved and maintained as public space by the Project applicant. This improvement, however, would require the issuance of a 'B-Permit' by the Los Angeles Department of Public Works, for which conditions would be imposed by the City to require proper maintenance of the property or other requirements deemed appropriate."

FTC contends, and we believe rightfully so, that the City cannot reconfigure the intersection, remove the right-turn lane, and create the Corner Plaza without going through the procedure

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[22] The description in the November 2014 EIR reads as follows: "With regard to the intersection of Sunset Boulevard and Crescent Heights, . . . the Project proposes to reconfigure the southwest quadrant of the intersection to remove the independent eastbound right-turn only lane and replace it with a more typical right-turn lane located at the intersection. The south side of Sunset Boulevard would be widened as necessary to provide the proposed right-turn lane, and the west side of Crescent Heights Boulevard between Sunset Boulevard and the Project's driveway would be reconstructed. The proposed removal of the existing independent right-turn lane would allow the existing raised triangular island at the southwest corner of the intersection to be joined with the site to create a plaza area adjacent to the northeast corner of the site."

for a street vacation as set forth in Streets and Highways Code sections 8300 et seq. The City insists that the subject is not "ripe" because the City has not yet issued a "B Permit" for the work. We do not agree. The issue deserves a ruling now.

We review this issue de novo because there are no factual disputes with respect to the City's proposed action or with respect to the aspects of the intersection and the proposed corner plaza. (See *Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.* (1994) 23 Cal.App.4th 812, 817–818 ["We independently review the trial court's determinations of questions of law. [Citation.]"].)

a. The Issue is Ripe for Review

Under CEQA, approval takes place at the agency's "earliest commitment" to a project, not its final approval in the sequence of approvals. The "general rule" provides that if a development decision has potentially significant environmental effects, it must be preceded, not followed, by CEQA review. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.) Here, the EIR and Project approvals already include the Corner Plaza's creation, including closing off the traffic lanes at issue. The letter of determination acknowledges that the Corner Plaza constitutes part of the Project, and the City should be estopped from claiming otherwise. It makes little sense to await the conclusion of the essentially ministerial B-permit process before entertaining a challenge. The City treated the approval of the Project's entitlements as final, including a cover letter dated October 7, 2014, on the Vesting Tentative Tract Map to the effect that "No additional requirements can be placed upon the project once the Advisory Agency has issued the letter of decision." It follows that conditions pertaining to the tract map must be placed on the

project before it is approved. This includes the street vacation process.

Every version of the EIR has included the Corner Plaza, creation of which requires paving over the right turn lane and "merging" or "incorporating"" it into the project. In its approval of the FEIR, the city has treated the conversion like a fait accompli, not just a settled question, but an integral and important feature of the Project. Moreover, the City has given no indication that it plans to seek a street vacation, only a B-permit. In light of this record, we conclude that a decision regarding the need for a street vacation procedure would not be speculative or advisory at this time. Sufficient concreteness and immediacy frame the legal issues to enable us to render a conclusive and definitive judgment. (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1722.)

The cases on which the City and the Real Party rely stem from fact situations that were much less settled than here. In one of them, the plaintiff sought declaratory relief regarding a possible unspecified future condemnation for which the city had not started any move toward acquiring the property. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1583–1584.) In another, there was a hypothetical future reference of a recently passed general plan, but no challenge to any specific project or other governmental action. (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 115–116.) The court noted that the city's general plan was by its very nature merely tentative and subject to change. Here, the City has certified an EIR that endorses the conversion of a traffic lane to pedestrian use, and the city has discussed this subject in its

finding approving the EIR and the Project. There is no question what the City and the Real Party plan to do.

b. A Street Vacation Procedure Must Occur.

