



AGENDA REPORT

Meeting Date: August 2, 2011

Item Number: D-2

To: Honorable Mayor & City Council

From: Susan Healy Keene, AICP, Director of Community Development

Subject: AN APPEAL OF THE ARCHITECTURAL COMMISSION'S DECISION APPROVING A FAÇADE REMODEL AND SIGN ACCOMMODATION ASSOCIATED WITH THE ESTABLISHMENT OF AN EQUINOX EXERCISE CLUB AT 9465 WILSHIRE BOULEVARD.

Attachments¹:

1. Appeal Petition (Appeal letter only)
2. Appeal Petition (Entire appeal petition, inclusive of attachments, as submitted by appellant)
3. City Council Resolution No. 11-R-12809
4. Historic Consultant Analysis (April 5, 2011)
5. Historic Consultant Analysis (June 17, 2011)
6. Architectural Commission Approval Letter
7. Architectural Commission Staff Report – May 18, 2011 (Includes report from April 27, 2011)
8. Kaplan Chen Kaplan Historic Assessment - 3/25/2011
9. Architectural Plans (Under separate cover)

RECOMMENDATION

It is recommended that the City Council grant approval of the façade remodel and sign accommodation associated with the establishment of an Equinox exercise club at 9465 Wilshire Boulevard and deny the appeal.

¹ In relation to its prior consideration of the appeal of the Conditional Use Permit for this same project, the City Council was provided the full documentation supporting the determination that this project is exempt from the California Environmental Quality Act. A complete packet of that information is available for public review at the City's Community Development Department, and on the City's website at www.beverlyhills.org under the archived City Council Formal Meeting for April 5, 2011, Item D.1. If anyone would like a copy of the documentation, please contact Ryan Gohlich, the project planner at 310-285-1194 or rgohlich@beverlyhills.org.

INTRODUCTION

This is an appeal of the May 18, 2011 decision of the Architectural Commission approving a façade remodel associated with the establishment of an approximately 37,000 square foot exercise club. The façade remodel approval included the following elements:

1. A new pedestrian entrance along the North Beverly Drive façade of the building;
2. New business identification signs along North Beverly Drive and Wilshire Boulevard;
3. Installation of window film to obscure exercise areas; and
4. New landscaping within existing planters.

Subsequent to the Architectural Commission's approval of the project, a timely appeal was filed by Todd Elliot, attorney on behalf of Ron and Sharon Gart and Neighbors Organized to Protect the Environment in Beverly Hills (N.O.P.E. Beverly Hills). The appeal contests the validity of the Architectural Commission's approval, and states that the environmental review prepared for the project was inadequate. This report outlines the basis for the Architectural Commission's approval, responds to the information contained in the appeal petition, and makes a recommendation to approve the façade remodel and deny the appeal.

BACKGROUND

Project History

The establishment of the proposed 37,000 square foot Equinox exercise club at the subject property was previously reviewed by the Planning Commission, and then by the City Council on appeal. The reviews conducted by the Planning Commission and City Council related to the issuance of a Conditional Use Permit for the Project. An exercise club is a permitted use within the City's commercial zones; however, the project required a CUP in order to be located on the ground floor of a building located within the Business Triangle, occupy more than 25 feet of street frontage within the Pedestrian Oriented Area, and utilize shared parking facilities. The Planning commission and the City Council each undertook environmental review of both the interior and exterior building modifications associated with the project. During the appeal hearing the City Council approved the Conditional Use Permit and issued a Class 1, Class 2, and Class 32 Categorical Exemption in accordance with the provisions of the California Environmental Quality Act (CEQA), finding that the project would not result in a significant environmental impact. The Appellant thereafter filed a challenge to the City's CEQA determinations, and the City is currently in the process of litigating that matter.

Subsequently, as required by the Beverly Hills Municipal Code, and as conditioned by the City Council, the Architectural Commission was required to review the exterior building modifications associated with the project. The Architectural Commission's review of the exterior modifications is discussed below.

Summary of Architectural Commission Deliberations and Findings

The Architectural Commission reviewed the project on April 27, 2011 and May 18, 2011. At the April 27, 2011 meeting the Architectural Commission received public testimony and requested that the project be modified to offer simplified canopy and façade treatment, and reduced signage. In accordance with the direction provided by the Commission, the applicant modified the project to provide a simplified façade and reduced signage.

On May 18, 2011 the Architectural Commission held a public hearing to review the project as revised in response to the April 27th direction, and found that the revised project was consistent with the findings necessary for project approval. In making this determination the Architectural Commission treated the project as exempt from CEQA for the same reasons previously determined by the City Council, because the façade modifications were substantially the same as those contemplated under the City Council's prior review of the project. The Architectural Commission voted unanimously in support of the project, and made all necessary findings required by the Municipal Code.

APPEAL

The appellant identifies the following main points as the basis for the appeal:

1. The project violates CEQA, is not eligible for a Categorical Exemption because the subject building is an historic resource, and an Environmental Impact Report must be prepared;
2. The Architectural Commission should have reviewed the project prior to the City Council reviewing the project; and
3. The environmental review was conducted in a fragmented manner that is inconsistent with CEQA.

Further, it should be noted that the appeal petition contains no new information that had not previously been considered by the Architectural Commission prior to rendering a decision on the project. Therefore, staff is not recommending that the matter be remanded to the Architectural Commission.

APPEAL ANALYSIS

The following section restates each of the main points provided in the Appeal Petition and provides analysis of each point.

The project violates CEQA, is not eligible for a Categorical Exemption because the subject building is an historic resource, and an Environmental Impact Report must be prepared.

Although previously reviewed and discussed by the City Council during its April 5, 2011 appeal hearing on the Conditional Use Permit for the project, NOPE contends that the subject property is an historic resource, and therefore not eligible for a Categorical Exemption.

During a 2006 update to the City's historic resource lists, the subject property (9465 Wilshire Boulevard) was identified as a potentially historic structure. The property was assigned a Class 3CD designation during the City's survey. More specifically, a Class 3CD designation means that the subject building "Appears eligible for California Register as a contributor to a California Register eligible district through a survey evaluation." This designation means that the subject building is not a standalone historic resource, and does not represent the necessary historic qualities to be considered an individual resource. At most, the building is a contributor to a potential district. Further, none of the contemplated exterior changes would cause a substantial adverse change in the alleged historical significance of the building. The fact that the changes would not result in an impact is further evidenced by the historic analysis provided by the project applicant (Attachments 4 and 5), which supports the City's finding that the exterior changes associated with the project are in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and therefore does not constitute a significant impact under the provisions of CEQA.

In reviewing the State CEQA Guidelines regarding historic resources, Section 15064.5 (b)(2) of the Guidelines sets forth specific criteria used to define whether exterior changes to an historic resource will result in a significant adverse change. The applicable text of Section 15064.5 of the Guidelines states the following:

- "(2) The significance of an historical resource is materially impaired when a project:*
 - (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Places; or*
 - (B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or*
 - (C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA."*

Based on the information provided in the Kaplan Chen Kaplan historic analysis letter submitted by NOPE in March 2011 (Attachment 8), the character defining features of the building consist of:

"...generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this

district...The exterior design of the structure also represents the post war era with its curved façade shaped inward away from the public as if inviting the public, while simultaneously displaying the awe of the structure with large ground floor windows and stone columns."

The minor exterior changes contemplated as a part of the project will not result in the loss of any of the character defining architectural features identified above, nor will the contemplated modifications result in any changes in building design and detailing such as setbacks, massing, façade curvature, or interaction with adjacent street intersections that are allegedly associated with the post-war Modern style. As a result, the project does not conflict with any of the CEQA criteria outlined above for identifying an adverse change to the building's exterior, and therefore does not result in an impact. This finding was previously made by the City Council and relied upon by the Architectural Commission, and is further supported by the historic analysis provided in Attachments 4 and 5, which conclude that the contemplated exterior changes are in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and therefore do not constitute a significant impact under the provisions of CEQA. The historic analysis provided in Attachment 4 was presented prior to the City Council's action issuing the Categorical Exemptions associated with the project, and a follow-up analysis is provided as Attachment 5 to reconfirm the findings previously made with regard to historic preservation. The follow-up analysis is provided for Council consideration because this is a de novo hearing.

It is notable that the Kaplan Chen Kaplan historic analysis letter submitted by NOPE neither claims that the proposed building modifications would result in any impact to the alleged historical character of the building, nor provides any evidence that such an impact would result from the project.

The appellant alleges that the documentation supporting the City's conclusion that the project is exempt from CEQA suggests additional environmental review is required. However, the Class 32 categorical exemption specifically requires, among other things, a determination that the project "would not result in any significant effects relating to traffic, noise, air quality, or water quality." CEQA Guidelines Section 15332(d). The documentation in the record provides the basis for this determination. Additional information has also been provided in response to the appellant's allegations regarding historical resource impacts, as discussed above. At bottom, the evidence in the record supports the conclusion that there will be no impacts on any historical resource, therefore, the categorical exemptions relied upon by the City when reviewing the CUP remain applicable to the architectural review action.

Finally, the subject of this appeal is only those items that were subject to the Architectural Commission's review, and the issues related to prior Planning Commission proceedings and determinations with respect to the previously approved CUP are not relevant to this significantly more limited review of exterior building modifications.

The Architectural Commission should have reviewed the project prior to the City Council reviewing the project.

The appellant states that the Architectural Commission should have reviewed the project prior to the Planning Commission and City Council because the Architectural Commission serves as an advisory body to the City Council on the preservation of historic and cultural landmarks in the city. The appellant further contends that because the Architectural Commission did not review the project first, an accurate environmental assessment could not possibly have been made.

First, Article 30 of Title 10 of the City's Municipal Code, entitled "Architectural Commission, Architectural Review, And Procedure" establishes a regime for review of the exterior appearance of buildings to avoid harmful effects that, among other things, would impact the value of buildings in the City and otherwise encourage inappropriate land uses in the City. Specifically, Section 10-3-3001 states:

"The council hereby finds that Beverly Hills is internationally known and has become a worldwide synonym for beauty, quality, and value; that by far the largest area of the community is zoned for single-family residences, but a significant part is zoned for apartment, commercial, and industrial uses; that most persons who travel through Beverly Hills or do business in and with Beverly Hills do so in its apartment, commercial, and industrial areas; that there is a tendency of some owners and developers in these areas to disregard beauty and quality in construction and a consequent serious danger that construction of inferior quality and appearance in the apartment, commercial, and industrial areas will degrade and depreciate the image, beauty, and reputation of Beverly Hills with adverse consequences for the entire city, including single-family residential areas as well as apartment, commercial, and industrial areas; and that poor quality of design in the exterior appearance of buildings erected in any neighborhood or in the development and maintenance of structures, landscaping, signs, and general appearances affect the desirability of the immediate area and neighboring areas for residential and business purposes or other uses and, by so doing, impair the benefits of occupancy of existing property in such areas, impair the stability in value of both improved and unimproved real property in such areas, prevent the most appropriate development of such areas, produce undesirable conditions affecting the health, safety, comfort, and general welfare of the inhabitants of the city, and destroy the proper relationship between the taxable value of real property in such areas and the cost of municipal services provided therefore. It is the purpose of this article to prevent these and other harmful effects of such exterior appearances of buildings erected in any neighborhood and thus to promote and protect the health, safety, comfort, and general welfare of the community, to promote the public convenience and prosperity, to conserve the value of buildings, and to encourage the most appropriate use of land within the city.

As a separate and independent function, the Architectural Commission also "serves in an advisory capacity to the council on the preservation of historic and cultural landmarks in the city." Section 10-3-3201. This project, however, was not presented to the Commission for landmark consideration, thus the provisions of Article 32 (Preservation of Landmarks) of Title 10 do not apply to this proceeding.

Further, review by the Architectural Commission in its architectural review capacity, pursuant to Article 30 of Title 10, is not a necessary prerequisite to consideration of a conditional use permit by either the Planning Commission or the City Council. Requiring Architectural Commission review first would not have provided any new information to the public or other reviewing bodies,

and would have gone against longstanding City policies requiring review and approval of land use entitlements prior to the review and approval of final exterior detailing. This approach is intended to avoid multiple architectural review processes, which would be required if the land use entitlements required material project revisions after completion of an initial architectural review process. Finally, the order in which the project was reviewed has had no impact on the environmental review required under CEQA. All aspects of the project were considered when the City Council initially concluded that the project was exempt from CEQA.

The environmental review was conducted in a fragmented manner that is inconsistent with CEQA.

The appellant states that environmental review was conducted in a fragmented manner that provided for after-the-fact analysis in violation of CEQA. Additionally, the appellant makes numerous references to the hearings conducted by the Planning Commission and a condition of approval requiring historic analysis of the project prior to approval by the Architectural Commission.

The Planning Commission and City Council public hearings were appropriately conducted in accordance with CEQA and contained no irregularities with regard to environmental review. Each reviewing authority thoroughly reviewed all environmental documentation associated with the project and made the necessary findings in issuing the applicable Categorical Exemptions prior to taking final action on the project; there was no after-the-fact analysis. This review included complete analysis of the Categorical Exemptions issued for the project, as well as issues associated with historic resources. As is detailed in the attached City Council Resolution (Attachment 3), the City Council found that the project would not result in any significant environmental impacts, historic or otherwise, and approved the project. In turn, the exterior modifications approved by the Architectural Commission are consistent with those contemplated under the Categorical Exemptions relied upon by the City Council. Furthermore, all studies and information relied upon in the issuance of the Categorical Exemptions and approval of the project remain valid and available for public review in the Community Development Department.

Contrary to the appellant's assertions, the environmental review for this project was done at the earliest time – the time at which the decision on the conditional use permit was rendered. The decision makers and the public have been provided with more than sufficient documentation to support the environmental determination that the project is exempt from CEQA, and the City Council has demonstrated that it has considered the alleged environmental implications of its actions. The appellant has not submitted any new or different information that warrants a change in the City Council's previous determination that this project, including all component parts, is exempt from CEQA.

Regarding the condition of approval imposed by the City Council requiring historic review of the project prior to Architectural Commission approval, this condition of approval does not constitute an after-the-fact environmental analysis. As is clearly outlined in City Council Resolution No. 11-R-12809, the City Council found that the exterior modifications would not result in an environmental impact; however, because review by the Architectural Commission was anticipated to result in minor detailing changes to what was reviewed by the City Council, the City Council required that any subsequent changes in response to Architectural Commission comments be reviewed by a historic consultant to ensure consistency with the environmental findings made by the Council. In accordance with this condition of approval, a historic consultant was involved throughout the Architectural Review process to ensure consistency with

the findings made by the City Council. The final exterior design was reviewed by a historic consultant in accordance with the condition of approval, and the final design approved by the Architectural Commission continues to qualify for the same Categorical Exemptions previously issued by the City Council (see Attachment 5).

FINDINGS

Staff recommends that the following findings be made in support of the project:

1. *The plan for the proposed building or structure is in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality;*

The proposed façade remodel and signs create a dynamic façade and interesting visual appearance. The materials proposed are of a high quality. The proposed business identification signs are appropriately simple in design. The design is in keeping with (and in some cases superior to) the quality of nearby shops and other businesses. The proposed facade remodel and business identification signs are in conformity with good taste and good design and in general contribute to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

2. *The plan for the proposed building or structure indicates the manner in which the structure is reasonably protected against external and internal noise, vibrations, and other factors which may tend to make the environment less desirable;*

The proposed façade remodel and new signs do not appear to modify any existing barriers to external or internal noise and is not anticipated to make the environment less desirable than under current conditions. Although the project includes a new pedestrian opening along North Beverly Drive, the opening will include doors to replace existing windows. The doors will continue to protect against external and internal noise, vibrations, and other factors in the same manner as the existing windows.

3. *The proposed building is not in its exterior design and appearance of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value;*

The materials proposed for the facade remodel and new signs do not appear to be inferior in quality or execution and would therefore not degrade the local environment in appearance or value.

4. *The proposed building or structure is in harmony with the proposed developments on land in the General area, with the General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan; and*

The proposed facade remodel and signage is in conformity with the prevailing uses in the general area and with other similar projects approved by the Commission. Furthermore, the overall composition and design of the façade and signage would be in harmony with proposed or future uses in the area as would be allowed in compliance with the current General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

5. *The proposed building or structure is in conformity with the standards of this Code and other applicable laws insofar as the location and appearance of the buildings and structures are involved.*

The proposed façade remodel and new signage are in conformity with the standards of the Beverly Hills Municipal Code and other applicable laws insofar as the location and appearance of the buildings and structures involved.

RECOMMENDED ACTION

Based on the forgoing information, staff recommends that the Council direct the City Attorney's office to prepare a resolution determining that the project is exempt from the provisions of CEQA, making findings, approving the façade remodel and sign accommodation, and denying the appeal.

FISCAL IMPACT

No fiscal impact to the City is anticipated from a Council decision in this matter.

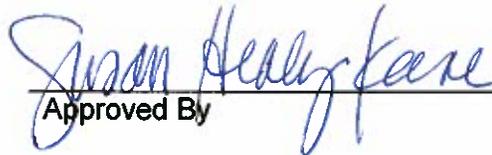
PUBLIC NOTICE AND COMMENTS

A public hearing notice was mailed on July 22, 2011 to all parties originally noticed in the Architectural Commission's review of the project. As of the writing of this report, no public correspondence has been received.

RECOMMENDED CONDITIONS OF APPROVAL

Staff recommends that all original conditions imposed by the Architectural Commission (Attachment 6) also be imposed as conditions of any City Council approval resolution.

Susan Healy Keene, AICP
Director of Community Development


Approved By

ATTACHMENT 1

Appeal Petition (Appeal letter only)

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May 31, 2011

VIA HAND DELIVERY

Honorable Mayor Brucker and
Members of the Beverly Hills City Council
City of Beverly Hills
455 N. Rexford Drive, First Floor
Beverly Hills, California 90210

RECEIVED
CITY OF BEVERLY HILLS
1 2011 MAY 31 A 10:26
CITY CLERK'S OFFICE

Re: Appeal of the Beverly Hills Architectural Commission's Approval of a Façade Remodel and Sign Accommodation for the Proposed Equinox Exercise Club at 9465 Wilshire Boulevard, Beverly Hills, California 90212 ("Project")

Honorable Mayor Brucker and Honorable Members of the City Council:

On behalf of our clients, Ron and Sharon Gart and N.O.P.E. ("Neighbors Organized to Protect the Environment in Beverly Hills"), we write to appeal the May 18, 2011 decision of the Beverly Hills Architectural Commission ("Commission") regarding the above-referenced Project.

As the commission responsible for preservation of historical and cultural resources in the City, we find it astounding that the Commission could so easily forego its administrative duties and let a highly deficient project pass through the approval process without meeting minimal environmental requirements. This letter addresses the procedural and substantive inadequacies of the Architectural Commission's review of the Project as well as summarizes the perplexing journey of this project wrought with procedural deficiencies from the beginning. Most recently, this Project was approved by the Architectural Commission despite the complete omission of any discussion of the historical significance of the property or the district of which it is a part. In addition, the Commission failed to discuss the impacts of the project on a historical resource.

The goals included in the Beverly Hills' Vision Statement include:

1. Offering the highest quality of life achievable and maintaining a unique and friendly character for residents, visitors, and neighbors;

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2. Providing a world-class community, offering an extraordinary environment, activities, and events;
3. Being known throughout the region, state and nation as a leading edge, innovative community in its government, business, and technology programs;
4. Committing to being the safest city in America; and
5. Being known internationally for its alluring and distinctive hotels, retail stores, restaurants, and entertainment and headquarter businesses.

We agree with these goals and believe that all applicants for projects in the City should seek to further these goals. To establish a fitness club at the proposed location, the applicant must conduct the proper environmental review to ensure there will not be any adverse effects to the environment. Because the applicant has chosen to locate the Project within a historical resource, it is essential that the proper environmental review under the California Environmental Quality Act ("CEQA") is undertaken. The ad-hoc, "review as you go" method undertaken by the City is not the methodology allowed under CEQA. While we appreciate the City's attempt to answer some of the underlying environmental questions this project creates, the City's procedure was completely erroneous and should have been properly undertaken before the project was approved. There were numerous instances where all the details were not properly analyzed at appropriate points in the process and then only minimally analyzed or overlooked entirely.

The California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA"), requires a lead agency to analyze the potential adverse environmental impacts that may be caused by a proposed project. City staff determined the Project is exempt from CEQA with Class 1, Class 2 and Class 32 categorical exemptions. The Project does not meet the qualifications for these exemptions. Accordingly, failure to prepare an Environmental Impact Report for this Project violates the procedural requirements of CEQA.

Further, allowing review by the Architectural Commission, and an architectural historian after approval by the City Council violates of CEQA.

Because the City's use of categorical exemptions is procedurally inappropriate and the Categorical Exemption Report is substantively inadequate, the Project approval must be voided until an Environmental Impact Report is prepared and certified for the Project.

This project initially came before the Beverly Hills Planning Commission on October 14, 2010 with minimal environmental review. The Staff Report for the project indicated that "the operational changes do not result in any significant environmental impacts, including traffic and parking, and are therefore exempt from further review under the Provisions of CEQA." (Planning Commission Staff Report, October 14, 2011, p. 7.) See Exhibit 1, attached copy of the

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October 14, 2011 Staff Report. In fact, the applicant's only review was a traffic study and parking study, both of which were proven misleading and erroneous upon further review. The Staff Report concluded that the Project would "yield a small decrease in daily [vehicle] trips." (Planning Commission Staff Report, October 14, 2011, p. 8.) The Staff Report did not even consider the Project's building was a historical resource or part of a historic district.

Not until we submitted a letter dated October 13, 2011 on our clients' behalf did some of the environmental implications of the Project become clear. It became clear that the Project's traffic study was entirely erroneous. The Planning Commission initially realized the faults of the Project in this location and required the applicant to complete additional review. See Exhibit 2, selected relevant portions of the transcript of the October 14, 2011 Planning Commission hearing.

However, unlike most categorically exempt projects where there is actually an inconsequential impact to the environment as a result of the project, here, the applicant prepared a 280-page Categorical Exemption Report to attempt to prove there was no significant impact. As we previously indicated to Staff, projects which are exempt from the requirements of CEQA are those projects that typically do not cause an impact on the environment and therefore should not be required to undertake environmental review. Any project where a 280-page Categorical Exemption Report is required to attempt to prove there is no impact must lead to the conclusion that there is at least a possible impact -- the result of which necessitates the requirement for an initial study and, at minimum, a negative declaration. The applicant and the City ignored this requirement. Most stunning of all, the Categorical Exemption Report did not even address the impacts on a historical resource.

We still do not know whether the parking plan for the project is correct. Neither the Planning Commission nor the City Council questioned the applicant regarding the impacts of the Project on parking. The Planning Commission was concerned regarding the parking when there was supposedly a decrease in vehicle trips caused by the Project. However, once the numbers were "revised" neither Staff, the Planning Commission, nor the City Council even questioned the applicant regarding how 1,130 additional daily trips would impact the parking of the Project.

With regard to historical resources, City staff did not even address the potential impacts of the Project on historical resources until moments before the January 13, 2011 Planning Commission hearing with a brief one-page supplemental staff report admitting that the Project was a historical resource, however, concluding, without any supporting evidence that the Project would not have a substantial adverse impact on the historical resource. The Planning Commission approved the project without considering this potential impact.

In its initial Planning Commission Resolution approving the project (Resolution No. 1600), the Planning Commission approved the Project and concluded the "**exterior modifications will not cause any substantial adverse change in significance [sic] and**

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architectural detailing of the building”, without any substantial evidence to support this conclusion. However, the Planning Commission required all exterior modification to be reviewed by a qualified historic consultant “to ensure no substantial adverse changes will occur” after project approval. This “flip-flip” of the environmental review procedure required FLIES IN THE FACE OF CEQA. See Exhibit 3, attached copy of the Beverly Hills Planning Commission Resolution No. 1600.

Meaningful review of potential adverse impacts to the environment MUST occur prior to a lead agency making a determination that it will approve a project. See Exhibit 4, *No Oil, Inc v. City of Los Angeles* (1974) 13 Cal.3d 68. Further, the City’s attempt to consider the potential adverse impacts on historic resources after approving the Project is contrary to well-established judicial interpretations of CEQA, including *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3d 247, prohibiting post hoc rationalizations to support an agency’s prior approvals. See Exhibit 5, *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3d 247. Accordingly, the Planning Commission acted without authority in the first part.

After approval by the Planning Commission, we appealed the approval, again explaining the environmental concerns of the Project and that the appropriate review was not completed. And, in line with the ad-hoc review of the Project, just prior to the April 5, 2011 hearing, a historic review of the property suddenly appeared. This analysis was not completed in the initial environmental review of the Project. It was not completed after the Planning Commission continued the October 14, 2010 hearing. It was completed LONG AFTER our clients requested that the Project be reviewed for an adverse impact to a historical resource. The Planning Commission, the decision-making body for the conditional use permit hearing, did not even review this data before approving the Project.

The fragmented, ad-hoc approach to the environmental review of this Project violates the very principles upon which CEQA was based – to identify and disclose to decision-makers and the public the significant environmental impacts of a proposed project prior to its consideration and approval. Some of the policies of CEQA derived from California courts in CEQA cases include:

- To protect not only the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal.App.3d 795.)
- To demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal.App.3d 495.)

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How is the community supposed to be apprised of all potential environmental impacts of a project when the lead agency does not properly analyze all impacts? That public itself should not be forced into a position to make the lead agency realize the potential environmental impacts of proposed projects.

The purpose of an environmental review is to give the public and government agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Besides informing the agency decision-makers themselves, environmental review is intended to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions. See Exhibit 6, *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136. Decision-makers and ordinary citizens should not be left wondering whether the project would significantly impact the existing environment. (See *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 709.)

The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation. In such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-37; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491-93; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021-23; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

This approach taken by the City warrants a complete renewal of the environmental review of the Project. An initial study should be completed and due to the impact on a historical resource, an environmental impact report must be completed. The ad-hoc approval method by the City cannot stand.

The latest error by the City involves the Architectural Review commission's decision to approve the project.

I. PROCEDURAL INADEQUACIES OF THE PROJECT'S ARCHITECTURAL REVIEW

As indicated above, the environmental review of the Project's potential impact on a historic resource was not correctly reviewed. In order to properly assess the impact of a project on a historical resource, a lead agency must first undertake the analysis regarding the impact prior to approval of the project. As the "advisory commission to the City Council regarding the preservation of historical and cultural landmarks in the City", the Architectural Commission should have reviewed the Project BEFORE the review by the City Council. Allowing historical

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review of the project after approval is a foregone conclusion defies the purpose of historical preservation. Accordingly, once the Project was approved by the City Council, the Architectural Commission chose not to even consider the historical qualities of the Project's building. City staff instructed the Architectural Commission that they were not to review the historic quality of the project, despite its mandate as the commission responsible for historic preservation. Instead, limited to the on-site signage of the project, the Commission approved the project despite its historic deficiency without complaint.

Pursuant to Beverly Hills Municipal Code section 10-3-3201, "the architectural commission shall serve in an advisory capacity to the council on the preservation of historic and cultural landmarks in the city." As part of this duty, the architectural commission shall have, among others, the following powers and duties:

- A. To inspect and investigate any site, building, or structure within the city which it has reason to believe is or in the near future will be a historical or cultural landmark; and
- B. To compile and maintain a current list of all such sites, buildings, or structures which it has determined from such inspections and investigations to be historical or cultural landmarks. Such list shall contain a brief description of the site, building, or structure and the reasons for its inclusion in the list.

Lastly, pursuant to section 10-3-3204, the architectural commission shall transmit to the building and safety department, the recreation department, the public works department, and the board of education current copies of such list, including additions and deletions.

This mandate was not appropriately undertaken. The Architectural Commission did not review property in light of its historic record. Further, even if it had, the process undertaken by the City, to allow review by the Architectural Commission after approval by the City Council defeats the purpose of CEQA.

II. SUBSTANTIVE INADEQUACIES OF THE PROJECT'S ARCHITECTURAL REVIEW

As mentioned above, the Categorical Exemption Report provided no analysis of the impact of the Project on historical resources. CEQA section 15300.2(f) negates the use of a categorical exemption for a project which may cause a substantial adverse change in the significance of a historical resource. In *Sierra Club v. State Bd. of Forestry*, Pacific Lumber Company refused to provide information regarding the presence of old-growth-dependent wildlife species within the old growth forest covered by proposed timber harvesting plans submitted for approval to the Department of Forestry. (*Sierra Club*, 7 Cal.4th at p. 1219.) The California Supreme Court concluded that the State Board of Forestry abused its discretion when

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it evaluated and approved [Pacific Lumber Company's timber harvesting] plans on the basis of a record which lacked information regarding the presence in the subject areas of some old-growth-dependent species. (*Id.* at p. 1220. (Emphasis added).) The court stated: "By approving the plans without the necessary information regarding those species the board failed to comply with the obligation imposed on it by the California Environmental Quality Act." (*Id.*)

Here, the building at 9465 Wilshire Boulevard has been found to be a contributor to a potential historic district under California Register Criterion 3. Yet the Categorical Exemption Report is bereft of any analysis of the impacts the proposed project will have on this site. Despite its administrative mandate, the Architectural Commission ignored the historic qualities of the Project's building.

However, City staff acknowledged the Project's building qualifies as a historical resource as a contributor to a group of buildings eligible for listing in the California Register.

Under CEQA Guidelines section 15064.5(a)(2), historical resources for the purposes of CEQA include those "identified as significant in an historical resource survey meeting the requirements of section 5024.1(g) of the Public Resources Code". These historical resources "shall be presumed to be historically or culturally significant."

Public Resources Code Section 5024.1(g) sets forth four criteria which must be met to allow a resource identified as significant in a historical resource survey to be listed in the California Register, including:

- a. The survey has been or will be included in the State Historic Resources Inventory.
- b. The survey and the survey documentation were prepared in accordance with office procedures and requirements.
- c. The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.
- d. If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.

The Project meets all of the above criteria. A project that may cause a "substantial adverse change" in the significance of a historical resource is a project that may have a significant effect on the environment. (CEQA Guidelines, § 15064.5, sub. (b).) "Substantial adverse change" means "physical demolition, destruction, relocation or alteration of the

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resources or its immediate surroundings” resulting in material impairment to the significance of the historical resource. (CEQA Guidelines, § 15064.5, sub. (b)(1).)

The proposed exterior modifications to the Bank of America Building will impair the historic integrity of the Project’s building by diminishing the character-defining features of the building and thus impairing an identified historic district.

Again, consistent with the ad-hoc approach of the City staff in its environmental review of this Project, just prior to review of the project by the Architectural Commission hearing, the applicant apparently decided to keep the original exterior planters as part of the Project and not demolish them as originally sought. This important admission by the applicant that these planters were an important component of the Project building’s character-defining features clearly show the errors of the Planning Commission and City Council in deciding that the Project was not historic or part of a historic district and that demolition or destruction of the character-defining features of the building would violate California law.

This change in the Project, necessitated because of the historic quality of the building, was not completed in the initial environmental review of the project. It was not completed after the Planning Commission continued the October 14, 2010 hearing. It was not completed before the April 5, 2011 City Council hearing. It was completed LONG AFTER our clients requested that the project be reviewed for an adverse impact to a historical resource. Neither the Planning Commission, the decision-making body for the conditional use permit hearing, nor the City Council reviewed this issue before approving the Project.

The Architectural Commission did not comment on this fact. However, there is no escaping the fact that as part of the Project, the applicant intends to sever the ground floor Beverly Drive façade of the building to create a new entry door for the Project. In addition, the applicant wishes to further harm the original exterior siding/plating by cutting into to add another Equinox sign. These actions combined with the proposed painting over of original portions of the exterior will inexorably destroy the original character-defining features of this building. Considering this building is part of a historic district, these actions will damage the district as well. The Architectural Commission chose to ignore this. Missing their mandate and missing the mark, the Architectural Commission failed in their duty to protect historical resources in the City.

Accordingly, the City should have treated the Project building as historical and provided appropriate environmental review.

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The decision of the Architectural Commission is procedurally and substantively deficient, not unlike the decision-making prior to this hearing. The Project requires the preparation of an Environmental Impact Report. The City Council should grant this appeal and return this Project to staff for adequate review under CEQA.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Todd Elliott', with a stylized flourish at the end.

Todd Elliott
of TRUMAN & ELLIOTT LLP

Enclosures

ATTACHMENT 2

**Appeal Petition (Entire appeal petition, inclusive of attachments,
as submitted by appellant)**

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Los Angeles, California 90017
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Fax: (213) 629-1212
www.trumanelliott.com

TRUMAN & ELLIOTT LLP

May 31, 2011

VIA HAND DELIVERY

Honorable Mayor Brucker and
Members of the Beverly Hills City Council
City of Beverly Hills
455 N. Rexford Drive, First Floor
Beverly Hills, California 90210

RECEIVED
CITY OF BEVERLY HILLS
2011 MAY 31 A 10:26
CITY CLERK'S OFFICE

Re: Appeal of the Beverly Hills Architectural Commission's Approval of a Façade Remodel and Sign Accommodation for the Proposed Equinox Exercise Club at 9465 Wilshire Boulevard, Beverly Hills, California 90212 ("Project")

Honorable Mayor Brucker and Honorable Members of the City Council:

On behalf of our clients, Ron and Sharon Gart and N.O.P.E. ("Neighbors Organized to Protect the Environment in Beverly Hills"), we write to appeal the May 18, 2011 decision of the Beverly Hills Architectural Commission ("Commission") regarding the above-referenced Project.

As the commission responsible for preservation of historical and cultural resources in the City, we find it astounding that the Commission could so easily forego its administrative duties and let a highly deficient project pass through the approval process without meeting minimal environmental requirements. This letter addresses the procedural and substantive inadequacies of the Architectural Commission's review of the Project as well as summarizes the perplexing journey of this project wrought with procedural deficiencies from the beginning. Most recently, this Project was approved by the Architectural Commission despite the complete omission of any discussion of the historical significance of the property or the district of which it is a part. In addition, the Commission failed to discuss the impacts of the project on a historical resource.

The goals included in the Beverly Hills' Vision Statement include:

1. Offering the highest quality of life achievable and maintaining a unique and friendly character for residents, visitors, and neighbors;

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2. Providing a world-class community, offering an extraordinary environment, activities, and events;
3. Being known throughout the region, state and nation as a leading edge, innovative community in its government, business, and technology programs;
4. Committing to being the safest city in America; and
5. Being known internationally for its alluring and distinctive hotels, retail stores, restaurants, and entertainment and headquarter businesses.

We agree with these goals and believe that all applicants for projects in the City should seek to further these goals. To establish a fitness club at the proposed location, the applicant must conduct the proper environmental review to ensure there will not be any adverse effects to the environment. Because the applicant has chosen to locate the Project within a historical resource, it is essential that the proper environmental review under the California Environmental Quality Act ("CEQA") is undertaken. The ad-hoc, "review as you go" method undertaken by the City is not the methodology allowed under CEQA. While we appreciate the City's attempt to answer some of the underlying environmental questions this project creates, the City's procedure was completely erroneous and should have been properly undertaken before the project was approved. There were numerous instances where all the details were not properly analyzed at appropriate points in the process and then only minimally analyzed or overlooked entirely.

The California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA"), requires a lead agency to analyze the potential adverse environmental impacts that may be caused by a proposed project. City staff determined the Project is exempt from CEQA with Class 1, Class 2 and Class 32 categorical exemptions. The Project does not meet the qualifications for these exemptions. Accordingly, failure to prepare an Environmental Impact Report for this Project violates the procedural requirements of CEQA.

Further, allowing review by the Architectural Commission, and an architectural historian after approval by the City Council violates of CEQA.

Because the City's use of categorical exemptions is procedurally inappropriate and the Categorical Exemption Report is substantively inadequate, the Project approval must be voided until an Environmental Impact Report is prepared and certified for the Project.

This project initially came before the Beverly Hills Planning Commission on October 14, 2010 with minimal environmental review. The Staff Report for the project indicated that "the operational changes do not result in any significant environmental impacts, including traffic and parking, and are therefore exempt from further review under the Provisions of CEQA." (Planning Commission Staff Report, October 14, 2011, p. 7.) See Exhibit 1, attached copy of the

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October 14, 2011 Staff Report. In fact, the applicant's only review was a traffic study and parking study, both of which were proven misleading and erroneous upon further review. The Staff Report concluded that the Project would "yield a small decrease in daily [vehicle] trips." (Planning Commission Staff Report, October 14, 2011, p. 8.) The Staff Report did not even consider the Project's building was a historical resource or part of a historic district.

Not until we submitted a letter dated October 13, 2011 on our clients' behalf did some of the environmental implications of the Project become clear. It became clear that the Project's traffic study was entirely erroneous. The Planning Commission initially realized the faults of the Project in this location and required the applicant to complete additional review. See Exhibit 2, selected relevant portions of the transcript of the October 14, 2011 Planning Commission hearing.

However, unlike most categorically exempt projects where there is actually an inconsequential impact to the environment as a result of the project, here, the applicant prepared a 280-page Categorical Exemption Report to attempt to prove there was no significant impact. As we previously indicated to Staff, projects which are exempt from the requirements of CEQA are those projects that typically do not cause an impact on the environment and therefore should not be required to undertake environmental review. Any project where a 280-page Categorical Exemption Report is required to attempt to prove there is no impact must lead to the conclusion that there is at least a possible impact – the result of which necessitates the requirement for an initial study and, at minimum, a negative declaration. The applicant and the City ignored this requirement. Most stunning of all, the Categorical Exemption Report did not even address the impacts on a historical resource.

We still do not know whether the parking plan for the project is correct. Neither the Planning Commission nor the City Council questioned the applicant regarding the impacts of the Project on parking. The Planning Commission was concerned regarding the parking when there was supposedly a decrease in vehicle trips caused by the Project. However, once the numbers were "revised" neither Staff, the Planning Commission, nor the City Council even questioned the applicant regarding how 1,130 additional daily trips would impact the parking of the Project.

With regard to historical resources, City staff did not even address the potential impacts of the Project on historical resources until moments before the January 13, 2011 Planning Commission hearing with a brief one-page supplemental staff report admitting that the Project was a historical resource, however, concluding, without any supporting evidence that the Project would not have a substantial adverse impact on the historical resource. The Planning Commission approved the project without considering this potential impact.

In its initial Planning Commission Resolution approving the project (Resolution No. 1600), the Planning Commission approved the Project and concluded the **"exterior modifications will not cause any substantial adverse change in significance [sic] and**

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architectural detailing of the building”, without any substantial evidence to support this conclusion. However, the Planning Commission required all exterior modification to be reviewed by a qualified historic consultant “to ensure no substantial adverse changes will occur” after project approval. This “flip-flip” of the environmental review procedure required FLIES IN THE FACE OF CEQA. See Exhibit 3, attached copy of the Beverly Hills Planning Commission Resolution No. 1600.

Meaningful review of potential adverse impacts to the environment MUST occur prior to a lead agency making a determination that it will approve a project. See Exhibit 4, *No Oil, Inc v. City of Los Angeles* (1974) 13 Cal.3d 68. Further, the City’s attempt to consider the potential adverse impacts on historic resources after approving the Project is contrary to well-established judicial interpretations of CEQA, including *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3d 247, prohibiting post hoc rationalizations to support an agency’s prior approvals. See Exhibit 5, *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3d 247. Accordingly, the Planning Commission acted without authority in the first part.

After approval by the Planning Commission, we appealed the approval, again explaining the environmental concerns of the Project and that the appropriate review was not completed. And, in line with the ad-hoc review of the Project, just prior to the April 5, 2011 hearing, a historic review of the property suddenly appeared. This analysis was not completed in the initial environmental review of the Project. It was not completed after the Planning Commission continued the October 14, 2010 hearing. It was completed LONG AFTER our clients requested that the Project be reviewed for an adverse impact to a historical resource. The Planning Commission, the decision-making body for the conditional use permit hearing, did not even review this data before approving the Project.

The fragmented, ad-hoc approach to the environmental review of this Project violates the very principles upon which CEQA was based – to identify and disclose to decision-makers and the public the significant environmental impacts of a proposed project prior to its consideration and approval. Some of the policies of CEQA derived from California courts in CEQA cases include:

- To protect not only the environment but also to demonstrate to the public that it is being protected. (*County of Inyo v. Yorty*, 32 Cal.App.3d 795.)
- To demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal.App.3d 495.)

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How is the community supposed to be apprised of all potential environmental impacts of a project when the lead agency does not properly analyze all impacts? That public itself should not be forced into a position to make the lead agency realize the potential environmental impacts of proposed projects.