Eliminating the right turn lane promises to generate significant community reaction. In fact it already has. At least one City employee wrote in April 2013 that he was "concerned about the loss of capacity at the intersection by replacing a long, uncontrolled right turn lane with a shorter, signal controlled lane that will be blocked by a bus stop . . . This intersection is heavily congested, and we need to try for at least capacity neutral projects if possible." Another person in the traffic department noted "a surprising amount of community opposition to the proposed intersection modification." In November 2015 the Mayor of West Hollywood wrote the City's Environmental Analysis Section to say that while West Hollywood shared the City of Los Angeles's desire to improve the site, West Hollywood had three concerns, including, "[p]reserving the dedicated right turn lane on the eastbound lane of Sunset Boulevard" because it was "very important to the traffic flow of the intersection." There also were a number of negative comments from the general public. Reactions like this constitute a reason why the Legislature created the street vacation procedure.

The Streets and Highways Code defines "vacation" as "the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement." (Sts. & Hy. Code, § 8309.) The code defines a "street" and "highway" as "all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith,

including, but not limited to, restrictions of access or abutters' rights, sloping easements, or other incidents to a street or highway." (*Id.* § 8308.) The section provides that "[t]his part shall be liberally construed in order to effectuate its purposes." (*Id.* § 8310.)

"The authority to vacate a street rests with the city legislative body and may occur only after a hearing is held and evidence presented to the city council and a resolution of vacation adopted. (Sts. & Hy. Code, §§ 8312, 8320–8325; *City of Los Angeles v. Fiske* (1953) 117 Cal.App.2d 167, 172 ["The act of vacating can be done only upon a finding that the property in question is unnecessary for present or future uses as a street"].)" (*County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1106–1107.) In other words, before a municipality vacates a street, it must engage in proscribed procedures, such as noticing and holding an evidentiary hearing after which the legislative body may find "from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use," and thereafter vacate the street. (Cal. Sts. & Hy. Code, §§ 8320, 8324.)

The City argues that no "vacation" will occur because the public will maintain the right to use the ground where the right turn lane and island were located. Changing this space from vehicular to pedestrian use, the City claims, constitutes nothing more than a "reconfiguration" of the area as opposed to a "vacation" of a street.

The City's argument overlooks the fact that while the City may continue to own this ground, the Corner Plaza will be considered part of the Project, a fact the City all but admits in its

letter of determination, which states that "the project also includes a 9,134 square-foot Corner Plaza." Further evidence to this effect appears in a June 7, 2016, letter from the Real Party to the City in which the owner wrote, "[t]he City would retain ownership and control over the traffic island. The Applicant (Real Party) has simply volunteered to maintain the traffic island."

A street may not be vacated for exclusive private use. (*Citizens Against Gated Enclaves v. Whitley Heights Civic Assn., supra*, 23 Cal.App.4th 812, 820, citing *Constantine v. City of Sunnyvale* (1949) 91 Cal.App.2d 278, 282.) This intersection would merge into a public-private project which will be essentially a private development. The Real Party needs the space in question to make the project more inviting to the public. As part of maintaining the Corner Plaza, we anticipate that the owner will deploy cleaning crews, private security, and other services. The chances are excellent that these employees—as well as the public in general—will consider the Corner Plaza part of the Project. The lingering public aspect of this area will fade away as the Corner Plaza is increasingly viewed and treated as an integral part of the Project.

Putting aside the public-private issue, the City's privacy argument misses a more important point—that the vacation procedure relates to findings that a street "is no longer needed *for vehicular traffic*." (*Zack's, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1188 (*Zack*'s).) In *Zack's,* a city leased portions of a public street to a private company to use for boat storage. When the city argued that certain statutes relating to reclaimed tidelands allowed the city to lease the land, the Court of Appeal held that "[i]t cannot reasonably be supposed that the Legislature

intended that governments holding these streets can summarily close them to vehicular traffic, even if they are heavily trafficked major thoroughfares, but can close nearby nontideland streets, even those of marginal use, only on the basis of a resolution or ordinance made upon a formal finding that the street is no longer needed for vehicular traffic after a noticed hearing on the issue." [Citation.] (*Id.* at p. 1188.)

The City's reliance on 77 Ops. Cal. Atty. Gen 94 (May 12, 1994) is incomplete. After saying that "For an abandonment of a public thoroughfare to occur (i.e. "vacation"), the public's right to use the thoroughfare must be terminated. [Citations omitted]," the opinion goes on to say, "[a]s stated in *City of Los Angeles v. Fiske* (1953) 117 Cal.App.2d 167, 172: 'The act of vacating can be done only upon a finding that the property in question is unnecessary for present or future uses *as a street*. (Sts. & Hy. Code, §§ 8300 & 8331.)'" (Italics added.)[23]

Zack's leasing a public street on reclaimed tidelands to a private company is akin to the City's ceding to a private company everything about the Corner Plaza other than its legal title. In both cases, the proposed action closes the street to vehicular traffic, and that is what underscored the Court of Appeal's decision in *Zack*. "[T]he application of those democratic processes to the vacating or closing of tideland streets is no less salutary

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[23] This passage is repeated in 87 Ops. Cal. Atty. Gen 36 (April 7, 2004), the other Attorney General opinion on which the City relies. While a street can include a sidewalk, to call the over 9,000 square foot Corner Plaza a sidewalk ranges far beyond the definition of the word. ("A usually paved walk for pedestrians at the *side* of a street." (Webster's 10th Collegiate Dict. (1995) p. 1090).) (Italics added)

that its application to all other streets." (165 Cal.App.4th p. 1188.)

The City argues that "converting a public right-of-way from one public use to another is not a vacation." The court finds this reading of the vacation statute too narrow and unsupported. *People v. Vallejos* (1967) 251 Cal.App.2d 414 is the only decision on which the City relies. *Vallejos* held that converting a residential street to a highway drainage ditch was not a vacation, (*id.* at p. 419) but the City cites the case out of context. The *Vallejos* court went on to explain that "[t]he street, although converted to the use of the freeway system, is still being used for highway purposes . . . The drainage channel is part of the highway system . . .Thus, what has happened to Choisser Street is that it remains part of the highway system, one half of it being used for traffic, the other half for drainage." (*Id.* at 418–419.) A drainage channel is "part of the highway system, no less than is the ramp. 'As used in this code, unless the particular provision or the context otherwise requires, "highway" includes bridges, culverts, curbs, drains, and all works incidental to highway construction, improvement, and maintenance.' (Sts. & Hy. Code, § 23.) Drainage of water is an integral part of a highway system. [Citations omitted.]" (*Id.* at p. 418; also see *Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 362; *City of Cloverdale v. Department of Transportation* (2008) 166 Cal.App.4th 488, 495.) That is why *Vallejos* found that "[t]he easement for drainage, as one function of a highway, has not been abandoned or extinguished." (251 Cal.App.2d at p. 419.) Here, in contrast, the proposed Corner Plaza is not a work "incidental" to a highway or a "street."

We hold that the complete removal of a street in favor of a plaza that is linked economically and spatially to a private development constitutes a "vacation" of that street. As referenced by *Zack's*, *supra*, implicit in the vacation statutes is the removal of a public's right to access a street for "vehicular traffic."

In addition, the Streets and Highways Code includes specific provisions for the conversion of a street from vehicular use to a pedestrian mall. (See Sts. & Hy. Code, § 11200.) A "pedestrian mall" is defined as "one or more 'city streets,' or portions thereof, on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be used exclusively or primarily for pedestrian travel." (*Id.* § 11006.) The record tells us that the Corner Plaza will become part of a quasi-shopping mall, i.e., the Project itself. Establishing a pedestrian mall requires special procedural methods. (*Id.* §§ 11301–11311.)

Because the Streets and Highway Code lays out a procedure to establish a "pedestrian mall" as it does for a street vacation, it would be inconsistent for the Legislature to require a noticed evidentiary hearing when a city desires to restrict vehicular travel on a street in favor of pedestrian mall access, but not to require a similar procedure where the entire street would be removed to create a "Corner Plaza." Before moving forward with the Project, the City will have to initiate a street vacation hearing consistent with the requirements in the Streets and Highways Code.