The purpose of an environmental review is to give the public and government agencies the information needed to make informed decisions, thus protecting not only the environment but also informed self-government. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) Besides informing the agency decision-makers themselves, environmental review is intended to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions. See Exhibit 6, *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 136. Decision-makers and ordinary citizens should not be left wondering whether the project would significantly impact the existing environment. (See *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 Cal.App.4th 683, 709.)

The failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision making and informed public participation. In such cases, the error is prejudicial. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-37; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491-93; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021-23; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.)

This approach taken by the City warrants a complete renewal of the environmental review of the Project. An initial study should be completed and due to the impact on a historical resource, an environmental impact report must be completed. The ad-hoc approval method by the City cannot stand.

The latest error by the City involves the Architectural Review commission's decision to approve the project.

I. PROCEDURAL INADEQUACIES OF THE PROJECT'S ARCHITECTURAL REVIEW

As indicated above, the environmental review of the Project's potential impact on a historic resource was not correctly reviewed. In order to properly assess the impact of a project on a historical resource, a lead agency must first undertake the analysis regarding the impact prior to approval of the project. As the "advisory commission to the City Council regarding the preservation of historical and cultural landmarks in the City", the Architectural Commission should have reviewed the Project BEFORE the review by the City Council. Allowing historical

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review of the project after approval is a foregone conclusion defies the purpose of historical preservation. Accordingly, once the Project was approved by the City Council, the Architectural Commission chose not to even consider the historical qualities of the Project's building. City staff instructed the Architectural Commission that they were not to review the historic quality of the project, despite its mandate as the commission responsible for historic preservation. Instead, limited to the on-site signage of the project, the Commission approved the project despite its historic deficiency without complaint.

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The Project meets all of the above criteria. A project that may cause a "substantial adverse change" in the significance of a historical resource is a project that may have a significant effect on the environment. (CEQA Guidelines, § 15064.5, sub. (b).) "Substantial adverse change" means "physical demolition, destruction, relocation or alteration of the

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The proposed exterior modifications to the Bank of America Building will impair the historic integrity of the Project’s building by diminishing the character-defining features of the building and thus impairing an identified historic district.

Again, consistent with the ad-hoc approach of the City staff in its environmental review of this Project, just prior to review of the project by the Architectural Commission hearing, the applicant apparently decided to keep the original exterior planters as part of the Project and not demolish them as originally sought. This important admission by the applicant that these planters were an important component of the Project building’s character-defining features clearly show the errors of the Planning Commission and City Council in deciding that the Project was not historic or part of a historic district and that demolition or destruction of the character-defining features of the building would violate California law.

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Accordingly, the City should have treated the Project building as historical and provided appropriate environmental review.

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The decision of the Architectural Commission is procedurally and substantively deficient, not unlike the decision-making prior to this hearing. The Project requires the preparation of an Environmental Impact Report. The City Council should grant this appeal and return this Project to staff for adequate review under CEQA.

Very truly yours,

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Todd Elliott
of TRUMAN & ELLIOTT LLP

Enclosures

APPEAL PETITION

ATTACHMENT 1



Planning Commission Report

Meeting Date: October 14, 2010

Subject: 9465 Wilshire Boulevard
Equinox Fitness Club

Request for a Conditional Use Permit to allow an approximately 37,000 square foot exercise club to be located on the ground floor of a building located within the Business Triangle, occupy more than 25 feet of street frontage within the Pedestrian Oriented Area, and utilize shared parking facilities in order to satisfy the parking requirements set forth in the Municipal Code.

PROJECT APPLICANT: Murray Fischer

Recommendation: That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project; and
 2. Direct staff to prepare a resolution conditionally approving the requested Conditional Use Permit.
-

REPORT SUMMARY

The proposed project involves the establishment of an approximately 37,000 square foot exercise club within the building located at 9465 Wilshire Boulevard (Bank of America building). The proposed exercise club would occupy portions of the building's first, second, and third floors. The exercise club would be accessible from Wilshire Boulevard and North Beverly Drive, and would utilize a combination of dedicated on-site parking and shared on-site parking, all of which would be located in the interconnected subterranean parking garages located beneath the Bank of America building and William Morris building.

Attachment(s):

- A. Staff Recommended Findings and Conditions of Approval
- B. Applicant Project Description Letter
- C. Public Notice
- D. Traffic and Parking Study
- E. Staff Memo in Response to Traffic and Parking Study
- F. Public Correspondence
- G. Architectural Plans

Report Author and Contact Information:

Ryan Gohlich
(310) 285-1194
rgohlich@beverlyhills.org

BACKGROUND

File Date 8/13/2010
Application Complete 9/12/2010
Subdivision Deadline N/A
CEQA Deadline 60 days from CEQA Determination
Permit Streamlining 11/11/2010 without extension request from applicant

Applicant(s) Equinox Fitness Club
Owner(s) Beverly Wilshire Owner, LP
Representative(s) Murray Fischer

Prior PC Action None
Prior Council Action None

PROPERTY AND NEIGHBORHOOD SETTING

Property Information

Address 9465 Wilshire Boulevard
Legal Description Lot 8 and 9 in Block 10 of Beverly Tract
Zoning District C-3
General Plan General Commercial - Low Density
Existing Land Use(s) General offices and Bank
Lot Dimensions & Area 225' x 170' x 117' x 152' (trapezoidal) - 27,705 square feet
Year Built 1961
Historic Resource The property is not listed on any local, state or federal inventory
Protected Trees/Grove None

Adjacent Zoning and Land Uses

North C-3 General Commercial with E-O-PD Overlay Zone (William Morris)
South (across Wilshire) C-3 General Commercial
East C-3 General Commercial with Beverly Hills Garden Specific Plan (Montage)
West C-3 General Commercial

Circulation and Parking

Adjacent Street(s) Wilshire Boulevard to the south and North Beverly Drive to the east
Adjacent Alleys Alley at rear (east side) of property. One-way circulation - south to north
Parkways & Sidewalks Eastern sidewalk/parkway along North Beverly Drive - 12' from face of curb to property line.
Southern sidewalk/parkway along Wilshire Boulevard - 15' from face of curb to property line.
Parking Restrictions The project site is surrounded by commercial uses. On-street parking is generally provided by 1-hour meters. Residential zones do not begin until the 200 blocks south of Wilshire Boulevard, and allow on-street parking by permit only.
Nearest Intersection Wilshire Boulevard and North Beverly Drive
Circulation Element Wilshire Boulevard and Beverly Drive serve as arterial streets
Estimated Daily Trips Wilshire Boulevard carries approximately 44,400 daily trips, and Beverly

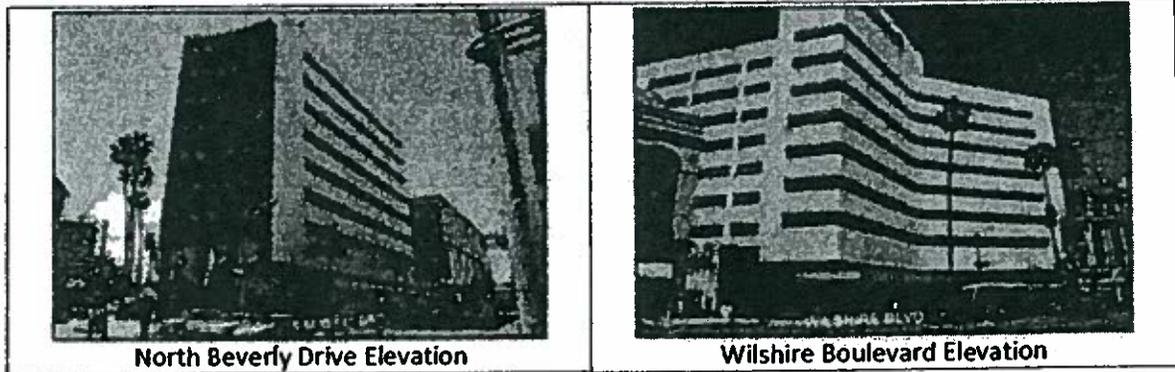
Drive carries approximately 19,300 daily trips.

Neighborhood Character

The project site is located on the north side of Wilshire Boulevard, in what is identified as the City's Business Triangle. The existing neighborhood character within the vicinity of the project consists of a variety of commercial developments, which are predominantly occupied by retail and general office uses. Although not shown in the aerial photos provided below, the project site is immediately south of the "William Morris" building, and immediately west of the Montage Hotel. Additionally, the project site is located immediately east of the "Two Rodeo" development, and northeast of the Beverly Wilshire Hotel.

Commercial buildings in the immediate vicinity of the project site tend to exceed the current height and density requirements, and were often approved through the use of variances during the 1960s and 1970s. The commercial building at the subject property was built in 1961, with a total of 8 stories and a maximum height of 125 feet. Retail uses typically dominate the ground floors of buildings located within the Business Triangle; however, many of the larger-scale commercial buildings located along Wilshire Boulevard and east of the project site contain minimal amounts of retail space, and instead provide financial and banking services. The larger-scale commercial buildings located along Wilshire Boulevard and west of the project site generally provide retail uses at the ground floor.





PROJECT DESCRIPTION

The proposed project consists of the operation of an approximately 37,000 square foot exercise club within portions of the first, second, and third floors of the existing commercial building at the subject property. Floor area distribution of the exercise club would include 10,300 square feet on the first floor, 7,281 square feet on the second floor, and 19,082 square feet on the third floor. As proposed, the breakdown of uses within the subject commercial building would include 36,663 square feet of exercise club uses, 5,651 square feet of bank uses, and 122,784 square feet of general office uses. This distribution includes a 1,660 square foot area that is currently open-to-below, but would be filled in to create additional space for the exercise club.

The subject property is trapezoidal in shape, and has street frontage along Wilshire Boulevard and North Beverly Drive. A subterranean parking garage is located beneath the subject property and is connected to the newly constructed "William Morris" parking garage. As a result of the two parking garages being connected, a total of 959 parking spaces are provided on site. Ingress and egress to the parking garage is provided along North Beverly Drive, along the rear alley of the property, and at Dayton Way.

Requested Permits

The applicant is seeking approval of a Conditional Use Permit to allow the proposed exercise club. The establishment of an exercise club within the City does not generally require a Conditional Use Permit; however, certain components of the proposed project trigger the need for a Conditional Use Permit. As a result, the applicant seeks approval of a Conditional Use Permit for the following purposes:

1. To allow an exercise club to be located on the ground floor of a building located within the Business Triangle;
2. To allow portions of the exercise areas to be visible from a public street or sidewalk (exercise areas at the third floor would be visible);
3. To allow the exercise club to occupy more than 25 feet of ground-floor street frontage within the Pedestrian Oriented Area (90 feet of street frontage along North Beverly Drive and 33 feet of street frontage along Wilshire Boulevard); and
4. To allow the use of shared parking facilities in order to satisfy the parking requirements set forth in the Municipal Code. A total of 260 parking spaces would need to be approved as "shared" parking spaces in order for the proposed exercise club to meet code requirements with regard to parking.

ZONING CODE¹ COMPLIANCE

A detailed review of the proposed project to applicable zoning standards has been performed. The proposed project complies with all applicable codes, or is seeking through the requested permits, permission to deviate from certain code standards, in a manner that is consistent with the Zoning Ordinance.

Due to the complex nature of the building's original approval through the issuance of a variance, as well as parking garage connections with the "William Morris" project, additional information on parking and floor area requirements are provided as follows:

Parking

Parking for the existing Bank of America building is located in a subterranean garage below the building that provides 212 spaces. Additionally, the garage is connected to the William Morris parking garage at levels P1 and P4. The purpose of connecting the two garages was to provide replacement parking for spaces belonging to the Bank of America building that were lost when parking facilities located on what is now the William Morris site were demolished to make way for the William Morris project.

As a result, the Bank of America building controls a total of 474 spaces within the two structures, but has access to a total of 959 parking spaces when the spaces designated for William Morris are included. Based on the total number of parking spaces provided on site and the applicability of shared parking provisions, all existing and proposed uses would comply with the City's parking requirements, and a detailed breakdown of the required parking for the proposed project is as follows:

Use	Floor Area	Parking Rate	Code-Required Parking	Provided Parking
B of A Exercise Club	36,663 S.F.	1/100 S.F.	367 Spaces	33 Dedicated + 334 Shared
B of A General Office	122,784 S.F.	1/350 S.F.	351 Spaces	351 Dedicated
B of A Bank	5,651 S.F.	1/350 S.F.	16 Spaces	16 Dedicated
William Morris Office	141,322 S.F.	1/350 S.F.	403 Spaces	403 Dedicated
William Morris Retail	21,150 S.F.	1/350 S.F.	60 Spaces	60 Dedicated
William Morris Dining	7,295 S.F.	1/45 S.F.	162 Spaces	81 Dedicated + 81 Shared
Totals	334,865 S.F.	N/A	1,359 Spaces	944 Dedicated + 415 Shared

The above table indicates that a total of 1,359 parking spaces would be required to accommodate all uses within the two buildings, while the cumulative capacity of both parking garages is 959 spaces. However, per BHMC §10-3-1618 and §10-3-2730 up to fifty percent (50%) of the parking facilities of a use considered to be primarily a daytime use may be used to satisfy the parking facilities required for uses considered to have peak demand during early-morning or nighttime hours. As a result, up to 50% of the parking required for the office, bank, and retail uses shown above may be applied to the dining and exercise club uses. Therefore, 415 spaces $((351+16+403+60)/2)$ may be applied to the dining and exercise uses. This provision was previously applied to 81 of the 162 spaces required for restaurant dining areas within the William Morris building, which leaves 334 spaces $(415-81)$ available to be applied to the parking required for the exercise club. This means that 33 dedicated spaces $(367-334)$ need to be provided for the exercise club, while 334 spaces can be shared (this utilizes the remainder of the entire

¹ Available online at http://www.sterlingcodifiers.com/codebook/index.php?book_id=466

50% credit for shared parking). Therefore, if the shared parking arrangement is approved as proposed, the project would be in conformance with all code requirements.

Floor Area

The proposed project includes adding approximately 1,660 square feet of interior floor at the second floor level. The 1,660 square feet of floor area to be added and is currently within the building, but is open-to-below. In order for the applicant to add 1,660 square feet of floor area, the addition needs to be within the maximum floor area ratio originally approved for the building. The original approvals for the subject building set a maximum floor area ratio of 4.0 to 1, and used the entire block for the purpose of establishing the total site area. Presently, the properties occupying the block have been reconfigured and the William Morris project has been constructed, which renders the original 4.0 to 1 floor area ratio inaccurate. As a result, staff relied on approved square footages for the building, rather than rely on a floor area ratio calculation that is no longer accurate. The subject building was approved for up to 166,131 square feet, and with the added floor area the building would total 165,098 square feet. Therefore, the total floor area of the building, inclusive of the proposed additions, would be within the allowed floor area and compliant with the building's original approvals.

Agency Review²

The following City Departments conducted a preliminary project review as it relates to other technical provisions of local and state law:

- **TRANSPORTATION DIVISION**

The Transportation Division has reviewed the traffic and parking analysis submitted by the applicant, and is generally in agreement with the findings of the report. The proposed project will not result in any substantial changes in trip generation, and the proposed shared parking arrangement will not result in any shortfall of parking spaces, even at times of peak parking demand. The applicant's traffic and parking analysis is provided as Attachment D, and a memo from the City's Transportation Division providing a detailed review of the analysis is provided as Attachment E.

- **CIVIL ENGINEERING**

The City's Engineering Department did not have any comments with regard to the proposed project.

GENERAL PLAN³ POLICIES

The General Plan includes several goals and policies. Some policies relevant to the Planning Commission's review of the project include:

- **Policy LU 2.8 Pedestrian-Active Streets.** Require that buildings in business districts be oriented to, and actively engage the street through design features such as build-to lines, articulated and modulated facades, ground floor transparency such as large windows, and the limitation of parking entries directly on the street. Parking ingress and egress should be accessed from alleys where feasible.

² Recommended conditions of approval by other departments are provided in the Analysis section of this report.

³ Available online at http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp

- Policy LU 11.1 Preservation of Pedestrian-Oriented Retail Shopping Areas. Preserve, protect and enhance the character of the pedestrian-oriented retail shopping areas, which are typified by a variety of retail shops with displays to attract and hold the interest of pedestrian shoppers, to ensure the continuity of the pedestrian experience.
- Policy LU 11.3 Retail Street Frontages. Require that development and street frontages in districts containing retail uses be designed and developed to promote pedestrian activity including: (a) location and orientation of the building to the sidewalk; (b) transparency of and direct access to the ground floor elevation from the sidewalk; (c) articulation of street-facing elevations to promote interest and sense of quality; (d) inclusion of uses and public spaces that extend interior functions to the sidewalk such as cafes and plazas; and (e) use of pedestrian oriented signage and lighting.

ENVIRONMENTAL ASSESSMENT

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines⁴, and the environmental regulations of the City. The project qualifies for a categorical exemption pursuant to Section 15301 (Class 1) of the Guidelines. Specifically, the proposed project would result in operational changes within an existing commercial building. The operational changes do not result in any significant environmental impacts, including traffic and parking, and are therefore exempt from further review under the provisions of CEQA.

PUBLIC OUTREACH AND NOTIFICATION

Type of Notice	Required Period	Required Notice Date	Actual Notice Date	Actual Period
Posted Notice	N/A	N/A	10/8/2010	6 Days
Newspaper Notice	10 Days	10/4/2010	10/1/2010	13 Days
Mailed Notice (Owners & Residents - 300' Radius)	5 Days	10/9/2010	10/1/2010	13 Days
Property Posting	N/A	N/A	N/A	N/A
Website	N/A	N/A	10/8/2010	6 Days

Applicant Outreach Efforts

As of the date of the preparation of this report, staff is unaware of any outreach efforts undertaken by the applicant.

Public Comment

The City has received several inquiries regarding the details of the proposed project, and has received one letter in support of the proposed project (Attachment F) as of the date of the preparation of this report.

⁴ The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

ANALYSIS⁵

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. Draft findings are included with this report in Attachment A and may be used to guide the Planning Commission's deliberation of the subject project.

The required findings for the Conditional Use Permit generally relate to preservation of surrounding neighborhoods, preservation of the City's Pedestrian Oriented Areas, and an ability to show that the project will not result in any parking or traffic related impacts. Based on staff's analysis and the technical reports provided, the proposed project will not result in any adverse impacts. Specific discussion related to key issues associated with the project is provided below, and draft findings in support of the project are provided as Attachment A.

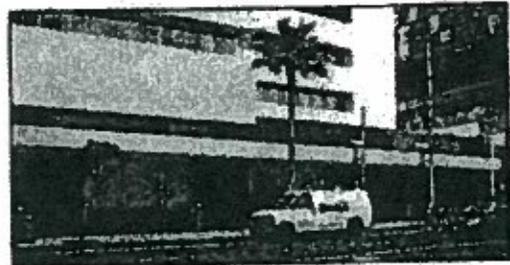
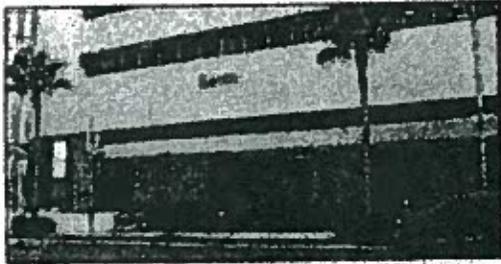
Traffic. Trip generation for an exercise club is typically higher than that of a general office use. Because the majority of the proposed project replaces general office uses, one would anticipate that the project would result in a substantially larger number of trips when compared to existing uses. However, a portion of the exercise club would also replace 10,300 square feet of bank uses. The replacement of bank uses is important because bank uses generate a significantly higher number of trips than exercise club uses (150 trips per 1,000 square feet versus 32.93 trips per 1,000 square feet). As a result, the proposed configuration of uses actually yields a small decrease in daily trips. The City's Transportation Division has reviewed the trip generation analysis provided by the applicant, and is in agreement with the methodology used to determine overall trips. Because the proposed project is anticipated to result in a net decrease in the number of daily trips, the project will not result in a significant traffic impact.

Parking. A detailed breakdown of required, provided, and shared parking is provided above in the Zoning Code Compliance section of this report. In addition to the code analysis provided above, the applicant's traffic consultant has prepared a detailed parking demand analysis to show that the project will not result in a shortfall of parking spaces. The parking analysis was prepared using parking data from existing Equinox facilities in the area, as well as parking usage data for the Bank of America Building. Peak parking demand for the exercise club as an individual use is anticipated to occur between the hours of 6:00 PM and 7:00 PM; however, the overall peak parking demand for the building as a whole is anticipated to occur between the hours of 5:00 PM and 6:00 PM. The parking demand study assumes access to 474 parking spaces, as this is the number of spaces directly controlled by the Bank of America building, although there is actually a total of 959 spaces within the shared parking garage. Even when assuming a total of 474 available parking spaces, the parking demand study demonstrates that peak hour demand for the entire building (5:00 PM - 6:00 PM) will yield a surplus of 65 parking spaces. The City's Transportation Division has reviewed the parking demand analysis and is in agreement with the methodology used and the conclusions of the report. Based on this analysis, the proposed project will not result in any parking related impacts, as the existing parking facilities have the capacity to accommodate all proposed uses.

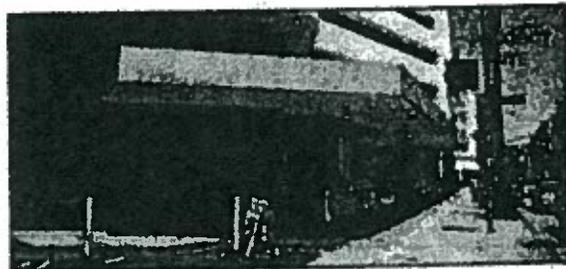
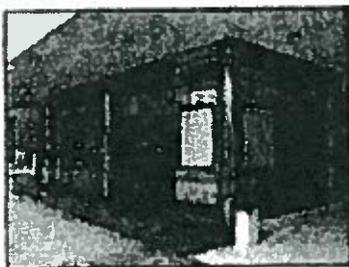
⁵ The analysis provided in this section is based on draft findings prepared by the report author prior to the public hearing. The Planning Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to modify the findings. A change to the findings may result in a final action that is different from the staff recommended action in this report.

Pedestrian Oriented Area. The City's General Plan, as outlined above, provides specific policies for maintaining and improving the pedestrian experience within the City's commercial areas. The proposed use of an exercise club is not considered to be a pedestrian oriented use under the zoning code. Therefore, in addition to consideration regarding compliance with the General Plan, specific findings must be made in order to grant a Conditional Use Permit to allow the exercise club to be located on the ground floor of the building and have exercise areas that are visible from the public right-of-way.

Although an exercise club is generally not considered to be pedestrian oriented, staff has reviewed the project against existing conditions at the subject property, as well as existing conditions within the vicinity of the project. The ground floor of the subject property is currently occupied entirely by bank uses, which are not considered to be pedestrian oriented. Therefore, the proposed use would not result in the loss of any existing pedestrian oriented uses. Further, the existing bank use does not provide any window displays, and provides no pedestrian access along North Beverly Drive. Contrary to the existing conditions, the proposed project includes window displays along North Beverly Drive, a pedestrian entrance along North Beverly Drive, and a small retail and juice bar component along North Beverly Drive. This reconfiguration of the ground floor uses and displays actually results in an improved pedestrian experience when compared to existing conditions. The portion of Wilshire Boulevard frontage to be occupied by the exercise club spans approximately 33 feet, and is proposed to have an opaque storefront. The current storefront along Wilshire Boulevard provides no pedestrian interaction, and installation of an opaque storefront would not result in the loss of any elements that would otherwise contribute to the pedestrian experience. The proposed plans indicate that third floor windows would be fitted with mechanical shades, which would screen views of any exercise areas. Because the shades may not always be in place, portions of the exercise area may be visible from the street. Due to the third floor location, any visibility would be minimal, and is not anticipated to degrade the pedestrian environment along Wilshire Boulevard.



Existing North Beverly Drive Frontage



Existing Wilshire Boulevard Frontage

Special Conditions of Approval

The recommendation in this report is for approval. In addition to standard conditions of approval, the following project-specific conditions are recommended (also see Attachment A):

- *"The Conditional Use Permit (CUP) shall expire fifteen (15) years from the date of the resolution and all rights granted by this CUP shall terminate at that time. Unless the CUP is renewed, or a new CUP granted, the Applicant shall immediately cease operation of the fitness facility at this location. The Applicant shall have the right to submit requests for renewal of the CUP but shall have no right to renewal of the CUP. Any application for renewal of the CUP or a new CUP must be filed at least sixty (60) days prior to the expiration of these approvals. If the Planning Commission does not renew the CUP, the CUP shall expire and all rights possessed under the CUP shall be terminated. Provided, however, if the Applicant files an application for a renewal, any existing CUP shall be extended until the City takes final action on the application. Any application for a renewal of this CUP shall be subject to the application fee established by Resolution of the City Council. Upon expiration of the renewal and any future renewal, the Applicant may apply for further extensions pursuant to the procedures set forth above. The length of any future renewals granted shall be governed by the provisions of the Beverly Hills Municipal Code." (Special Condition 1)*

The purpose of the above condition is to afford the City the opportunity to review the CUP at a later date to determine whether the project is still in conformance with the goals and policies of the City at the time of review.

- *Six (6) months after the opening of the exercise club, the Applicant shall provide to the Director of Community Development parking utilization counts at the subject site to monitor actual parking demand and ensure that the parking demand is being met. Should parking demands be different than those reported under the parking survey prepared in connection with the review of the Project, the Applicant will be required to develop a parking management plan satisfactory to the Directors of Community Development and Transportation to mitigate the parking deficiency." (Special Condition 2)*

The purpose of the above condition is to ensure that actual parking demand is consistent with the anticipated demand outlined in the parking study. In the event that unanticipated parking impacts are occurring, corrective measures will be able to be implemented.

- *"The conditions of approval set forth in this resolution are specifically tailored to address the operation of a fitness facility that substantially conforms to the project presented to and approved by the Planning Commission at its meeting of October 14, 2010. To ensure that the subsequent fitness facilities operated at the subject site do not cause adverse impacts to other building tenants or adjacent land uses, any transfer of ownership, management, or control of the proposed fitness facility shall be reviewed by the Director of Community Development to determine whether the proposed operations of the new fitness facility substantially conform to the project approved by the Planning Commission. If the Director determines that the proposed operations do not substantially conform to the approved project, the Director shall schedule a hearing before the Planning Commission in accordance with the provisions of Section 10-3-3803 of the Beverly Hills Municipal Code. The Planning Commission expressly reserves jurisdiction at said hearing to revoke the conditional use permit or to impose additional conditions as necessary to ensure that the operation of a subsequent exercise club at the subject site is compatible with adjacent land uses." (Special Condition 3)*

The purpose of the above condition is to ensure consistency with any project approvals granted by the Planning Commission. In the event that any operations are determined to be inconsistent with any approvals granted, modification or revocation of the approvals will be possible.

- *"Prior to the issuance of building permits for any exterior work, all exterior modifications to the building, as well as signage and window displays, shall be submitted to and approved by the Architectural Commission." (Special Condition 4)*

The purpose of the above condition is to ensure that an appropriate architectural design is executed with the goal of enhancing the built environment and pedestrian experience.

- *"A minimum of 367 on-site parking spaces shall be maintained for use by the exercise club. Up to 334 of the 367 required parking spaces may be provided as shared parking. The Applicant shall record a parking covenant in a form satisfactory to the City Attorney to evidence the availability of the shared parking spaces." (Special Condition 5)*

The purpose of the above condition is to ensure that adequate parking is provided for the exercise club, and that its operation will not affect other parking resources within the vicinity of the project.

- *"The Applicant shall provide two (2) hours of free parking to all members and guests of members. The Applicant shall also provide one additional half (1/2) hour of parking at rates comparable to those charged in the nearest City parking structure. The requirements set forth in this condition shall exclude valet parking unless adequate self-parking is not available on the subject site to meet the parking demand generated by the Project. The City expressly reserves the right to review parking conditions as it deems appropriate. If, after holding a duly noticed hearing, the Planning Commission determines that the operation of the Project at the Property creates an adverse impact on traffic circulation or parking, the Planning Commission may require the Applicant to provide free valet parking to members or such other condition(s) that the Planning Commission determines are necessary to mitigate such impacts. Applicant shall forthwith comply with such additional requirements at its sole cost and expense." (Special Condition 6)*

The purpose of the above condition is to ensure that users of the exercise club are using the on-site parking facilities, rather than using off-site facilities and potentially impacting other parking operations within the city.

- *"The Applicant shall provide free on-site parking at all times for employees and any other consultants or agents retained by the applicant in connection with the operation of the Project." (Special Condition 7)*

The purpose of the above condition is to ensure that employees or consultants park on-site, and do not cause spillover into any residential areas or impact existing parking operations within the vicinity of the project.

- *"No sports medical center shall be allowed as part of the proposed Project." (Special Condition 8)*

The purpose of the above condition is to ensure that uses not reviewed as a component of the project are not established within the exercise club. Analysis has not been conducted with regard to potential impacts that could result from a sports medical center. Therefore, it is recommended that such a use be specifically excluded at this time.

- *"This CUP shall be reviewed annually by the Planning Commission during the exercise club's first three (3) years of operation to ensure that the Project complies with the conditions set forth herein and does not have any unanticipated impacts or adversely affect adjacent uses. The Planning Commission expressly reserves jurisdiction relative to traffic and parking issues and the right to impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project as they arise. Prior to the annual review hearing, the Applicant shall submit an affidavit attesting to its continued compliance with all of the conditions of approval set forth in this Resolution."* (Special Condition 9)

The purpose of the above condition is to ensure that the project operates in substantial conformance with the Planning Commission's approval, and to ensure that if any unanticipated impacts arise they can be addressed as necessary.

- *"The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 38 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense."* (Special Condition 10)

The purpose of the above condition is to ensure that the project does not result in any unanticipated impacts related to traffic or parking. Should issues arise, this condition gives the Director and Commission the latitude to re-review the project relative to traffic and parking impacts.

- *"The Applicant shall cap membership in the proposed club at a maximum of four thousand five hundred (4,500) members, including any transfers from other locations. This condition shall not be construed to bar the Applicant from requesting a modification at a later date to permit additional members."* (Special Condition 11)

The purpose of the above condition is to follow past precedent and ensure that membership numbers will not reach such a level as to create traffic and parking demands beyond those currently anticipated.

- *"The proposed exercise club shall not be permitted to open for business unless and until the William Morris parking facilities become fully operational and open for use."* (Special Condition 12)

The purpose of the above condition is to ensure that all code requirements are met for the purpose of providing shared parking, as the William Morris parking garage provides code-required parking spaces for the Bank of America building and subject project.

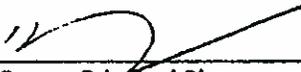
NEXT STEPS

It is recommended that the Planning Commission conduct the public hearing and direct staff to prepare a resolution conditionally approving the requested Conditional Use Permit.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines, and at applicant's request or consent.

Report Reviewed By:



David Reyes, Principal Planner

APPEAL PETITION
ATTACHMENT 2

1 **Item 4. 9465 WILSHIRE BOULEVARD**
2 **EQUINOX EXERCISE CLUB**
3 **CONDITIONAL USE PERMIT**

4 [1:23:55 - Hearing begins]

5 [2:35:56 – Commissioner Questions for Applicant]

6 **Bosse:** Does anybody else have any questions?

7 **Cole:** I have just a couple. Let me ask, because there was some reference to an
8 error in citing the peak hour during weekdays and unfortunately our copies,
9 the color don't come through so it's hard to tell what is a weekend or a
10 weekday. So what are the peak hours that you are claiming for the
11 weekdays?

12 **Klein:** [John Klein is the Executive Vice President of Real Estate for Equinox]
13 The opposition says, a general statement that – [inaudible] – the health
14 club's peak hours during the weekday AM peak are 10am.

15 **Cole:** um hm.

16 **Klein:** That's on a Saturday...when we expect and all of our empirical studies
17 show and all of our nine clubs in southern California show that if they are
18 in an office building that garages are wide open...they're unoccupied.

19 **Cole:** At...

20 **Klein:** In an office building on a Saturday.

21 **Cole:** Ok. I was looking at the chart here and that's why I went back to the
22 book...and it says weekday. So what is your...what are you identifying as
23 your peak morning for weekdays?

24 **Klein:** 7 to 8 am.

25 **Cole:** 7 to 8. Because it is confusing from the attachments.

26 **Klein:** But you don't have...yes, because it's not colored.

27 **Cole:** Right. Exactly.

28 **Klein:** But if you look at...there are...there is a chart that's more numerical...

1 Cole: um. hm.

2 Klein: uh...within the study you can actually see it in the numerical chart.

3 Cole: Right. And I was looking also...the same occurs both in the Westwood
4 and, I believe, the Santa Monica...same confusion occurs in terms of,
5 because as I understand why that speaker mentioned 10 a.m. because
6 frankly no matter what the color it shows that as the peak for 2-day
7 weekday average. For instance, for the Westwood data. And we don't have
8 any data for your Century City facility

9 Klein: We didn't study that...

10 Cole: How is that different?

11 Klein: It's a much lower membership. A much higher membership fee per
12 member. It's predominantly a spa which is open to the public. A 20 room
13 spa...here we are proposing a 2 room spa. It's connected to the hotel and
14 there is a lot of interplay between the hotel guests... at the suggestion of....

15 Fischer: it was not comparable from the standpoint of uses and operation and that's
16 why I suggested that we use the two that we did...

17 Klein: You would see much lower parking counts and it wouldn't be an honest fair
18 study relative to what we're proposing in Beverly Hills.

19 Cole: And in terms of user demand would it change during midday hours?

20 Klein: Change relative to....?

21 Cole: To the data we've been provided for Westwood and Santa Monica.

22 Klein: No, because our belief, and staff's belief, is that these markets, uh, when I
23 say these markets, Santa Monica, Westwood, and the Triangle in Beverly
24 Hills, function very similarly in that you're in a core CVD with dense office
25 space, like Santa Monica and Westwood, and you're surrounded by
26 residential... so the member flow, whether vehicular or pedestrian, should
27 be very very similar to Beverly Hills

28 Cole: What....

1 Fischer: May I just respond...

2 Cole: Sure.

3 Fischer: If you were to look at the study that was done for the SportsClub...

4 Cole: um hm.

5 Fischer: It shows the same thing...that their peak hours are 8, and, below, 8am

6 ...7... and their peak hour at nighttime is 6pm hour so that comparision, and

7 again, they asked us to make sure that we included that comparison so that

8 we could see if there was any difference from Beverly Hills history and

9 there isn't.

10 Reyes: And, Commissioner Cole...for your benefit...we actually asked the

11 applicant not to give us the Century City. We felt that it was going to be a

12 much lower rate and it wasn't going to be a fair assessment and we could

13 certainly give you that information....

14 Cole: No...I was simply curious because it was raised previously by a speaker

15 and because I looked at the charts. It just caused me to question...because

16 the peaks do appear to be at 9 and 10 a.m. and the point was ...and again,

17 I'm not looking at the colors but I'm looking at the peaks and, at least for

18 Santa Monica 2-day weekday average, it is showing between 9 and 10 a.m.

19 Fischer: We have our traffic engineer that could tell you...

20 Cole: I was talking about the usage here...the parking utilization profile. So that's

21 perhaps...my point is, perhaps, I was misreading it and since we do have

22 the so-called glass building, which I call the blue building, I remember a

23 very significant point being that entertainment-related office buildings or

24 office tenants have different hours hence, we couldn't have the parking

25 before, public parking, before 6pm... 6 or 7, I forget. But, so that's what

26 I'm trying to ascertain here is, I'm just trying to make sure I am reading

27 these charts correctly.

28 Fischer: We... I would hope that you are reading them...I think you are very

1 smart...that you have the capability of reading them that way. That
2 analysis was done, we looked at what the entertainment was, we wanted to
3 make sure that at no time there was an overlap to the point. If you would
4 look at the...in looking at the studies you will note that there is surpluses at
5 the coinciding times, and that we feel very comfortable that those surpluses
6 will always be maintained.

7 Cole: No... yes, I did note that there was something like 67 parking space
8 surplus...

9 Fischer: Yes, ma'am.

10 Cole: But given the other comments, I wanted to make sure that we had the peak
11 hours here given in the charts.

12 [2:41:30 - End of Cole's questions regarding traffic peak hours]

13 [2:47:14 - Start of Chair Bosse's Deliberations]

14 Bosse: I don't believe any of my fellow Commissioners have any other
15 questions...right? [looks around room for confirmation.] Yeah. So I'm
16 going to go first in terms of deliberation. [pause] Today, we are supposed
17 to address a CUP and having the findings and I don't know what my other
18 commissioners can do today, but I absolutely today could not make the
19 findings. There is a lot of information that is BLATANTLY missing for
20 me...in order for me to find for this project and again if my fellow
21 commissioners can find for it, they can go ahead. But what I would suggest
22 though is to at least listen to my concerns and perhaps come back at another
23 date with some answers. What really was glaring at me was the analysis of
24 how you arrived at the trip counts. So much of this was based on Bank
25 trips and, you know, the 150 per 1,000 square feet that was in the manual
26 that was in 1998. That was prior to internet banking. And I think it's rare
27 these days that people go into a bank. Most people do most of their
28 banking online. So I think it's not really a fair indication of, I don't believe

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that we are comparing apples to apples to as to the bank that is there now. I don't believe that it has that much driving traffic as it once had so I would like to see a real count of how that usage is portrayed at that location for the bank so we could really compare... you know, so much of the report, was banking has so much traffic in terms of trips, and health club has so much traffic and office has so much traffic and in that hierarchy, in terms of banking, health clubs and office and I think based on the numbers of what we have for banking, I think it's so skewed that it's not really a fair indication. I think it's absolutely important to me that the tenants of the building are notified. I would like for them if there is, any comments one way or the other, for them to come, if they so chose to speak on behalf of how they feel this would affect them...I did speak to somebody that is a major tenant in the building and their concern to me is that they said right now they don't find there is enough parking currently for their usage and I recognize that the glass building is going to be built and there is that element but I really want to understand how this project is going to work and I feel that whenever we've made findings we've had something really substantial to work with and I want to see a substantial accurate parking management plan that shows the circulation. You know, you pointed out to the three entrances or exits – Dayton Way, Beverly Drive or the alley. ...that to me is like you know, anything is possible. I want to really understand who is coming in where, who is going out where, and really have idea of how all this going to work, as opposed to we have these entrances, we have these exits, its going to work. For me I won't be able to make findings based on just trust. I also would love and I don't know if this is something that the owner of the building would speak to but the possibility of another high user per take some space in the building and how that would work... in terms of parking and circulation, so I want to

1 since we're planning I want to plan ahead I don't want to, you know, be
2 reactive I want to think of worst case scenario what can happen and I want
3 to make sure that we are ready now for the worst case scenario of another
4 high usage coming into the building and how will it all work together.
5 Then in terms of the alley usage there's a lot of the time there's loading in
6 that alley there's trucks that park on the side and load and there are
7 currently circulation issues which is part of what were dealing with in terms
8 of the two way traffic so again I want to understand how that is going to
9 work... in terms of aesthetically on Wilshire Boulevard where you were
10 having the bikes on first floor, I don't think cars going east, you know, part
11 of what was dealt with at the Sports Club LA was that we don't want part
12 of our image of Beverly Hills is for people to see...

13 Fischer: The first level of parking, not the first floor...

14 Bosse: No. On the first floor of the health club. On Wilshire Boulevard, you could
15 see the bicycles... I am correct?

16 Fischer: No.

17 Bosse: So what is on the first floor going into Wilshire?

18 Fischer: Exactly...what we tried to say...right now, it's totally... it's the same finish
19 as basically like the building, but we said, if you'd rather have a retail look
20 we will put a ...

21 Furie: [inaudible.]

22 Fischer: No. It's opaque.

23 Furie: [inaudible.]

24 Bosse: that's what I'm talking about. I mean...so there is bicycles in there. Ok, so
25 absolutely, you will not see bicycles?

26 Fischer: You will not see it at all.

27 Bosse: Ok. Then forgive me... I wanted to make sure that...

28 Fischer: But if you prefer, we will put a retail element in...that's what I am saying.

1 We have the flexibility.

2 Bosse: Ok. I just didn't want people as they were driving...I know that for the
3 third floor...I know that you were saying that you won't be able to see it. I
4 want to make sure that we can't...because people will drive...I don't want
5 them to be able to see exercise equipment.