4. The Trial Court Ruled Correctly With Respect to the Seismic Issues

FTC argues that the City's approval permits construction in violation of the Alquist-Priolo Act's[24] requirement of a fifty-foot setback for seismic safety. We disagree.

We review this issue for an abuse of discretion on the part of the City, and we review the City's action de novo. "'"In determining whether an abuse of discretion has occurred, a court may not substitute its judgment for that of the administrative board [citation], and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation]." [Citation.]' [Citation.] "'In general . . . the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support . . . .' [Citation.]' [Citation.]" (*California Oak , supra,* 188 Cal.App.4th at p. 247 [describing the standard of review for mandamus proceedings involving alleged violations of the Alquist-Priolo Act.].)

The City acknowledges that the Project is located in an Official Alquist-Priolo Earth Fault Zone that was established on November 6, 2014, by the California geological Survey for the Hollywood fault on the USGS 7.5 minute Hollywood Quadrangle.

Originally passed in 1972, the Alquist-Priolo Earthquake Fault Zoning Act requires the State Geologist to draw boundaries around known active faults. The Act's salutary purpose is "to provide policies and criteria to assist cities, counties, and state agencies in the exercise of their responsibility to prohibit the location of developments and structures for human occupancy across the trace of active faults." (§ 2621.5, subd. (a).)

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[24] Sections 2621–2630.

The Alquist-Priolo Act provides, in part, "[t]he approval of a project by a city or county shall be in accordance with policies and criteria established by the State Mining and Geology Board and the findings of the State Geologist. In the development of those policies and criteria, the State Mining and Geology Board shall seek the comment and advice of affected cities, counties, and state agencies. Cities and counties shall require, prior to the approval of a project, a geologic report defining and delineating any hazard of surface fault rupture. If the city or county finds that no undue hazard of that kind exists, the geologic report on the hazard may be waived, with approval of the State Geologist." (§ 2623, subd. (a).)

The California Code of Regulations contains "specific criteria" which "shall apply within earthquake fault zones and shall be used by affected lead agencies"—the City in this case—"in complying with the provisions of the act." (Cal. Code Regs., tit. 14, § 3603.) "No structure for human occupancy, identified as a project under Section 2621.6 of the Act, shall be permitted to be placed across the trace of an active fault. Furthermore, as the area within fifty (50) feet of such active faults shall be presumed to be underlain by active branches of that fault unless proven otherwise by an appropriate geologic investigation and report prepared as specified in Section 3603(d) of this subchapter, no such structures shall be permitted in this area." (*Id.* at subd. (a); see also *Better Alternatives for Neighborhoods v. Heyman* (1989) 212 Cal.App.3d 663, 670–671.) In other words, this presumption is rebuttable by an appropriate geologic investigation and report.

Such a document was prepared in connection with the Project. According to the report, the Hollywood Fault passes the northwest corner of the Project. According to a "Map of CPT

Borehole Locations and Reinforced Foundation Zone" prepared by Golder Associates, a geotechnical engineering firm that the real party retained, at its closest point, the project lies approximately 125 feet from the Hollywood Fault itself. The record is not clear whether that measurement pertains to the fault or to the trace. Regardless, there is sufficient evidence that no part of the site lies within 50 feet of the Hollywood Fault—or for that matter, any other known fault—with the result that the City did not abuse its discretion by approving the Project. Golder Associates concluded in a geological report that the nearest fault trace likely exceeds 100 feet to the northwest. The following passages contain these conclusions:

From the Golder Report: "Based on these past studies and Golder's review of historical stereoscopic aerial photographs and topographic maps, we consider that the active Hollywood fault trace is located about 100 feet northwest of the Site and not within it."

From the Department of Building and Safety: "Based on the continuity of stratigraphy, the consultants conclude that no active faults underlie the site."

The record amply supports a conclusion that the nearest active fault (and trace) occurs more than 100 feet away from the Project.