6 Fischer: We are very cognizant of that.

7 Bosse: Ok. And then in terms of, you know, I think you were talking about the
8 opponent, or whatever, how they were giving unfair information in terms of
9 peak hours, et certera...our very own Bijan in the report, you know, it says
10 that the ITE lacks information regarding both the daily and AM peak hour
11 trip generation for banks, which is what I was addressing, and that the
12 applicant used the SANDAG and the focus on the peak, from SANDAG, is
13 from 6 a.m. to 9:30 a.m. for bank usage and then from 3 p.m. to 6:30 p.m.,
14 so much similar to what [pointing to Comm. Cole] Commissioner Cole was
15 saying, I think the peak times really need to be much more accurate into the
16 real world. What we've found, even with EIRs, is, our consultants and,
17 different ITEs, or whatever, can talk about peak times, but Beverly Hills we
18 are our own community and we have certain hours that we do things, and
19 something that is really more true to our lifestyle, as residents, I think really
20 needs to be addressed here because, at least for myself, in order to make
21 findings, it has to work. And for me, I have to be able to justify how it
22 works and not just in theory. So those are my comments for today. Thank
23 you.

24 Furie: Ok. I wanna thank Mr. Elliott for his letter and I would ask that staff
25 respond to each of the issues that have been raised in that letter and would
26 ask that we get a response back from staff at least a week before the next
27 hearing so we have an opportunity to review it and come to our own
28 judgment on it.... [rest of speech not transcribed]

1 Bosse: Commissioner Cole?

2 Cole: One concern I didn't have the chance to ask...I thought you were going to
3 be having your parking person up...part of it has to do with the access into
4 the Bank of America...

5 Fischer: We would like the opportunity to have our two other people speak...it may
6 have shed some additional light...we never...

7 Bosse: They can speak, but Nanette...

8 Cole: We are still not going to come to a decision.

9 Fischer: Oh, I understand that...

10 Bosse: I didn't have any questions...do you have any questions [looking at Comm.
11 Cole]?

12 Cole: My concern, going to some of the questions that have been raised...going
13 back to when we were considering parking at the blue building that
14 interfaces with and has been relied upon for this application, is that,
15 well...it was challenging at best and the existing layout at Bank of
16 America, what I call Bank of America, the subject property, is challenging
17 and in going through the plans, based on my use of that, without having to
18 go through the valet, is, I mean, it's challenging in there...if you don't have
19 a compact car...if you have a standard car. So that was part of my...I'm
20 sure that's been studied and so forth, but we've never seen the blue
21 building's parking as built, much less in operation...we've only seen it on
22 paper. And I think we certainly recognize the challenges at the time. It was
23 a very challenged parking layout. And clearly the BofA is a very parking
24 challenged layout..that's why it required covenanted parking....so that
25 logistic, particularly...if you have these people coming in, at the very time
26 that others are arriving, with the cross-over time, that's of some concern to
27 me. Similarly, I'd like some clarification of peak hours, only because, it
28 could be something as simple as making sure we have this in color. So that

1 we know what lines so to weekdays and what lines go to Saturdays. And,
2 going back, again, a simple matter to clarify was the anticipated parking
3 usage at the blue building because, I recall, we had a later start date for
4 public parking, because of the anticipated range of hours for that type of
5 use. And it was made very clear to us that public parking, as I recall, could
6 not start as early as six o'clock.

7 Reyes: [inaudible]

8 Cole: Yes. Good [head nodding] that was my recollection. Yes, we had to defer
9 public parking until 7 o'clock because there was simply too much
10 occupancy in the building and the parking would not be available for public
11 use. I too, shared the concern about the tenants of the current building
12 having some idea. We know that has been an issue...it has raised an issue
13 with people having to share parking...who might run into each other. Let's
14 make sure this isn't an issue. I realize it's a gym, it's not a related business.
15 I'm just trying to identify things. Yes. Staff's response. And I would like
16 to... the one big sticky I put on here as I read through is... a tour the sight.
17 I would like see how, the a parking [works]...whether its driving there on
18 our own time between now and the future hearing...seeing how that related
19 parking., the connected parking has actually come to look in fruition and I
20 realize that won't give us any operational assistance. And that's...other
21 than the concerns... I had some questions regarding the plans...if you
22 would clarify that as to the retail display...the applicant's project
23 description had 1100 square feet...the plan showed very little retail display,
24 but you've addressed that in your presentation. I will assume that to be the
25 case. So those are the areas I am most concerned about, particularly the
26 ability to function given the difficulties within that parking.

27 Bosse: Commissioner Cole, do you have somebody of their staff that you that want
28 to answer a question of yours?

1 Cole: You know, if....you have someone who has been able to....who can
2 address the concerns about access....

3 Fischer: We do. We have those people here. They're prepared to answer all
4 questions.

5 Cole: Ok. Because, obviously, there's triple tandem...and there's microspaces
6 that are counted as real spaces, and a series of 90 degree turns...that people
7 are needing to make.

8 Fischer: I would be more than happy to bring up Al Pineda.

9 Cole: Great. While we have the time...

10 [3:03:03 - Rest of discussion re: parking not transcribed]
11 [3:09:55 - Start of discussion regarding traffic]

12 Fischer: I would like to have Roy Nakamura speak on the traffic issues.

13 Nakamura: Good Afternoon. My name is Roy Nakamura, I'm a senior transportation
14 engineer with Crain and Associates.

15 Bosse: Welcome.

16 Nakamura: I think there's a misunderstanding and I could understand because the
17 graphics are in black and white about peaks, uh, it's been stated correctly
18 that when you see the 10 a.m. peak, whether its for Santa Monica or
19 Westwood... that's really on a Saturday. I think perhaps it might be better
20 to go look at attachment G in my technical letter and that's a table and its
21 shows the percentage of parking utilization Equinox Beverly Hills which is
22 based on Equinox Westwood and has been correctly stated by our side the
23 peak morning time that this Equinox and the other Equinox are busiest is
24 from 6 o'clock until 7 o'clock maybe 8 o'clock. If you look at attachment
25 G you will see 6 o'clock.... Ahh excuse me.... At 7 o'clock at 58% and
26 then it goes from 48 to 55 and after 9 o'clock as we been saying the usage
27 of the gym based on the parking diminishes and so while the other office
28 usage maybe heavy, peaking where parking demand is close to 2 o'clock or

1 99% at 1 o'clock, our demand is actually at a low ebb then of course, we
2 start ratcheting it up towards 6 o'clock. So yes our peak activity in the
3 morning is not at 10 o'clock, it's more like 7 o'clock to 8 o'clock and yes
4 in the afternoon from 5 to 7 it's the heaviest. [emphasis added.]

5 Fischer: Can you also address the fact of the worst case scenario with respect traffic
6 counts?

7 Nakamura: Well...its been my experience with trip generation analysis in the City of
8 Beverly Hills that uh you follow the ITE Manual and to the extent that you
9 can you use those rates and equations. Sometimes for whatever reason
10 we're not sure, ITE does not have all the information for all peak hours or
11 for the daily rate and so usually the traffic engineer of the city, we will
12 consult with him and find out what's the next best alternative and typically
13 in southern California, it's been to go to SANDAG, but the preference is to
14 stay with ITE. When we looked at the bank use, the existing and proposed,
15 ah, we use the current addition of the ITE but they did not have an AM rate
16 or a daily rate and so we went to SANDAG. If you look at Mr. Bejeri's
17 memo, while he disagreed with the peaking characteristics of the bank or
18 with the other uses in the existing and proposed situations, he did concur
19 that the daily generation was the negative value of 138. And now based on
20 that, he said, in his experience, as a rule of thumb, you take 10% of that and
21 he came up with approximately -11 trips in the morning and -11 trips in the
22 afternoon. While they are different than our numbers, they are not that
23 much different and he agreed with our negative daily numbers, and so we
24 don't feel whether it's a +1 trip or -11 or +15 that, those are substantially
25 enough trips in the peak hours, which are the critical time constraint, at
26 which you are going to have impacts of any significance.

27 Cole: Well, the issue for me, which is what I am looking to get for the next
28 meeting is...there is the trips and then there is also the parking. Even if

1 there is not a lot of trips, will this facility be able to manage having the
2 Equinox and the office building and the blue building. Will there be, with
3 the whole element of the shared parking, is...I want to see that it can really
4 work.

5 Nakamura: I understand that concern. I am not familiar with the parking demand
6 analysis for the William Morris Building. I do know that the B of A uses,
7 the bank, the office and the Equinox –have control over 474 spaces – either
8 physically underneath or through covenant - they control that. Our exercise
9 was to see whether or not, using very conservative assumptions, if Equinox
10 went in there, the bank, whatever size it is remain, and the office, whatever
11 size it is remain, at the worst time with parking, would it exceed 474. No
12 they would not. Not on a weekday. Not on a weekend. In fact, they would
13 have a surplus of about 65 spaces. So that was kinda of our mandate.

14 Bosse: I understand. And I think you do that. I'm just saying for future, what I
15 would like to see, is you take that a step further and really see where are
16 people going to park...those spots and how are they going to get there in
17 terms circulation. What we generally see is... we see a parking plan, a
18 circulation plan...that is what we did with the glass building. We
19 understood how it's going to work. Just because I know there are spots
20 there. I don't know that those spots are going to be used where they need to
21 be used. How do we know that the other building is not going to use them?
22 So I would just like to make sure that we're not crowding too much in a
23 space unless we can really prove it can work.

24 [3:15:25 – rest of speech from Furie re: SANDAG not transcribed]

25 [Discussion regarding traffic...Pick up at 3:16:36]

26 Cole: Quick question. I had seen your attachment G and since I don't have the
27 other attachments in color, let me just confirm. Going back to attachment
28 C, which references the Equinox Westwood and because I can't see the

1 differential in colors, I presume that is where you are referencing the peak 7
2 a.m. for weekdays. It's called attachment C. I am right?
3 Nakamura: Yeah.
4 Cole: Then going on to attachment D, that's for Santa Monica.
5 Nakamura: Correct.
6 Cole: And what do you show as the peak hour for the 2-day weekday?
7 Nakamura: It's at 147.
8 Cole: Pardon
9 Nakamura: It's at 147 at 6 o'clock
10 Cole: Ok. But for the AM?
11 Nakamura: For the AM, let's see...[pause] It would be...um....
12 Cole: It looks like it is between 9 and 10 am to me.
13 Nakamura: No. Can I come up and point with my finger?
14 Cole: Sure. Again. I've got three lines here with no way to tell which is your
15 Saturday, Sunday or two-day weekday.
16 [Nakamura goes up to dais and points to paper]
17 Reyes: For the record....is that the top, the middle or the bottom line?
18 [Answer from Nakamura] It's the middle one. Thank you.
19 Cole: But it seems to go up from there.
20 Reyes: I ask that at the next meeting that we get color versions of this.
21 Cole: Yes. Because the peak to me looks like it falls at 9 o'clock...following that
22 line you just identified for me.
23 Nakamura: We'll send staff a CD with color graphics.
24 Cole: Ok. So final question on this. Again, trying to understand how you came to
25 your conclusions on this. Attachment G...you chose to use the Equinox
26 Westwood 2-day average?
27 Nakamura: Correct.
28 Cole: And why is that? Rather than the Santa Monica?

1 Nakamura: Well...as we explained, we had three clubs. Two of them were Equinox
2 and one was Sports Club LA. And because parking was critical and because
3 we were trying to do a very conservative shared parking analysis. We
4 didn't want to have the City approve something were there is going to be a
5 parking shortfall based on a dilution ... of taking many data points and
6 coming up with an average that maybe 85% of the time meets the average
7 and 15% of the time it isn't enough parking so when looking at the peak
8 parking demand ratios, it was highest for Equinox Westwood, then Equinox
9 Santa Monica and then there was drop down to SportsClub LA. And if
10 we'd average them out, we get a parking ratio which if we would have gone
11 through our charts, it would show a surplus of more than 65 spaces. Instead
12 for this, because we decided that parking is such a critical issue, let's be
13 conservative and just use the highest peak average which was Equinox
14 Westwood.

15 Cole: And Westwood has the AM peak at 7am, you mentioned?

16 Nakamura: Right.

17 Cole: Ok. But now clarify for me again going to Attachment D, the, and I
18 understand why you don't want a whole bunch of data filling into those
19 averages but looking at the data you've given us...for Santa Monica, please
20 clarify for me, when is the morning peak? Because on my data it looks like
21 it's 9 o'clock. Either 9 or 10 o'clock depending on...I'm assuming 10 is the
22 weekend. So what is the weekday peak there? Because nothing falls lower
23 than 9 o'clock. [pause. Nakamura and Fischer looking at papers.]
24 Attachment D – Equinox Santa Monica.

25 Fischer: He's got it. He's just trying to figure it out.

26 Cole: Ok. If you look at the 9 o'clock time there's nothing lower for the AM. I
27 mean, there's nothing higher unless you go to possibly the weekend.

28 Nakamura: You are correct. For Santa Monica it's at 9 o'clock.

1 Cole: It's between 9 and 10.
2 Nakamura: Right. But...
3 Cole: So. That's the peak morning use? For Santa Monica.
4 Nakamura: For Santa Monica. Right.
5 Cole: One of the three clubs on which you gave us data?
6 Nakamura: Correct.
7 Cole: Ok.
8 Reyes: [3:21:08 – End of Questions by Cole; Comments by Reyes not transcribed]
9 [3:28:13 - End of hearing]
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APPEAL PETITION

ATTACHMENT 3

RESOLUTION NO. 1600

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A REQUEST FOR A CONDITIONAL USE PERMIT TO ALLOW AN APPROXIMATELY 37,000 SQUARE FOOT EXERCISE CLUB TO BE LOCATED ON THE GROUND FLOOR OF A BUILDING LOCATED WITHIN THE BUSINESS TRIANGLE, OCCUPY MORE THAN 25 FEET OF STREET FRONTAGE WITHIN THE PEDESTRIAN ORIENTED AREA, AND UTILIZE SHARED PARKING FACILITIES IN ORDER TO SATISFY THE PARKING REQUIREMENTS SET FORTH IN THE MUNICIPAL CODE, FOR THE PROPERTY LOCATED AT 9465 WILSHIRE BOULEVARD.

The Planning Commission of the City of Beverly Hills hereby finds, resolves and determines as follows:

Section 1. Murray Fischer, Applicant, on behalf of Equinox Fitness Club, (collectively the "Applicant") have submitted an application for a Conditional Use Permit (CUP) to allow the establishment of an approximately 37,000 square foot exercise club to be located on the ground floor of a building located within the Business Triangle, occupy more than 25 feet of street frontage within the Pedestrian Oriented Area, and utilize shared parking facilities in order to satisfy the parking requirements set forth in the Municipal Code on the property locate at 9465 Wilshire Boulevard (the "Project"). An exercise club is a permitted use within the City's commercial zones; however, the Project requires a CUP in order to be located on the ground floor of a building located within the Business Triangle, occupy more than 25 feet of street frontage within the Pedestrian Oriented Area, and utilize shared parking facilities.

Section 2. The Project site is located on the north side of Wilshire Boulevard, in what is identified as the City's Business Triangle, and falls within the Pedestrian Oriented Area of the city. The existing neighborhood character within the vicinity of the Project consists of a variety of commercial developments, which are predominantly occupied by retail and general office uses. The Project site is immediately south of the "William Morris" building, and immediately west of the Montage Hotel. Additionally, the Project site is located immediately east of the "Two Rodeo" development, and northeast of the Beverly Wilshire Hotel.

The Project consists of tenant improvements for and the operation of an approximately 37,000 square foot exercise club within portions of the first, second, and third floors of the existing commercial building at the subject property. Floor area distribution of the exercise club includes 10,300 square feet on the first floor, 7,281 square feet on the second floor, and 19,082 square feet on the third floor. As proposed, the breakdown of uses within the subject commercial building would include 36,663 square feet of exercise club uses, 5,651 square feet of bank uses, and 122,784 square feet of general office uses. This distribution includes a 1,660 square foot area that is currently open-to-below, but would be filled in to create additional space for the exercise club.

Section 3. Parking for the existing Bank of America building is located in a subterranean garage below the building that provides 212 spaces. Additionally, the garage is connected to the William Morris parking garage at levels P1 and P3 of the Bank of America building. The purpose of connecting the two garages was to provide replacement parking for spaces belonging to the Bank of America building that were lost when parking facilities located

on what is now the William Morris site were demolished to make way for the William Morris project.

As a result, the Bank of America building controls a total of 474 spaces within the parking garage, but has access to a total of 959 parking spaces within the entire garage. Based on the total number of parking spaces provided on site and the applicability of shared parking provisions, all existing and proposed uses would comply with the City's parking requirements.

Section 4. The Project includes adding approximately 1,660 square feet of interior floor at the second floor level. The 1,660 square feet of floor area to be added and is currently within the building, but is open-to-below. In order for the Applicant to add 1,660 square feet of floor area, the addition needs to be within the maximum floor area ratio originally approved for the building. The original approvals for the subject building set a maximum floor area ratio of 4.0 to 1, and used the entire block for the purpose of establishing the total site area. Presently, the properties occupying the block have been reconfigured and the William Morris project has been constructed, which renders the original 4.0 to 1 floor area ratio inaccurate. As a result, staff relied on approved square footages for the building, rather than rely on a floor area ratio calculation that is no longer accurate. The subject building was approved for up to 166,131 square feet, and with the added floor area the building would total 165,098 square feet. Therefore, the total floor area of the building, inclusive of the proposed additions, would be within the allowed floor area and compliant with the building's original approvals.

Section 5. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000,

et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines (hereafter the “Guidelines”), and the City’s environmental guidelines, and Class 1, Class 2, and Class 32 Categorical Exemptions have been issued in accordance with the requirements of Sections 15301, 15302, and 15332 of the Guidelines for the Project. The Class 1, Class 2 and Class 32 exemptions are applicable because the Project results in minor interior and exterior changes to an existing commercial building, demolition and reconstruction of a commercial space within an existing commercial building, and in-fill development within an existing urban area. The exemptions are further supported by technical environmental analysis prepared and reviewed in conjunction with the Project, and no exceptions to the exemptions apply.

The subject property has been identified as a potential contributor to a potential “California Register district of ...Post World War II modern office buildings.” At present there is no established Post World War II modern office building historic district. The Planning Commission finds that the subject building is not a historic resource on that ground, and is not a historic resource itself, as shown by the resource review records. Further, the Planning Commission finds that even if the building were to be deemed a historic resource, the project will not cause a substantial adverse change in the significance of the structure. Specifically, new window displays, a pedestrian entrance, introduction of a small retail component, and installation of a 33 foot opaque storefront will not individually or cumulatively result in a substantial change in the appearance of the building, much less a substantial adverse change to the alleged historic resource. Further, any changes are fully reversible, and no evidence was presented to suggest that the minor building modifications would result in substantial adverse changes to the building appearance. Although the structure is not found to be a historic resource, and the changes

presented to the Planning Commission will not adversely affect the appearance of the structure, the conditions of approval imposed on the project require, as part of the Architectural Review process, review of any changes to the building exterior, including any changes as may be recommended by the Architectural Review Commission, by a qualified historian to ensure changes would not result in a substantial adverse change to the building. Therefore, the Commission finds that the minor exterior changes that would result from the Project will be fully reversible and will not cause a substantial adverse change in the significance of the building.

The Planning Commission also finds that the characteristics of the intersection of Wilshire Boulevard and Beverly Drive, adjacent to the project site, do not constitute an unusual circumstance for purposes of CEQA Guidelines Section 15300.2 (c), and that there will be no adverse impacts to traffic or parking for the reasons documented in the detailed traffic and parking analysis prepared for this project.

Section 6. Notice of the Project and public hearing was mailed on October 1, 2010 to all property owners and residential tenants within a 300-foot radius of the property. Additionally, notice was provided to all commercial tenants of the subject property. Seventeen letters were received from the public in support of the Project, and five letters were received from the public in opposition to the Project. The letters, as well as staff responses, were reviewed and considered by the Commission prior to acting on the Project. On October 14, 2010, November 23, 2010 and January 13, 2011 the Planning Commission considered the application at duly noticed public meetings. Evidence, both written and oral, was presented at said meeting.

Section 7. In considering the request for a Conditional Use Permit, the Planning Commission was required to make the following findings:

1. The proposed location of any such use will not be detrimental to adjacent property or to the public welfare;
2. The proposed restricted use is compatible with and will not result in any substantial adverse impacts to surrounding uses;
3. Granting the request for a conditional use permit will not result in an over concentration of non-pedestrian oriented uses in the block in which the proposed restricted use will be located;
4. Granting the request for a conditional use permit will not adversely impact the public health, safety or general welfare and will leave ample space available for future retail growth in designated pedestrian oriented areas; and
5. The configuration of the building in which the proposed space is located is not suited to pedestrian oriented retail uses and does not contribute to the pedestrian experience.

Section 8. Based on the foregoing, the Planning Commission hereby finds and determines as follows:

1. The Project is commercial in nature, and is consistent with ongoing commercial operations in the vicinity of the Project site. Traffic and parking studies that have been peer reviewed by the City's Transportation Division indicate that the Project will not result in any significant traffic or parking related impacts. Existing site conditions do not include pedestrian oriented development, and the proposed

Project will improve upon the existing conditions by providing window displays, a new pedestrian access point, and a broader range of uses along the subject property's street frontage. Further, all exterior modifications, signage, and window displays will be reviewed by the Architectural Commission to ensure a pedestrian-friendly design. As a result, the proposed Project will not be detrimental to adjacent property or to the public welfare.

2. The proposed exercise club is consistent with commercial operations in the vicinity of the Project site. Although the exercise club is not designated as a pedestrian oriented use, the proposed design will improve upon existing conditions and create a more pedestrian oriented environment. Surrounding ground floor uses consist of general retail and banking/financial uses, and there are no residential properties in the immediate vicinity of the Project site. Based on existing commercial uses and surrounding development the restricted use will be compatible with and will not result in any substantial adverse impacts to surrounding uses.

3. The existing building that the proposed Project is intended to occupy is currently utilized entirely by general office and banking uses, which do not qualify as pedestrian oriented uses. Because the Project would be replacing non-pedestrian oriented uses, the Project will not result in the loss of any pedestrian oriented development. In fact, placement of the exercise club will include the installation of new window displays, a new pedestrian access point, and a broader range of uses along the subject property's street frontage. These changes will help to add some level of pedestrian oriented design, and will not result in an over concentration of non-pedestrian oriented uses in the block.

4. Thorough analysis has been conducted to ensure that the Project will not result in any traffic or parking related impacts. The proposed use is consistent with commercial operations in the vicinity of the Project site, thereby protecting the public health, safety and general welfare. Additionally, the Project does not result in the loss of any existing pedestrian oriented development, and improves upon the building's existing configuration with regard to pedestrian orientation. The Project site is surrounded by pedestrian-oriented developments to the north, east, and west, and leaves ample space for future retail growth in the designated pedestrian oriented areas.

5. The configuration of the existing building on the Project site does not appear to have been designed with pedestrian movement in mind. Existing ground-floor bank uses provide little if any pedestrian oriented atmosphere, nor does the architectural design of the building contribute to the pedestrian experience. The proposed Project, as well as its accompanying architectural modifications to the ground floor will help to improve the pedestrian experience beyond existing site conditions.

Section 9. Based on the foregoing, the Planning Commission hereby grants the requested Conditional Use Permit, subject to the following conditions:

1. The Conditional Use Permit (CUP) shall expire fifteen (15) years from the date of the resolution and all rights granted by this CUP shall terminate at that time. Unless the CUP is renewed, or a new CUP granted, the Applicant shall immediately cease operation of the fitness facility at this location. The Applicant

shall have the right to submit requests for renewal of the CUP but shall have no right to renewal of the CUP. Any application for renewal of the CUP or a new CUP must be filed at least sixty (60) days prior to the expiration of these approvals. If the Planning Commission or City Council on appeal does not renew the CUP, the CUP shall expire and all rights possessed under the CUP shall be terminated. Provided, however, if the Applicant files a timely application for a renewal, any existing CUP shall be extended until the City takes final action on the application. Any application for a renewal of this CUP shall be subject to the application fee established by Resolution of the City Council. Upon expiration of the renewal and any future renewal, the Applicant may apply for further extensions pursuant to the procedures set forth above. The length of any future renewals granted shall be governed by the provisions of the Beverly Hills Municipal Code.

2. Six (6) months after the opening of the exercise club, the Applicant shall provide to the Director of Community Development parking utilization counts at the subject site to monitor actual parking demand and ensure that the parking demand is being met. Should parking demands be different than those reported under the parking survey prepared in connection with the review of the Project, the Applicant will be required to develop a parking management plan satisfactory to the Directors of Community Development and Transportation to mitigate the parking deficiency.

3. The conditions of approval set forth in this resolution are specifically tailored to address the operation of a fitness facility that substantially conforms to the Project presented to and approved by the Planning Commission at its meeting of January 13, 2011. To ensure that the subsequent fitness facilities operated

at the subject site do not cause adverse impacts to other building tenants or adjacent land uses, any transfer of ownership, management, or control of the proposed fitness facility shall be reviewed by the Director of Community Development to determine whether the proposed operations of the new fitness facility substantially conform to the Project approved by the Planning Commission. If the Director determines that the proposed operations do not substantially conform to the approved Project, the Director shall schedule a hearing before the Planning Commission in accordance with the provisions of Section 10-3-3803 of the Beverly Hills Municipal Code. The Planning Commission expressly reserves jurisdiction at said hearing to revoke the conditional use permit or to impose additional conditions as necessary to ensure that the operation of a subsequent exercise club at the subject site is compatible with adjacent land uses.

4. Prior to the issuance of building permits, all exterior modifications to the building, as well as signage and window displays, shall be submitted to and approved by the Architectural Commission. Although the Planning Commission finds that the exterior modifications will not cause any substantial adverse change in significance and architectural detailing of the building, all exterior modifications shall be reviewed by a qualified historic consultant to ensure no substantial adverse changes will occur.

5. A minimum of 367 on-site parking spaces shall be maintained for use by the exercise club. Up to 334 of the 367 required parking spaces may be provided as shared parking. The Applicant shall record a parking covenant in a form satisfactory to the City Attorney to evidence the shared parking spaces.

6. The Applicant shall provide two (2) hours of free parking to all members and guests of members. The Applicant shall also provide one additional half (1/2) hour of parking at rates comparable to those charged in the nearest City parking structure. The requirements set forth in this condition shall exclude valet parking unless adequate self-parking is not available on the subject site to meet the parking demand generated by the Project.

7. The Applicant shall provide free on-site parking at all times for employees and any other consultants or agents retained by the Applicant in connection with the operation of the Project.

8. No sports medical center shall be allowed as part of the proposed Project. This condition shall not be construed to bar the Applicant from requesting a modification at a later date to permit a sports medical center.

9. This CUP shall be reviewed annually by the Planning Commission during the exercise club's first three (3) years of operation to ensure that the Project complies with the conditions set forth herein and does not have any unanticipated impacts or adversely affect adjacent uses. The Planning Commission expressly reserves jurisdiction relative to traffic and parking issues and the right to impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project as they arise. Prior to the annual review hearing, the Applicant shall submit an affidavit attesting to its continued compliance with all of the conditions of approval set forth in this Resolution.

10. The City expressly reserves jurisdiction relative to traffic and parking issues. In the event the Director determines that operation of the use at this

site is having unanticipated traffic and parking impacts, the Director shall require the Applicant to pay for a parking demand analysis. After reviewing the parking demand analysis, if, in the opinion of the Director, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 38 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense. Mitigation may consist of a requirement to provide free valet parking for members.

11. The Applicant shall cap membership in the proposed club at a maximum of four thousand five hundred (4,500) members, including any transfers from other locations. This condition shall not be construed to bar the Applicant from requesting a modification at a later date to permit additional members.

12. The proposed exercise club shall not be permitted to open for business unless and until the William Morris parking facilities become fully operational and open for use.

13. APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.

14. RECORDATION. The resolution approving the Conditional Use Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development within 60 days of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.

15. EXPIRATION. Conditional Use Permit: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution.

16. VIOLATION OF CONDITIONS: A violation of these conditions of approval may result in a termination of the entitlements granted herein.

17. This approval is for those plans submitted to the Planning Commission on January 13, 2011, a copy of which shall be maintained in the files of

the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.

18. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

19. Approval Runs With Land. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

20. Prior to the issuance of a building permit, all applicable Park and Recreation Facilities Tax required by the Municipal Code shall be paid.

21. The Project shall operate at all times in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.

22. The Project shall operate at all times in compliance with Municipal requirements for Noise Regulation.

23. The Applicant shall remove and replace all public sidewalks surrounding the Project site that are rendered defective as a result of Project construction.

24. The Applicant shall remove and replace all curbs and gutters surrounding the Project site that are rendered defective as a result of Project construction.

25. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained.

26. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

27. The Applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The Applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.

28. The Applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.

29. The Applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.

30. The Applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.

31. The Applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.

32. The Applicant shall provide to the Engineering Office the proposed demolition/construction staging for this Project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.

33. The Applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the Project.

34. The Applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

35. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.

36. Condensation from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

37. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges are; rising ground water and garage sumps.

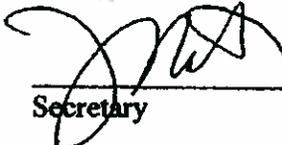
Section 10. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: January 13, 2011



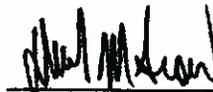
Lili Bosse
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



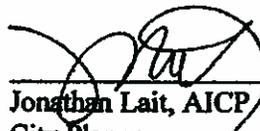
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1600 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on January 13, 2011, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Rosenstein, Cole, Vice Chair Yukelson and Chair Bosse.
NOES: None.
ABSTAIN: None.
RECUSED: Commissioner Corman.
ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

APPEAL PETITION

ATTACHMENT 4



NO OIL, INC., et al., Plaintiffs and Appellants, v. CITY OF LOS ANGELES et al., Defendants and Respondents

L.A. No. 30268

Supreme Court of California

13 Cal. 3d 68; 529 P.2d 66; 118 Cal. Rptr. 34; 1974 Cal. LEXIS 194; 7 ERC (BNA) 1257; 50 Oil & Gas Rep. 293; 5 ELR 20166

December 10, 1974

SUBSEQUENT HISTORY: The petition of respondent Occidental Petroleum Corp. for a rehearing was denied January 29, 1975, and the opinion was modified to read as printed above. Molinari, J., + sat in place of Mosk, J., who deemed himself disqualified. Clark, J., was of the opinion that the petition should be granted.

+ Assigned by the Chairman of the Judicial Council.

PRIOR HISTORY: Superior Court of Los Angeles County, No. C 42021, David N. Eagleson, Judge.

DISPOSITION: The judgment is reversed, and the cause remanded to the superior court to proceed in accordance with the views herein expressed. ²⁶

26 In view of our disposition of this appeal, plaintiffs' motion for leave to produce new evidence on appeal is moot.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

Four nonprofit corporations brought a proceeding in mandamus challenging the validity of the creation by ordinances of three oil drilling districts within an essentially residential area without the preparation and consideration of an environmental impact report, required by the Environmental Quality Act of 1970 for all projects which may have a significant effect on the environment. After taking evidence, which was sharply conflicting, the trial court remanded the matter back to the city council so that it might clarify its intent in adopting the proposed ordinance without the prior preparation and consideration of an environmental impact report, and stated that the test for use by the

council in determining whether a project may have a significant effect on the environment is "whether there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature." The city council adopted a resolution declaring that at the time it had adopted the ordinance it had believed, and now specifically found, that the ordinance and the restricted activities permitted thereby would have no significant effect on the environment. The trial court found that the council's adoption of the resolution was supported by substantial evidence and entered judgment declaring that the council lawfully determined that no environmental impact report was required for the drilling project, and denied plaintiffs' request for mandate and injunctive relief. Superior Court of Los Angeles County, No. C 42021, David N. Eagleson, Judge.)

The Supreme Court reversed and remanded, directing the superior court to set aside the ordinances establishing the oil drilling districts on the ground that the city, in enacting these ordinances, failed to comply with the provisions of the California Environmental Quality Act. The court held that the city council specifically failed to comply with the requirements of the act in two respects: first, because an environmental impact report serves to guide an agency in deciding whether to approve or disapprove a proposed project, the act impliedly requires (and the guidelines expressly require), that the agency render a written determination whether a project requires an environmental impact report before it gives final approval to that project, but the city council initially approved the drilling project without a written determination concerning the environmental impact of that project, and the belated council resolution after remand, despite its attempt to render a determination retroactively, did not suffice to comply with the requirement that environmental issues be considered and resolved before a project is approved. Second, since the preparation of an environmental impact report is the key to environmental protection under the act, the act requires the preparation of an environmental impact report whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. But, the court stated, the superior court ordered the city council to follow a far more restrictive test that limited use of the report to projects which may have an "important" or "momentous" effect of semi-permanent duration, and the trial court's instruction, in addition, overlooked the importance of preparing a report in cases, such as the present action, in which the determination of a project's environmental effect turns on the resolution of controverted issues of fact and forms the subject of intense public concern. Finally, the court held that the city's use of the erroneous test stated by the trial court constituted a prejudicial abuse of discretion. (Opinion by Tobriner, J., with Wright, C. J., Sullivan, J., and Molinari, J., * concurring. Separate dissenting opinion by Clark, J., with McComb, J., and Burke, J., + concurring.)

* Assigned by the Chairman of the Judicial Council.

+ Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to McKinney's Digest

(1) Zoning § 8--Appeal--Under Environmental Quality Act. --Judicial review of a city's decision enacting ordinances creating oil drilling districts without the preparation or consideration of an environmental impact report is governed by *Pub. Resources Code, § 21168.5*, providing that the inquiry shall extend only to whether there was a prejudicial abuse of discretion, which 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.

(2) Mandamus § 105--Trial and Judgment--Findings. --In a traditional mandamus action the court is not limited to review of the administrative record, but may receive additional evidence. Hence, in a mandamus action to review the action of a city council in enacting ordinances creating oil drilling districts without the preparation or consideration of an environmental impact report, the issue was whether substantial evidence, on the whole record including the evidence presented to the superior court, supported the determination that no environmental impact report was required, and the superior court's finding--that the council's resolution declaring that no report was required was supported by substantial evidence "in the administrative record,"--was not responsive to that issue.

(3) Zoning § 5--Enactment, Amendment and Repeal of Zoning Laws--Environmental Quality Act. --The Environmental Quality Act requires that an agency determine whether a project may have a significant environmental impact, and thus whether an environmental impact report is required, *before* it approves that project.

(4) Zoning § 5--Enactment, Amendment and Repeal of Zoning Laws--Environmental Quality Act. --A determination that a project does not require an environmental impact report, when that project is not exempt from environmental study under the act (*Pub. Resources Code, § 21085*), or the administrative guidelines (Cal. Admin. Code, tit. 14, §§ 15101-15107), must take the form of a written Negative Declaration. Thus, a city council's enactment of ordinances creating oil drilling districts in a residential area without a written determination covering the environmental impact of the project was contrary to the requirements of law, and a resolution adopted at a subsequent meeting, pursuant to a remand by the superior court in a mandamus action, declaring that the project would have no significant environmental impact, was simply a *post hoc* rationalization of a decision already made. The doctrine empowering a trial court to remand a matter to an administrative agency for clarification of ambiguous findings, was not applicable, since the matter did not involve ambiguous findings, but the total absence of any written determination on the issue of environmental impact.

(5a) (5b) Zoning § 5--Enactment, Amendment and Repeal of Zoning Laws--Environmental Quality Act. --A city council's resolution that an oil drilling project in a residential area would not have a significant environmental effect and thus did not require an environmental impact report, was defective where the determination was based on an incorrect standard, namely, whether "there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature." The correct test is that an agency should prepare an environmental impact report whenever it perceives "some substantial evidence that a project may have a significant effect environmentally," or "whenever the action *arguably* will have an adverse environmental impact."

(6) Zoning § 4--Variances and Nonconforming Uses--Environmental Quality Act. --There is no statutory warrant for restricting the preparation of an environmental impact report only to projects with environmental effects "of a permanent or long enduring nature." Although the duration of an environmental effect is one of many facts which affect its significance, nothing in the Environmental Quality Act suggests that short-term effects cannot be of such significance as to require an environmental impact report.

(7) Zoning § 4--Variances and Nonconforming Uses--Environmental Quality Act. --A trial court's test for determining whether an oil drilling project required the preparation of an environmental impact report, which stated that the report was necessary only "if there is a reasonable probability the project will have a momentous or important effect of a permanent or long-enduring nature," was error in that it failed to take into consideration the fact that the evaluation of the environmental impact of the drilling project required resolution of a factual dispute concerning the probability that the project might cause landslides or blowouts, and the preparation of the report could perform an invaluable service in aiding the resolution of the dispute.

(8) Zoning § 4--Variances and Nonconforming Uses--Environmental Quality Act. --The existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an environmental impact report is desirable. The federal guidelines for the National Environmental Protection Act provide that "proposed actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases," and, since the California act was modeled on the federal statute, judicial and administrative interpretation of the federal statute is persuasive authority in interpreting the California act.

(9) Zoning § 4--Variances and Nonconforming Uses--Environmental Quality Act. --One major purpose of an environmental impact report is to inform other government agencies, and the public generally, of the environmental impact of a proposed project, and to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions. A simple resolution or Negative Declaration, stating that the project will have no significant environmental effect, cannot serve this function.

(10a) (10b) Zoning § 5--Enactment, Amendment and Repeal of Zoning Laws--Environmental Quality Act. --A trial court's instructions to a city council, on remand to clarify the council's intent in adopting an ordinance creating oil drilling districts in a residential area without preparation of an environmental impact report, that erroneously limited the necessity of preparation of the report to projects which may have an "important" or "momentous" effect of semi-permanent duration, and which overlooked the importance of preparing a report in cases in which the determination of the project's environmental effect turned on the resolution of controverted issues of fact and formed the basis of intense public concern, prejudicially affected the proceedings before the city council and its decision not to prepare the report, in that the city council did in fact employ the test stated by the trial court, and the use of an erroneous legal standard constituted a prejudicial abuse of discretion by the council.

(11) Zoning § 5--Enactment, Amendment and Repeal of Zoning Laws--Environmental Quality Act. --When a court remands a case to an administrative agency with directions to follow a specific legal test, it must be presumed that the administrators faithfully followed those instructions. Thus, where a trial court directed a city council to employ an erroneous legal test in determining whether an oil drilling project required preparation of an environmental impact report, declarations by city councilmen filed before the trial court's pronouncement of its test which stated that the projects would not have a significant environmental effect, fell far short of showing that the council subsequently failed to follow the trial court's test.

COUNSEL: Brent N. Rushforth, Carlyle W. Hall, Jr., Mary D. Nichols, John R. Phillips, A. Thomas Hunt and Frederic P. Sutherland for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, Robert H. O'Brien, Assistant Attorney General, Nicholas C. Yost and Jan E. Chatten, Deputy Attorneys General, as Amici Curiae on behalf of Plaintiffs and Appellants.

Lawler, Felix & Hall, Robert Henigson, William K. Dial, Hanna & Morton, Harold C. Morton, Edward S. Renwick, Bela G. Lugosi, Mitchell, Silberberg & Knupp and Arthur Groman for Defendants and Respondents.

Hindin, McKay, Levine & Glick and Denis A. Glick as Amici Curiae on behalf of Defendants and Respondents.

JUDGES: In Bank. Opinion by Tobriner, J., with Wright, C. J., Sullivan, J., and Molinari, J., concurring. Separate dissenting opinion by Clark, J., with McComb, J., and Burke, J., concurring.

* Assigned by the Chairman of the Judicial Council.

+ Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.

OPINION BY: TOBRINER

OPINION

[*73] [**69] [***37] Plaintiffs appeal from a judgment of the Los Angeles Superior Court ruling that the City of Los Angeles need not prepare an environmental impact report (EIR) before enacting ordinances to permit defendant Occidental Petroleum Corp. to sink two test oil wells in the Pacific Palisades region of the city. This appeal, the first case arising under the California Environmental Quality Act (hereafter CEQA) (*Pub. Resources Code, § 21050 et seq.*) to reach this court since *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247 [104 Cal. Rptr. 761, 502 P.2d 1049], compels us to inquire into how an agency should decide whether a pending project requires an EIR.¹

¹ For a summary of the relationship between CEQA as enacted in 1970, *Friends of Mammoth*, and the 1972 amended act, see Seneker, *The Legislative Response to Friends of Mammoth -- Developers Chase the Will-O'-The-Wisp* (1973) 48 State Bar J. 127.