Assuming arguendo that the Project falls within the ambit of Alquist-Priolo, the presumption in section 3603 is rebutted by the conclusions of the geologic report prepared for the Project and concurred in by the City's Department of Building and Safety. They note that the consultants found no active faults underlying the site.

The City initially commented, "In sum, there are too many epistemic and aleatory uncertainties regarding the Hollywood fault to warrant disregarding the required setback." Golder responded by recommending that either 1) borings be drilled in Sunset Boulevard 50 feet beyond the property boundary, 2) any proposed structure be set back 50 feet from the northwest property boundary, or 3) within the 50-foot setback area, the structure be designed to accommodate either 10 inches of horizontal and 2 inches of vertical off-fault deformation, or an alternative design as approved by the Department of Building and Safety.

Five months later, on October 19, 2015, the City prepared a geology and soils report approval letter which found various reports acceptable, provided that during site development, the Real Party comply with a number of conditions. Among them were the requirement that the Project's engineering geologist "observe and log in detail the proposed basement excavations where the natural alluvial soils are exposed" and then "post a notice on the job site for the City Grading Inspector/Geologist and the Contractor stating that excavation (or portions there) has been observed and document[ed] and meets the conditions of the report." Following that, according to the City's Geology and Soils Report Approval Letter, "[a] supplemental report summarizing the geologist's observations (including photographs and logs of excavations) must be submitted to the Grading Division of the Department upon completion of excavations."

The City relied on a seismological study concluding that the nearest fault to the property lay at least 100 feet to the northwest. There was no evidence of active faults on the property itself. Accordingly, even presuming a fault trace within fifty feet

of the known fault line, the City rebutted the presumption. Substantial evidence exists to the effect that the proposed project's boundary lines are necessarily set back at least 50 feet from any trace. FTC has provided no contrary proof. The trial court's ruling with respect to this cross-appeal was correct.

5. The Trial Court Correctly Found No Violations of Mandatory Policies in the General Plan Regarding Traffic and Emergency Response Times

FTC argues that approval of the Project violated mandatory policies in the HCP that any density increases by zoning change or subdivision must provide "adequate public services facilities" sufficient to "serve the proposed development." Specifically, FTC relies on studies finding that emergency response times for the three closest fire departments already exceed five minutes for 90 percent of calls. FTC also argues that the fire department concluded that the project may require additional staffing. Finally, FTC says that the project will increase traffic in an area that already has failing levels of traffic gridlock. We disagree and affirm the trial court's rulings in this regard.

As an initial matter, because FTC bases its arguments on provisions of the HCP, the abuse of discretion standard of review set forth in section B of this opinion applies to our review of this issue.

Regarding emergency services, the HCP provides under a heading of "Service Systems" that "[t]he full residential, commercial, and industrial densities and intensities proposed by the Plan are predicated upon the provision of adequate public service facilities, with reference to the standards contained in the

General Plan. No increase in density shall be effected by zone change or subdivision unless it is determined that such facilities are adequate to serve the proposed development. In mountain areas no tentative subdivision map shall be approved until reviewed and approved by the Fire Department."

Here, however, the City correctly points out that not only is the permitted density unchanged from the allowable density for mixed-use projects, but any density increases result from density bonuses, not a zoning change. The tentative tract map states that the Project consists of "one master lot and 10 air space lots for the development of 249 residential dwelling units, including 28 units set-aside for Very Low Income households, and 65,000 square feet of commercial uses . . . ."

We agree that even if the Project approval resulted in a tentative tract map that included some type of subdivision of "air space lots," the resulting level of density within the Project itself was not caused by the subdivision of the property, but rather by the allowable zoning, the shift from commercial uses to mixed-use, and the density bonuses. The subdivision of the lot was incidental to the Project's density, and therefore the City could not have violated the HCP's provision regarding adequate services, which applies only where an increase in density is "effected by zone change or subdivision . . . ."