[*74] In CEQA, the Legislature sought to protect the environment by the establishment of administrative procedures drafted to "Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions." (*Pub. Resources Code, § 21001, subd. (d).*) To achieve these objectives, CEQA and the guidelines issued by the State Resources Agency to implement CEQA¹ establish a three-tiered structure. If a project falls within a category exempt by administrative regulation (see *Pub. Resources Code, §§ 21084, 21085*), or "it can be seen with certainty that the activity in question will not have a significant effect on the environment" (Cal. Admin. Code, tit. 14, § 15060), no further agency evaluation is required. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study (Cal. Admin. Code, tit. 14,

§ 15080); if that study demonstrates that the project "will not have a significant effect," the agency may so declare in a brief Negative Declaration. (Cal. Admin. Code, tit. 14, § 15083.) If the project is one "which may have a significant effect on the environment," an EIR is required. (*Pub. Resources Code*, §§ 21100, 21151; see Cal. Admin. Code, tit. 14, § 15080.) The parties assume that the drilling project is one which may possibly have a significant effect and thus requires an initial threshold environmental study. The question is whether the city properly determined that no EIR was necessary.

2 The guidelines established by the State Resources Agency took effect on February 10, 1973, shortly after completion of the trial in the present case. We do not apply these guidelines retroactively to decisions of the court or city council rendered before the guidelines went into effect. We make use of the guidelines, however, as a suggested interpretation of the statute, and as an illustration of the procedures which the resources agency finds necessary to enforcement of the statute.

(1) Judicial review of the city's decision is governed by *Public Resources Code* [**70] [***38] *section 21168.5*, which provides that "In any action or proceeding, other than an action or proceeding under *Section 21168*, to attack, review, set aside, void or annul a determination or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only 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." Since, as we shall explain, the judgment [*75] of the superior court sustaining the city's decision must be reversed because of the city's failure to proceed in the manner required by law, we do not reach the question whether that decision is supported by substantial evidence.

3 Judicial review of agency action under CEQA is governed by *sections 21168* and *21168.5*. *Section 21168* provides that review of an agency decision "made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency" should follow the administrative mandamus procedure of *Code of Civil Procedure section 1094.5*. *Section 21168.5*, quoted in the text, provides that other agency decisions should be reviewed by a traditional mandamus action. Since the Los Angeles City Council was not required by law to hold an evidentiary hearing before approving the ordinances establishing the oil drilling districts, *section 21168.5* governs the case at bar.

Sections 21168 and *21168.5* became effective on December 5, 1972 -- subsequent to the October city council hearings and to the filing of this action, but before the trial in the superior court and that court's remand of the matter to the city council. Fortunately the Legislature, anticipating that issues might arise concerning the retroactivity of these sections, enacted that "*Sections 21168* and *21168.5* are declaratory of existing law with respect to the judicial review of determinations or decisions of public agencies made pursuant to this division." (*Pub. Resources Code*, § 21168.7.) This enactment demonstrates that the Legislature intends *sections 21168* and *21168.5* to apply to all proceedings under CEQA, including those pending when those sections became effective.

The city council specifically failed to comply with the requirements of CEQA in two respects. First, because an EIR serves to guide an agency in deciding whether to approve or disapprove a

proposed project, CEQA impliedly requires (and the guidelines expressly require) that the agency render a written determination whether a project requires an EIR before it gives final approval to that project. The city council, however, approved the drilling project in October of 1972 without a written determination concerning the environmental impact of that project. The belated council resolution in January of 1973, despite its attempt to render a determination retroactively as of the previous October, does not suffice to comply with the requirement that environmental issues be considered and resolved before a project is approved.

Second, since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. The superior court in the present case, however, ordered the city council to follow a far more restrictive test that limited use of an EIR to projects which may have an "important" or "momentous" effect of semi-permanent duration. The superior court's instruction, in addition, overlooked the importance of preparing an EIR in cases, such as the present action, in which the determination of a project's environmental effect turns upon the resolution of controverted issues of fact and forms the subject of intense public concern. In the context of this case, we shall point out the bases for our conclusion that the city's use of the erroneous test stated by the trial court constitutes a prejudicial abuse of discretion.

[*76] 1. *Chronology of events.*

In 1966 Occidental Petroleum drilled the Marquez Core Hole in Santa Monica Canyon and discovered oil producing sands at a depth of 9,200 feet. Seeking to determine the extent of the oil field, Occidental [*71] [***39] acquired the "highway drillsite" in Pacific Palisades in 1969. This two-acre site lies across a state highway from Will Rogers State Beach and near the foot of a bluff which has experienced numerous landslides.

In July of 1970, the Office of Zoning Administration of the City of Los Angeles granted Occidental a conditional use permit allowing it to drill a test well at the highway drillsite. The board of zoning appeals overturned that decision, finding that the drilling might trigger a disastrous landslide, that a blowout -- an uncontrolled effusion of oil under pressure -- would have severe environmental consequences, and that an industrial use of the site would be aesthetically undesirable.

Seeking to circumvent the requirement for a conditional use permit, Occidental petitioned the city in 1972 to establish three oil drilling districts in the Pacific Palisades. Since the oil drilling districts proposed by Occidental would have permitted commercial oil production, the hearing examiner for the city planning commission, concerned about the environmental impact of such production, recommended disapproval of the proposal. Nevertheless the planning commission resolved to approve the proposal on condition that only two test holes be drilled.

On October 10, 1972, the council considered three ordinances which established oil drilling districts in the Pacific Palisades area, subject to the condition that only two test wells could be drilled. At the close of the hearing Councilman Wachs inquired whether the city attorney had examined the proposed ordinances in the light of our opinion in *Friends of Mammoth* filed three weeks earlier. The city attorney replied that since the city had not yet established procedures to ascertain the environmental impact of measures coming before the council, he had made no such examination.

At the next meeting, on October 17, Councilman Wachs moved to postpone consideration of the ordinances pending preparation of an EIR. No other councilman discussed the motion, which failed

by an eight-to-six vote. The council then passed the ordinances by the same eight-to-six vote. Mayor Yorty signed the ordinances into law on October 20.

Plaintiffs, four nonprofit corporations representing persons opposed to oil drilling in Pacific Palisades, filed the instant action on October 27. Their complaint sought a declaration that the ordinances were invalid, [*77] prayed for mandate to compel preparation of an EIR, and requested an injunction against the issuance of a drilling permit by the office of zoning administration. The city, in response, contended that no EIR was necessary, supporting this contention with declarations from the eight councilmen who voted for the ordinances; each declared, in the statutory language, his opinion that the drilling project was not such as might have a significant effect on the environment. Occidental, on the other hand, maintained that the reports of the planning commission constituted a sufficient EIR.

4 Before beginning to drill, Occidental was required to secure drilling permits from the office of zoning administration. The office expressly found that issuance of the drilling permits would not require an EIR, and issued the requested permits on January 4, 1973. The board of zoning appeals upheld that decision on January 31, and Occidental commenced drilling operations the same day. We issued a stay order halting the drilling on February 7.

Plaintiffs initially claimed that the "project" whose impact was at issue encompassed commercial oil production in Pacific Palisades; they argued that it was evident such production would have a significant effect on the environment. The trial court, however, limited the issue to the impact of the drilling of the test wells. Plaintiffs presented expert testimony [*78] to [**72] [***40] show that even this limited "project" might have a significant environmental effect. Paul Witherspoon, a professor of petroleum geology at the University of California at Berkeley, explained that a blowout, an unavoidable hazard of exploratory drilling, might lead to oil seepage polluting the adjoining state beach and harbor. George Tauxe, a professor of soil mechanics at U.C.L.A., testified that the drilling site was located at the foot of an unstable bluff, a locale of past landslides. Plaintiffs also contend that the drilling operation would be noisy and visually unattractive.

5 Plaintiffs contend that the trial court erred in limiting the scope of the "project" at issue to the drilling of two test wells; they maintain that the scope of inquiry should include the environmental effects of commercial production and exploitation of the oil resources of the Pacific Palisades. They point out that the drilling of the test wells would be a useless waste of money unless commercial production can follow. Thus information on the environmental impact of commercial production is relevant to the council's decision to approve the test wells; if that data proved that commercial production would be harmful, the council might well decide to disapprove the test drilling. Under these circumstances, plaintiffs observe that a narrow definition of "project" which bars inquiry into the environmental effects of commercial production defeats the objectives of the act.

Defendants protest, however, that the geologic information obtained from the test wells is essential to the preparation of an accurate EIR on the impact of commercial production. As the court pointed out in *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Com'n* (1973) 481 F.2d 1079 [156 App. D.C. 395], an impact statement prepared before reliable information is available would "tend toward uninformative generalities" (481 F.2d at p. 1093), but one delayed until after key decisions have been made could not assure that such decisions reflected

environmental consideration. "Thus we are pulled in two directions. Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process." (481 F.2d at p. 1094.)

The issue thus narrows to the question whether the city, before drilling of the test wells, has sufficient reliable data to permit preparation of a meaningful and accurate report on the impact of commercial production. Unfortunately the parties have not briefed this question thoroughly, and the record contains little evidence pertinent to its resolution. Since we are persuaded by plaintiffs' other contentions to reverse the judgment against them, we need not and do not decide whether the trial court erred in limiting the scope of inquiry to exclude consideration of commercial production.

In rebuttal, Occidental presented testimony by Ted Bear, a consulting petroleum geologist, that absent human or mechanical failure, there was no danger of a blowout at the highway drillsite. Other geologists employed by Occidental described measures planned to contain a blowout. David Leeds, a consulting seismologist, testified that the drilling vibrations perceived at the base of the bluff would be of lesser magnitude than those caused by existing traffic on the highway west of the drillsite, and even less than the ambient vibrations in the vicinity of the courtroom. Occidental also presented photographs to show that a drillsite could be constructed to avoid visual blight.

On December 29, 1972, the judge announced an oral ruling. Declaring that the council's actions of October 10 and 17 were equivocal, he resolved to remand the matter to the council for clarification of the council's position on the question: "Is the present Occidental application to drill two core holes such a project that may have a significant effect on the environment?"

In remanding the matter, the court stated a test for use by the council in determining whether a project "may have a significant effect on the environment": "whether there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature."

The council convened on January 8, 1973. At the conclusion of the hearing the council, by an eight-to-seven vote, adopted a resolution stating that "the Los Angeles City Council specifically declare that at the time it adopted the subject three ordinances it believed, and now specifically finds, that such ordinances and the restricted activities permitted thereby would have no significant effect on the environment."

(2) (See fn. 6.) The superior court found that the council's adoption of this resolution [**73] [***41] was supported by substantial evidence in the administrative [*79] record both as of October 1972, and as of January 8, 1973. ' It then entered judgment declaring that the council lawfully determined that no EIR was required for the drilling project, and denying plaintiffs' request for mandate and injunctive relief.

6 In an action for administrative mandamus, the court reviews the administrative record, receiving additional evidence only if that evidence was unavailable at the time of the administrative hearing, or improperly excluded from the record. (*Code Civ. Proc.*, § 1094.5.) In a traditional mandamus action, on the other hand, the court is not limited to review of the administrative record, but may receive additional evidence. (*Felt v. Waughop* (1924) 193 Cal. 498, 504 [225 P. 862]; *Lassen v. City of Alameda* (1957) 150 Cal. App. 2d 44, 48 [309 P.2d

520J]; Cal. Civil Writs (Cont. Ed. Bar 1970) § 17.9.) Hence the issue before the superior court in the present case was whether substantial evidence, on the whole record including the evidence presented to that court, supported the determination that no EIR was required. The superior court's finding -- that the council's resolution was supported by substantial evidence "in the administrative record" -- is not responsive to that issue.

Plaintiffs appealed and unsuccessfully sought a stay order from the Court of Appeal. ' Since the appeal presented issues of public importance, which would be mooted if Occidental completed the drilling project pending appeal, we ordered the cause transferred to this court, issued a stay order and returned the cause to the Court of Appeal. (See *People ex rel. S.F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 537 [72 Cal. Rptr. 790, 446 P.2d 790].) The action is now here on petition for hearing from the Court of Appeal decision.

7 On January 15, 1973, the superior court entered a minute order denying plaintiffs' request for preliminary and final injunctions, declaratory relief, and mandamus. The order also denied plaintiffs' motion for stay of execution, and directed counsel for Occidental to prepare findings and judgment.

Plaintiffs appealed from that minute order and any ensuing judgment. Although the order did not constitute a final judgment on the merits, plaintiffs' appeal was timely both with respect to the denial of a preliminary injunction and the denial of stay of execution (see *Code Civ. Proc.*, § 904.1; *Brydon v. City of Hermosa Beach* (1928) 93 Cal. App. 615, 620 [270 P. 255]). Final judgment has now been entered, rendering moot the denial of preliminary relief.

2. *The Council erroneously failed to render a written determination respecting the environmental effect of the drilling project before it approved that project.*

(3) As the superior court recognized, CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, *before* it approves that project. ' [*80] Finding the council's action of October 17 ambiguous, the court remanded the matter to the council for clarification. The council passed a resolution stating that it believed, as of October 1972, that the drilling project was not such as might have a significant impact; the court accepted this resolution as constituting the requisite determination of environmental issues before approval of the project.

8 See *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d 247, 262. The statutory definition of an EIR requires that the report be considered before a project is approved (see *Pub. Resources Code*, § 21061), which necessarily implies that the decision whether or not to prepare a report must precede approval of the project. The CEQA guidelines expressly state that "The EIR process is intended to enable public agencies to evaluate a project to determine whether it may have a significant effect on the environment, to examine and institute methods of reducing adverse impacts, and to consider alternatives to the project as proposed. *These things must be done prior to approval or disapproval of the project.*" (Cal. Admin. Code, tit. 14, § 15012.) (Italics added.)

(4) We conclude, however, that a determination that a project does not require an EIR, when that project is not exempt [**74] [***42] from environmental study under the act or guidelines, ' must take the form of a written Negative Declaration. Such is the unanimous view of the federal courts construing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 *et*

seq.),¹⁰ and the explicit requirement of both federal and state guidelines. (See Council on Environmental Quality, Preparation of Environmental Impact Statements: Guidelines, § 1500.5, 38 Fed. Reg. 20552 (1973); Cal. Admin. Code, tit. 14, § 15083.) " Absent such a written determination, [*81] there is no way a court can determine whether agency silence represents a decision that a project does not require an EIR or a failure to decide that issue.

9 *Public Resources Code section 21085* provides that no environmental study is required if a project comes within a category exempt by administrative regulation; the Resource Agency guidelines list seven such categorical exemptions (Cal. Admin. Code, tit. 14, §§ 15101-15107). Guideline 15060 also provides generally that no environmental study is needed if "it can be seen with certainty that the activity in question will not have a significant effect on the environment."

10 See, e.g., *Hanly v. Mitchell* (2d Cir. 1972) 460 F.2d 640; *Hanly v. Kleindienst* (2d Cir. 1972) 471 F.2d 823; cf. *Environmental Defense Fund, Inc. v. Ruckelshaus* (1971) 439 F.2d 584, 598 [142 App. D.C. 74].

11 Guideline 15083 specifies that a Negative Declaration must include a brief description of the project, a finding that the project will not have a significant effect, and a statement of reasons to support that finding. The city maintains that since section 15083 did not take effect until February of 1973, its specifications should not be applied to the decision of the city council in October of 1972. The requirement that a finding of no significant impact take the form of an express written determination, however, is implicit in the act itself, and could have been deduced in October of 1972 from examination of the act, from our decision in *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d 247, and from the federal cases cited in that decision.

Plaintiffs in turn assert that a Negative Declaration should go beyond the specifications of section 15083 and contain a full exposition of all relevant environmental factors; they contend that section 15083, which contemplates only a conclusory one page document, is invalid under the terms of CEQA. Language in *Hixon v. County of Los Angeles* (1974) 38 Cal. App. 3d 370, 380 [113 Cal. Rptr. 433] notwithstanding, plaintiffs' contention presents a justiciable issue. (See *Desert Environment Conservation Assn. v. Public Utilities Com.* (1973) 8 Cal.3d 739, 742-743 [106 Cal. Rptr. 31, 505 P.2d 223].) Its resolution, however, should await a case which arises after the effective date of the challenged regulation.

We do not question the power of a trial court to remand a matter to an administrative agency for clarification of ambiguous findings. (See *Keeler v. Superior Court* (1956) 46 Cal.2d 596, 600 [297 P.2d 967].) This doctrine, however, does not apply to the present case. This is not a case in which an agency rendered ambiguous findings concerning the environmental effect of the project, but a case of total absence of any written determination on the matter; for all the record reveals, the council may have simply ignored CEQA and enacted the ordinances in the same manner to which it was accustomed before CEQA was enacted.¹²

12 Neither CEQA nor *Code of Civil Procedure section 1094.5* require rendition of findings of fact in quasi-legislative proceedings; our opinion imposes no such requirement. We hold only that when the agency makes a determination whether a project requires an EIR, as CEQA requires it to do, it should put that determination in writing.

At the time of the January 8, 1973, resolution, the council had already approved the project. No resolution adopted on that date can constitute that determination of environmental impact prior to approval of the project which the act requires. The resolution adopted at that meeting represents simply an example of that "post hoc rationalization" of a decision already made, which the courts condemned in *Citizens to Preserve Overton Park v. Volpe* (1971) 401 U.S. 402, 420 [28 L. Ed. 2d 136, 155, 91 S. Ct. 814] and *Environmental Defense Fund, Inc. v. Coastsides County Water Dist.* (1972) 27 Cal. App. 3d 695, 706 [104 Cal. Rptr. 197].

In failing to render a written determination of environmental impact before approving [**75] [***43] the project, the council proceeded in a manner contrary to the requirements of law. (See *Pub. Resources Code*, § 21168.5.) This failure cannot be excused on the theory that the council might have approved the drilling project anyway; "[to] permit an agency to ignore its duties . . . with impunity because we have serious doubts that its ultimate decision will be affected by compliance would subvert the very purpose of the Act." (*City of New York v. United States* (E.D.N.Y. 1972) 337 F. Supp. 150, 160 [NEPA]; *Arizona Public Service Co. v. Federal Power Com'n* (1973) 483 F.2d 1275, 1283 [157 App. D.C. 272]; see *Jones v. District of Columbia Redevelopment Land Agency* (D.C. Cir. 1974) 499 F.2d 502, 512-513.)

[*82] 3. *The city council followed an erroneous test in deciding that the drilling project did not require an environmental impact report.*

As we have explained, the council's resolution of January 8, 1973, cannot be given retroactive effect to validate the council's actions of the previous October. (5a) We now point out that the council's resolution is defective on a second ground, namely, that the council employed incorrect standards in determining that the drilling project did not require an EIR.

Public Resources Code section 21151, as of October 1972, provided that local government agencies not having an officially adopted conservation element of a general plan (such as the City of Los Angeles) "shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment." (Italics added.) Although section 21151 was amended effective December 5, 1972, ¹³ the italicized words, the focus of the present controversy, are identical in both the original and amended sections. ¹⁴

13 Section 21151 now provides that "All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. . . ." The amendment authorized agencies to contract for preparation of an EIR instead of preparing it themselves, added the requirement for an EIR when the agency approves a private project (thus codifying the holding in *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d 247) and eliminated the exemption for cities with an officially adopted conservation element in their general plan.

14 The defendants concede that the test wells constitute a "project" as defined in *Public Resources Code* section 21065, and that the enactment of the ordinances establishing oil drilling districts constitutes the carrying out of such a project within the terms of section 21151. Plaintiffs maintain that the scope of the "project" whose impact is at issue encompasses not only the drilling of the test wells but also the possibility of subsequent commercial production. (See fn. 5, *supra*.)

The trial court, on remanding this cause to the city council for clarification, interpreted this section to compel preparation of an EIR only when "there is a reasonable possibility that the project will have a momentous or important effect of a permanent or long enduring nature." As we shall explain, this test sets far too high a barrier to the preparation of an EIR. ¹⁵

15 We do not think this court at this time should draft a substitute test. The responsibility for formulation of such a test is expressly delegated by CEQA to the State Resources Agency. (See *Pub. Resources Code*, § 21083.) That agency has defined "significant effect" as "a substantial adverse impact on the environment" (Cal. Admin. Code, tit. 14, § 15040) -- a definition which differs markedly from that advanced by the trial court -- and listed those environmental consequences which ordinarily indicate that a project may have a significant effect. (Cal. Admin. Code, tit. 14, § 15081.)

The Attorney General, as amicus curiae, stated his opposition to the guidelines' definition of "significant effect" on the ground that agency action may significantly affect the environment even if the agency believes that effect to be beneficial rather than "adverse." (Cf. *Hiram Clarke Civic Club, Inc. v. Lynn* (5th Cir. 1973) 476 F.2d 421, 426-427 [NEPA]; *Goose Hollow Foothills League v. Romney* (D. Ore. 1971) 334 F. Supp. 877, 879 [NEPA].) One writer has also suggested that the term "substantial" imposes too high a threshold level for the preparation of EIRs. (Comment, *Aftermammoth: Friends of Mammoth and the Amended California Environmental Quality Act* (1973) 3 Eco. L.Q. 349, 367-368, fn. 111.) In the light of such criticism, the secretary for resources has announced that the resources agency will "do additional work" on this guideline, and schedule public hearings at a later date. (Letter from N. B. Livermore, dated Feb. 5, 1974, accompanying the issuance of the amended CEQA guidelines.)

Under these circumstances, we believe it would be inappropriate for us to utilize the present case to determine the validity of section 15040, or to preempt the Resources Agency by drafting an alternative definition. Our conclusion that the trial court's definition is patently erroneous is sufficient to decide the present appeal.

[*83] [**76] [***44] CEQA requires an EIR only for projects whose environmental effect can be described as "significant."

This key word, however, is not a term of precision but encompasses a range of meaning. ¹⁶ It cannot be adequately defined by a random selection of synonyms from a thesaurus. Facing a spectrum of possible meanings, describing a range extending from projects of relatively minor import to those of truly momentous proportions, the court's task is to indicate the point on this spectrum beyond which the seriousness of the foreseeable impact dictates preparation of an EIR.

16 As stated by Judge Friendly, construing the phrase "significantly affecting the quality of the human environment" in NEPA (42 U.S.C. § 4332): "While . . . determination of the meaning of 'significant' is a question of law, one must add immediately that to make this determination on the basis of the dictionary would be impossible. Although all words may be 'chameleons, which reflect the color of their environment,' *C.I.R. v. National Carbide Corp.*, 167 F.2d 304, 306 (2 Cir. 1948) (L. Hand, J.), 'significant' has that quality more than most. It covers a spectrum ranging from 'not trivial' through 'appreciable' to 'important' and even 'mo-

mentous." (*Hanly v. Kleindienst* (2d Cir. 1972) 471 F.2d 823, 837 (dissenting opn. of Friendly, J.)) (For discussion of *Hanly v. Kleindienst*, see fn. 18, *infra*.)

Moreover, CEQA does not speak of projects which *will* have a significant effect, but those which *may* have such effect. Although we agree with the trial court that the word "may" connotes a "reasonable possibility," that phrase again encompasses a range of meaning extending from the most unlikely possibility which might influence the views of a reasonable man to events which fall but a hair short of certainty.

In interpreting *section 21151*, our principal guide is the fact, recognized in *Friends of Mammoth*, "that the Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at p. 259; accord, *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 804 [108 Cal. Rptr. 377]; see *Environmental Defense Fund, Inc. v. Coastside* [*84] *County Water Dist.*, *supra*, 27 Cal. App. 3d at p. 701.) The EIR is the "heart" of CEQA (*County of Inyo v. Yorty*, *supra*, 32 Cal. App. 3d at p. 810), the principal method by which environmental data are brought to the attention of the agency and the public. Consequently that interpretation of *section 21151* which will "afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (*Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at p. 259) is one which will impose a low threshold requirement for preparation of an EIR. "

17 "[In] view of the clearly expressed legislative intent to preserve and enhance the quality of the environment . . . , the court will not countenance abuse of the 'significant effect' qualification as a subterfuge to excuse the making of impact reports otherwise required by the act." (*Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at p. 271.)

As stated by Judge Friendly, discussing the federal act, "It is not readily conceivable that Congress meant to allow agencies to avoid this central requirement by reading 'significant' to mean only 'important,' 'momentous,' or the like. One of the purposes of the impact statement is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit Federal resources [**77] [***45] to the project; the statute must not be construed so as to allow the agency to make its decision in a doubtful case without the relevant data or a detailed study of it." (*Hanly v. Kleindienst*, *supra*, 471 F.2d at pp. 837-838 (dissenting opinion).) "

18 The majority opinion in *Hanly v. Kleindienst* (2d Cir. 1972) 471 F.2d 823 advanced the view that an environmental impact statement is not required in merely close and arguable cases *if* the agency submits, in lieu of such statement, a fully detailed explanation of its reasons for concluding that the project will not have a significant environmental effect. The majority in *Hanly v. Kleindienst* then reviewed a 25-page "Assessment of the Environmental Impact" prepared by a government agency to support its conclusion that a proposed jail would not significantly affect the environment, and held that this assessment was inadequate because it failed to include findings with respect to some relevant environmental considerations. (471 F.2d at p. 834.) Judge Friendly's dissent suggests that the agency could as easily have prepared an environmental impact statement.

In limiting the use of EIRs to projects which may have an "important" or "momentous" effect, the trial court adopted a test which will necessarily bar preparation of an EIR in those close and

doubtful cases to which Judge Friendly referred, and will, to that extent, defeat the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions. (*Pub. Resources Code, § 21001, subd. (d).*) Indeed, the trial court test of "significant impact" imposes a far higher threshold barrier to the preparation of an EIR than any suggested in state or federal guidelines or in any reported decision; its [*85] interpretation affords not the fullest, but the least possible protection to the environment within the statutory language. "

19 Anderson, *NEPA in the Courts* (1973) reviews the federal decisions under NEPA and concludes that they have given the act "the widest possible scope of application" (p. 56) and imposed a "low threshold" for preparation of an environmental impact statement (the federal equivalent of California's environmental impact report).

(6) In addition, the trial court added the gratuitous stipulation that no EIR is required unless the environmental effect of a project is "of a permanent or long enduring nature." We find no statutory warrant for this restriction; although the duration of an environmental effect is one of many facts which affect its significance, nothing in the act suggests that short-term effects cannot be of such significance as to require an EIR.

(7) The trial court's test also erred in its omission of important considerations which called for the preparation of an EIR in the instant case. Evaluation of the environmental impact of the drilling project in the instant case required resolution of a factual dispute concerning the probability that the project might cause landslides or blowouts. In such cases, an EIR -- an impartial, detailed, and factual analysis of the project's effect -- can perform an invaluable service in aiding the agency's resolution of the dispute. As pointed out in *County of Inyo v. Yorty, supra, 32 Cal. App. 3d 795, 814*, in such cases of factual controversy "The very uncertainty created by the conflicting assertions made by the parties as to the environmental effect . . . underscores the necessity of the EIR to substitute some degree of factual certainty for tentative opinion and speculation."

(5b) Thus we conclude, as did the court in *County of Inyo v. Yorty*, that an agency should prepare an EIR whenever it perceives "some substantial evidence that the project 'may have a significant effect' environmentally." (*32 Cal. App. 3d at p. 809.*) As stated by Judge J. Skelly Wright in *Students Challenging Reg. Agency Pro. v. United States (D.D.C. 1972) 346 F. Supp. 189, 201*, an environmental impact report should be prepared "whenever the action *arguably* will have an adverse environmental impact." (Italics in original.)²⁰

20 The United States Supreme Court noted jurisdiction in *Students Challenging Reg. Agency Pro. v. United States*, affirmed the district court's holding that the plaintiff had standing, but ruled that the district court lacked jurisdiction to enjoin the Interstate Commerce Commission. (*United States v. SCRAP (1973) 412 U.S. 669 [37 L. Ed. 2d 254, 93 S. Ct. 2405].*) Its opinion does not discuss the standards for preparation of an environmental impact statement.

[**78] [***46] (8) Furthermore, the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation [*86] of an EIR is desirable.²¹ (9) One major purpose of an EIR is to inform other government agencies, and the public generally, of the environmental impact of a proposed project (see *County of Inyo v. Yorty, supra, 32 Cal. App. 3d 795, 810; Environmental Defense Fund, Inc. v. Coastside County Water Dist., supra, 27 Cal. App. 3d 695, 704-705; cf. Jones v. District of Columbia Redevelopment Land Agcy. (D.C. Cir. 1974) 499 F.2d 502, 511 [NEPA]*), and to demonstrate to an apprehensive citizenry that the agency

has in fact analyzed and considered the ecological implications of its action. A simple resolution or Negative Declaration, stating that the project will have no significant environmental effect, cannot serve this function.

21 The federal guidelines for NEPA provide that "Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases." (Council on Environmental Quality, Guidelines on Preparation of Environmental Impact Statements, § 1500.6, 38 Fed. Reg. 20551 (1973).) These guidelines, first adopted in 1971, were in effect at the time of trial in the instant case. Since the California act was modeled on the federal statute, judicial and administrative interpretation of the latter enactment is persuasive authority in interpreting the California act. (See *Environmental Defense Fund, Inc. v. Coastside County Water Dist.*, supra, 27 Cal. App. 3d 695, 701.)

The state guidelines, which took effect while this case was pending on appeal, provide that "where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect [of the project] to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved." (Cal. Admin. Code, tit. 14, § 15081.) Although defendants suggest that this language is intended to imply by omission that public opinion is relevant to the question of whether the project's net effect is "adverse," but not to the question whether that effect is "significant," this seems a wholly illogical interpretation. The need for a full report to provide information and quiet public apprehension is at least as great in cases, such as the present action, where the controversy concerns the risk of an admittedly adverse effect as in cases in which the controversy concerns whether a predicted effect is adverse or benign.

(10a) Having decided that the trial court's instruction to the city council erred both in its definition of "significant impact" and in its omission of considerations suggesting the need for an EIR in the instant case, we must now determine whether that error prejudicially affected the proceedings before the city council. The principal issue here is whether the city council, on remand, did in fact employ the test stated by the trial court.

Upon the remand of the matter to the council, that body scheduled a public hearing on January 8, 1973, at which it received additional testimony and argument concerning the environmental effect of the drilling project. The council then resolved, by an eight-to-seven vote, not to require an EIR. Several councilmen explained their votes; four councilmen, two who favored and two who opposed the resolution, explicitly [*87] phrased their determination in terms of the trial court's test. Another councilman, who had previously voted in favor of the drilling districts, asked the city's assistant administrative officer for petroleum matters whether the effect of a blowout would have a "permanent long-enduring nature." Receiving a negative reply, he stated that he had heard nothing to change his mind, and voted for the resolution.

The record of the proceeding before the council on January 8 convinces us, as it did the trial court, " that the council [**79] [***47] employed the trial court's test in resolving against preparation of an EIR. Since that resolution carried by a bare eight-to-seven majority, we are compelled to conclude that the use of a test which limits EIRs to projects of momentous and semi-permanent effect, and which excludes the presence of disputed factual issues of public controversy as criteria suggesting preparation of a report, prejudicially affected the council's decision. "

22 On January 15, the court announced its intention to rule against plaintiffs. The judge observed that "[The] court formulated a test to be applied in interpreting the language 'may have a significant effect on the environment,' the key phrase in these proceedings. This test is as follows: Is there a reasonable possibility that the project will have a momentous or important effect of a permanent or long-enduring nature? . . . With this test clearly in mind -- it was alluded to in one form or another fourteen separate times by the city council -- the council on January 8, without remand, adopted a resolution. . . . This court finds that that resolution is synonymous with a statement that the contemplated project is not one which may have a significant effect on the environment."

23 Pointing to a letter by the city attorney dated October 3, 1973, defendants argue that the council, when it approved the ordinances, was aware that the then unmodified *Friends of Mammoth* opinion established a test requiring an EIR for all projects with a "nontrivial" effect. Defendants infer that the council, in approving those ordinances, silently employed that test and found that the drilling project would have only a trivial impact on the environment. Defendants also infer that the resolution of January 1973, stating the council's belief as of October 1972 that the project would not have a significant impact, referred to the definition of "significant effect" as "nontrivial effect" which the council inferably followed in October. Piling inference upon inference, defendants conclude that if the council consistently utilized the test of significant effect set out in the unmodified *Friends of Mammoth* opinion, the trial court's erroneous test could not have influenced the council's decision.

We reject the inferences proposed by the defendants. Our review of the council proceedings of October 10, October 17, and January 8 reveals no instance in which a councilman who voted in favor of the ordinances indicated that he did so on the basis of the "nontrivial effect" test of the unmodified opinion in *Friends of Mammoth*.

(11) Defendants point out that the eight councilmen who voted in favor of the resolution filed declarations on December 6, prior to the trial court's pronouncement of its test of "significant effect," which stated that the oil drilling districts were not projects such as might have a significant environmental effect. Relying on these declarations, defendants contend that the eight councilmen had made up their minds before the [*88] January 8 meeting; defendants imply that no test set out by the trial court -- correct or incorrect -- would have influenced them.

The argument is certainly a strange one. As the Attorney General points out, it is analogous to a contention that an erroneous jury instruction is not prejudicial because the jurors had already resolved to convict the defendant regardless of the court's instructions. When, as here, a court remands a case to an administrative agency with directions to follow a specific legal test, we must presume that the administrators faithfully followed those instructions. (See *Evid. Code*, § 664.)²⁴ The presumption is rebuttable, but the declarations of the councilmen filed prior to the trial court's statement of its test fall far short of showing that the council subsequently failed to follow that test.

24 *Evidence Code section 664* states that "It is presumed that official duty has been regularly performed." This is a rebuttable presumption going to the burden of proof. (*Evid. Code*, § 660.)

(10b) *Section 21168.5* permits a court to reverse a determination of a public agency for "prejudicial abuse of discretion." "Abuse of discretion is established if the agency has not proceeded in a manner required by law." (*Pub. Resources Code*, § 21168.5.) The council's use of an erroneous le-

gal standard constitutes a failure to proceed in the manner required by law. (See *Gilles v. Department of Human Resources Development* (1974) 11 Cal.3d 313, 329 [113 Cal. Rptr. 374, 521 P.2d 110].)

The record in this case demonstrates that this error of law was prejudicial. The present case, in fact, is an excellent example of those close and arguable cases [**80] in which an EIR should be prepared. With the council confronting allegations, [***48] supported by expert testimony but controverted by opposing testimony, that the drilling projects could cause an environmental disaster, the value of an impartial environmental analysis cannot be gainsaid. The intense and continuing public concern with these hazards, and with the impact of oil drilling in the vicinity of public beaches and residential neighborhoods, equally suggests the need for a thorough and impartial study. Under these circumstances, we believe that the council, employing a proper test, would have decided to direct preparation of an EIR.

4. Conclusion.

For the reasons stated in parts 2 and 3 of this opinion, we conclude that the judgment of the superior court must be reversed. The superior court shall set aside the ordinances establishing the oil drilling districts on the ground that the city, in enacting these ordinances, failed to comply with the provisions of CEQA. The city, of course, may choose to reenact [*89] these ordinances after complying with the requirements of that act. "

25 Occidental suggests that an opinion requiring the trial court to set aside the ordinances will require Occidental to file new applications for the creation of the drilling districts, and compel the city to follow anew all procedural steps preparatory to the enactment of the ordinance. To quiet such apprehensions, we note that our opinion does not compel the trial court to vacate any action, such as the filing of an application for an ordinance, which may lawfully precede the city's determination whether to prepare an environmental impact report. Occidental has not called our attention to any ordinance or rule of the City of Los Angeles which would, under the circumstances of this case, compel repetition of any actions which may lawfully precede that determination.

The judgment is reversed, and the cause remanded to the superior court to proceed in accordance with the views herein expressed. "

26 In view of our disposition of this appeal, plaintiffs' motion for leave to produce new evidence on appeal is moot.

DISSENT BY: CLARK

DISSENT

CLARK, J. I dissent.

When enacting a zoning ordinance in 1972, the Los Angeles City Council was not required to render a written Negative Declaration to evidence its determination that the ordinance would have no significant effect on the environment. There was no express requirement of such writing and no basis for implying one. The city council proceeded in a manner required by law, and the evidence

before us fully supports the determination that the proposed test holes will have no significant effect on the environment.

In enacting the present zoning ordinances, the city council performed a legislative function. (*Johnston v. City of Claremont* (1958) 49 Cal.2d 826, 835-836 [323 P.2d 71]; *Clemons v. City of Los Angeles* (1950) 36 Cal.2d 95, 98 [222 P.2d 439]; *Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 460 [202 P.2d 38].) As recognized by the majority (*ante*, pp. 74-75), the city council was not required to hold an evidentiary hearing, and judicial review of the council's action is governed by traditional mandamus principles rather than the administrative mandamus procedure of *Code of Civil Procedure section 1094.5*. (*Pub. Resources Code*, §§ 21168, 21168.5, 21168.7.) Thus the requirement of administrative findings set forth in *section 1094.5* (see *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511, 522 [113 Cal. Rptr. 836, 522 P.2d 12]) is not applicable to the adoption of the ordinances,¹ and no other principle of general law or charter provision has been cited [***49] or found requiring the Los Angeles City Council to make findings of fact in adopting ordinances.

1 The statement of the majority that Occidental in seeking rezoning was circumventing the requirement of a conditional use permit is misleading and unfortunate. (*Ante*, p. 76.) In *Topanga*, the court stated that rezoning was the appropriate method to obtain a special use for a large parcel. (11 Cal.3d at p. 522.)

[*90] [**81] There is no express provision in the California Environmental Quality Act (*Pub. Resources Code*, § 21000 *et seq.*) (hereinafter CEQA),² as enacted in 1970 or in its present form, requiring prior to project approval either "findings" or any written determination that a project will not have a significant effect on the environment. To the contrary, the language of CEQA indicates that written findings were not contemplated for such a determination. *Section 21168.5* provides that abuse of discretion may be established either by showing that the agency failed to proceed in a manner required by law or by showing that the "*determination or decision*" is not supported by substantial evidence. (§ 21168.5; italics added.) Clearly the act contemplates *only* that the determination be made. If the Legislature had intended written findings, it could easily have said that abuse of discretion is established when the decision is not supported by the *findings*, or the *findings* are not supported by substantial evidence. (Cf. *Code Civ. Proc.*, § 1094.5; *Topanga Assn. for a Scenic Community v. County of Los Angeles*, *supra*, 11 Cal.3d 506.)³

2 Unless otherwise stated, all statutory references are to the Public Resources Code.

3 The absence of an express statutory requirement of "findings" distinguishes the instant case from *Topanga*. In *Topanga* we determined that the administrative mandamus procedure of *Code of Civil Procedure section 1094.5*, by providing that abuse of discretion is established if the administrative decision "'is not supported by the findings, or the findings are not supported by the evidence,'" required that agencies subject to review by administrative mandamus must set forth specific findings. (11 Cal.3d at p. 515.)

Our reasoning in *Topanga* was that the Legislature must have intended specific findings in view of the fact that it established the reviewing court's duty to compare the evidence and ultimate decision to "*the findings*" . . ." (11 Cal.3d at p. 515; italics added.) We noted that "[if] the Legislature had desired otherwise, it could have declared as a possible basis for issuing mandamus the absence of substantial evidence to support the administrative agency's *action*." (11 Cal.3d at p. 515; italics added.) On the basis of the *Topanga* rationale we must

conclude the Legislature did *not* intend findings in the case of CEQA, for it has provided that the evidence be compared only to the "determination or decision" of the agency. (§ 21168.5.)

The majority disclaims having imposed any requirement of findings on the legislative process, stating that it requires only that the determination of no significant effect on the environment be put in writing. (*Ante*, p. 81.) The majority reasons that in the absence of such writing there is no way a court can tell if the agency actually made the determination. If this is the case, the requirement would seem fully satisfied by either the declarations of the councilmen submitted prior to trial or the council resolution of 8 January 1973. These eliminate the majority's objection to the record, i.e., they show that a determination was in fact made prior to approval of the ordinances.

By the lengthy impeachment of the council resolution (*ante*, pp. 82-88), however, the majority requires more of a negative declaration than a mere written statement of the fact of determination. The resolution adequately satisfied the only *formal* requirement *purportedly* imposed by the majority. By going behind the resolution, the majority in effect requires not only that the determination be reduced to writing but also that it affirmatively evidence proper supporting reasons.

[*91] Further support for the conclusion that CEQA did not require a written Negative Declaration is furnished by this court's decision in *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 270 [104 Cal. Rptr. 761, 502 P.2d 1049]. *Friends of Mammoth* expressly rejected a requirement of written findings when an agency approves a project after preparation of an environmental impact report. It appears inconsistent to imply a requirement of written findings for a determination that no environmental impact report is necessary when this court refused to imply a requirement for such findings for the more important decision whether to approve a project in light of the admitted adverse environmental effects disclosed by an environmental impact report.