Irrespective of whether a zoning change or a subdivision caused the density increase, FTC has not shown that current levels of services are inadequate to meet the increased demand for services that would occur because of the project.

a. Fire Response Times

Regarding fire response times, FTC points only to its own analysis of publicly-available data showing that the average response time by the fire department in 2016 was five minutes, 43 seconds[25] for emergency medical services and six minutes, 21 seconds for non-EMS services. FTC asserts that the City has adopted a response time of at most five minutes as the limit of an adequate response, but FTC has not submitted satisfactory evidence of this. Cross-appellant has not shown that the City would find that response times longer than five minutes would result in inadequate service such that it could not approve any new project that would add demand for services. FTC writes that "the response time is below the National Fire Protection Association (NFPA) standard (which the City has adopted) of five minutes." However, to support the contention that the city "adopted" the NFPA standard, FTC cites only its own conclusory statement in a letter sent on November 1, 2016. There is no evidence that the City has adopted a mandatory five minute response time threshold for adequate service.

The November 2014 EIR devoted an entire chapter to analyzing the project's effect on fire and emergency services. While the EIR noted that "[a]ccording to the LAFD, the response standard is five minutes for 90 percent of emergency medical services responses and [five minutes, 20 seconds] for 90 percent of fire incidence responses," an email from a fire department employee clarifies that the department only "strive[s] to reach all EMS incidents within five minutes 90 [percent] of the time." The EIR ultimately determined that "the Project is not expected to

[25] The court notes that FTC's data states "5:43 seconds," but this appears to be a typo.

result in a substantial increase in demand for additional fire protection services that would exceed the capability of the LAFD to serve the Project such that it would require construction of new fire facilities."

FTC's reply brief argues that the fire department "has clearly articulated that the national NFPA 1710 response time standard sets the standard for its performance," and that "[c]alling it 'only an aspiration goal' . . . betrays all who call 911 and expect a timely response." Again, however, FTC does not show us any regulations or policies which would prohibit the approval of any project where the current response time exceeds five minutes for 90 percent of emergency calls.

FTC relies on the following minutes of a Board of Fire Commissioners hearing from April 17, 2012: "The basic intent behind the NFPA was, it is a consensus body that comes together to develop guidance for fire departments on objectives or goals they should be aiming for. The intent of the NFPA is to establish a collaborative dialogue between the community and the fire service so that the community can have input into what a particular fire department does and how they deploy their resources. Specifically, with regard to NFPA Guidance 1221 and 1710, NFPA 1221 looks at call processing time. That is, from the point that the call comes into the Fire Department to the point we send the dispatch to the Fire Station. 1221 has a standard that they aim for and it is to do that in less than one minute 95 percent of the time. The other standard we looked at was NFPA 1710, and we wanted to focus on this standard because it deals primarily with when the dispatch comes into the Fire Station to the point when the resource pushes 'on-scene'—that is your response time."

The minutes of this meeting go on to say that the fire department had "adopted [NFPA 1710] as our goal," and that the fire chief supported NFPA 1710. However, goals are aspirational. They are not evidence of a formal policy.

b. Traffic and the Roadways

FTC believes that the City should not approve the Project because the public roads servicing the area already are overtaxed and thus "inadequate" to service the traffic the Project would create.

The HCP provides "[n]o increase in density shall be effected by zone change or subdivision unless it is determined that the local streets, major and secondary highways, freeways, and public transportation available in the area of the property involved, are adequate to serve the traffic generated. Adequate highway improvements shall be assured prior to the approval of zoning permitting intensification of land use in order to avoid congestion and assure proper development."

As discussed earlier, FTC has not shown that approving the project would increase density as the result of a zone change or a subdivision.

The City has provided substantial evidence supporting its position with respect to the Project's impact on traffic. The November 2014 EIR, on which FTC relies, noted that significant impacts would occur if the Project caused certain traffic flow increases. However, after a detailed analysis of the exact number of anticipated additional trips occasioned by the Project, the November 2014 EIR found that "[t]he Project would result in a less than significant impact on the four roadway segments analyzed in the TIA in the Existing (Year 2013) With Project and

Future (Year 2018) With Project scenarios. Therefore, no mitigation measures are necessary."