[***50] Sound practical considerations militate against the implication of formalistic requirements into the legislative process. When the legislative body has complied with all substantive requirements and all express formalistic requirements, the majority's [*82] will should not be frustrated by adding a formalistic requirement, the necessity for which could only be foreseen by those possessing acute clairvoyance.

The unreasonableness of implying a formalistic requirement into the legislative process is dramatically illustrated by the requirement implied by the majority today. Unless the legislative body somehow anticipated today's implied requirement of a written determination, every ordinance affecting the use of land adopted between the enactment of CEQA in 1970 and the adoption of the guidelines in 1973 has been improperly adopted, including ordinances involving projects where "it can be seen with certainty that the activity in question will not have a significant effect on the environment." Although projects coming within the quoted term are presently exempt from the written Negative Declaration requirement expressly imposed by the guidelines (Cal. Admin. Code, tit. 14, § 15060), the guidelines with the three-tiered structure relied upon by the majority were not adopted until 1973. ' Probably thousands of ordinances [*92] including those coming within the quoted term were not properly adopted under today's majority opinion. '

4 The 1972 amendments to CEQA provide that the guidelines shall contain a list of classes of projects which the Secretary of the Resources Agency has found do not have a significant effect on the environment. (§ 21084.) A project falling within these classes is exempt from

the provisions of CEQA. (§§ 21084, 21085.) The guidelines presently contain a list of such projects. (Cal. Admin. Code, tit. 14, §§ 15100-15112.) However, CEQA itself does not exempt any projects other than ministerial ones and emergency repairs to public service facilities (§§ 21080, 21085); hence there were no projects other than those mentioned in CEQA which were exempt until promulgation of the guidelines.

In general the guidelines establish a three-tiered structure -- projects for which an EIR is filed; projects for which a Negative Declaration is filed, and categorically exempt projects. However, only a two-tiered structure is provided as to the type of ordinance before us. Activities for the purpose of "basic data collection" or "resource evaluation" are categorically exempt unless the activity will result in a "serious or major disturbance to an environmental resource." (Cal. Admin. Code, tit. 14, § 15106.) If the activity would result in a "serious or major disturbance to an environmental resource," it would seem perforce that an EIR is required. If not, the activity is exempt. In the instant case, if the city council finds such a disturbance, an EIR must be prepared. If it does not so find, there is not even a requirement of a Negative Declaration, for the guidelines do *not* require filing of a Negative Declaration when a public agency approves a project that is categorically exempt. (Cf. Cal. Admin. Code, tit. 14, § 15035.5.)

5 Since the majority has implied the writing requirement, it could imply the exemption too -- once the fabric is woven from thin air, it may be embellished at will. Nevertheless, implication of the requirement and the exemption in the absence of any language dealing with writing requirements or exemptions from them appears a clear invasion of the legislative process.

In imposing the requirement of a written determination on the legislative process, the majority also starts us down a dangerous path which, if followed in the future, will have unfortunate consequences. The majority implies the requirement not on the basis of language dealing with writings; the only language relied on is that set forth in the purposes of the act. However laudable or noble the purposes of a statute, the method to be followed by the city council in adopting ordinances under it should remain the same unless the statute itself or authorized regulations provide for a different method of enactment. To vary the method of enactment, depending upon judges' opinions as to the virtues of statutory purpose, is an improper interference with the legislative process and can only lead to confusion and frustration of the majority's will.

Since the city council was not required to produce written findings of fact or a written determination in the form of a Negative Declaration, it must be presumed [**83] [***51] that official duty has been regularly performed (*Evid. Code*, § 664) and that the legislative body has ascertained the existence of those facts essential to its action (e.g., *Orinda Homeowners Committee v. Board of Supervisors* (1970) 11 Cal. App. 3d 768, 775 [90 Cal. Rptr. 88]). As the council passed the ordinances without preparing an EIR, it must be presumed it had determined the informational holes would not have a significant effect on the environment.

Evidence of events occurring after the 17 October 1972 passage of the ordinances, including submission of declarations by the councilmen and the council resolution of 8 January 1973 (both of which stated that the ordinances were approved on 17 October 1972, because the council believed the limited drilling would have no significant effect on the environment) [*93] does not establish that the council failed to make the determination. If anything the evidence tends to support the presumption that the determination was made. ⁶ In any event it was unnecessary for defendants to prove

that the determination was actually made, for the issue should have been resolved in their favor when plaintiffs failed to adduce evidence sufficient to overcome the presumption.

6 In a 17-page letter of 3 October 1972 the city attorney advised the city council that all projects which may have a significant effect on the environment required preparation of an EIR and specifically concluded that all *zone* changes should be accompanied by an EIR if the permitted use may have a significant effect on the environment.

I conclude the council proceeded in a manner required by law. The inquiry thus is whether the council's determination is supported by substantial evidence. (§ 21168.5.) There is ample evidence in the record to sustain the decision. The ordinances contemplated drilling of extremely limited scope. Only two informational test bore holes were authorized; the entire operation was to last only 90 days, with the rigs to be removed upon completion; and a number of other restrictions and conditions were imposed on the project. Under no circumstances was commercial production of oil to be permitted. With respect to the impact of the drilling vibrations, Occidental produced expert testimony that vibrations from the drilling at a point 150 feet from the drill site would be less than those caused by movement along the nearby highway, and 5 to 10 times less than the ambient vibrations outside the courtroom door. As to the possibility of a "blowout," there was evidence that the incidence of blowouts at urban drill sites was only 2/10ths of 1 percent. Occidental also introduced photographs demonstrating methods by which the drill site would be made aesthetically consonant with adjacent land uses. The foregoing represents only a sampling of the evidence marshalled by Occidental to dispel any doubts about the environmental effect of the test holes.

7 The experts for plaintiffs conceded that the incidence of blowouts was "very low" and that the petroleum industry had developed "very sophisticated means" of preventing such accidents.

The limited drilling authorized by the ordinances is a "basic data collection" or "resource evaluation" activity inasmuch as the object of the drilling is to determine the size and yield of the Riviera oil field and obtain data essential to a thorough environmental assessment of oil production. Unless the city council determines that this activity will result in a "serious or major disturbance to an environmental resource" the proposed test holes will be *categorically exempt* from CEQA under the present guidelines. (Cal. Admin. Code. tit. 14, § 15106.) In the event [*94] the council concludes the drilling will not result in a serious or major disturbance to an environmental resource, the city council will *not* be required to render a written Negative Declaration nor any writing whatsoever prior to approval [***52] of the ordinances, for the guidelines [**84] do not require *any* writing for a determination that a project is categorically exempt from CEQA. The agency "may" file a brief notice of exemption but is not compelled to. (Cal. Admin. Code, tit. 14, § 15035.5.) This observation only highlights the futility, as well as the inappropriateness, of the requirement which the majority implies today.

I would affirm the judgment. *

8 The majority balks at resolving a number of questions highly pertinent to cases arising under CEQA, which I feel leaves the disposition of this case and others uncertain to an unfair extent. Specifically, the majority does not decide what is required in a Negative Declaration and declines to formulate a more definite test for determining what constitutes a "significant effect" on the environment. Thus, while the city council must now redetermine the environ-

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118 Cal. Rptr. 34, ***; 1974 Cal. LEXIS 194

mental issues involved, it does not even have assurance that adherence to the standards set forth in the guidelines is the proper course to pursue. The majority remands the case without informing the council what is expected of it in future deliberations.

The unwarranted aspersions cast by the majority on the application of the political process in this case perhaps explain the majority's willingness to reach its desired result without confronting the important questions of law. The record, however, provides no basis for believing the political channels were abused in any manner.

APPEAL PETITION

ATTACHMENT 5



**FRIENDS OF MAMMOTH et al., Plaintiffs and Appellants, v.
BOARD OF SUPERVISORS OF MONO COUNTY et al., Defendants
and Respondents; INTERNATIONAL RECREATION, LTD., Real
Party in Interest and Respondent**

Sac. No. 7924

Supreme Court of California

**8 Cal. 3d 247; 502 P.2d 1049; 104 Cal. Rptr. 761; 1972 Cal. LEXIS 253;
4 ERC (BNA) 1593; 2 ELR 20673**

September 21, 1972

SUBSEQUENT HISTORY: The petition of the defendants and respondents for a rehearing was denied November 6, 1972. Sullivan, J., was of the opinion that the petition should be granted.

PRIOR HISTORY: Superior Court of Mono County, No. 4637, Walter R. Evans, Judge.

DISPOSITION: The order appealed from is reversed, with directions to grant a peremptory writ of mandate ordering defendants to set aside the issuance of the conditional use and building permits.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a petition in administrative mandamus by an unincorporated property owner's association and an individual seeking to set aside a county planning commission's issuance of conditional use and building permits to a private corporation for the construction of condominiums, and the county board of supervisor's affirmance of such action. Two of the members of the class represented by the individual plaintiff had appealed the matter to the board of supervisors. The question presented was whether the California Environmental Quality Act applies to private activities for which a permit or other entitlement is required so as to make mandatory the filing of an environmental impact report pursuant to *Pub. Resources Code, § 21151*, stating that local government agencies (such as the county involved) shall make such a report "on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency." (Superior Court of Mono County, No. 4637, Walter R. Evans, Judge.)

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The Supreme Court reversed the order of the trial court with directions to grant a peremptory writ ordering the conditional use and building permits set aside. The court found a legislative intent to include private activities within the purview of the act in *Pub. Resources Code*, §§ 21000, 21001, captioned "Legislative intent" and "Additional legislative intent" as well as in other parts of the act. The intent sections, it was pointed out, referred to regulation of private activities as well as to private interests in the context of public decisions. On the question whether the intent was effectuated, the court turned for guidance to the National Environmental Policy Act on which the state act apparently had been patterned. It noted, among other matters, that "project" as defined in the guidelines adopted for the federal act included those involving a lease, permit, license, certificate, or other entitlement for use. The phrase "they intend to carry out" following the word "project" in the state act was construed to mean only that before an environmental impact report becomes required the government must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity. That the statute in question provided for the filing of the impact report as a part of another report required only with respect to direct activities of a public agency was regarded as directory only and not meant to limit the breadth of the section. The matter of whether the particular activity in question might have a significant effect on the environment within the meaning of the act was left for determination in future proceedings. It was noted that the reach of the phrase "significant effect" is not immediately clear but that the language would be fleshed out by interpretation in the normal process of case-by-case adjudication. In that connection the court observed that abuse of the "significant effect" qualification would not be countenanced as a subterfuge to excuse the making of impact reports otherwise required, but it reasoned that most of the private projects for which a government permit or similar entitlement is necessary are minor in scope, having, in the absence of unusual circumstances, little or no effect on the public environment, and that they would therefore be subject to approval exactly as before passage of the act. The court declined either to make its determination prospective only or to stay the effective date of the decision. Various procedural contentions were found to be without merit. (Opinion by Mosk, J., with Wright, C. J., McComb, Peters, Tobriner and Burke, JJ., concurring. Separate dissenting opinion by Sullivan, J.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

Classified to McKinney's Digest

(1a) (1b) Zoning § 4--Variances and Nonconforming Uses--Conditions--Environmental Quality Act. --In enacting the Environmental Quality Act, the Legislature intended to include private activities for which a government permit or other entitlement is necessary within the requirement of *Pub. Resources Code*, § 21151, that "local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment." In addition to other indications in the act, *Pub. Resources Code*, § 21000, captioned "Legislative intent" refers in subd. (g) to regulation of activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, and in subd. (f) to systematic and concerted efforts by public and private interests to enhance environmental quality, while *Pub. Resources Code*, § 21001, captioned "Additional legislative intent" provides in subd. (d) that insuring long-term protection of the environment shall be the guiding criterion in public decisions.

(2) Statutes § 114--Construction and Interpretation--Giving Effect to Intent of Legislature. -- Absent a single meaning apparent on the face of a statute, courts are required to give it an interpretation based upon the legislative intent with which it was passed.

(3a) (3b) (3c) Zoning § 4--Variances and Nonconforming Uses--Conditions--Environmental Quality Act. --*Pub. Resources Code, § 21151*, requiring governmental agencies to "make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment" is sufficiently flexible to effectuate the broad legislative intent that private activities requiring a governmental permit or other entitlement be brought within the ambit of the California Environmental Quality Act of which the section in question is a part. It appears that the state act was patterned on the National Environmental Policy Act and the guidelines adopted for that act provide that "action" as used therein in place of "project" as used in the state act includes "projects . . . involving a federal lease, permit, license, certificate or other entitlement for use," and the phrase "they intend to carry out" following the word "project" in the state act must be construed to mean only that before an environmental impact report becomes required the government must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity.

(4) Statutes § 129 -- Construction and Interpretation -- Departure From Literal Meaning--To Give Effect to Legislative Intent. --Once a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.

(5) Statutes § 129 -- Construction and Interpretation -- Departure From Literal Meaning--To Give Effect to Legislative Intent. --The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the Legislature apparent by the statute, and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

(6) Statutes § 157--Construction and Interpretation--Interpretation of Words and Phrases--Meaning of Particular Words--"Project." --In analyzing the legislative use of the word "project" the objectives sought to be achieved by the statute in which the word is used as well as the evil to be prevented is of prime consideration. Where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.

(7) Administrative Law § 125--Judicial Review and Control--Exhaustion of Administrative Remedies. --A proceeding in administrative mandamus challenging a county planning commission's granting of a conditional use permit for the construction of condominiums could not be defeated on a theory that plaintiffs had not exhausted their administrative remedies, where, though neither of the named plaintiffs had appealed to the county board of supervisors as provided by ordinance, two members of the class represented by one of the plaintiffs had so appealed. Thus the board had had the opportunity to hear arguments of interested property owners and had had its opportunity to act and to render litigation unnecessary, had it chosen to do so.

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(8a) (8b) Zoning § 8--Appeal and Review. --Plaintiffs in an administrative mandamus proceeding in the superior court challenging a decision of a county board of supervisors giving final approval of a conditional use permit to construct condominiums complied with a provision of a county ordinance requiring that court review be sought within 30 days, where, though the superior court action was not filed until 35 days after the board's decision became final, plaintiffs had filed an identical petition in the Court of Appeal within the 30-day period, which petition was denied without prejudice to the filing of proceedings in the superior court, and where plaintiffs thereafter promptly re-filed in the superior court.

(9) Mandamus § 100--Trial and Judgment--Hearing and Determination. --A denial by the Supreme Court or an appellate court of an application for a writ of mandamus without opinion is not res judicata of the legal issues presented by the application unless the sole possible ground of the denial was that the court acted on the merits, or unless it affirmatively appears that such denial was intended to be on the merits.

(10) Zoning § 4 -- Variances and Nonconforming Uses -- Conditions -- Findings. --Where a county planning commission is required to file an environmental impact report as to a proposed private development in connection with its consideration of an application for a conditional use permit, no further written findings are required to comply with an ordinance providing that "use permits may be granted . . . only when it is found that . . ." The impact report requires a written statement of the supportive facts on which an agency has made its decision and it thus affords the same benefits that would be achieved by written findings pursuant to the ordinance.

(11) Zoning § 4--Variances and Nonconforming Uses--Conditions--Environmental Quality Act. --In view of the clearly expressed intent of the California Environmental Quality Act to preserve and enhance the quality of the environment, the courts will not countenance abuse of the term "significant effect," as used in the requirement that an environmental impact report be filed when a project may have such an effect, as a subterfuge to excuse the making of impact reports otherwise required by the act. From a commonsense standpoint, however, it appears that most private projects for which a government permit or similar entitlement is necessary such as construction, improvement, or operation of an individual dwelling or small business are minor in scope, having, in the absence of unusual circumstances, little or no effect on the public environment, and that they will, therefore, be subject to approval exactly as before passage of the act.

COUNSEL: John C. McCarthy and Young, Henrie & McCarthy for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, Louise H. Renne and Nicholas C. Yost, Deputy Attorneys General, Carlyle W. Hall, Jr., John R. Phillips, Frederic P. Sutherland, Beatrice Challiss Laws, J. Edd Steppe and Sandy English as Amici Curiae on behalf of Plaintiffs and Appellants.

N. Edward Denton, District Attorney, David M. Kennedy, Assistant District Attorney, Kronick, Moskovitz, Tiedemann & Girard, Adolph Moskovitz, Robert E. Murphy and Clifford W. Schulz for Defendants and Respondents.

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Gray, Cary, Ames & Frye, R. Reaves Elledge, Jr., and Browning E. Marean III for Real Party in Interest and Respondent.

JUDGES: In Bank. Opinion by Mosk, J., with Wright, C. J., McComb, Peters, Tobriner and Burke, JJ., concurring. Separate dissenting opinion by Sullivan, J.

OPINION BY: MOSK

OPINION

[*252] [**1051] [***763] This case affords us the first opportunity to construe provisions of the California Environmental Quality Act of 1970 (EQA). (*Pub. Resources Code, §§ 21000-21151.*)¹ As the express legislative intent forthrightly declares, the EQA was designed to be a milestone in the campaign for "maintenance of a quality environment for [**1052] [***764] the people of this state now and in the future" (*§ 21000, subd. (a).*) The specific question presented here is whether a municipal body is required to submit an environmental impact report (see *§ 21100*) pursuant to *section 21151* of the code before it issues a conditional use or building permit.

1 All code references are to the Public Resources Code unless otherwise indicated.

Real party in interest, International Recreation, Ltd. (International) filed an application for a conditional use permit on April 20, 1971, with defendant Mono County Planning Commission (Commission). The application described the proposed use as follows: "Two multi-story structures housing 64 1, 2, 3, 4 bedroom condominiums plus 120 studio-type condominiums, a proposed restaurant and specialty shops. All for sale. With ample parking and recreational facilities." The use permit report refers to a parcel of 5.5 acres, approximately 135 feet by 1,775 feet. It appears from the record that some six buildings are eventually contemplated each with a height of from six to eight stories. Thus a long and relatively narrow structure or series of structures in close proximity is proposed.

The Commission approved the use permit on May 6, 1971. Thereupon on May 21, Frederick Schaeffer and Richard Young, both members of the class represented by plaintiff Charles E. Griffin II, along with two other individuals, appealed the Commission's decision to defendant Mono County Board of Supervisors (Board). On June 14, 1971, the Board affirmed the issuance of the use permit.

[*253] On July 12 plaintiffs Friends of Mammoth² and Griffin filed a petition for a writ of administrative mandamus with the Court of Appeal attacking the validity of the permit. On July 15, the court denied the writ without prejudice to the filing of proceedings in the superior court. On July 19, plaintiffs filed an identical petition with the Mono County Superior Court. The writ was denied and plaintiffs appeal. We stayed the activities of International for which the conditional use permit and subsequent building permit were issued pending our disposition of the matter.

2 Friends of Mammoth is described as "an unincorporated association of hundreds of resident and nonresident owners of lots or mountain residences at Mammoth Lakes, Mono County, California."

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Mono County is situated in eastern California and is bordered on the east by the State of Nevada. The boundary on the west generally follows the crest of the Sierra Nevada mountain range. The county is primarily mountainous and open range land, almost all above 5,000 feet. It is California's third smallest county in population with 4,016 people. Although historically a county oriented to the economy of cattle and sheep ranching, nature's bountiful gifts of majestic mountains, lakes, streams, trees and wildlife have produced in the area one of the nation's most spectacularly beautiful and comparatively unspoiled treasures.

Mammoth Lakes, the section of Mono County immediately involved in this action, consists of some 2,100 acres of land surrounded by the Inyo National Forest. Plaintiffs assert that acute water and sewage problems will be created if International is permitted to construct its proposed condominium complex. Additional matters of concern include snow removal, police protection and the diminution of open space in general. Documents filed with defendant Commission prior to its decision indicate that the Commission may have considered in general the effect of the construction on the character and value of surrounding property, traffic, water and sewage facilities, snow removal, and fire and police protection.

The principal legal question that arises is whether the EQA applies to private activities for which a permit or other similar entitlement is required. This issue has been ventilated, not only by the named parties but also by the Attorney General and the Sierra Club as amici curiae. Defendants and International contend that even if their interpretation of the EQA [**1053] [***765] does not prevail, plaintiffs should be denied relief for other reasons. Plaintiffs likewise assert additional grounds for setting aside the use and building permits. In view of the impact inherent in the initial judicial consideration of the EQA, we turn first to that issue.

[*254] II

Though recognition of the problem in and out of government is more pervasive today, concern over violation of our environment is not entirely a contemporary phenomenon. Four decades ago Justice Holmes described a river as "more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it." (*New Jersey v. New York* (1931) 283 U.S. 336, 342 [75 L. Ed. 1104, 1106, 51 S. Ct. 478].) Five years ago Justice Douglas spoke for the high court in admonishing the Federal Power Commission that the issue is not "whether the project will be beneficial to the licensee The test is whether the project will be in the public interest . . . in preserving reaches of wild rivers and wilderness areas . . . and the protection of wildlife." (*Udall v. FPC* (1967) 387 U.S. 428, 450 [18 L. Ed. 2d 869, 883, 87 S. Ct. 1712].) More recently, a circuit court discussed statutes attesting "to the commitment of the Government to control, at long last, the destructive engine of material 'progress.'" The duty of the judiciary, it held, is to assure that important environment purposes, heralded in legislative halls, are not lost or misdirected in the vast hallways of administrative bureaucracy. (*Calvert Cliffs' Coord. Com. v. United States A. E. Com'n* (1971) 449 F.2d 1109, 1111 [146 App. D.C. 33].) The public interest involved in a challenge to administrative action need not be economic. (*Environmental Defense Fund, Incorporated v. Hardin* (1970) 428 F.2d 1093, 1097 [138 App. D.C. 391].)

The most recent declaration on the ecology ethic was the Supreme Court decision in *Sierra Club v. Morton* (1972) 405 U.S. 727 [31 L. Ed. 2d 636, 92 S. Ct. 1361]. Though decided on an issue of standing to maintain the action, majority and dissenting opinions agreed on environmental protection principles. Justice Stewart wrote for the majority: "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact

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that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." (405 U.S. at p. 734 [31 L. Ed. 2d at p. 643, 92 S. Ct. at p. 1366].) In dissenting Justice Blackmun decried rigidity of the law that prevented reaching issues involving "significant aspects of a wide, growing, and disturbing problem, that is, the Nation's and the world's deteriorating environment with its resulting ecological disturbances." (405 U.S. at p. 755 [31 L. Ed. 2d at p. 654, 92 S. Ct. at p. 1376].)

California's Environmental Quality Act of 1970 requires various state and local governmental entities to submit environmental impact reports before undertaking specified activity. These reports compel state and local agencies to consider the possible adverse consequences to the environment [*255] of the proposed activity and to record such impact in writing. In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act cannot be understated. As *section 21001, subdivision (g)*, clearly sets forth, the EQA requires "governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs and to consider alternatives to proposed actions affecting the environment."

Pursuant to *section 21100*, the environmental impact reports required by the act must set forth the following information:

"(a) The environmental impact of the proposed action.

[**1054] " [***766] (b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

"(c) Mitigation measures proposed to minimize the impact.

"(d) Alternatives to the proposed action.

"(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

"(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented."

Under *section 21100*, the reports are required of "state agencies, boards and commissions"; *section 21101* requires similar information with regard to federal projects "on which the state officially comments"; *section 21102* requires an impact report before a state agency requests certain funds; *section 21105* provides that a state official must include a report as part of "the regular project report used in the existing review and budgetary process." Finally *sections 21150* and *21151* require local governmental entities to submit environmental impact reports prior to receiving certain state or federal funds or engaging in various activities.

Section 21151, the specific provision involved in the case at hand, states: "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code*."

[*256] (1a) Mono County does not yet have a conservation element of a general plan. Thus, the first sentence of *section 21151* does not apply. Only if the second provision covers the issuance of a permit does the mandate of the act govern here. This determination necessarily turns on whether the term "project" as used in *section 21151* includes private activity for which a government permit is necessary.

We begin our inquiry by noting that nowhere in the act is "project" defined. (Compare The Ventura-Los Angeles Mountain and Coastal Study Commission Act, *Pub. Resources Code*, § 22000 *et seq.*, enacted at the same time as the Environmental Quality Act, ch. 2 of which sets forth definitions of terms used therein.) (2) Because of the failure of the Legislature to expressly delineate the meaning of "project," we must rely on a cardinal principle of statutory construction: that absent "a single meaning of the statute apparent on its face, we are required to give it an interpretation based upon the legislative intent with which it was passed." (*Benor v. Board of Medical Examiners* (1970) 8 Cal. App. 3d 542, 546-547 [87 Cal. Rptr. 415] (hg. den.).)

(1b) In this instance our task has been considerably simplified because the Legislature has expressly set forth its intent in *sections 21000* and *21001* of the act. These two provisions, captioned "Legislative intent" and "Additional legislative intent," contain no less than 14 references to the concern of the Legislature with the current deterioration of the environment. (See §§ 21000, *subds. (a)-(g)*; 21001, *subds. (a)-(g)*.) An analytical reading of these sections leads to the ineluctable conclusion that the Legislature intended to include within the panoply of the act's provisions private activities for which a permit, lease or other entitlement is necessary.

The clearest manifestation of this intent can be found in *section 21000, subdivision (g)*, which provides: "It is the intent of the Legislature that all agencies of the state government which *regulate* activities of private individuals, corporations, and public agencies which are found to affect the quality [**1055] [***767] of the environment, shall *regulate* such activities so that major consideration is given to preventing environmental damage." (Italics added.) It is significant that *regulate* is the verb employed in this subdivision. (See also § 21107.) Its use demonstrates that the concern of the Legislature was not limited solely to activities which the government performs in a proprietary capacity. Instead the Legislature apparently desired to ensure that governmental entities in their *regulatory* function would determine that private individuals were not forsaking ecological cognizance in pursuit of economic advantage. One of the most common means by which a government [*257] agency regulates private activity is through the granting or denial of a permit.

The Legislature also evidenced strong concern for the promulgation of standards by which environmental needs could be regularly included in the decision-making process. (See § 21001, *subds. (f)* and *(g)*.) Because of the regular involvement of public entities in the issuance of permits it would appear that requiring "governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality" (§ 21001, *subd. (f)*) necessarily includes not only situations in which the government itself engages in construction, acquisition or other development, but also those instances in which the state regulates private activity.

Other provisions in the EQA likewise support the conclusion that the Legislature intended to include the permit-issuing process as a governmental activity for which an environmental impact report is required. For example, *section 21000, subdivision (e)*, states: "*Every citizen* has a responsibility to contribute to the preservation and enhancement of the environment." (Italics added.) Such responsibility may never be exercised if the EQA is to apply only to activities in which the government is directly engaged. "Every citizen" is an unmistakable reference to private individuals as dis-

tinguished from government officials. Subdivision (f) of the same section provides: "The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by *public and private interests* to enhance environmental quality and to control environmental pollution." (Italics added.) Finally, *section 21001, subdivision (d)*, provides: "Ensure that the long-term protection of the environment shall be the guiding criterion in *public decisions*." (Italics added.) The reference in *section 21000, subdivision (f)*, to "private interests" coupled with the "public decisions" phrase of *section 21001, subdivision (d)*, contemplates as within the act the decision of a public agency to grant or deny private interests the opportunity to engage in enumerated activities.

In view of what appears to be a clear legislative mandate that the EQA be given a broad construction and that it apply to private actions for which a permit is necessary, we note parenthetically that the principal author of the EQA, Assemblyman John T. Knox, is on record as supporting such an interpretation. The legislator, in a sworn declaration, states that in authoring the bill and guiding it through the Legislature it "was my intent that the requirement of an environmental impact report extend to the situation where a state or local public agency by lease, permit, funding or comparable entitlement for use was authorizing or facilitating a private undertaking as long as there was a significant impact upon the environment. [*258] This includes situations such as zoning changes, conditional use permits and building permits. I communicated this intent to other legislators in the course of the legislative process" (Declaration by John T. Knox, Feb. 1972, plaintiffs' opening brief, appendix C.)

Defendants and International seek to rebut the significance of the Knox declaration by offering a declaration of Assemblyman Carley V. Porter in which he opines that the act does not apply to private activities for which a permit was necessary. (Declaration of Carley V. Porter, Apr. 11, 1972, appendix to defendants' answer to briefs of amici curiae; also see Interim [**1056] [***768] Guidelines for the Preparation and Evaluation of Environmental Impact Statements Under the California Environmental Quality Act of 1970, Office of the Secretary for Resources (draft of Apr. 28, 1972).)

That two legislators report contradictory legislative intent fortifies judicial reticence to rely on statements made by individual members of the Legislature as an expression of the intent of the entire body. (See *Ballard v. Anderson* (1971) 4 Cal.3d 873, 881 [95 Cal. Rptr. 1, 484 P.2d 1345]; *Rich v. State Board of Optometry* (1965) 235 Cal. App. 2d 591, 603 [45 Cal. Rptr. 512] (hg. den.)). Other extrinsic aids to determine legislative intent are generally more persuasive.

Defendants and International also submit a statement by a former consultant to the Assembly Select Committee on Environmental Quality. The consultant, Robert L. Jones, conceded that it was only his "impression" that the EQA was limited to activities undertaken directly by governmental bodies. (Testimony of Robert L. Jones before Senate Committee on Natural Resources and Wildlife, on the Administration of the Environmental Quality Act of 1970 and Related Acts, Dec. 16, 1970, at pp. 3-5.) More significant, perhaps, is the preface to his remarks in which he defers for an authoritative interpretation of the act to "the Legislative [Counsel] or the Attorney General." (*Id.* at p. 2.) To compound the conflict of extrajudicial opinions, the Attorney General has taken the position that the act does apply to private activity (Attorney General of the State of California, In re Proposed Guidelines for the Preparation and Evaluation of Environmental Impact Statements under the California Environmental Quality [*259] Act of 1970, at p. 9; amicus curiae brief of the State of California filed herein, at pp. 15-26) whereas the Legislative Counsel has concluded that it does

not (letter from George H. Murphy, Legislative Counsel, to Hon. Carley V. Porter, Nov. 23, 1971, appendix to defendants' answer to briefs of amici curiae, ex. 3). We observe, however, that the cursory three-page letter of the Legislative Counsel was not designed to be an in-depth analysis of the type included in the Attorney General's petition and brief which together number some 60 pages.

3 In a subsequent letter Jones first indicated that it was his view that the EQA "probably" did not apply to private activities. He further stated, however, "In the policy section of AB 2045 [the act's bill number], there are however, two sections that certainly indicate legislative policy on application of environmental impact studies on private land. The first is *Section 21000(g)* and the second is *Section 21107*. Considering these two sections together, I believe it can be inferred that all state agencies, boards and commissions who regulate private activities are responsible for insuring environmental protection when these activities are carried out." (Letter from Robert L. Jones to Hon. Peter F. Schabarum and Carley V. Porter, Nov. 15, 1971.)

In resolving the conflict on intent, as we must, we conclude that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. We also conclude that to achieve that maximum protection the Legislature necessarily intended to include within the operation of the act, private activities for which a government permit or other entitlement for use is necessary.

III

(3a) Defendants and International contend that notwithstanding the broad language of the act, the Legislature did not effectuate this avowed intent in *section 21151*. They point to the use of the word "project" and the clause that follows it -- "they [i.e., local governmental agencies] intend to carry out." Defendants and International maintain that in this context "project" is coterminous with "public works."

As noted previously, the EQA does not attempt to define "project." Because the legislative intent provisions dictate that we give a broad interpretation to the act's [**1057] [***769] operative language, we begin from that vantage point. (4) Once a particular legislative intent has been ascertained, it must be given effect "even though it may not be consistent with the strict letter of the statute." (*Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 802 [151 P.2d 505, 157 A.L.R. 324].) (5) As we stated nearly a half century ago in *In re Haines* (1925) 195 Cal. 605, 613 [234 P. 883]: "The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."

(3b) Our task then is to determine whether the word "project" is "sufficiently flexible" so as to effectuate the broad legislative intent that private activities should be brought within the ambit of the act. We may not, of course, give an unreasonable construction to the statute. (See *Cedars [*260] of Lebanon Hosp. v. County of L. A.* (1950) 35 Cal.2d 729, 735 [221 P.2d 31]; *Dept. of Motor Vehicles v. Ind. Acc. Com.* (1948) 83 Cal. App. 2d 671, 677 [189 P.2d 730].)

In interpreting "project" our task has been made difficult both by the dictionary definition of the word and the use of "project" and similar terms in the act itself. Webster defines project as a "plan

or design . . . scheme . . . proposal" (Webster's New Internat. Dict. (3d ed. 1961) p. 1813.) Such synonyms provide little interpretative aid. Furthermore the act itself refers to "projects" in some instances (see, e.g., §§ 21100, 21150, 21151) and to "actions" and "proposals" in other instances (see, e.g., § 21100, *subds.* (a), (b), (d), (f)), devising no neat categories in which to place the several similar terms.

(6) With this in mind, we resort to the rule declared in *People ex rel. S. F. Bay etc. Com. v. Town of Emeryville* (1968) 69 Cal.2d 533, 543-544 [72 Cal. Rptr. 790, 446 P.2d 790]: A principle "which must be applied in analyzing the legislative usage of the word 'project,' is that 'the objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in [the word's] interpretation, and where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.'" (3c) Since neither the dictionary definition nor the EQA itself provides us with a tool to use in interpreting "project" we turn to the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*) for guidance.

The National Environmental Policy Act (NEPA) was signed into law January 1, 1970. Interim guidelines written by the President's Council on Environmental Quality were promulgated on April 30, 1970. (35 Fed. Reg. 7390.) (They were superseded by the final federal guidelines on April 23, 1971 (36 Fed. Reg. 7724).) The EQA was passed by the Legislature on August 21, 1970 (Assembly Final Calendar (1970 Reg. Sess.) at p. 637), and was signed by the Governor on September 18, 1970 (*id.*). Not only does the timing and the titles of the two acts tend to indicate that the EQA was patterned on the federal act, the key provision of the two acts, the environmental impact report, is the same. (Compare 42 U.S.C. § 4332, *subd.* (2)(C) with *Pub. Resources Code*, § 21100; see also *Pub. Resources Code*, §§ 21101, 21102, 21105, 21150, 21151.) Indeed, much of the phraseology of the EQA is either adopted verbatim from or is clearly patterned upon the federal act. ⁴ As one commentator has observed, [*261] [**1058] [***770] the EQA is "much like the Federal NEPA." (Powell, *The Courts as Protectors of the Environment* (1972) 47 L.A. Bar Bull. 215, 218.)

4 Compare *Pub. Resources Code*, § 21100, *subd.* (a), and 42 U.S.C. § 4332 (2)(C)(i); *Pub. Resources Code*, § 21100, *subd.* (b), and 42 U.S.C. § 4332 (2)(C)(ii); *Pub. Resources Code*, § 21100, *subd.* (d), and 42 U.S.C. § 4332(2)(C) (iii); *Pub. Resources Code*, § 21100, *subd.* (e), and 42 U.S.C. § 4332(2)(C)(iv); *Pub. Resources Code*, § 21100, *subd.* (f), and 42 U.S.C. § 4332(2)(C)(v); *Pub. Resources Code*, § 21000, *subd.* (e), and 42 U.S.C. § 4331(c); *Pub. Resources Code*, § 21001, *subd.* (e), and 42 U.S.C. § 4321; *Pub. Resources Code*, § 21001, *subds.* (f) and (g), and 42 U.S.C. § 4332(2)(B) and (2)(D); *Pub. Resources Code*, §§ 21104 and 21105 and 42 U.S.C. § 4332(2)(C); *Pub. Resources Code*, § 21107 and 42 U.S.C. § 4333.

Accordingly, in construing "project" in the EQA, the definition of that word in the federal act and regulations becomes relevant. It is significant to note, in this regard, the Court of Appeals for the District of Columbia has emphasized that in construing the federal act the judicial role is active and that the NEPA must be interpreted broadly. (See *Calvert Cliffs' Coord. Com. v. United States A. E. Com'n*, *supra*, 449 F.2d 1109, 1111.) This is consonant with the mandate of the California Legislature that the EQA be given a liberal construction.

Section 102 of the NEPA, the act's principal substantive provision, uses the word "action" as opposed to "project." (42 U.S.C. § 4332, *subd.* (2)(C).) The Council on Environmental Quality first

defined "action" in the interim guidelines it issued some four months prior to the enactment of the EQA. In view of the similarity between the federal and state acts, the Legislature obviously was aware of the federal definitions when the EQA was passed. (Cf. § 98, Assem. Bill 681, a bill which would add § 21109 to the Pub. Resources Code, introduced Mar. 2, 1972.) Accordingly, the definitions promulgated by the Council on Environmental Quality are helpful to an understanding of the subsequent California use of the word "project." The interim guidelines, ultimately adopted without significant change insofar as relevant here in the final guidelines, provide the following:

"5. *Actions included.* . . .

"(a) 'Actions' include but not limited to:

"(i) Recommendations or reports relating to legislation and appropriations;

"(ii) Projects and continuing activities;

"-- Directly undertaken by Federal agencies;

"-- Supported in whole or in part through Federal contracts, grants, subsidies, loans or other forms of funding assistance;

[*262] "-- Involving a Federal lease, permit, license, certificate or other entitlement for use;

"(iii) Policy -- and procedure-making." (35 Fed. Reg. 7390, 7391; see also 36 Fed. Reg. 7724, 7725.)

Arguably "actions" is broader than "projects," even though the EQA tends to use the two words interchangeably in *section 21100*.⁵ However, it is crucial that "actions," under the federal guidelines, is divided into three categories, one of which is "projects." It is under "projects" as a subclass of "actions" that "lease, permit, license, certificate, or other entitlement for use" is included.⁶

5 *Section 21100* requires that the following shall be included "in any report on any *project* they propose to carry out . . . : (a) The environmental impact of the proposed *action*. . . . [para.] (d) Alternatives to the proposed *action*. . . . [para.] (f) Any irreversible environmental changes which would be involved in the proposed *action* should it be implemented." (Italics added.) (See also § 21001, *subd. (g)*.)

6 We note that the second category is actually titled "projects and continuing activities." The former would appear to apply to activities the duration of which is relatively settled, whereas the latter appears to cover those activities which might continue for some unknown period of time. The differences between the two subcategories do not involve any distinction between public and private activities.

[**1059] [***771] In view of the relationship between the two acts and the fact that both are subject to a broad judicial interpretation, it is manifest that the word "project" as used in *section 21151* and other provisions of the EQA includes the issuance of permits, leases and other entitlements. Accordingly, we hold that in the case at bar defendants were required to consider whether the proposed condominium construction "may have a significant effect on the environment" (§ 21151; see fn. 9, *infra*) and, if so, to prepare an environmental impact report *prior to* the decision to grant the conditional use and building permits. (Cf. *Greene County Planning Board v. Federal Power Com'n* (2d Cir. 1972) 455 F.2d 412, 418-421.)

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Defendants and International contend that since "project" is followed by the phrase "they intend to carry out," *section 21151* can only be interpreted as referring to a public works type project "to be carried out," i.e., constructed, acquired or developed, by the government. However, having interpreted the word "project" broadly to include private activity for which a permit is necessary, certainly the granting or denying of a permit is an act which a governmental authority "carries out." Accordingly, we construe the phrase following "project" to mean only that before an environmental impact report becomes required the government must [*263] have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity. ⁷

7 -

Regulation of private activity by a public agency can be more vividly seen as a project which the agency intends to "carry out" in those instances in which the agency maintains regulatory control over the project throughout its lifetime. (Cf. *Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal.3d 945, 948 [95 Cal. Rptr. 17, 484 P.2d 1361].)

Moreover, to limit the operation of the EQA solely to what are essentially public works projects would frustrate the effectiveness of the act. It is undisputed that the Legislature intended that environmental considerations play a significant role in governmental decision-making (see §§ 21000, 21001) and that such an intent was not to be effectuated by vague or illusory assurances by state and local entities that the effect of a project on the environment had been "taken into consideration." * To read "project they intend [**1060] [***772] to carry out" -- the cornerstone of many of the act's provisions -- as limited to public works projects would render meaningless much of the legislative intent sections that contemplate regulation of private activity, for none of the act's other substantive provisions more clearly relate to private actions. And to exclude all private activity from being covered by the act would be inconsistent with the broad legislative intent appearing therein. More specifically, if private activities for which a permit [*264] is required were exempted from the operation of the act, projects with admittedly deleterious ecological consequences would be covered only if construction, acquisition or other development were undertaken by the governmental authority but not if the same authority allowed private enterprise to engage in the identical activity. The incongruity of such interpretation would be most vivid in the less populous counties, such as Mono, which because of limited economic capabilities might never engage in massive public works projects significantly affecting the environment, but could achieve the same result by permitting, licensing, or partially funding private activities.

8 The fact that defendants in the instant action allegedly considered the effect of the proposed construction on the character and value of surrounding property, traffic, water and sewage facilities, fire and police protection, snow removal and the ecology in general, does not, in any sense of the term, "substantially comply" with the environmental impact report requirements. Whether on different facts the requirements of this act can be satisfied by substantial rather than literal compliance is a question we do not here reach.

The impact report must be specially prepared in written form before the governmental entity makes its decision. This will give members of the public and other concerned parties an opportunity to provide input both in the making of the report and in the ultimate governmental decision based, in part, on that report.

The report, of course, must satisfy the elements set forth in *section 21100*. For example, subdivision (b) requires that "[any] adverse environmental effects which cannot be avoided if the proposal is implemented" be included in the report. There is no requirement that these adverse effects be considered "significant" before they are to be listed. Subdivisions (c) and (d) require that mitigation measures and alternatives to the proposed action be considered. Obviously if the adverse consequences to the environment can be mitigated, or if feasible alternatives are available, the proposed activity, such as the issuance of a permit, should not be approved. In making these determinations concrete concepts, not mere aphorisms or generalities, must be considered. Finally, subdivision (f) requires the entity to include in the report "[any] irreversible environmental changes which would be involved in the proposed action should it be implemented." As in subdivision (b), there is no requirement that these changes be assessed as "significant" before they are to be included in the report.

The report, therefore, is to contain substantially greater analysis of the effect of the proposed activity on the environment and the possible mitigation devices and alternatives than can be achieved simply through testimony followed by a naked conclusion that the environment will not be harmed by the project.

To further demonstrate the paradoxical position advanced by defendants and International, generally the sparsely populated counties in which massive public works projects are less likely because of the financial burden are the counties with significant natural resources and wildlife most in need of protection. While the act applies to large and small counties, and to urban and rural areas alike, certainly the protection afforded by the EQA would be substantially diminished in an area where it may be most needed if the act were to be interpreted to cover only public works projects.

Defendants, nevertheless, assert that the legislative history of the EQA indicates that the word "project" does not apply to the issuance of a permit. They cite the original language of AB 2045, as introduced in the Assembly on April 21, 1970. At that time, *section 21151* would have applied to "[all] local governmental agencies . . . for any *program* carried out by them." (Italics added.) An amendment on May 26 made the bill more specific, setting up three classifications of local governmental entities: (1) the legislative body of all cities and counties with a conservation element of a general plan; (2) local governmental units without a conservation element; and (3) all other local governmental agencies. The language "for any program carried out by them" was retained for all three categories except for minor grammatical changes.

A subsequent amendment introduced in the Senate on August 4, 1970, distinguished between the three categories by making the act operative for group one entities for "any *project* or *change in zoning* they intend to carry out"; and for group two entities for "any *project* they intend to carry out"; yet retaining for group three the "any *program* they intend to carry out" wording. (Italics added.) On August 14, the proposed *section 21151* was amended once again, this time eliminating altogether the second category; separating the "project" and "change in zoning" provisions of the first category into two sentences instead of one; and changing "program" in the third category to "project." The final amendment, on August [*265] 20, deleted the sentence pertaining to "change in zoning" and retained the "project" requirement for the categories designated above as groups one and three. The second category was not reinstated. It was with this language that the bill became law.

It is possible that these intricate semantic changes enroute to final enactment were not without significance. Defendants insist that the amending process has been a narrowing one. We do not

agree. Leaving [**1061] [***773] aside the several intermediate alterations, we note in essence the change was from "program" to "project." It may be fairly said that the former entails more general planning, and policy and procedure-making, similar to that described in the NEPA guidelines. (See 35 Fed. Reg. 7390, 7391, 5(a)(iii); see also 36 Fed. Reg. 7724, 5(a)(iii), both *supra*.) Conversely, "project" appears to emphasize activities culminating in physical changes to the environment, changes which were of paramount interest to the Legislature. (Cf. § 21102.) It appears that the Legislature in its amendments to Assembly Bill 2045 was influenced by the issuance of the interim federal guidelines published subsequent to the introduction of Assembly Bill 2045 but prior to its final passage. Those guidelines used the word "project" rather than "program." Thus the Legislature appears to have intended, in order to prevent confusion, to use the same broad terminology in effect under federal law rather than to adopt an entirely different set of phrases of its own.

International next insists that *section 21151* does not apply to private activity because of its clause that requires local agencies to submit an environmental impact report "to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code*." *Section 65402* provides that counties, cities and local agencies shall submit a report to planning agencies pursuant to proposed acquisition of real property or construction of public buildings and structures so that a determination can be made as to whether the proposal is consistent with their respective general plans. (See *Gov. Code*, § 65100 *et seq.*, especially §§ 65350-65402.) It is contended that since the Government Code provision applies only to development or acquisition by municipal entities, it would be illogical to require an impact report on private activities to be filed in conjunction with some mythical report on a public works project. Accordingly, they argue, *section 21151* must apply only to the type of public works projects contemplated by *Government Code section 65402* and not to private activity for which a permit is necessary.

The reading proposed by International elevates what appears to be simply a directory measure to far greater significance than is warranted. We have reviewed the broad legislative intent of the EQA and the close [*266] relationship between that act and the federal NEPA. Both compel the conclusion that private activities involving the issuance of a permit are within the scope of the EQA. The use of these reports by the planning agencies mentioned in *Government Code section 65402* is secondary to the principal purpose of *section 21151*, which is to compel local governments to study and record the environmental implications of proposed activities before they are acted upon. This broad purpose cannot be frustrated by procedural details surrounding filing of the reports.

The NEPA provides that copies of all impact statements prepared by the various federal agencies are to be made available to the Council on Environmental Quality, among others, and must "accompany the proposal through the existing agency review processes." (42 U.S.C. § 4332 (2)(C).) The EQA similarly directs the Office of Planning and Research to "coordinate the development of objectives, criteria, and procedures to assure the orderly preparation and evaluation of environmental impact reports . . ." (§ 21103.) The act also requires consultation with the various governmental entities (§§ 21103, 21104) and directs the impact reports be included "as a part of the regular project report used in the existing review and budgetary process" (§ 21105).

On the basis of similar directory provisions in the EQA and NEPA, the command in *section 21151* that environmental impact reports be submitted with the reports required by *section 65402 of the Government Code* is not meant to limit the breadth of the section. Instead, it is an attempt to integrate such impact reports into any existing [**1062] [***774] reporting procedure in order to avoid unnecessary duplication, confusion and cost. Accordingly, projects for which a *Government*

Code section 65402 report must be filed must also contain an environmental impact report. Those projects, such as that involved here, for which no *section 65402* report is necessary, must nonetheless be preceded by an environmental impact report pursuant to *section 21151*.

9 -

"Statutes," wrote Justice Frankfurter in *United States v. Shirey* (1959) 395 U.S. 255, 260 [3 L. Ed. 2d 789, 793, 79 S. Ct. 746], "are not inert exercises in literary composition. They are instruments of government, and in construing them 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' [Citation.] This is so because the purpose of an enactment is embedded in its words even though it is not always pedantically expressed in words." Judge Learned Hand described interpretation of statutes as "the art of proliferating a purpose." (*Brooklyn Nat. Corp. v. Commissioner of Int. Rev.* (2d Cir. 1946) 157 F.2d 450, 451.)

We cannot, as respondents would have us do, indulge in an inert exercise, leaning heavily on isolated words and phrases and remaining oblivious to the express legislative intent to protect society against environmental blight. Nor are we impressed with the significance of legislative proposals introduced in March of 1972, long after this permit was issued and the lawsuit instituted, since here the post facto legislative amendments not only express the interpretation of "project" which we have declared, but *expand* the act to apply beyond "projects" to "major actions."

[*267] V

Aside from the question of the proper construction of the Environmental Quality Act the parties make several other contentions to which we now turn.

Defendants and International first assert that plaintiffs did not properly exhaust their administrative remedies prior to seeking judicial relief. Section 1209 of the Mono County Zoning Ordinance provides: "B. Any interested person . . . not satisfied with the decision of the Commission on any use permit . . . may, within fifteen (15) days . . . , appeal in writing to the Board [of Supervisors]." Neither plaintiff Friends of Mammoth nor plaintiff Griffin filed an appeal pursuant to section 1209. An appeal was filed by individuals Frederick Schaeffer, Richard Young, Donald J. LaCasse and Robert H. Meyer, all property owners in the Mammoth Lakes area.

(7) Plaintiffs allege that Messrs. Schaeffer and Young are members of the class represented by plaintiff Griffin in this class action. Defendants and International do not controvert this allegation. Instead they argue that Friends of Mammoth and Griffin, and not members of the representative class, must personally exhaust their administrative remedies. Otherwise, they contend, a plaintiff could avoid the exhaustion doctrine simply by including within the class one individual who had pursued his administrative remedies but did not bring judicial action as a named plaintiff.

This assertion proves too much. First of all, the fact that an individual pursued administrative remedies would not, as a matter of course, entitle him to be included in a subsequent class action. Exhaustion of administrative remedies does not necessarily provide the "well defined community of interest in the questions of law and fact involved affecting the parties to be represented" required in class actions. (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [63 Cal. Rptr. 724, 433 P.2d 732]; see also 3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 181, at pp. 1853-1854.) However, in most instances those individuals who have a sufficient interest in the subject matter to seek ad-

ministrative review will possess the community of interest with others to justify inclusion in the group represented in a subsequent class action. But this conclusion defeats the very argument defendants advance: that the Board is entitled to learn the contentions of interested parties before litigation is instituted. If those unnamed plaintiffs in the class suit [**1063] [***775] have previously sought administrative relief they will have expressed the position of the representative plaintiff in the class suit, and the Board will have had its opportunity to act and to render litigation unnecessary, if it had chosen to do so.

[*268] Messrs. Schaeffer and Young apparently desire to be represented by plaintiff Griffin. They have not sought to be excluded from the class. (Cf. *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821 [94 Cal. Rptr. 796, 484 P.2d 964].) Since two plaintiffs, albeit unnamed plaintiffs, have previously appeared before the Board, the policies of the exhaustion doctrine have been fulfilled. Under these circumstances, the doctrine cannot be employed to bar a suit by a class not organized at the time of the administrative appeal. Defendant Board has had the opportunity to hear arguments of interested property owners Schaeffer and Young, along with two others who also appealed. Now several interested property owners, including Schaeffer and Young, represented here by named plaintiff Griffin, seek a judicial determination of the legality of that decision. Nothing more could effectuate the policy of the exhaustion doctrine. To require plaintiff Griffin to have personally appeared, in addition to the others, or to require Schaeffer and Young to be named plaintiffs (cf. *La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872 [97 Cal. Rptr. 849, 489 P.2d 1113]) would serve no additional useful purpose.

(8a) Defendants and International next insist that plaintiffs failed to seek timely relief from the decision of defendant Board giving final approval of the permit. Section 1213 of the zoning ordinance provides that decisions of the Board "shall be final for all purposes unless a court review thereof is sought within thirty (30) days after such decisions become final." Defendant Board upheld the decision of defendant Commission on June 14, 1971. On July 12, within the 30-day period, plaintiffs sought a writ of administrative mandamus in the Court of Appeal, Third District. On July 15, the Court of Appeal denied the writ but "without prejudice to the filing of proceedings in the Superior Court." On July 19, 35 days after the decision by the Board, plaintiffs filed an identical petition for a writ of administrative mandamus in superior court. Defendants and International assert that because the period between June 14 and July 19 is greater than the 30-day allotment provided by ordinance, plaintiffs cannot seek judicial review. We reject this contention.

It must be noted at the onset that judicial relief was "sought" (in the words of the ordinance) in the Court of Appeal within 30 days of the Board's decision. Relief was denied there but it was denied "without prejudice." (9) This term usually indicates that no decision on the merits has been made: "The rule is well settled that a denial by this or the appellate court of an application for a writ without opinion 'is not res judicata of the legal issues presented by the application unless the *sole possible* ground of the denial was that the court acted on the merits, or unless it affirmatively appears that such denial was intended to be on the merits.'" [*269] (*Hagan v. Superior Court* (1962) 57 Cal.2d 767, 770 [22 Cal. Rptr. 206, 371 P.2d 982]; see *Imperial Land Co. v. Imperial Irrigation Dist.* (1913) 166 Cal. 491, 492 [137 P. 234].)

(8b) Defendants and International contend that denying the writ without prejudice does not toll or extend the statute of limitations of 30 days. *Article VI, section 10, of the state Constitution* gives original jurisdiction to the Supreme Court, Courts of Appeal, superior courts, and their judges in "proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." Rule

56(a) provides: "If the petition might lawfully have been made to a lower court in the first instance, it shall set forth the circumstances which, in the opinion of the petitioner, render it proper that the writ should issue originally from the reviewing court . . ." In his comments to the rule, Witkin states: "In form this is a rule of *pleading*; in effect, [**1064] [***776] however, it expresses the policy of the Supreme Court and courts of appeal to refuse to exercise their original jurisdiction in the first instance, unless the circumstances are exceptional." (5 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, § 114, at p. 3889; see also *Cohen v. Superior Court* (1968) 267 Cal. App. 2d 268, 270 [72 Cal. Rptr. 814].)

The foregoing policy seeks to encourage the filing of petitions for extraordinary writs in the superior court. It does not follow, however, when such policy is effectuated by an appellate court order denying relief without prejudice that petitioners should be denied a hearing on the merits by a myopic reading of the abbreviated statute of limitations. An equally strong public interest was formulated by the court in *Morgan v. Somervell* (1940) 40 Cal. App. 2d 398, 400 [104 P.2d 866]: "It is in furtherance of a policy frequently exemplified in legislative acts to enable a party who, like the plaintiffs in the present proceeding, has seasonably filed a cause of action, to try it upon its merits, notwithstanding defects in the form or substance of pleadings, error in the remedy sought, or *mis-take in the tribunal invoked*." *Morgan* involved the *transfer* of a cause of action pursuant to *Code of Civil Procedure* section 396. Thus it is factually distinguishable from the case at bar. The policy explicated in *Morgan*, however, applies here. Defendants and International, having been put on notice of the litigation, were not prejudiced in any manner by the Court of Appeal's denial of the petition and the subsequent prompt refiling in superior court.

We conclude that plaintiffs complied with the statute of limitations by filing a petition for writ of mandamus in the Court of Appeal within the statute of limitations contained in the Mono County Zoning Ordinance and upon denial without prejudice by refiling promptly in the superior court.

[*270] We now turn to two final contentions raised by plaintiffs. Plaintiffs insist that the granting of the permit must be set aside on the following grounds in addition to defendants' failure to comply with the EQA: (1) defendants have not made written findings as required by local ordinance; (2) the evidence did not support the granting of the permits and they must be set aside as a matter of law.

(10) Section 1201 of the Mono County Zoning Ordinance provides, in pertinent part: "Use Permits. Use permits may be granted by the Planning Commission only when it is *found* that. . ." (Italics added.) The question involved here, then, is whether the use of the word "found" requires specific written findings. In *Schumm v. Board of Supervisors* (1956) 140 Cal. App. 2d 874, 878 [295 P.2d 934], the court was required to interpret an ordinance which provided: "'In recommending the approval of any use permit the Planning Commission shall find . . .'" The court held that written findings were not required. (140 Cal. App. 2d at pp. 880-881.) However, in *Broadway, Laguna etc. Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 767 [59 Cal. Rptr. 146, 427 P.2d 810], we said that an ordinance which required the zoning administrator to specify "in his findings the facts which establish . . ." (66 Cal.2d at p. 771, fn. 3) necessitated written findings and that the normal presumption of necessary findings "does not apply to agencies which must expressly state their findings and must set forth the relevant supportive facts." (66 Cal.2d at p. 773; cf. *Siller v. Board of Supervisors* (1962) 58 Cal.2d 479, 484 [25 Cal. Rptr. 73, 375 P.2d 41].)

The proper interpretation of ordinances using the word "findings" or "found" naturally depends on the intent of the body adopting those ordinances. In light of the statewide concern expressed by

the Legislature for written findings in the field of ecology, as evidenced by the EQA's impact *report*, the proper construction of the words "findings" or "found" requires a [**1065] [***777] written statement of the supportive facts on which the agency has made its decision. Since this report involves the assessment of a myriad of elements (see § 21100) it obviously includes all those facts which would be contained in written findings if such findings were required by the ordinance. Accordingly, the written report affords plaintiffs the same benefits that would be achieved by written findings pursuant to the ordinance, and we therefore hold in this case no additional written findings in the orthodox sense are required.

[*271] Plaintiffs finally contend that there was insubstantial evidence to support the issuance of the permits and that they must be set aside as a matter of law. In view of our conclusion that the EQA applies to private activity, and the fact that such a holding will necessitate further proceedings by the defendants, we find it unnecessary to analyze the weight of the evidence.

VI

We emphasize that by the terms of the act an environmental impact report is required only for a project "which may have a significant effect on the environment" (§ 21151; see also §§ 21100, 21101, 21102, 21150). In the case at bar the issue whether the proposed project of International might have such an effect was not resolved by either the defendants or the superior court, presumably because it was believed the project was not covered by the act in any event. It would be inappropriate for this court to determine the issue in the first instance, and we therefore leave the matter to the defendants' future proceedings.

We recognize that the reach of the statutory phrase, "significant effect on the environment," is not immediately clear. To some extent this is inevitable in a statute which deals, as the EQA must, with questions of degree. Further legislative or administrative guidance may be forthcoming on this point among others. But the courts, for their part, are limited to discharging their constitutional function of deciding the cases that are brought before them. As with other questions of statutory interpretation, the "significant effect" language of the act will thus be fleshed out by the normal process of case-by-case adjudication.

(11) Two general observations, nevertheless, may be made at this time. On the one hand, in view of the clearly expressed legislative intent to preserve and enhance the quality of the environment (§§ 21000, 21001), the courts will not countenance abuse of the "significant effect" qualification as a subterfuge to excuse the making of impact reports otherwise required by the act. In this connection we stress that the Legislature has mandated an environmental impact report not only when a proposed project *will* have a significant environmental effect, but also when it "may" (§§ 21101, [*272] 21150, 21151) or "could" (§§ 21100, 21102) have such an effect. On the other hand, common sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope -- e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business -- and hence, in the absence of unusual circumstances, have little or no effect on the public environment. Such projects, accordingly, may be approved exactly as before the enactment of the EQA.

In their petition for rehearing respondents and amici curiae assert that in the period between November 23, 1970, when the EQA went into effect, and September 21, 1972, the date of our decision herein, governmental agencies approved private projects, now either in progress or completed, without requiring the preparation of environmental impact reports, in the erroneous but good faith

belief that such projects were exempt from the act. To avoid possible hardship to parties who have relied on permits thus issued, we are asked to make our decision prospective only.

[**1066] [***778] We see no need for such a drastic step. In the minority of cases in which impact reports should have been prepared, the appropriate statutes of limitations will govern. As noted herein (p. 268, *ante*), the Mono County Zoning Ordinance declares a 30-day statute of limitations for seeking judicial review of a decision of defendant Board. If this provision is typical of such ordinances, very few if any of the projects approved during the 22-month period in question will still be subject to attack. And if a substantially longer statute of limitations is provided in any case, similar protection may be afforded by invoking the doctrine of laches.

We are also asked to stay the effective date of our decision in order to allow additional time, *inter alia*, for governmental agencies to draw up guidelines and develop procedures for applying the EQA to private projects as defined herein. Again we perceive no real necessity for such a departure from normal practice. In extraordinary circumstances we have authorized a delay in the effectiveness of a decision of this court when its immediate implementation would have been virtually impossible. (See, e.g., *Young v. Gness* (1972) 7 Cal.3d 18, 28 [101 Cal. Rptr. 533, 496 P.2d 445]; *Serrano v. Priest* (1971) 5 Cal.3d 584, 618-619 [96 Cal. Rptr. 601, 487 P.2d 1241].) For the reasons given above, however, we expect that the majority of the private projects for which governmental approval will be sought in the future will present no risk of significant environmental effect and therefore will not require impact reports in any event. With respect to the remainder, we point out that the EQA has been in effect since November 23, 1970, and many of the questions here raised as to the method of complying [*273] with the act in the case of private projects could also have arisen during the past 22 months in the case of public projects. We must therefore presume that governmental agencies charged with responsibilities under the act have been performing their duties (*Civ. Code*, § 3548) and can now draw upon their planning and experience in the public sector to aid in solving whatever problems they may have in the private sector. To the extent such planning and experience prove inadequate to the task at hand, we do not doubt that with the good will and cooperation of all concerned appropriate new guidelines and procedures can be promptly devised. And if some delays nevertheless ensue in processing applications for certain private projects which threaten to have a significant effect on the environment, it should be remembered that such delays are implicit in the Legislature's primary decision to require preparation of a written, detailed environmental impact report in precisely those cases.

The order appealed from is reversed, with directions to grant a peremptory writ of mandate ordering defendants to set aside the issuance of the conditional use and building permits.

DISSENT BY: SULLIVAN

DISSENT

SULLIVAN, J. I dissent. The opinion of the majority, discarding settled principles of statutory construction and distorting the plain meaning of common English words, adopts an interpretation of the pertinent section of the Environmental Quality Act of 1970 (EQA) (*Pub. Resources Code*, §§ 21000- 21151) ' which in my opinion is not legally supportable. The desired end arrived at by the majority cannot justify such a means. "This court has no power to rewrite the statute so as to make it conform to a *presumed* intention which is not expressed." (*Seaboard Acceptance Corp. v. Shay* (1931) 214 Cal. 361, 365 [5 P.2d 882]; italics added.)

1 Hereafter, unless otherwise indicated, all section references are to the Public Resources Code.

[**1067] [***779] The crucial question before us is, of course, whether Mono County must prepare an environmental impact report, pursuant to *section 21151*, before it grants a conditional use or building permit for International's proposed development at Mammoth Lakes. The answer to this question depends in turn on the resolution of a problem of statutory construction -- whether the phrase "any project they intend to carry out" (§ 21151) includes within its scope a *private* development for which a governmental permit is required. As will appear, I conclude that the applicable rules of interpretation compel a negative answer.

Section 21151 provides: "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may [*274] have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code*."

In order to construe the statutory phrase "any project they intend to carry out," it is fundamental that the court "should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645 [335 P.2d 672]* and cases there cited.) Our endeavor must be to produce a "reasonable result consistent with legislative purpose . . ." (E.g., *Kusior v. Silver (1960) 54 Cal.2d 603, 620 [7 Cal. Rptr. 129, 354 P.2d 657]*.)

We pointed out many years ago that in ascertaining the will of the Legislature, "[the] court turns first to the words themselves for the answer. It may also properly rely on extrinsic aids Primarily, however, the words, in arrangement that superimposes the purpose of the Legislature upon their dictionary meaning, stand in immobilized sentry, reminders that whether their arrangement was wisdom or folly, it was wittingly undertaken and not to be disregarded. [para.] . . . If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citations.] Certainly the court is not at liberty to seek hidden meanings not suggested by the statute or by the available extrinsic aids. [Citation.]" (*People v. Knowles (1950) 35 Cal.2d 175, 182-183 [217 P.2d 1]*; see also *In re Miller (1947) 31 Cal.2d 191, 198-199 [187 P.2d 722]*; *Code Civ. Proc.*, § 1858.)

In giving effect to this canon of literal construction we must interpret statutes "according to the usual, ordinary import of the language employed in framing them." (*In re Alpine (1928) 203 Cal. 731, 737 [265 P. 947, 58 A.L.R. 1500]*; see also *Merrill v. Department of Motor Vehicles (1969) 71 Cal.2d 907, 918 [80 Cal. Rptr. 89, 458 P.2d 33]*; *Chavez v. Sargent (1959) 52 Cal.2d 162, 203 [339 P.2d 801]*.) The sweep of the statute should not be enlarged by introduction of language which the Legislature has overtly left out. (E.g., *Keeler v. Superior Court (1970) 2 Cal.3d 619, 632 [87 Cal. Rptr. 481, 470 P.2d 617, 40 A.L.R.3d 420]*.)

I recognize, of course, that an enactment must be interpreted so as to harmonize its various parts, by considering the particular clause or section in the light of the statutory framework as a whole (*Select Base Materials [*275] v. Board of Equal., supra, 51 Cal.2d 640, 645*; *Stafford v. L.A. etc. Retirement Board (1954) 42 Cal.2d 795, 799 [270 P.2d 12]*); but a special or particular

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provision qualifies the general, especially where the provisions are inconsistent and cannot be reconciled (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637 [268 P.2d 723]; *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724 [123 P.2d [**1068] [***780] 505]; *In re Marquez* (1935) 3 Cal.2d 625, 629 [45 P.2d 342]; *Code Civ. Proc.*, § 1859) and where the particular provision is later in point of position (*Hartford Acc. etc. Co. v. City of Tulare* (1947) 30 Cal.2d 832, 835 [186 P.2d 121]).

Applying these general principles in construing the phrase "any project they intend to carry out," I begin with the words themselves. Since no definitions are provided in the EQA, our first guide is the dictionary. Webster's Third International Dictionary, Unabridged (1963) defines the noun "*project*" in pertinent part as "(1): a specific plan or design . . . a scheme . . . (3): a planned undertaking: [as] (a): a definitely formulated piece of research . . . (b) (1): an undertaking devised to effect the reclamation or improvement of a particular area of land" (at p. 1813). The verb "*intend*" is defined in relevant part thus: "(2) (a) (1): to have in mind as a design or purpose: . . . (2) . . . as an object to be gained or achieved" (*id. at p. 1175*). The verb "*carry out*" is defined thus: "(1): to put into execution (2): to bring to a successful issue (3): to continue to an end or stopping point." (*Id. at p. 344*.)

Putting together these definitions, the statutory phrasing at issue takes on meaning: *any undertaking, designed to be put into execution and successfully completed*. Moreover, the pronoun "they" in the phrase "any project they intend to carry out" sharpens the significance of the words in the context of the case at bench. "They," of course, refers back to "legislative bodies of all cities and counties" in the first sentence of *section 21151*, and to "[all] other local governmental agencies" in the second sentence.²

2 I recognize that Mono County did not have a conservation element at the time of the decisions of the planning commission and the board of supervisors, and thus only the second sentence of *section 21151* is strictly applicable herein. Nevertheless, it is instructive to analyze both sentences to discern legislative intent, since both contain the crucial words "project they intend to carry out."

In other words, under the first sentence of the section, legislative bodies of cities and counties which have an officially adopted conservation element of a general plan must make a *finding* that any undertaking *they* propose to put into execution which may have a significant effect on the environment "is in accord" with such conservation element. Under the second [*276] sentence, all *other* local governmental agencies (i.e., cities and counties which do *not* have an officially adopted conservation element)³ must make an *environmental impact report* on any undertaking they propose to put into execution which may have a significant effect on the environment.

3 Clearly the phrase "[all] other local governmental agencies" in this context means cities and counties which have *not* officially adopted a conservation element in a general plan; it does not mean governmental entities *other* than cities and counties. (Compare *section 50001 of the Government Code*, which defines "local agencies" under the context of title 5 ("Local agencies"), division 1 ("Cities and Counties"), part 1 ("Powers and Duties Common to Cities and Counties"), chapter 1 ("General") as follows: "'Local agency' as used in this division means county, city, or city and county, unless the context otherwise requires.")

The meaning of this language is plain and clear. Local agencies (i.e., cities and counties) must make an environmental finding (to use a shorthand expression) or an environmental impact report,

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as the case may be, in connection with any proposed project which the local agency itself directly plans to put into effect or execute. To put it another way, such a finding or report is required only with respect to *public works* projects of local agencies (as described in *Gov. Code, § 65401*). Nowhere in *section 21151* do we find any language to the effect that local agencies shall make such findings or reports with respect to *private* projects for which they may issue permits, licenses or other regulations. Certainly, if this had been the intention of the Legislature, it could have very easily [****1069**] [*****781**] expressed such intention in a few simple words, coordinated with the plain meaning of the words it had already employed.

This conclusion is buttressed by additional language in the second sentence of *section 21151*, to the effect that an impact report on "any project . . . which may have a significant effect on the environment" shall be submitted "as part of the report required by *section 65402 of the Government Code*." *Section 65402* is found in chapter 3 ("Local Planning") of title 7 ("Planning") of the Government Code. It provides in brief that neither a county nor a city shall acquire real property for *public* purposes nor construct a *public* building or structure without making a report to the local planning agency so that the latter may ascertain whether the scheme conforms to its general plan. Since *section 21151* environmental impact reports are to be incorporated in reports prepared pursuant to *Government Code section 65402*, it would make no sense for a *section 21151* report to apply to a "project" beyond the scope of the Government Code section. Inasmuch as *section 65402* applies only to *public* acquisition, development, or construction, so too must *section 21151* apply only to public works projects, and *not* as well to *private* activity, carried out by a developer like International. A contrary result would lead to the administrative [***277**] illogic of a local planning agency processing reports on activities beyond its statutory purview.

In sum, I conclude that the environmental finding or impact report requirement of *section 21151* is not applicable to *private* activity for which a governmental permit is necessary, as opposed to "projects" *carried out by public* entities. I reach this result merely by analysis of the plain meaning of the statutory words "any project they intend to carry out" in the context of the section in which they are found. (See *People v. Knowles, supra, 35 Cal.2d 175, 182-183; In re Alpine, supra, 203 Cal. 731, 737.*)

The above analysis of the plain meaning of the words of *section 21151* is supported by the Legislature's placement of that section in the statutory scheme of the EQA as a whole. *Section 21151* is located in chapter 4 of the EQA, which the Legislature has entitled "Local agencies." *Section 21151* is the only *operative* provision of the chapter -- and of the entire act -- setting forth the circumstances under which local agencies are *required* to adopt environmental findings or impact reports. Nowhere within chapter 4 is there mention of *private* activity or intent to regulate it. Similarly, chapter 3 of the act, labeled "State Agencies, Boards and Commissions," sets forth with almost identical wording requirements of environmental impact reports for projects that *state agencies, boards, and commissions* "propose to carry out which could have a significant effect on the environment of the state." (§ 21100.) *Section 21100*, the operative provision affecting state agencies, again does not indicate any intent to regulate private activity, nor can such indication be found anywhere else within chapter 3. Chapter 2 merely states the short title of the act.

Only in chapter 1, which the Legislature has merely labeled "Policy," is there any reference to "private interests," "individuals," or "corporations" (§ 21000, *subds. (f) and (g)*) or the general need to "regulate" their activities (§ 21000, *subd. (g)*). However, those lofty and imprecise references to private activity in chapter 1 pale in importance when compared with the fact of their omission in

chapters 3 and 4. Since the latter chapters contain the only operative provisions of the act, their omission of any reference to private "projects" (e.g., for which a governmental permit is necessary) is significant.

Thus it is abundantly clear that the Legislature simply did not intend either *section 21100* (environmental impact report on projects to be carried out by *state* agencies) or *section 21151* (environmental impact report on projects to be carried out by *local* agencies) to apply to projects to be carried out by *private* persons or corporations. That clarity is apparent in the structure and framework of [**1070] [***782] the EQA, the plain meaning of its operative [*278] language, and a textual examination of the section at issue. The majority make no attempt to interpret those words by accepted rules of literal construction. Instead they draw lavishly from general findings and declarations of the Legislature (concerning maintenance of environmental quality (§ 21000) and the policy of the state in that respect (§ 21001)), refer to similar language in federal law, and trace the course of the EQA through the Legislature. In short, the majority, unable to discover in the words of *section 21151* any intent to cover *private* projects, attempt to persuade us by the elaborate reasoning referred to above, that in some way private projects must be deemed to be included anyhow. I suggest that in this venture they were completely unsuccessful. Plainly private projects are not so included.

The majority initially stress other sections of the EQA to support enlargement of the obviously limited meaning of *section 21151*. Chief reliance is placed on *sections 21000* and *21001*, which are said to "expressly set forth" the intent of the Legislature. In particular the opinion quotes *section 21000, subdivision (g)*.⁴ This subdivision, together with subdivisions (e) and (f) of *section 21000* and *subdivisions (d) and (f) of section 21001*, is employed to support the broad proposition that "the Legislature intended to include the permit-issuing process [for private projects] as a governmental activity for which an environmental impact report is required." (*Ante*, at p. 257.)

4 "It is the intent of the Legislature that all agencies of the state government which *regulate* activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall *regulate* such activities so that major consideration is given to preventing environmental damage." (Italics added.)

Such an attempt to infuse these general expressions into *section 21151* does not withstand scrutiny. *Section 21151*, setting forth requirements for environmental findings or impact reports, is the only section of the EQA with actual operative impact insofar as local agencies are concerned, as the parties herein recognize. It is found under a separate chapter 4, which has special reference to local agencies. It is the very last section of the act, separated by various intervening sections from the general "intent" provisions of *sections 21000* and *21001*. It constitutes a particular, special provision within the more general cast of the act as a whole.

However commendable the general declarations of state policy contained in *sections 21000* and *21001*, they exert no broadening influence on the clearly limited language of *section 21151*. They are impotent to make the clear words of that section say more than they actually do. Indeed, the broad declarations of *sections 21000* and *21001* are properly harmonized with the particular operative provisions of *sections 21100* (state projects) and *21151* (local governmental projects) by treating those particular [*279] provisions as paramount to the general statements of the preliminary sections. (*Code Civ. Proc.*, § 1859.)

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My conclusion that *section 21151* does not apply to private projects is supported rather than refuted by the legislative history of the act itself, as it passed from initial introduction in the Assembly to final enactment. While the "general intent" provisions of *sections 21000* and *21001* were retained virtually intact in the course of the legislative process, the operative provision of *section 21151* was significantly amended.

When Assembly Bill 2045 was first introduced on April 2, 1970, by members of the Assembly's Select Committee on Environmental Quality, the proposed *section 21151* provided as follows: "All local governmental agencies shall conduct needed environmental impact studies and shall consider alternative methods *for any program carried out by them* which may have a significant effect on the quality of the environment." (Italics added.)

[**1071] [***783] By May 26, 1970, the proposed *section 21151* had been almost entirely rewritten, after referral to the Assembly Committee on Natural Resources and Conservation. The bill was reintroduced and passed by the Assembly on July 17, 1970. At that time proposed *section 21151* read as follows: "The legislative body of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any *program they intend to carry out*, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. Local governmental units without an officially adopted conservation element shall make environmental impact reports on any *program they intend to carry out*, which may have a significant effect on the quality of the environment. All other local governmental agencies shall make an environmental impact report on any *program they intend to carry out* which may have a significant effect on the environment and shall submit it to the appropriate local planning agency *as a part of the report* required by *Section 65402 of the Government Code*." (Italics added.)

The bill was then sent to the Senate, where the Senate Committee on Government Organization amended *section 21151* again by striking the first above reference to "program" and replacing it with the words "*project or change in zoning*," and by striking the second reference to "program" and replacing it merely with the word "*project*." ⁵

5 Thus the Senate's version of *section 21151* on August 4, 1970, read as follows, deletions being shown by strike-outs and additions by italics: "The legislative body of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any *project or change in zoning* they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. Local governmental units without an officially adopted conservation element shall make environmental impact reports on any *project* they intend to carry out which may have a significant effect on the quality of the environment. All other local governmental agencies shall make an environmental impact report on any program they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code*."

[*280] On August 14, 1970, *section 21151* was amended again. ⁶

6 The legislative *bodies* of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation

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element of the general plan. *The legislative bodies of all counties which have an officially adopted conservation element of a general plan shall make a finding that any change in zoning they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan.* All other local governmental agencies shall make an environmental impact report on any *project* they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code.*"

Finally, and most significantly, *section 21151* was again amended, by deleting entirely the above second sentence referring to the environmental effect of any "*change in zoning.*" Thus on August 20, 1971, the section read as it was finally adopted and reads now: "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. [**1072] [***784] All other local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code.*"

Contrary to the majority's claim, no special significance may be attached to the intermediate amendments which may indeed fairly be summarized as a change from "program" to "project." That change is not nearly as clear or as broadening as the majority make it out to be, since either [*281] "program" or "project" may connote "planning" or, on the other hand, actual physical alterations in the environment. Nor is the analogy to the federal guidelines under the National Environmental Policy Act (NEPA) helpful in this instance, since, as will be explained, the *differences* between the federal and state enactments are more significant than the similarities in solving the present problem.

The truly important amendment, in my view, is the last one, which deletes the requirement that any legislative body of a city or county with a conservation element in its general plan make a finding of environmental accord with that element for any "*change in zoning*" which it "intends to carry out." In other words, after the amendment, and as enacted, *section 21151* requires the local body to find accord with the conservation element of its general plan only for a "*project*" which it intends to carry out. In a strict sense it is arguable that the change is inapplicable to Mono County, since it did not have such conservation element at the pertinent time; but the change is nevertheless meaningful to show the narrowing process to which *section 21151* was subjected in the course of final enactment. The Legislature's obvious decision to make the requirements of *section 21151 inapplicable* to local zoning changes is especially important in the instant case, since zoning amendments and changes are one of the classic means by which a locality regulates *private* activity. The narrowing of *section 21151* in this manner strengthens the conclusion that the Legislature did not intend the operative provisions of that section to apply to *private* activity for which a governmental permit is necessary, but intended them to apply only to public works projects.

I turn now to consider the majority's reliance upon the federal act (NEPA) and the interim guidelines of the Council on Environmental Quality (*ante*, pp. 260-262). Respondents concede in their brief that the NEPA and the council's interim guidelines are part of the legislative history of the state act, by virtue of their adoption shortly prior to the passage of the state act and because of similarities in provisions (see *ante*, p. 260). Yet, as respondents point out, the very similarities be-

tween the state act and the federal language underscore the fact that the Legislature intended the *differences* to be meaningful -- a well-established rule (*City of Port Hueneme v. City of Oxnard* (1959) 52 Cal.2d 385, 395-396 [341 P.2d 318]; *Estate of Simpson* (1954) 43 Cal.2d 594, 600 [275 P.2d 467]; *People v. Kuhn* (1963) 216 Cal. App. 2d 695, 699 [31 Cal. Rptr. 253]) which the majority ignore. Examination of these differences results again in the conclusion that *section 21151* does not apply to a private project for which a governmental permit is required.

First, the NEPA provides in section 102(2)(C) (42 U.S.C. § 4332(2)(C)) [*282] that: "The Congress authorizes and directs that, to the fullest extent possible: . . . (2) all agencies of the Federal Government shall . . . [para.] (C) include in every recommendation or report on proposals for legislation and other *major Federal actions* significantly affecting the quality of the human environment, a detailed [environmental impact] statement by the responsible official . . ." (Italics added.)

[**1073] [***785] Next, the interim guidelines of the Council on Environmental Quality, promulgated on May 11, 1970 (before any significant amendments to the EQA) stated:

"5. *Actions included* [under the NEPA]

"(a) 'Actions' include but are not limited to:

"(i) Recommendations or reports relating to legislation and appropriations;

"(ii) Projects and continuing activities;

"-- *Directly undertaken by Federal agencies*;

"-- Supported in whole or in part through Federal contracts, grants, subsidies, loans or other forms of funding assistance;

"-- *Involving a Federal lease, permit, license, certificate or other entitlement for use*;

"(iii) Policy -- and procedure-making." (35 Fed. Reg. 7390, 7391; see also 36 Fed. Reg. 7724, 7724; italics added.)

In light of this tri-partite federal categorization of "projects," which, as the majority remind us, the Legislature had in mind when it enacted the EQA, what are we to make of the now-familiar phrasing of *section 21151*, "any project they intend to carry out," i.e., any project which local agencies intend to carry out?

To me two crucial points are clear. First, the very use of the word "project" by the Legislature in the first place shows that the Legislature intended *section 21151* to have narrower scope than the federal provisions, since "project" is manifestly a *subcategory* of "actions" according to the federal guideline No. 5. This difference in wording indicates that the Legislature desired to limit the coverage of *section 21151* to "projects" only (subcategory (ii)) as opposed to "[recommendations] or reports relating to legislation and appropriations" or "[policy] -- and procedure-making."

Second, when we scrutinize the *type* of "project" covered by *section* [*283] *21151* -- any project local bodies or agencies intend to carry out -- the analogy between the federal and state language is evidently *not* the one urged by the majority. Examination of the three federal types of "[projects] and continuing activities," ' *supra*, compels the conclusion that the Legislature was analogizing to "[projects] and continuing activities; [para.] [directly] undertaken by federal agencies" when it adopted *section 21151*. The phrase "any project [local agencies] intend to carry out" in the EQA is clearly similar to the phrase "[directly] undertaken by federal agencies" in the federal

guidelines. These two types of "projects" can be readily analogized and their similarity is pronounced, when we consider the marked *difference* between the phrasing of *section 21151* and the other two types of federal projects: those "[supported] in whole or in part through Federal contracts, grants . . . or other forms of funding assistance," or those "[involving] a Federal lease, permit, license, certificate or other entitlement for use."