FTC also invokes the September 2015 EIR to show that several intersections had already been graded "F" as of 2013. The EIR explains that a Level of Service (LOS) grade of "F" occurs when "a facility is overloaded and is characterized by . . . stoppages of long duration." FTC argues that if the services provided by the roads are already inadequate, the City could not make a finding that sufficient public services exist to serve the project or that the roadways have the capacity to absorb the traffic generated by the Project.

The City correctly points out that there is no evidence that an "F" grade for certain nearby intersections requires the City to make a finding that the "local streets, major and secondary highways, freeways, and public transportation available in the area of the property involved" are inadequate "to serve the traffic generated." That certain intersections may be "overloaded" and have "stoppages of long duration" is not the same as a finding that the entire transportation infrastructure serving the Project, which includes not just local streets, but "major and secondary highways, freeways, and public transportation," is "inadequate" to serve the traffic generated by the project.

Although the City did not specifically make a finding that the transportation infrastructure servicing the project's traffic is "adequate" with respect to the HCP, the EIR's analysis concludes that the Project will result in only "a net increase in daily trips of 18, a net decrease in A.M. peak hour trips of 108, and a net increase in P.M. peak hour trips of 123 compared to existing conditions."

The September 2015 DEIR discloses that the intersection of Fountain and Havenhurst would experience a 54.6 second increase in delays per car as a result of the Project. The document notes this as a "significant impact," but concludes that "[t]his impact would be reduced to a less than significant level through the implementation of Mitigation Measure TR-1, which requires the installation of a traffic signal."

FTC has not cited any City policy or regulation holding that an unmitigated substantial impact would negate the City's implicit finding that the transportation infrastructure would nevertheless remain "adequate" to handle the increased traffic from the Project. We have not been shown any definition of "adequate" that would prevent the City from making such a finding, or that would compel a finding of inadequacy. The trial court's ruling with respect to this cross-appeal was correct.

7. Approval of Tentative Tract Map Despite Inconsistency with the General Plan, Zoning, and Non-Disclosures

In challenging the Tentative Tract Map for inconsistency with the general plan and zoning, and a failure of disclosure, FTC repeats arguments we have already addressed in sections 1 and 2 of our discussion of the cross-appeal.

FTC argues that because Real Party 1) "did not disclose 'other pertinent zoning information' for the project site," specifically, the 1986 covenant discussed earlier, 2) did not disclose any "related or pending case numbers" relating to the site, and 3) failed to "disclose these significant and required aspects of the existing land use regulations," the approval of the Vesting Tentative Tract Map was not supported by substantial

evidence. FTC invokes Government Code section 66474.61, which provides that in any city "having a population of more than 2,800,000," (i.e., Los Angeles), "the advisory agency, appeal board or legislative body shall deny approval of a tentative map, or a parcel map for which a tentative map was not required" if it makes a finding that "the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans," or "the site is not physically suitable for the type of development." (Govt. Code, § 66474.61, subds. (b) & (c).)

These arguments have already been discussed. For the same reasons we articulated earlier, we find that the 1986 covenant was irrelevant to the approval of the Vesting Tentative Tract Map and that the City's land-use and general plan consistency determinations were proper and supported by substantial evidence.

FTC also points to Real Party's representation in the original August 2013 Master Land Use Permit Application that there were no "related or pending case numbers relating to this site," and that Real Party represented that the revised tentative tract map would not affect "any covenants and agreements already recorded." FTC points only to Government Code section 66474.61 subdivisions (b) and (c) as the legal basis for its claims that the approval of the Vesting Tentative Tract Map was improper. The failure by the Real Party to disclose the 1986 covenant or other, unnamed "related or pending case numbers" could not have violated section 66474.61, which relates only to approvals by the City and not the actions of Real Party.