7 The EQA omits the federal reference to "continuing activities" as well as "projects." This is one difference which is *not* significant in the instant context, since the distinction between "projects" and "continuing activities" would appear to be one of time duration, having nothing to do with the distinction between public and private activity at issue herein. Of course, the omission of "continuing activities" in the EQA may indeed be important in other cases.

In light of these differences, which we must deem significant, the phrase "any project they intend to carry out" *again* takes on the meaning of a project *actually executed or carried forward by local agencies* (a public works project) -- just like projects *directly undertaken by Federal agencies*. Moreover, under the rule of "*expressio unius est exclusio alterius*" the Legislature was evidently *not* including within the coverage of *section 21151* private projects for which a governmental permit is required. If the Legislature had intended such a result, it would indeed have *included* language similar to that used in the description of the counterpart type of Federal project: [**1074] [***786] "[involving] a Federal lease, permit, license, certificate or other entitlement for use." There is simply no basis for the majority's facile conclusion to the contrary.

Nor is there any justification, let alone constructional value, to the majority's "parenthetical" use of the statement of Assemblyman Knox in an attempt to shore up its interpretation of the Legislature's intent. It is a settled principle that such statements are *inadmissible* to show the intent of the Legislature as a whole in construction of statutes. (*In re Lavine* (1935) 2 Cal.2d 324, 327 [41 P.2d 161, 42 P.2d 311]; *Rich v. State Board of Optometry* (1965) 235 Cal. App. 2d 591, 603 [45 Cal. Rptr. 512].) I see no reason to depart from this rule of law in the instant case, even [*284] "parenthetically"; there has been no adequate showing that the statement of Assemblyman Knox (or, for that matter, the contrary declaration of Assemblyman Porter) falls within the sole exception to the rule, where the legislator's testimony consists only of a reiteration of legislative discussion leading to adoption of proposed amendments, which "amounts to a report of the [legislative] committee's activity . . . and is certainly part of the legislative history . . ." (*Rich v. State Board of Optometry, supra*, 235 Cal. App. 2d 591, 603.)

The majority also ignore the fact that two new bills were introduced in the Assembly in March 1972 precisely for the purpose of *expanding* the scope of *section 21151* from "any project they intend to carry out" to "any major action," as that term is almost identically explicated in the federal guidelines referred to above. The introduction of these new bills indicates that many legislators do not believe that the present *section 21151* carries the broad impact assigned to it by the majority.

On March 2, 1972, 46 members of the Assembly, together with 14 members of the Senate as co-authors, introduced A.B. 681. This bill would, inter alia, add a fifth chapter to the EQA concerning environmental review of actions by public agencies. The new chapter would institute a Department of Environmental Impact Review as an administrative subdivision of the State Environmental Quality Board. Section 99 of the bill would amend the present *section 21151* to read as follows (deletions shown by strike-outs, additions by italics): "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that

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any *major action* which *could* have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies *including districts* shall make an environmental impact report on any *major action* which *could* have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by *Section 65402 of the Government Code and to the State Environmental Quality Board. . . .*"

Section 98 of the bill would institute a new *section 21102* which would define the term "action" as follows:

"(a) Recommendation or reports relating to legislation and appropriation.

"(b) *Projects and continuing activities:*

"(1) *Directly undertaken by public agencies.* [para.] (2) *Supported in whole [*285] or in part through public contracts, grants, subsidies, loans or other forms of funding assistance.* [para.] (3) *Involving a public lease, permit, license, certificate or other entitlement for use.*

"(c) Policy and procedure making." (Italics added.)

This terminology is, of course, identical to the federal guideline No. 5 quoted *supra*, except for the immaterial substitution of [**1075] [***787] the word "public" for the word "federal" to render the language relevant to the state setting. First, the proposed amendment would plainly widen the scope of *section 21151* to cover not only "projects and continuing activities" but other subcategories of "actions" as well; second, the proposed amendment would also broaden the meaning of the word "project" itself, from the type now covered (projects which public agencies "intend to carry out," i.e., "[directly] undertaken by public agencies") to include as well those projects "[involving] a public lease, permit . . . or other entitlement for use." The proposed amendment, in light of the directly analogous federal wording, cannot be explained merely as an attempt to clarify but not broaden the present meaning of "project" as that word appears in *section 21151*. The suggested change shows that 60 members of the Legislature do not believe that the present *section 21151* covers purely private activity for which a public permit is necessary. That so many legislators co-authored the proposed amendment contained in A.B. 681 is further evidence of the inaccuracy of the majority's interpretation of the present *section 21151*.

Moreover, on March 13, 1972, A.B. 889 was introduced (by Assemblyman Knox himself). This bill proposes many of the same amendments to the EQA included in A.B. 681 (e.g., by adding a new chapter 2.5 defining certain terms such as "project" (substantially identical to the above wording of A.B. 681) and "public agency" (any "state agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision")). In addition, A.B. 889 would amend *section 21151* to read as follows (deletions shown by strike-outs, additions by italics): "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All local agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment. *When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.*"

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[*286] Once again, the thrust of these proposed changes is evident: *Section 21151* would expressly cover the type of "project" which plaintiffs herein wish were covered now. Environmental impact reports would be submitted for projects *other* than the public works type of projects for which a report is required under *Government Code section 65402*. A.B. 889 and A.B. 681 together constitute additional support for respondents' basic contention: that the present *section 21151* does not apply to private activity involving a use permit, such as International's proposed development at Mammoth Lakes.

To recapitulate, the majority opinion in my view ignores the plain meaning and usual import of the particular words of *section 21151* which are applicable to Mono County's decision to grant the conditional use permit to International. The opinion cites legislative history and analogous federal language which in fact negate rather than support an expansive interpretation of *section 21151*. The opinion relies on general declarations of legislative policy at the beginning of the EQA which simply are not effectuated in *section 21151* in the manner urged. I, as well as the majority, am conscious of the profound need to improve and maintain the quality of California's environment (see, e.g., *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 485-488, 491-494 [96 Cal. Rptr. 553, 487 P.2d 1193]), but settled principles of statutory construction [**1076] [***788] cannot be set aside by the judiciary in order to achieve that high purpose.

I conclude that the action taken by the Mono County Planning Commission and the Mono County Board of Supervisors was in all respects regular and lawful. The pertinent ordinance did not require said bodies to make specific findings of fact in respect to the issuance of the use permit. (Cf. *Schumm v. Board of Supervisors* (1956) 140 Cal. App. 2d 874, 878, 880-881 [295 P.2d 934].) The record discloses that the issuance of the permit was supported by substantial evidence and did not constitute an abuse of discretion.

I would affirm the order.

APPEAL PETITION

ATTACHMENT 6



SAVE TARA, Plaintiff and Appellant, v. CITY OF WEST HOLLYWOOD, Defendant and Respondent; WASET, INC., et al., Real Parties in Interest and Respondents.

S151402

SUPREME COURT OF CALIFORNIA

45 Cal. 4th 116; 194 P.3d 344; 84 Cal. Rptr. 3d 614; 2008 Cal. LEXIS 12737; 39 ELR 20272

October 30, 2008, Filed

SUBSEQUENT HISTORY: Reported at *Save Tara v. City of West Hollywood (Waset, Inc.)*, 2008 Cal. LEXIS 13793 (Cal., Oct. 30, 2008)

Later proceeding at *Save Tara v. City of West Hollywood (Waset, Inc.)*, 2008 Cal. LEXIS 13555 (Cal., Nov. 20, 2008)

Modified by *Save Tara v. City of West Hollywood*, 2008 Cal. LEXIS 13770 (Cal., Dec. 10, 2008)

Request denied by, Modified by *Save Tara v. City of West Hollywood (Waset, Inc.)*, 2008 Cal. LEXIS 14960 (Cal., Dec. 10, 2008)

Modification order at *Save Tara v. City of West Hollywood (Waset, Inc.)*, 2008 Cal. LEXIS 14977 (Cal., Dec. 10, 2008)

PRIOR HISTORY:

Court of Appeal Second Appellate District, Division Eight, No. B185656. Superior Court of Los Angeles County, No. BS090402, Ernest M. Hiroshige, Judge.

Save Tara v. City of West Hollywood, 147 Cal. App. 4th 1091, 54 Cal. Rptr. 3d 856, 2007 Cal. App. LEXIS 221 (Cal. App. 2d Dist., 2007)

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The superior court denied a neighborhood organization's mandate petition challenging the city's approval of an agreement with a corporation for the development of low-income senior housing at a specified location. Before preparing an environmental impact report (EIR), the city announced that it was determined to proceed with the development, acted in accordance with that determination by preparing to relocate tenants, made a substantial financial contribution to the project, and entered into a draft agreement to convey the property if the developer satisfied environmental requirements

as reasonably determined by the city manager. (Superior Court of Los Angeles County, No. BS090402, Ernest M. Hiroshige, Judge.) The Court of Appeal, Second Dist., Div. Eight, No. B185656, reversed.

The Supreme Court affirmed the judgment of the Court of Appeal as to its requirement that the city void its approval of the agreements and reconsider the agreements; reversed as to a requirement that the city prepare a new EIR; and remanded to the Court of Appeal with directions to instruct the superior court to require the city to set aside the prior approval of the project and to determine whether a subsequent or supplemental EIR was required. The court held that the city violated *Pub. Resources Code*, §§ 21100, subd. (a), 21151, by committing itself to a definite course of action regarding the project before fully evaluating its environmental effects. Although a California Environmental Quality Act, *Pub. Resources Code*, § 21000 et seq., compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, the compliance condition will not save the agreement from being considered an approval within the meaning of *Cal. Code Regs.*, tit. 14, § 15352, subds. (a), (b), requiring prior environmental review, if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project. (Opinion by Werdegar, J., expressing the unanimous view of the court.) [*117]

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES

(1) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing.--Case law addressing the timing of environmental review under the California Environmental Quality Act (CEQA) (*Pub. Resources Code*, § 21000 et seq.) has emphasized the same policy balance outlined in *Cal. Code Regs.*, tit. 14, § 15004, subd. (b). Environmental impact reports (EIR's) must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process. Environmental resources and the public fisc may be ill served if the environmental review is too early. On the other hand, the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. For that reason, EIR's should be prepared as early in the planning process as possible to enable environmental considerations to influence project program and design. At a minimum, an EIR must be performed before a project is approved, for if postapproval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken.

(2) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing.--Two considerations of legislative policy are important to the timing of mandated environmental impact report (EIR) preparation: (1) that the California Environmental Quality Act (CEQA) (*Pub. Resources Code*, § 21000 et seq.) not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and (2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter, serve its intended function of informing and guiding decision makers.

(3) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing--Compliance Condition in Agreement.--A California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review. [*118]

(4) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing--Compliance Condition in Agreement.--An agreement to purchase property is an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) analysis. The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not make a decision to proceed with the use of a site for facilities which would require CEQA review before conducting such review; the exception provides that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance (*Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(A)*). The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule (reflected in the same regulation) that a development decision having potentially significant environmental effects must be preceded, not followed, by CEQA review.

(5) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing.--Limiting the commitment that constitutes approval of a private project for purposes of the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) to unconditional agreements irrevocably vesting development rights would be inconsistent with the CEQA Guidelines' definition of approval as the agency's earliest commitment to the project (*Cal. Code Regs., tit. 14, § 15352*). Just as CEQA itself requires environmental review before a project's approval, not necessarily its final approval (*Pub. Resources Code, §§ 21100, 21151*), so the guideline defines "approval" as occurring when the agency first exercises its discretion to execute a contract or grant financial assistance, not when the last such discretionary decision is made.

(6) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing.--Considering any agreement, conditional or unconditional, to be an approval requiring prior preparation of California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) documentation if at the time it was made the project was sufficiently well defined to provide meaningful information for environmental assessment would be inconsistent with the CEQA Guidelines' definition of approval as involving a commitment by the agency (*Cal. Code Regs., tit. 14, § 15352, subd. (a)*). Agencies sometimes provide preliminary assistance to persons proposing a development in order that the proposal may be further explored, developed or evaluated. Not all such efforts require prior CEQA review. Moreover, [*119] privately conducted projects often need some form of government consent or assistance to get off the ground, sometimes long before they come up for formal approval. Approval, within the meaning of *Pub. Resources Code, §§ 21100, 21151*, cannot be equated with the agency's mere interest in, or inclination to support, a project, no matter how well defined. If having high esteem for a project before preparing an environmental impact statement nullifies the process, few public projects would withstand judicial

scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it.

(7) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing--Compliance Condition in Agreement.--Before conducting California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) review, agencies must not take any action that significantly furthers a project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project (*Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(B)*). In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative.

(8) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing--Compliance Condition in Agreement.--First, an analysis of whether an agency has approved a project for California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) purposes should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff has committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has approved the project. Thus, a court looks both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development [*120] constitutes a decision which commits the agency to a definite course of action in regard to a project.

(9) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports?Timing--Compliance Condition in Agreement.--California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*) analysis is not required before a definite project has been formulated and proposed to an agency. An agency cannot be deemed to have approved a project, within the meaning of *Pub. Resources Code, §§ 21100, 21151*, unless the proposal before it is well enough defined to provide meaningful information for environmental assessment (*Cal. Code Regs., tit. 14, § 15004, subd. (b)*). Moreover, when the prospect of agency commitment mandates environmental analysis of a large-scale project at a relatively early planning stage before all the project parameters and alternatives are reasonably foreseeable, the agency may assess the project's potential effects with corresponding generality. With complex or phased projects, a staged environmental impact report (*Cal. Code Regs., tit. 14, § 15167*) or some other appropriate form of tiering may be used to postpone to a later planning stage the evaluation of those project details that are not reasonably foreseeable when the agency first approves the project.

(10) Pollution and Conservation Laws § 2--California Environmental Quality Act--Impact Reports--Timing--Compliance Condition in Agreement.--Under *Pub. Resources Code*, §§ 21100, 21151, a city improperly committed itself to a definite course of action regarding a development of low-income senior housing before fully evaluating the environmental effects, as demonstrated by the city's public announcements that it was determined to proceed with the project at a specified location; its actions in accordance with that determination by preparing to relocate tenants from the property; its substantial financial contribution to the project; and its willingness to bind itself by a draft agreement to convey the property if the developer satisfied environmental requirements, as reasonably determined by the city manager.

[*Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2008) ch. 21, § 21.03; Cal. Forms of Pleading and Practice (2008) ch. 418, Pollution and Environmental Matters, § 418.36; 12 Witkin, Summary of Cal. Law (10th ed. 2005) Real Property, § 832.*]

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JUDGES: Opinion by Werdegar, J., expressing the unanimous opinion of the court.

OPINION BY: Werdegar

OPINION

[***619] [**348] **WERDEGAR, J.**--Under the California Environmental Quality Act (CEQA) (*Pub. Resources Code, § 21000 et seq.*),¹ a public agency must prepare an environmental impact report (EIR) on any project the agency proposes to "carry out or approve" if that project may have significant environmental effects (*§§ 21100, subd. (a), 21151, subd. (a)*). We address in this case the question whether and under what circumstances an agency's agreement allowing private development, conditioned on future compliance with CEQA, constitutes [**349] approval of the project within the meaning of *sections 21100 and 21151*. We conclude that under some circumstances such an agreement does amount to approval and must be preceded by preparation of an EIR. Under the circumstances of this case, we further conclude the City of West [*122] Hollywood's conditional agreement to sell land for private development, coupled with financial support, public statements, and other actions by its officials committing the city to the development, was, for CEQA purposes, an approval of the project that was required under *sections 21100 and 21151* to have been preceded by preparation of an EIR.

1 All further unspecified statutory references are to the Public Resources Code.

FACTUAL AND PROCEDURAL BACKGROUND

The property at 1343 North Laurel Avenue (1343 Laurel) in the City of West Hollywood (City) is occupied by a large colonial-revival-style house constructed in 1923, later converted to four apartments, and a chauffeur's house and garage. The buildings are set well back from the street, and the property is heavily wooded and landscaped, in contrast to most other properties on the block. City designated the main house a local cultural resource in 1994. In 1997, Mrs. Elsie Weisman, the longtime owner of 1343 Laurel, donated it to City on condition she be permitted to live there until her death and the other tenants be permitted to occupy the premises for six months after her death. Mrs. Weisman died in 2000 at the age of 101.²

2 Whether because of its estate-like appearance or because *Gone With the Wind* (Metro-Goldwyn-Mayer 1939) was Mrs. Weisman's favorite film, 1343 Laurel has acquired the popular nickname "Tara."

Two nonprofit community housing developers, West Hollywood Community Housing Corporation and WASET, Inc., and a corporation they created for the purpose, Laurel Place West Hollywood, Inc. (collectively, Laurel Place), propose to develop approximately 35 housing units for low-income seniors on the 1343 Laurel site. [***620] As outlined in a 2003 grant application to the United States Department of Housing and Urban Development (HUD), the project would preserve the main house but not the chauffeur's house or garage. The existing two-story house would be converted to hold the manager's apartment, one resident's apartment, and communal space, including a multipurpose room, arts and crafts room, television lounge and kitchen. A new three-story building, wrapping around the existing house's back and sides, would contain 33 one-bedroom apartments and underground parking spaces for residents. Between the back of the existing house and the new building would be a landscaped courtyard. A 2,800-square-foot portion of the existing front yard would remain in City's hands and be used as a pocket park. The HUD application included preliminary architectural drawings showing the proposed renovation, new building, site plan and landscaping.

On June 9, 2003, to facilitate Laurel Place's HUD grant application, City's city council granted Laurel Place an option to purchase the 1343 Laurel property, allowing the developer to show HUD

it had control of the project site. In a June 10 letter to a HUD official, City's city manager outlined City's [*123] intended contribution to the proposed project: "To make the project competitive, [City] has approved the sale of the property at negligible cost." More specifically, City planned to contribute \$ 1.5 million in land value. "In addition, [City] will commit additional funding, in an amount not to exceed \$ 1 million," toward development costs. "In summary, [City] will be contributing land and funds totaling \$ 2,500,000 toward the development of the Laurel Place project."

HUD approved a \$ 4.2 million grant to Laurel Place in late 2003. City's mayor announced the grant in a December 2003 e-mail to residents, explaining it "will be used to build 35 affordable senior residential units, rehabilitate an historic house, and provide a public pocket park on Laurel Avenue." He described the project as "a win-win-win for the City, balancing desperately needed affordable senior housing with historic preservation and open space." Similarly, a City newsletter announced that with the recent HUD grant, City and Laurel Place "will redevelop the property" to rehabilitate the main house, build 35 units of low-income senior housing, and create a pocket park. The mayor's announcement referred residents with questions about the proposed development [**350] to Jeffrey Skornick, City's housing manager.

Shortly after the HUD grant was approved, in November 2003, Skornick wrote to a 1343 Laurel tenant, Allegra Allison, reassuring her that "nothing is going to happen for about a year" and that "[a]s the project proceeds and prior to construction" the tenants would receive professional relocation assistance. While he knew she would prefer to stay at 1343 Laurel, the housing manager wrote, he pledged, on City's behalf, to "do everything in our power to minimize the impact of this project on you." In December 2003, Allison responded that "your relocation people" had already contacted tenants and, according to one tenant, had said they would soon be served with "one year eviction notices."

In January 2004, Skornick, responding to a resident critical of the proposed development, explained that the project would retain the historic house and most of the property's front yard, as the new building would be to the rear of the site. He continued: "We are happy to consider variations on the approach. However, inasmuch as the City and its development partners have been awarded a \$ 4.2 million federal grant to help develop this project for senior housing, we must continue on a [***621] path that fulfills this obligation." In another January 2004 e-mail to a resident, a city council member's deputy used the same language, referring to the development of senior housing on the site as an "obligation" City "must" pursue.

On April 23, 2004, City announced the city council would consider, at its May 3 meeting, an agreement to facilitate development of the 1343 Laurel [*124] project, "subject to environmental review" and other regulatory approvals. Save Tara, an organization of City residents and neighbors opposed to the project, wrote City to urge that it conduct CEQA review, including an EIR, *before* approving any new agreement, making a loan, or renewing the purchase option. Despite that and numerous other objections voiced at the meeting (many also expressed support), the city council on May 3, 2004, voted to (1) approve a "Conditional Agreement for Conveyance and Development of Property" between City and Laurel Place, including a \$ 1 million City loan to the developer, in order to "facilitate development of the project and begin[] the process of working with tenants to explore relocation options"; (2) authorize the city manager to execute the agreement "substantially in the form attached"; and (3) have appropriate City commissions review "alternative configurations" for the planned new building and obtain more public input "on the design of project elements."

The "Conditional Agreement for Conveyance and Development of Property" the city council thus approved and authorized the city manager to execute (the May 3 draft agreement) had the stated purpose of "caus[ing] the reuse and redevelopment of [1343 Laurel] with affordable housing for seniors and a neighborhood pocket park, while retaining the historic integrity of the Site." The agreement provided that "upon satisfaction of the conditions of this Agreement," City would convey the property to Laurel Place and provide the developer a loan, and Laurel Place would construct 35 units of housing, one for the resident manager and 34 restricted to occupancy by low-income seniors. In the first phase of actions under the agreement, Laurel Place would obtain final HUD approval, "complete the relocation of tenants" ' and take actions necessary "to comply with CEQA" Once the property was conveyed, the second, construction phase would begin.

3 A staff report on the proposed agreement, presented to the city council, explained that relocation notices would be sent "shortly after" the agreement was executed, starting a one-year period for relocating the tenants.

Under the May 3 draft agreement, City's obligation to convey the property and make the improvement portion of the loan (i.e., all of the \$ 1 million loan other than the predevelopment portion and an earlier grant for \$ 20,000) was subject to several conditions precedent, among them that "[a]ll applicable requirements of CEQA ... have been satisfied, as reasonably determined by the City Manager" and that "[d]eveloper shall have [**351] obtained all Entitlements." ' The city manager, however, could waive these conditions. The predevelopment portion of the loan, which City estimated at \$ 475,000, was to [*125] be used for, inter alia, "environmental reports" and "governmental permits and fees" and was not subject to the CEQA compliance or entitlement conditions.

4 The May 3 draft agreement defined "Entitlements" to include zoning changes, general plan amendments, and CEQA compliance, as well as any other permit or license required by City.

A "Scope of Development" discussion attached to the May 3 draft agreement explained that "[a] three- or four-story building [***622] over semi-subterranean parking will be erected at the west-rear portion of the lot, replacing what are currently the garage and outdoor parking area, and possibly the chauffeur's quarters." The new building's exterior and interior design were described in some detail.

At the city council's May 3, 2004, meeting, the project architect explained that the exact building design had not yet been determined and that historic preservation values would be fully considered in the final design. For example, the chauffeur's house could be preserved, while still adding 35 housing units, by making the new building four stories rather than three, though the architect for aesthetic reasons preferred a three-story building.

Skornick, City's housing manager, similarly told the council that the further planning processes the project would undergo were "not a rubber stamp," as there were "real options to consider" regarding the design of the new building and park. At the same time, Skornick noted that staff had already rejected the alternative uses of 1343 Laurel suggested in public comments, such as dedication of the entire property for a park or use of the historic home as a library or cultural center. These alternatives, Skornick explained, failed to contribute to City's affordable housing goals and, in any event, "there were no funds available for those options." Finally, Skornick stressed that "while the agreement is conditional, the council needs to know that the recommended actions will commit the city as long as the developer delivers."

On July 12, 2004, Save Tara filed the operative complaint and petition for writ of mandate alleging, inter alia, that City had violated CEQA by failing to prepare an EIR before the city council's May 3 approval of the loan and draft agreement. On August 9, 2004, City and Laurel Place executed a revised agreement (the August 9 executed agreement).⁵ This agreement followed the [*126] May 3 draft agreement in many respects, but contained some potentially significant changes. The requirement that all applicable CEQA requirements be satisfied could no longer be waived by the city manager, and the parties expressly recognized *City* retained "complete discretion over ... any actions necessary to comply with CEQA" and that the agreement "imposes no duty on City to approve ... any documents prepared pursuant to CEQA." Finally, details on tenant relocation were stated, including that the developer was to begin the process by hiring a relocation consultant within 30 days.

5 Save Tara argues the administrative record should not have been augmented with the August 9 executed agreement, as its execution took place *after* the decision Save Tara has challenged, i.e., the city council's approval of the May 3 draft agreement. We agree with the Court of Appeal, however, that "[w]hile the May 2004 agreement is relevant for certain purposes, review of City's decision would be ineffective, if it were limited to the May 2004 Agreement, which is no longer operative." Like the lower court, we treat Save Tara's petition for writ of mandate as amended to address the August 9 executed agreement as well as the May 3 draft agreement.

The superior court denied Save Tara's mandate petition, finding that while the parties agreed the 1343 Laurel project did call for an EIR at some time, none was required before approving the May 3 draft agreement because "the Agreement is expressly conditioned on compliance with CEQA ... [and] does not limit the project alternatives or possible mitigation measures." Thus, City "has not given its final approval to convey the property at issue to [Laurel Place], nor has it given its final approval of the housing project itself."

[***623] The Court of Appeal reversed. *Section 21100*, the appellate court reasoned, requires [**352] an EIR be prepared whenever lead agencies "propose to approve or carry out" a project with potential significant effects; it is not, contrary to the trial court's holding, "to be delayed until a 'final' decision has been made." Moreover, conditioning a development agreement on CEQA compliance is insufficient because the EIR review process "is intended to be part of the decisionmaking process itself, and not an examination, *after the decision has been made*, of the possible environmental consequences of the decision." Any question as to whether a particular point in the development process is too early for preparation of an EIR "is resolved by the pragmatic inquiry whether there is enough information about the project to permit a meaningful environmental assessment. If the answer is yes, the EIR review process must be initiated." Before May 3, 2004, the Court of Appeal held, the project was well enough defined to permit meaningful environmental analysis, which City should have performed between the award of the HUD grant in November 2003 and the approval of the May 3 draft agreement.

As remedy for the CEQA violation, the Court of Appeal remanded with directions that City be ordered (1) to void its approval of the May 3 and August 9 agreements, and (2) to "engage in the EIR review process (a) based on the project as described in the HUD application and (b) without reference to the May and August 2004 Agreements." One justice dissented, arguing the matter was moot because, according to the parties, City had certified a final EIR for the project in October 2006. [*127]

We granted City's and Laurel Place's petitions for review, which presented the mootness issue as well as the substantive question of whether an EIR was required before City's approval of the conditional development agreement.

DISCUSSION

I. Mootness

According to the Court of Appeal decision, City approved a final EIR for the 1343 Laurel project in October 2006, during pendency of the appeal. All parties agree on this chronology and further agree that Save Tara has not challenged the adequacy of this EIR in court.

The parties dispute whether these events rendered the present appeal moot. City and Laurel Place take the position that Save Tara has already received the relief it seeks in this action--preparation and certification of an EIR--and no further effective relief can be granted it. They cite CEQA cases in which, during pendency of the litigation, the project site had undergone irreversible physical or legal changes. (See, e.g., *Environmental Coalition of Orange County, Inc. v. Local Agency Formation Com.* (1980) 110 Cal.App.3d 164, 171-173 [167 Cal. Rptr. 735] [challenge to EIR for annexation moot where annexation had already occurred and could not be ordered annulled because annexing city was not a party to the action]; *Hixon v. County of Los Angeles* (1974) 38 Cal.App.3d 370, 378 [113 Cal. Rptr. 433] [street improvement project involving tree replacement had already progressed to removal of original trees, which could not be restored].) Save Tara, in turn, argues that effective relief, in the form of an order setting aside City's approval of the May 3 draft agreement and August 9 executed agreement, can still be awarded, as it was by the Court of Appeal. It cites CEQA cases that were held not to be moot despite some intervening progress on the project. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1202-1204 [***624] [22 Cal. Rptr. 3d 203] [partial construction of a project did not moot the appeal, as the project could still be modified, reduced, or mitigated]; *Woodward Park Homeowners Assn. v. Garreks, Inc.* (2000) 77 Cal.App.4th 880, 888 [92 Cal. Rptr. 2d 268] [already constructed project could be modified or removed].)

We agree with Save Tara that the preparation and certification of an EIR does not render the appeal moot. No irreversible physical or legal change has occurred during pendency of the action, and Save Tara can still be awarded the relief it seeks, an order that City set aside its approvals. As will appear, we ultimately conclude the matter must be remanded with directions that the superior court order City to void its approval of the May 3 and August 9 agreements and [**353] reconsider those decisions, informed this time by an EIR of [*128] the full environmental consequences. Neither City nor Laurel Place contends such reconsideration is impossible as a practical matter or that the superior court lacks the power to order it. Such an order remedies the CEQA violation Save Tara alleges occurred, approval of the agreements without prior preparation and consideration of an EIR, and thus constitutes effective relief.

II. Timing of EIR Preparation

We turn to the substantive CEQA issue presented: Was City required to prepare and consider an EIR before approving the conveyance and development agreement on May 3 and executing the revised agreement on August 9, 2004? To answer this question, we first outline, in this part of the opinion, the existing law on timing of EIR preparation and the legislative policies that shape this

law. We next address, in part III., the general question of whether an agency may delay EIR preparation by making its final approval of a project contingent on subsequent CEQA compliance, while otherwise agreeing to go forward with the project. In part IV., we apply our conclusions to the facts of this case to determine that City's May 3 and August 9 actions constituted project approval requiring prior preparation of an EIR.

We begin with CEQA's text. *Section 21100, subdivision (a)* provides in pertinent part: "All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they *propose to carry out or approve* that may have a significant effect on the environment." (Italics added.) To the same effect, *section 21151* provides that "local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they *intend to carry out or approve* which may have a significant effect on the environment." (Italics added.)⁶

6 Both sections appear applicable to City. *Section 21151* applies to local governments by its terms. *Section 21100*, although placed in a chapter of CEQA mainly addressing the duties of state agencies, itself applies to all "lead agencies," a term that includes local public entities undertaking projects subject to CEQA. (See §§ 21067 ["Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment."], 21063 ["Public agency' includes any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision."].)

While the statutes do not specify criteria for determining when an agency "approve[s]" a project, the law's implementing regulations, the CEQA Guidelines (*Cal. Code Regs., tit. 14, § 15000 et seq.*),⁷ [***625] do address the question. *Section 15352 of the CEQA Guidelines* provides as follows:

7 "The CEQA Guidelines, promulgated by the state's Resources Agency, are authorized by *Public Resources Code section 21083*. In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5 [53 Cal. Rptr. 3d 821, 150 P.3d 709].)

[*129]

"(a) 'Approval' means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The exact date of approval of any project is a matter determined by each public agency according to its rules, regulations, and ordinances. Legislative action in regard to a project often constitutes approval.

"(b) With private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project." (*Cal. Code Regs., tit. 14, § 15352, subds. (a), (b).*)

CEQA Guidelines section 15004, subdivision (b) observes that "[c]hoosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considera-

tions to influence project program and design and yet late enough to provide meaningful information for [**354] environmental assessment." (*Cal. Code Regs., tit. 14, § 15004, subd. (b).*) *

8 The parties' briefs frame the timing issue here in two ways: (1) Did City, in May and August of 2004, *approve* the 1343 Laurel project and (2) was the contingent agreement to convey and develop 1343 Laurel itself a *project*? While this opinion will discuss some relevant decisions on the definition of a project, it largely follows the first formulation, asking whether City approved the project. As *section 15378 of the CEQA Guidelines* explains: "(a) 'Project' means the whole of an action, which has a potential for resulting in [an environmental change.] [¶] ... [¶] (c) The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (*Cal. Code Regs., tit. 14, § 15378.*) The "project" in this case is the redevelopment of 1343 Laurel, not any of the individual steps City took to approve it. City and Laurel Place do not dispute the redevelopment of 1343 Laurel is a project requiring evaluation in an EIR; they disagree with Save Tara only on the required timing of that EIR process.

(1) This court has on several occasions addressed the timing of environmental review under CEQA, emphasizing in each case the same policy balance outlined in *CEQA Guidelines section 15004, subdivision (b)*. In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [118 Cal. Rptr. 34, 529 P.2d 66] (*No Oil, Inc.*), discussing whether the proper scope of an EIR included possible related future actions, we quoted this observation from a federal decision: "Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an [*130] input into the decision making process." (*Id. at p. 77, fn. 5.*) We again quoted this formulation of the general issue in *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779 [187 Cal. Rptr. 398, 654 P.2d 168] (*Fullerton*), which considered whether a particular action was a "project" for CEQA purposes, adding, with what has turned out to [***626] be an understatement, that "[t]he timing of an environmental study can present a delicate problem." (*Fullerton, at p. 797.*)

In *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 [253 Cal. Rptr. 426, 764 P.2d 278] (commonly known as *Laurel Heights I*), again discussing the proper scope of an EIR regarding future actions, we summed up the issue and attempted to state a rule, as follows: "We agree that environmental resources and the public fisc may be ill served if the environmental review is too early. On the other hand, the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project. ... For that reason, "EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design." (*Id. at p. 395.*)' We also observed that at a minimum an EIR must be performed before a project is approved, for "[i]f postapproval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken." (*Laurel Heights I, at p. 394.*)

9 In the recent decision of *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, *supra*, 40 Cal.4th at page 441, discussing the extent to which a large hous-

ing project's EIR was required to address water sources for the project's later phases, we reiterated *Laurel Heights I's* admonition that environmental analysis not be delayed to the point where "'bureaucratic and financial momentum'? rendered it practically moot.

(2) This court, like the CEQA Guidelines, has thus recognized two considerations of legislative policy important to the timing of mandated EIR preparation: (1) that CEQA not be interpreted to require an EIR before the project is well enough defined to allow for meaningful environmental evaluation; and (2) that CEQA not be interpreted as allowing an EIR to be delayed beyond the time when it can, as a practical matter, serve its intended function of informing and guiding decision makers.

[**355] The CEQA Guidelines define "approval" as "the decision by a public agency which commits the agency to a definite course of action in regard to a project." (*Cal. Code Regs., tit. 14, § 15352, subd. (a).*) The problem is to determine when an agency's favoring of and assistance to a project ripens into a "commit[ment]." To be consistent with CEQA's purposes, the line must be drawn neither so early that the burden of environmental review [*131] impedes the exploration and formulation of potentially meritorious projects, nor so late that such review loses its power to influence key public decisions about those projects.

Drawing this line raises predominantly a legal question, which we answer independently from the agency whose decision is under review. While judicial review of CEQA decisions extends only to whether there was a prejudicial abuse of discretion, "an agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: While we determine de novo whether the agency has employed the correct procedures, 'scrupulously enforc[ing] all legislatively mandated CEQA requirements' (*Citizens of Goleta Valley v. [***627] Board of Supervisors (1990) 52 Cal.3d 553, 564 [276 Cal. Rptr. 410, 801 P.2d 1161]*), we accord greater deference to the agency's substantive factual conclusions." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra, 40 Cal.4th at p. 435.*)

A claim, like Save Tara's here, that the lead agency approved a project with potentially significant environment effects *before* preparing and considering an EIR for the project "is predominantly one of improper procedure" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra, 40 Cal.4th at p. 435*) to be decided by the courts independently. The claim goes not to the validity of the agency's factual conclusions but to the required timing of its actions. Moreover, as noted above (fn. 8, *ante*), the timing question may also be framed by asking whether a particular agency action is in fact a "project" for CEQA purposes, and that question, we have held, is one of law. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com. (2007) 41 Cal.4th 372, 382 [60 Cal. Rptr. 3d 247, 160 P.3d 116]; Fullerton, supra, 32 Cal.3d at p. 795.*)¹⁰

10 In *Mount Sutro Defense Committee v. Regents of University of California (1978) 77 Cal.App.3d 20, 40 [143 Cal. Rptr. 365]*, the Court of Appeal remarked that "the determination of the earliest feasible time [for environmental review] is to be made initially by the agency itself, which decision must be respected in the absence of manifest abuse." (Accord, *Stand Tall on Principles v. Shasta Union High Sch. Dist. (1991) 235 Cal.App.3d 772, 780 [1 Cal. Rptr. 2d 107]*; see also *City of Vernon v. Board of Harbor Comrs. (1998) 63 Cal.App.4th 677, 690 [74 Cal. Rptr. 2d 497]* ["the timing of an EIR is committed to the discretion and judgment of the agency ..."].) To the extent these opinions contradict our determination that

45 Cal. 4th 116, *; 194 P.3d 344, **;
84 Cal. Rptr. 3d 614, ***; 2008 Cal. LEXIS 12737

postponement of an EIR until after project approval constitutes procedural error that is independently reviewable, we disapprove them.

Considering the timing issue as one of legally proper procedure does not remove all logistical discretion from agencies; it merely sets an outer limit to how long EIR preparation may be delayed. To accord overly deferential [*132] review of agencies' timing decisions could allow agencies to evade CEQA's central commands. While an agency may certainly adjust its rules so as to set "[t]he exact date of approval" (*Cal. Code Regs., tit. 14, § 15352, subd. (a)*), an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR.

III. *Development Agreements Contingent on CEQA Compliance*

(3) The May 3 draft agreement and August 9 executed agreement conditioned City's obligation to convey the property to Laurel Place for development on all applicable requirements of CEQA having been satisfied. City and Laurel Place contend such a CEQA compliance condition on an agreement to convey or develop property eliminates the need for preparation of an EIR (or any other CEQA document) before an agency approves [**356] the agreement. In contrast, *Save Tara*, quoting the Court of Appeal, maintains that permitting a CEQA compliance condition to postpone environmental review until after an agreement on the project has been reached would render the EIR requirement a "dead letter." We adopt an intermediate position: A CEQA compliance condition can be a legitimate ingredient in a preliminary public-private agreement for exploration of a proposed project, but if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the [***628] project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review.

As previously noted, the CEQA Guideline defining "approval" states that "[w]ith private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project." (*Cal. Code Regs., tit. 14, § 15352, subd. (b)*.) "On its face, this regulatory definition suggests a public agency's execution of a contract to convey a property for development would constitute approval of the development project. City and Laurel Place rely on two decisions holding agreements not to be approvals for CEQA purposes when conditioned on later CEQA compliance.

11 The guideline derives in part from *Public Resources Code section 21065*, which defines "project" as including a private activity supported by public contracts, grants, or other assistance, or requiring issuance of a public permit, license, or other entitlement. (*Id., subs. (b), (c)*.)

In *Stand Tall on Principles v. Shasta Union High Sch. Dist., supra, 235 Cal.App.3d 772 (Stand Tall)*, a school district board passed resolutions choosing the site for a new high school from a group of finalists and authorizing the district administration to purchase the property; any offer to [*133] purchase "was to be made contingent upon completion of the EIR process and final state approval." (*Id. at p. 777.*) The appellate court rejected a claim the EIR should have been done before selecting the preferred school site, reasoning that "the Board's resolutions regarding the site selection do not constitute an 'approval' under CEQA because they do not commit the District to a

definite course of action since they are expressly made contingent on CEQA compliance." (*Id.* at p. 781, italics omitted.)

In *Concerned McCloud Citizens v. McCloud Community Services Dist.* (2007) 147 Cal.App.4th 181 [54 Cal. Rptr. 3d 1] (*McCloud*), a district executed an agreement with a commercial spring water bottler for exclusive rights to bottle and sell water from the district's sources, contingent on, among other things, the district and the bottler "'completing, during the Contingency Period, proceedings under CEQA in connection with the Project, and the expiration of the applicable period for any challenge to the adequacy of District's and [the bottler's] compliance with CEQA without any challenge being filed.'" (*Id.* at p. 188.) Relying in part on *Stand Tall*, the *McCloud* court held no EIR was required before the district executed the contingent bottling agreement. The agreement was subject to several "'ifs,'" the court reasoned, continuing: "The biggest 'if' in the agreement however is *if* all discretionary permits, expressly defined as including CEQA documentation, review and approvals, along with the final adjudication of any legal challenges based on CEQA, are secured and all environmental, title, physical, water quality and economic aspects of the project are assessed." (*McCloud*, at p. 193.)

Without questioning the correctness of *Stand Tall* and *McCloud* on their facts, we note that each case involved particular circumstances limiting the reach of its logic; neither convinces us a broad rule exists permitting EIR preparation to be postponed in all circumstances by use of a CEQA compliance condition.