Additionally, section 66474.61 prohibits approval of a project by "the advisory agency, appeal board or legislative body" where that same body has made a finding that the design is "not

consistent with applicable general and specific plans" or the site "is not physically suitable for the type of development." The City made no such findings here. To the contrary, as discussed above, the City made specific findings that Alternative 9 squared with the general plans and that the site was physically suitable for this type of development. ["Development of the proposed mixed-use building will exceed the existing density of surrounding properties but it would be generally compatible with the character of the highly urbanized and built-out nature of the project vicinity. The project would follow the existing land use pattern in the vicinity, which includes higher intensity uses on commercial parcels along Sunset Boulevard with lower density residential areas to the north and south. The 249 units provided by the project is consistent with the C4-1D density applicable to the project site. The project's 111,339 square-foot site is allowed up to 278 units in the underlying C4 zone, which allows R4 densities (400 square feet per dwelling unit)."].)

We affirm the trial court's ruling upholding the approval of the Tentative Tract Map.

DISPOSITION

In the City's appeal, we reverse the trial court's issuance of a writ of mandate ordering the City to refrain from issuing further Project approvals that could result in demolition of the Lytton Building. We deny the petition for writ of mandate on that point, and we reinstate the City's findings of infeasibility as to alternatives 5, 6 and 7.

In the cross-appeal, we reverse the trial court's denial of a writ of mandate insofar as the court did not require a street vacation hearing regarding the conversion to non-vehicle use of

the traffic lane dedicated to right turns for vehicles traveling east on Sunset Boulevard onto southbound Crescent Heights Boulevard. We issue a peremptory writ of mandate (1) remanding the case to the City, (2) ordering the City to vacate the November 1, 2016 approvals of the Project on the sole ground that, with regard to that dedicated right turn lane, a street vacation hearing consistent with Streets and Highways Code sections 8300, et. seq., must be held, and (3) ordering the City conduct a such a hearing.

In all other respects in the appeal and cross-appeal, we affirm the judgment. Each side shall bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOHR, J.*

We concur:

EPSTEIN, P. J. WILLHITE, J.

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

LOS ANGELES CONSERVANCY, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Appellants; AG-SCH 8150 SUNSET BOULEVARD OWNER, Real Parties in Interest and Appellants.	B284089 (Los Angeles County Super. Ct. No. BS166487) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING [NO CHANGE IN JUDGMENT]
FIX THE CITY INC.,	B284093

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES et al.,

Defendants and Appellants;

AG-SCH 8150 SUNSET BOULEVARD OWNER et al.,

Real Parties in Interest and Appellants.

(Los Angeles County Super. Ct. No. BS166484)

THE COURT:

We have received and reviewed "Appellants' Petition for Rehearing to Clarify Disposition" filed on April 9, 2018 by Appellants City of Los Angeles, et al.

It is ordered that the unpublished opinion filed herein on March 23, 2018, be modified as follows:

The second sentence of the first full paragraph under DISPOSITION is deleted, and the following is inserted in its place:

> "We deny the LAC petition for writ of mandate in full, and FTC's petition for writ of mandate in part, on that

point, and we reinstate the City's findings of infeasibility as to alternatives 5, 6, and 7."

The second full paragraph under DISPOSITION is deleted, and the following is inserted in its place:

"In FTC's cross-appeal, we reverse the trial court's denial of a writ of mandate insofar as the court did not require a street vacation hearing regarding the conversion to non-vehicle use of the traffic lane dedicated to right turns for vehicles traveling east on Sunset Boulevard onto southbound Crescent Heights Boulevard. We issue a peremptory writ of mandate (1) remanding the case to the City and (2) ordering the City to vacate the November 1, 2016 approval of the Project on the sole ground that, with regard to that dedicated right turn lane, a street vacation hearing consistent with Streets and Highways Code section 8300 et seq., must be held, and (3) ordering the City to conduct such a hearing. This disposition does not change or modify any other approvals already in place."

This modification does not change the judgment.
The petition for rehearing is denied.

MOHR, J.*

We concur:

EPSTEIN, J.

WILLHITE, J.

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.