[***629] In *McCloud*, the court relied in part on the agreement's lack of information as to the springs that would be exploited, the site of the bottling plant, how the water would be transported, and other details essential to environmental analysis of the project. Without that information, the court concluded, [**357] "preparation of an EIR would be premature. Any analysis of potential environmental impacts would be wholly speculative and essentially meaningless." (*McCloud*, *supra*, 147 Cal.App.4th at p. 197.) In the terms used by the CEQA Guidelines to define "approval"-- "the decision by a public agency which commits the agency to a definite course of action" (*Cal. Code Regs.*, tit. 14, § 15352, subd. (a))--*McCloud* thus speaks as much to *definiteness* as to commitment and does not establish that a conditional agreement for development never constitutes approval of the development. [*134]

(4) *Stand Tall*, *supra*, 235 Cal.App.3d 772, involved an agreement to purchase property, an activity that, as a practical matter in a competitive real estate market, may sometimes need to be initiated before completing CEQA analysis. The CEQA Guidelines accommodate this need by making an exception to the rule that agencies may not "make a decision to proceed with the use of a site for facilities which would require CEQA review" before conducting such review; the exception provides that "agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency's future use of the site on CEQA compliance." (*Cal. Code Regs.*, tit. 14, § 15004, subd. (b)(2)(A).) The Guidelines' exception for land purchases is a reasonable interpretation of CEQA, but it should not swallow the general rule (reflected in the same regulation) that a development decision having potentially significant environmental effects must be *preceded*, not *followed*, by CEQA review. (See *Laurel Heights I*, *supra*, 47 Cal.3d at p. 394 ["A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved."].)

City and Laurel Place apparently would limit the "commit[ment]" that constitutes approval of a private project for CEQA purposes (*Cal. Code Regs., tit. 14, § 15352, subd. (a)*) to unconditional agreements irrevocably vesting development rights. In their view, "[t]he agency commits to a definite course of action ... by agreeing to be legally bound to take that course of action." (*City of Vernon v. Board of Harbor Comrs., supra, 63 Cal.App.4th at p. 688.*) On this theory, any development agreement, no matter how definite and detailed, even if accompanied by substantial financial assistance from the agency and other strong indications of agency commitment to the project, falls short of approval so long as it leaves final CEQA decisions to the agency's future discretion.

(5) Such a rule would be inconsistent with the CEQA Guidelines' definition of approval as the agency's "earliest commitment" to the project. (*Cal. Code Regs., tit. 14, § 15352, subd. (b)*, italics added.) Just as CEQA itself requires environmental review before a project's approval, not necessarily its final approval (*Pub. Resources Code, §§ 21100, 21151*), so the guideline defines "approval" as occurring when the agency first exercises its discretion to execute a contract or grant financial assistance, not when the last such discretionary decision is made.

Our own decisions are to the same effect: we have held an agency approved a [***630] project even though further discretionary governmental decisions would be needed before any environmental change could occur. (See *Muzzy Ranch Co. v. Solano County Airport Land Use Com., supra, 41 Cal.4th at [*135] p. 383* [adoption of airport land use plan held to be a project even though it directly authorized no new development]; *Fullerton, supra, 32 Cal.3d at p. 795* [adoption of school district succession plan held to be a project even though "further decisions must be made before schools are actually constructed ..."]; *Bozung v. Local Agency Formation Com. (1975) 13 Cal.3d 263, 279, 282 [118 Cal. Rptr. 249, 529 P.2d 1017]* [regional agency's approval of annexation by city held to be a project even though further approvals, including zoning changes, would be needed for property development to occur].) Though these decisions framed the question as whether certain agency steps constituted projects, rather than whether the agency had [**358] approved a project, they stand for the principle that CEQA review may not always be postponed until the last governmental step is taken.

Moreover, limiting approval to unconditional agreements that irrevocably vest development rights would ignore what we have previously recognized, that postponing environmental analysis can permit "bureaucratic and financial momentum" to build irresistibly behind a proposed project, "thus providing a strong incentive to ignore environmental concerns." (*Laurel Heights I, supra, 47 Cal.3d at p. 395.*)

A public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement with the private developer and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project. When an agency has not only expressed its inclination to favor a project, but has increased the political stakes by publicly defending it over objections, putting its official weight behind it, devoting substantial public resources to it, and announcing a detailed agreement to go forward with the project, the agency will not be easily deterred from taking whatever steps remain toward the project's final approval.

For similar reasons, we have emphasized the practical over the formal in deciding whether CEQA review can be postponed, insisting it be done early enough to serve, realistically, as a meaningful contribution to public decisions. (See *Fullerton, supra, 32 Cal.3d at p. 797* ["as a practical matter," school district succession plan was a project requiring review]; *No Oil, Inc., supra, 13*

Cal.3d at p. 77, fn. 5 ["Statements must be written ... early enough so that whatever information is contained can practically serve as an input into the decision making process."]; see also *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1221 [66 Cal. Rptr. 2d 102] [CEQA review should not be delayed to the point where it would "call for a burdensome re-consideration of decisions already made"].) The full consideration of environmental effects CEQA mandates must not be reduced "to a process whose result will be largely to generate paper, to [*136] produce an EIR that describes a journey whose destination is already predetermined." (*Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271 [126 Cal. Rptr. 2d 615].)

We note as well that postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA's goal of [***631] transparency in environmental decisionmaking. Besides informing the agency decision makers themselves, the EIR is intended "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." (*No Oil, Inc., supra*, 13 Cal.3d at p. 86; accord, *Laurel Heights I, supra*, 47 Cal.3d at p. 392.) When an agency reaches a binding, detailed agreement with a private developer and publicly commits resources and governmental prestige to that project, the agency's reservation of CEQA review until a later, final approval stage is unlikely to convince public observers that before committing itself to the project the agency fully considered the project's environmental consequences. Rather than a "document of accountability" (*Laurel Heights I, at p. 392*), the EIR may appear, under these circumstances, a document of post hoc rationalization.

On the other hand, we cannot agree with the suggestion of the Court of Appeal, supported by Save Tara, that any agreement, conditional or unconditional, would be an "approval" requiring prior preparation of CEQA documentation if at the time it was made the project was sufficiently well defined to provide "meaningful information for environmental assessment." (*Citizens for Responsible Government v. City of Albany, supra*, 56 Cal.App.4th at p. 1221, quoting *Cal. Code Regs., tit. 14, § 15004, subd. (b)*.) On this theory, once a private project had been described in sufficient detail, any public-private agreement related to the project would require CEQA review.

[**359] (6) This rule would be inconsistent with the CEQA Guidelines' definition of approval as involving a "commit[ment]" by the agency. (*Cal. Code Regs., tit. 14, § 15352, subd. (a)*.) Agencies sometimes provide preliminary assistance to persons proposing a development in order that the proposal may be further explored, developed or evaluated. Not all such efforts require prior CEQA review. (See, e.g., *Cal. Code Regs., tit. 14, § 15262* [conduct of feasibility or planning studies does not require CEQA review].) Moreover, privately conducted projects often need some form of government consent or assistance to get off the ground, sometimes long before they come up for formal approval. Approval, within the meaning of *sections 21100 and 21151*, cannot be equated with the agency's mere interest in, or inclination to support, a project, no matter how well defined. "If having high esteem for a project before preparing an environmental impact report (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is [*137] inevitable that the agency proposing a project will be favorably disposed toward it." (*City of Vernon v. Board of Harbor Comrs., supra*, 63 Cal.App.4th at p. 688.)

As amicus curiae League of California Cities explains, cities often reach purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other arrangements with potential developers, especially for projects on public land, before deciding on the specifics of

a project. Such preliminary or tentative agreements may be needed in order for the project proponent to gather financial resources for environmental and technical studies, to seek needed grants or permits from other government agencies, or to test interest among prospective commercial tenants. While we express no opinion on whether any particular form of agreement, other than those involved in [***632] this case, constitutes project approval, we take the League's point that requiring agencies to engage in the often lengthy and expensive process of EIR preparation before reaching even preliminary agreements with developers could unnecessarily burden public and private planning. CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development.

In addition to the regulatory definition of "approval" quoted earlier (*Cal. Code Regs., tit. 14, § 15352, subd. (b)*), Save Tara relies on *Citizens for Responsible Government v. City of Albany*, *supra*, 56 Cal.App.4th 1199 (*Citizens for Responsible Government*) for the principle that an EIR must be prepared before a public agency executes a detailed agreement for development. In that case, the city council decided to place before the voters a proposal for development of a gaming facility at a racetrack; included in the proposal was an agreement with the private developer setting out details of the proposed facility and its operation. (*Id. at p. 1206.*) Although the agreement called for the developer to submit any studies needed "to address any potential adverse environmental impact of the Project" and provided that "[a]ll reasonably feasible mitigation measures shall become conditions" of the city's implementation agreement (*id. at pp. 1219-1220*), the appellate court held the city council had approved the project, for CEQA purposes, by putting it on the ballot, and thus the agreed-to environmental analysis came too late: "[T]he appropriate time to introduce environmental considerations into the decision making process was during the negotiation of the development agreement. Decisions reflecting environmental considerations could most easily be made when other basic decisions were being made, that is, during the early stage of 'project conceptualization, design and planning.' Since the development site and the general dimensions of the project were known from the start, there was no problem in providing 'meaningful information for environmental assessment.' At this early stage, environmental review would be an integral part of the decisionmaking [*138] process. Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of 'post hoc rationalization[] to support action already taken,' which our high court disapproved in [*Laurel Heights I*]." (*Citizens for Responsible Government, at p. 1221.*)

Again, without questioning the correctness of this decision on its facts, we find it falls short of demonstrating a general rule against use of conditional agreements to postpone CEQA review. The development agreement in *Citizens for Responsible Government*, once approved by the voters, vested the developer with the right to build and operate a card room within particular parameters set out in the agreement. The city had thus "contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA" and had precluded consideration of a "no project" option. (*Citizens for Responsible Government, supra, 56 Cal.App.4th at pp. 1221-1222.*) "Indeed, the purpose of a development agreement is to provide developers with an assurance that they can complete the project. After entering into the development agreement with [the developer], the City is not free to reconsider the wisdom of the project in light of environmental effects." (*Id. at p. 1223.*)¹²

¹² *Citizens for Responsible Government's* references to a "development agreement" were to development agreements as described in *Government Code section 65865.2*, which allows for

only such conditions as "shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement." The purpose of such agreements is to give "[a]ssurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations" (*Gov. Code, § 65864, subd. (b)*; see *Citizens for Responsible Government, supra, 56 Cal.App.4th at pp. 1213-1214.*)

[***633] (7) Desirable, then, as a bright-line rule defining when an approval occurs might be, neither of those proposed--the execution of an *unconditional* agreement irrevocably vesting development rights, or of *any* agreement for development concerning a well-defined project--is consistent with CEQA's interpretation and policy foundation. Instead, we apply the general principle that before conducting CEQA review, agencies must not "take any action" that significantly furthers a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public [***634] project." (*Cal. Code Regs., tit. 14, § 15004, subd. (b)(2)(B)*; accord, *McCloud, supra, 147 Cal.App.4th at p. 196* [agreement not project approval because, inter alia, it "did not restrict the District's discretion to consider any and all mitigation measures, including the 'no project' alternative"]; *Citizens for Responsible Government, supra, 56 Cal.App.4th at p. 1221* [development agreement was project approval because it limited city's power "to consider the full range of alternatives and mitigation measures required by CEQA"].) [*139]

In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project. (See *Cal. Code Regs., tit. 14, § 15126.6, subd. (e)*.) In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative.

(8) A frequently cited treatise on CEQA (Remy et al., *Guide to the Cal. Environmental Quality Act (CEQA)* (11th ed. 2006)) summarizes this approach in a useful manner. "First, the analysis should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff have committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has 'approved' the project." (*Id. at p. 71.*) As [***361] this passage suggests, we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a "decision ... which commits the agency to a definite course of action in regard to a project." (*Cal. Code Regs., tit. 14, § 15352.*)

(9) Our analysis does not require CEQA analysis before a definite project has been formulated and proposed to the agency. An agency cannot be deemed to have approved a project, within the meaning of *sections 21100 and 21151*, unless the proposal before it is well enough defined "to provide meaningful information for environmental assessment." (*Cal. Code Regs., tit. 14, § 15004, subd. (b)*.) Moreover, when the prospect of agency commitment mandates environmental analysis of a large-scale project at a relatively early planning stage, before all the project parameters and alter-

natives are reasonably foreseeable, the agency may assess the project's potential effects with corresponding generality. With complex or phased projects, a staged EIR (*Cal. Code Regs., tit. 14, § 15167*) or some other appropriate form of tiering (see *In re Bay-Delta etc. (2008) 43 Cal.4th 1143, 1170 [77 Cal.rptr.3d 578, 184 P.3d 709]*; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra, 40 Cal.4th at p. 431*) may be used to postpone to a later planning stage the evaluation of those project details that are not reasonably foreseeable when the agency first approves the project. [*140]

IV. Application to City's Decisions

We turn finally to whether the city council's approval of the draft agreement on May 3, 2004, and the city manager's execution of the revised agreement on August 9 of the same year constituted approval of the 1343 Laurel project for purposes of *sections 21100 and 21151*. From the agreements and the surrounding circumstances, we conclude City did approve the 1343 Laurel project in substance, though it reserved some of the project's design details for later environmental analysis and final decision.

The contract between City and Laurel Place demonstrates City's commitment to the project. Both the May 3 draft and the August 9 executed agreements forthrightly stated their purpose was to "cause the reuse and redevelopment" of 1343 Laurel in accordance with the project as outlined in the agreements and in the earlier HUD grant application. The city council's May 3 resolution, similarly, stated the intent to "facilitate development of the project"--while allowing further public input on "the design of project elements."

In both versions of the agreement, moreover, City agreed to initially lend the developer nearly half a million dollars, a promise *not* conditioned on CEQA compliance. This predevelopment portion was to be advanced in the first phase of the agreement's performance, before EIR approval and issuance of other final approvals, and was to be repaid from project receipts over a period of up to 55 years. If City did not give final approval to the project, therefore, it would not be repaid. For a relatively small government like City's, this was not a trivial outlay, and it would be wasted unless City gave final approval to the project in some form.

While both versions of the agreement conditioned conveyance of the property and disbursement of the second half of the loan on CEQA compliance, among other conditions, the May 3 draft agreement significantly circumscribed City's remaining authority in this regard. Under the draft agreement, whether CEQA requirements had been met was to be "reasonably determined by the City Manager," language that could have left City open to charges it acted unreasonably, had it ultimately declined to certify the EIR or make any needed CEQA findings.

[***635] In addition, the May 3 draft agreement, in setting the condition that all "requirements of CEQA" be "satisfied," arguably left open the question whether City remained free to find that the EIR was legally adequate and yet to reject the project on substantive environmental grounds. An EIR that [*141] "satisfies" CEQA "requirements" may nonetheless demonstrate the project carries with it significant immitigable adverse effects. The May 3 draft agreement's condition does not clearly [**362] encompass the possibility that in such a situation City could decline to find, pursuant to *section 21081, subdivision (b)*, that the project's benefits outweigh such immitigable effects.

Finally, the May 3 draft agreement had no provision for appealing to the city council the city manager's decision on, or waiver of, CEQA compliance. Such a delegation of the council's authority

was itself an impermissible attempt to approve the project without prior CEQA review. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 [248 Cal. Rptr. 352] [permit condition requiring applicant to submit environmental study to the planning commission and adopt any mitigation measures formulated by commission staff was an improper delegation of CEQA responsibility to staff and an impermissible postponement of environmental review].)

After Save Tara sued, alleging some of these same flaws in the May 3 draft agreement, City staff revised the agreement to repair them. Under the August 9 executed agreement, the city manager no longer had authority to determine or waive CEQA compliance, and City's "complete discretion" over CEQA matters was expressly acknowledged. But the city council had already approved the May 3 draft agreement, by which it had shown a willingness to give up further authority over CEQA compliance in favor of dependence on the city manager's determination. Given that history, as well as the other circumstances discussed below, City's "apprehensive citizenry" (*No Oil, Inc., supra*, 13 Cal.3d at p. 86) could be forgiven if they were skeptical as to whether the city council would give adverse impacts disclosed in the EIR full consideration before finally approving the project.

Circumstances surrounding City's approval of the agreements confirm City's commitment to the 1343 Laurel project. In aid of Laurel Place's HUD grant application, the city manager told the federal agency City "has approved the sale of the property" and "will commit" up to \$ 1 million in financial aid. Once the grant was awarded, City's mayor announced it "will be used" for Laurel Place's project, and the City newsletter stated that, using the grant, City and Laurel Place "will redevelop the property." City officials told residents who opposed the project that while "variations" on the proposal would be entertained, City "must continue on a path that fulfills this obligation" to redevelop the property for senior housing. Similarly, at the May 3, 2004, city council meeting, City's housing manager stated that while there were "options to consider" regarding project design, options for other [*142] uses of the property (as a park, library, or cultural center) had already been ruled out. "

13 At oral argument, counsel for City and Laurel Place urged strenuously that expressions of enthusiasm for a project by an agency's staff members should not be confused with official approval of a project. We agree. In isolation, such statements could rarely, if ever, be deemed approvals for CEQA purposes. Here, of course, we weigh statements by City officials not in isolation but as one circumstance shedding light on the degree of City's commitment when it approved the May 3 and August 9 agreements. It bears noting, as well, that one of the statements upon which we rely was a communication from City's mayor, another appeared in an official City newsletter, and others were from City's housing manager, who, having been named in the mayor's announcement as the contact person for residents with questions about the proposed development, had apparent authority to speak for City on this topic.

[***636] Finally, City proceeded with tenant relocation on the assumption the property would be redeveloped as in the proposed project. After HUD awarded the grant, City's housing manager told a tenant that she would be relocated, though not for a year or so. Around the same time, other tenants reported being contacted by relocation consultants, who told them they would soon be given one-year notices. As part of its May 3, 2004, resolution, the city council authorized the predevelopment loan in order to, among other things, "begin the process of working with tenants to explore relocation options." The May 3 draft and August 9 executed agreements provided that Laurel Place would "complete the relocation of tenants" in the agreement's first performance phase, that is, *be-*

fore final project approval was given and the property conveyed to Laurel Place. A staff report on the May 3 draft agreement stated that relocation notices, with a one-year period, would be sent shortly after the agreement [**363] was executed. The August 9 executed agreement further specified the process was to begin within 30 days.

Relocation of tenants is a significant step in a redevelopment project's progress, and one that is likely to be irreversible. City's willingness to begin that process as soon as the conditional development agreement was executed, and to complete it before certifying an EIR and finally approving the project, tends strongly to show that City's commitment to the 1343 Laurel project was not contingent on review of an EIR.

(10) In summary, City's public announcements that it was determined to proceed with the development of low-income senior housing at 1343 Laurel, its actions in accordance with that determination by preparing to relocate tenants from the property, its substantial financial contribution to the project, and its willingness to bind itself, by the May 3 draft agreement, to convey the property if the developer "satisfied" CEQA's "requirements, as reasonably determined by the City Manager," all demonstrate that City committed itself to a definite course of action regarding the project before fully evaluating its environmental effects. That is what *sections 21100 and 21151* prohibit. [*143]

CONCLUSION

For the reasons given above, we agree with the Court of Appeal that City must be ordered to "declare void its approval of the May and August 2004 Agreements" and to reconsider those decisions in light of a legally adequate EIR for the project. (See § 21168.9, *subd. (a)(1)*.) If that reconsideration leads to approval of the project, City must make any appropriate findings under *section 21081*.

Unlike the Court of Appeal, however, we do not believe City necessarily must prepare a new EIR before reconsidering its approval of the project. The parties agree City certified a final EIR for the project in 2006, during pendency of this appeal, and Save Tara did not judicially challenge that EIR's legal adequacy.

[***637] The 2006 EIR was prepared after City approved the May 3 and August 9, 2004, agreements, which approvals must be now vacated. To the extent the 2006 EIR's discussion of project alternatives and mitigation measures was premised on City's 2004 approvals, that discussion may need revision. Moreover, by the time of our remand more than two years will have passed since the EIR was certified in October 2006. Because of both these factors, it is possible that "[s]ubstantial changes [have] occur[red] with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report" or that "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, [has] become[] available." (*Pub. Resources Code*, § 21166, *subds. (b), (c)*; see also *Cal. Code Regs.*, *tit. 14*, §§ 15162, 15163 [subsequent and supplemental EIR's].) Whether this is so must be decided in the first instance by City and reviewed by the superior court on a substantial evidence standard. (See *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704 [7 Cal. Rptr. 3d 868].)

This matter must therefore be returned to the superior court for that court (1) to order City to set aside its prior approval of the project; (2) if City decides no subsequent or supplemental EIR is re-

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quired under *section 21166*, to review that decision; and (3) to make any other order necessary and proper under *section 21168.9*. [*144]

DISPOSITION

The judgment of the Court of Appeal is affirmed in part and reversed in part. The matter is remanded to the Court of Appeal for further proceedings consistent with our opinion.

George, C. J., Kennard, J., Baxter, J., Chin, J., Moreno, J., and Corrigan, J., concurred.

On December 10, 2008, the opinion was modified to read as printed above.

ATTACHMENT 3

City Council Resolution No. 11-R-12809

RESOLUTION NO. 11-R-12809

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING A CONDITIONAL USE PERMIT TO ALLOW AN EXERCISE CLUB TO BE LOCATED ON THE GROUND FLOOR OF A BUILDING LOCATED WITHIN THE BUSINESS TRIANGLE, OCCUPY MORE THAN 25 FEET OF STREET FRONTAGE WITHIN THE PEDESTRIAN ORIENTED AREA, AND UTILIZE SHARED PARKING, FOR THE PROPERTY LOCATED AT 9465 WILSHIRE BOULEVARD

The City Council of the City of Beverly Hills hereby finds, and resolves as follows:

Section 1. Equinox Fitness Club (the "Applicant") submitted an application for a Conditional Use Permit ("CUP") to allow an exercise club: (1) to be located on the ground floor of a building located within the Business Triangle, (2) to occupy more than 25 feet of street frontage within the Pedestrian Oriented Area, and (3) to utilize shared parking facilities in order to satisfy the City's parking requirements. The exercise club is proposed to be located at 9465 Wilshire Boulevard (the "Project"). An exercise club is a permitted use within the City's commercial zones. The Project requires a CUP in order to: (1) be located on the ground floor of a building within the Business Triangle, (2) occupy more than 25 feet of street frontage within the City's Pedestrian Oriented Area, and (3) utilize shared parking facilities.

The Project site is located on the northwest corner of the intersection of Wilshire Boulevard and Beverly Drive, in a building commonly referred to as the "Bank of America building." The building is located within the Pedestrian Oriented Area of the City. The existing neighborhood character within the vicinity of the Project consists of a variety of commercial developments, which are predominantly occupied by retail and general office uses. The Project site is immediately south of an office building soon to be occupied by Metro Goldwyn Mayer

("MGM") and across Beverly Drive from the Montage Hotel. Additionally, the Project site is located immediately east of the "Two Rodeo" development, and northeast of the Beverly Wilshire Hotel.

The Project consists of tenant improvements for and the operation of an approximately 37,000 square foot exercise club within portions of the first, second, and third floors of the existing commercial building at the subject property.

Parking for the existing Bank of America building is located in a subterranean garage below in the MGM building parking garage, which is connected to the Bank of America building at levels P1 and P3 of the Bank of America building. As a result, the Bank of America building has access to a total of 959 parking spaces within the entire garage.

Section 2. Notice of the Project and public hearing before the Planning Commission was mailed on October 1, 2010 to all property owners and residential tenants within a 300-foot radius of the property. Additionally, notice was provided to all commercial tenants of the subject property. On October 14, 2010, November 23, 2010 and January 13, 2011 the Planning Commission considered the application at duly noticed public meetings. On January 13, 2011, the Planning Commission adopted a resolution approving the CUP.

Section 3. An appeal from the decision of the Planning Commission was filed by Todd Elliot, attorney on behalf of Ron and Sharon Gart and Neighbors Organized to Protect the Environment in Beverly Hills (N.O.P.E Beverly Hills) (hereinafter referred to as the "Appellant").

Section 4. Notice of the appeal hearing was mailed on March 25, 2011 to the Applicant, the Appellant, and all parties who received notice of the Planning Commission

hearing. Notice was also published in two newspapers of general circulation. On April 5, 2011, the City Council held a de novo public hearing to consider the application for the CUP.

Section 5. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*, the “State Guidelines”), and the City’s Local CEQA Guidelines (the “City Guidelines”). Class 1, Class 2, and Class 32 Categorical Exemptions have been issued in accordance with the requirements of Sections 15301, 15302, and 15332 of the State Guidelines. The Class 1, Class 2 and Class 32 exemptions are applicable because the Project results in minor interior and exterior changes to an existing commercial building, demolition and reconstruction of a commercial space within an existing commercial building, and in-fill development within an existing urban area. The exemptions are further supported by the technical environmental analysis prepared and reviewed in conjunction with the Project.

No exceptions to the categorical exemptions apply. The City Council finds that there is no substantial evidence of a reasonable possibility that the activity will have a significant environmental effect due to unusual circumstances. The accident count comparisons between Los Angeles intersections and the intersection of Beverly Drive/Wilshire Boulevard presented by the Appellant were inappropriate because the studies being compared did not measure comparable accident rates.

Additionally, the City Council finds that the Project will not cause a substantial adverse change in the significance of an historic resource. The Bank of America building has not been identified as a historic resource itself, but as a contributor to a potential historic district. Based on the conditions of this CUP, the staff report regarding consultation with the City’s

historic resources consultant, and the presentation from Mr. George Taylor Loudon, the Council finds that the proposed changes to the Bank of America building would not alter character defining features of the Bank of America building, and would be reversible.

Section 6. In considering the request for the CUP, the City Council was able to make the following findings as further detailed in Section 7:

1. The proposed location of the use will not be detrimental to adjacent property or to the public welfare;

2. The proposed restricted use is compatible with and will not result in any substantial adverse impacts to surrounding uses;

3. Granting the request for a conditional use permit will not result in an over concentration of non-pedestrian oriented uses in the block in which the proposed restricted use will be located;

4. Granting the request for a conditional use permit will not adversely impact the public health, safety or general welfare and will leave ample space available for future retail growth in designated pedestrian oriented areas; and

5. The configuration of the building in which the proposed space is located is not suited to pedestrian oriented retail uses and does not contribute to the pedestrian experience.

Section 7. Based on the evidence presented at the hearing, including the staff report and written and oral testimony, the City Council hereby finds and determines as follows:

1. The proposed location of the Project will not be detrimental to adjacent property or to the public welfare. The Project is commercial in nature, and is compatible with ongoing commercial operations in the vicinity of the Project site by

providing additional services to shoppers and workers, including additional dining, retail and exercise opportunities. Traffic and parking studies that have been peer reviewed by the City's Transportation Division indicate that the Project will not result in any significant traffic or parking related impacts. Based on parking survey data, the office uses in the Bank of America building are primarily daytime uses. Also, based on survey data from the Westwood Equinox club, the proposed use will be primarily an early morning and nighttime use. The survey data indicates that most exercise club patrons visit during the hours before 9:00 a.m. and after 5:00 p.m. Additionally, the heaviest per hour use is during these hours. The parking facility is located on site and has more than 500 parking spaces and a parking utilization study prepared by a certified traffic engineer has concluded to the satisfaction of the City Council that the parking facilities exceed the demand for parking spaces that will be generated by the Project and other uses in the Bank of America building.

Existing site conditions do not include pedestrian oriented development, and the proposed Project will improve upon the existing conditions by providing window displays, a new pedestrian access point, and a broader range of uses along the subject property's street frontage. Further, all exterior modifications, signage, and window displays will be reviewed by the Architectural Commission to ensure a pedestrian-friendly design. As a result, the proposed Project will further the City's General Plan goals of encouraging pedestrian oriented streets and shopping areas and will not be detrimental to adjacent property or to the public welfare.

2. The proposed Project is compatible with and will not result in any substantial adverse impacts to surrounding uses. The proposed Project is commercial

in nature and will complement commercial operations in the vicinity of the Project site by providing additional services to shoppers and workers, including additional dining, retail and exercise opportunities. Although the exercise club is not designated as a pedestrian oriented use, the proposed design will improve upon existing conditions and create a more pedestrian oriented environment. Existing site conditions do not include pedestrian oriented development. The proposed Project will provide window displays, a new pedestrian access point, and a broader range of uses along the subject property's street frontage. Further, all exterior modifications, signage, and window displays will be reviewed by the Architectural Commission to ensure a pedestrian-friendly design.

3. Granting the request for a conditional use permit will not result in an over concentration of non-pedestrian oriented uses in the block in which the proposed Project will be located. The existing Bank of America building is currently utilized entirely by general office and banking uses, which do not qualify as pedestrian oriented uses. Because the Project would be replacing non-pedestrian oriented uses, the Project will not result in the loss of any pedestrian oriented development. In fact, the Project will include the installation of new window displays, a new pedestrian access point, and a broader range of uses along the building's street frontage. These changes will improve the pedestrian orientation of the building and therefore the block on which the building is located. Thus, the proposed Project will not result in an over concentration of non-pedestrian oriented uses in the block.

4. Granting the request for a conditional use permit will not adversely impact the public health, safety or general welfare and will leave ample space available for future retail growth in designated pedestrian oriented areas. Traffic and parking studies have concluded that the Project will not result in any traffic or parking related impacts. For the reasons discussed above, the proposed Project will improve the pedestrian orientation of the building and the area, thereby furthering the City's General Plan goals and will add a retail use to the street level of the Bank of America building. Additionally, the Project does not result in the loss of any existing pedestrian oriented development. The Project site is surrounded by pedestrian-oriented developments to the north, east, and west, and therefore leaves ample space for future retail growth in the designated pedestrian oriented areas in addition to the retail growth caused by the Project itself.

5. The configuration of the Bank of America building in which the Project will be located is not suited to pedestrian oriented retail uses and does not contribute to the pedestrian experience. The configuration of the existing building on the Project site does not appear to have been designed with pedestrian movement in mind. Existing ground-floor bank uses provide little if any pedestrian oriented atmosphere. The architectural design of the building does not contribute to the pedestrian experience due to its setback and blank walls at the street level. The proposed Project, including its architectural modifications to the ground floor, will help to improve the pedestrian experience for the reasons discussed above.

6. The subject property has been identified as a potential contributor to a potential "California Register district of ...Post World War II modern office

buildings.” At present there is no established Post World War II modern office building historic district. The City Council finds that the subject building is not a historic resource on that ground, and is not a historic resource itself, as shown by the resource review records. Further, the City Council finds that even if the building were to be deemed a historic resource, the Project will not cause a substantial adverse change in the significance of the structure. Specifically, new window displays, a pedestrian entrance, introduction of a small retail component, and installation of a 33 foot opaque storefront will not individually or cumulatively result in a substantial change in the appearance of the building, much less a substantial adverse change to the alleged historic resource. Further, any changes are fully reversible, and no evidence was presented to suggest that the minor building modifications would result in substantial adverse changes to the building appearance. Although the structure is not found to be a historic resource, and the changes presented to the City Council will not adversely affect the appearance of the structure, the conditions of approval imposed on the project require, as part of the Architectural Review process, review of any changes to the building exterior, including any changes as may be recommended by the Architectural Review Commission, by a qualified historian to ensure changes would not result in a substantial adverse change to the building. Therefore, the City Council finds that the minor exterior changes that would result from the Project will be fully reversible and will not cause a substantial adverse change in the significance of the building.

7. The City Council also finds that the characteristics of the intersection of Wilshire Boulevard and Beverly Drive, adjacent to the project site, do

not constitute an unusual circumstance for purposes of CEQA Guidelines Section 15300.2 (c), and that there will be no adverse impacts to traffic or parking for the reasons documented in the detailed traffic and parking analysis prepared for the Project. The accident count comparisons between Los Angeles intersections and the intersection of Beverly Drive/Wilshire Boulevard presented by the Appellant were inappropriate because the studies being compared did not measure comparable accident rates.

Section 8. Based on the foregoing, the City Council hereby denies the appeal and grants the requested Conditional Use Permit, subject to the following conditions:

1. The Conditional Use Permit (CUP) shall expire fifteen (15) years from the date of the resolution and all rights granted by this CUP shall terminate at that time. Unless the CUP is renewed, or a new CUP granted, the Applicant shall immediately cease operation of the exercise club at this location. The Applicant shall have the right to submit requests for renewal of the CUP but shall have no right to renewal of the CUP. Any application for renewal of the CUP or a new CUP must be filed at least sixty (60) days prior to the expiration of these approvals. If the Planning Commission or City Council on appeal does not renew the CUP, the CUP shall expire and all rights possessed under the CUP shall be terminated. Provided, however, if the Applicant files a timely application for a renewal, any existing CUP shall be extended until the City takes final action on the application. Any application for a renewal of this CUP shall be subject to the application fee established by Resolution of the City Council. Upon expiration of the renewal and any future renewal, the Applicant may apply for further extensions pursuant to the procedures set forth above.

2. Six (6) months after the opening of the exercise club, the Applicant shall provide to the Director of Community Development parking utilization counts at the subject site to monitor actual parking demand and ensure that the parking demand is being met. Should parking demands be different than those reported under the parking survey prepared in connection with the review of the Project and the Director determines that parking supply is insufficient to meet the demands of the exercise club, then the Applicant shall develop a parking management plan satisfactory to the Directors of Community Development and Transportation to mitigate the parking deficiency. If at any time the Director of Community Development determines that parking demand or parking supply may no longer reflect the conditions that were monitored six (6) months after opening of the exercise club, then the Director may require additional parking utilization counts. Should parking demands at that time be different than those reported under the parking survey prepared in connection with the review of the Project and the Director determines that parking supply is insufficient to meet the demands of the exercise club, then the Applicant shall develop a parking management plan satisfactory to the Directors of Community Development and Transportation to mitigate the parking deficiency.

3. The conditional approval set forth in this resolution is specifically tailored to address the operation of a fitness facility that substantially conforms to the Project plans presented to and approved by the City Council at its meeting of April 5, 2011. The Project shall be operated in substantial conformity with the presentation to the Planning Commission and the City Council. To ensure that the subsequent fitness facilities operated at the subject site do not cause adverse impacts to other building

tenants or adjacent land uses, any transfer of ownership, management, or control of the proposed fitness facility shall be reviewed by the Director of Community Development to determine whether the proposed operations of the new fitness facility substantially conform to the Project as presented to and approved by the City Council. If the Director determines that the proposed operations do not substantially conform to the approved Project, then the Director shall schedule a hearing before the Planning Commission in accordance with the provisions of Section 10-3-3803 of the Beverly Hills Municipal Code. The Planning Commission expressly reserves jurisdiction at said hearing to revoke the conditional use permit upon a finding that the Project operations do not substantially conform to Project presented to the Planning Commission and the City Council, or to impose additional conditions as necessary to ensure that the operation of a subsequent exercise club at the subject site is compatible with adjacent land uses.

4. Prior to the issuance of building permits, all exterior modifications to the building, as well as signage and window displays, shall be submitted to and approved by the Architectural Commission. Although the City Council finds that the exterior modifications will not cause any substantial adverse change in significance and architectural detailing of the building, all exterior modifications shall be reviewed by a qualified historic consultant to ensure no substantial adverse changes will occur.

5. A minimum of 367 on-site parking spaces shall be maintained for use by the exercise club. Up to 334 of the 367 required parking spaces may be provided as shared parking. The Applicant and the Project site owner shall record a

parking covenant in a form satisfactory to the City Attorney to evidence the shared parking spaces.

6. The Applicant shall provide two (2) hours of free parking to all members and guests of members during weekdays. The Applicant shall also provide one additional half (1/2) hour of parking at rates comparable to those charged in the nearest City parking structure. The Applicant shall provide three (3) hours of free parking to all members and guests of members during weekends. The requirements set forth in this condition shall exclude valet parking unless adequate self-parking is not available on the Project site to meet the parking demand generated by the Project.

7. The Applicant shall provide free on-site parking at all times for trainers who assist patrons of the exercise club and any other employees, independent contractors, and any other consultants or agents retained by or associated with the Applicant in connection with the operation of the Project.

8. No sports medical center shall be allowed as part of the proposed Project. This condition shall not be construed to bar the Applicant from requesting a CUP modification at a later date to permit a sports medical center.

9. This CUP shall be reviewed annually by the Planning Commission during the exercise club's first three (3) years of operation to ensure that the Project complies with the conditions set forth herein and does not have any unanticipated impacts or adversely affect adjacent uses. The Planning Commission expressly reserves jurisdiction with regard to traffic and parking issues and reserves the right to impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Project as they arise. Prior to the annual

review hearing, the Applicant shall submit an affidavit attesting to its continued compliance with all of the conditions of approval set forth in this Resolution.

10. The City expressly reserves jurisdiction with regard to traffic and parking issues. In the event the Director determines that operation of the Project at this site is having unanticipated traffic or parking impacts, the Director shall require the Applicant to pay for a City controlled traffic and parking analysis. After reviewing the traffic and parking analysis, if, in the opinion of the Director, the parking or traffic issues merit review by the Planning Commission, the Director shall schedule a hearing before the Planning Commission in accordance with the provisions of Article 38 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic or parking impacts caused by the proposed Project, and the Applicant shall forthwith comply with any additional conditions at its sole expense. Mitigation may consist of a requirement to provide free valet parking for members.

11. The Applicant shall cap membership in the proposed exercise club at a maximum of four thousand five hundred (4,500) members, including any transfers from other locations. This condition shall not be construed to bar the Applicant from requesting a modification of this conditional use permit at a later date to permit additional members.

12. The proposed exercise club shall not be permitted to open for business unless and until the MGM building parking facility becomes fully

operational and available for use by the exercise club patrons, employees and others visiting the exercising club.

13. RECORDATION. This resolution approving the Conditional Use Permit shall not become effective until the Applicant and the owner of the Project site record a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the City Council's adoption of this resolution. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project shall be **null and void and of no further effect**. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.

14. TERMINATION. The exercise of rights granted by this conditional use permit shall be commenced within three (3) years after the adoption of this resolution by opening the proposed Project to patrons. If such rights have not been exercised within such time, then this conditional use permit shall automatically terminate and shall be of no further force and effect.

15. VIOLATION OF CONDITIONS: A violation of these conditions of approval is grounds for revocation of the conditional use permit pursuant to the procedures set forth in the Beverly Hills Municipal Code.

16. This approval is conditioned upon substantial compliance with those plans submitted to the City Council for the City Council hearing on April 5, 2011, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be substantially consistent with such plans, except as otherwise specified in these conditions of approval.

17. Project plans must comply with all applicable zoning regulations. Project plans shall be subject to a complete Code compliance review when building plans are submitted for plan check. Compliance with the Municipal Code is required prior to the issuance of a building permit.

18. Approval Runs With Land. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

19. Prior to the issuance of a building permit, the applicable Park and Recreation Facilities Tax required by the Municipal Code shall be paid.

20. The Project shall not unreasonably disturb nearby tenants, properties or residents due to light, noise, activities, or parking by patrons, employees or others visiting the Project.

21. The Project shall operate at all times in compliance with the City's ordinances concerning noise.

22. The Applicant shall remove and replace all public sidewalks surrounding the Project site that are damaged as a result of Project construction.

23. The Applicant shall remove and replace all curbs and gutters surrounding the Project site that are damaged as a result of Project construction.

24. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained.

25. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and the security shall be in a form approved by the City Engineer and the City Attorney.

26. The Applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The Applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.

27. The Applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.

28. The Applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the applicable utility company and the City.

29. The Applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.

30. The Applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.

31. The Applicant shall provide to the Engineering Office the proposed demolition/construction staging for this Project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.

32. The Applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, and similar encroachments, for construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling equipment and materials related to the Project.

33. The Applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

34. During construction, all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.

35. Condensation from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

36. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges include, without limitation, rising ground water and garage sumps.

37. In the event of any court action or proceeding challenging the approval of this resolution or otherwise challenging the approval of this conditional use permit, the Project, or the environmental review conducted in conjunction with this Project, the Applicant shall defend, at its own expense, the action or proceeding. In addition, the Applicant shall reimburse the City for the City's cost of defending any such court action or proceeding. The Applicant shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. The Applicant shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event the Applicant fails or refuses to reimburse the City for its cost to defend any challenge to the approval of this conditional use permit, the Project, or the environmental review conducted in conjunction with this Project, the City shall have the right to revoke this conditional use permit approval.

In order to ensure compliance with this condition, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack,

set aside, void or annul the approval of this conditional use permit or the Project, the Applicant shall deposit with the City cash or other security in the amount of seventy five thousand dollars (\$75,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this condition. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the Applicant shall restore the deposit to its original amount within thirty (30) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional fifty thousand dollars (\$50,000.00) is necessary to secure the obligations of this section, the Applicant shall provide such additional security within thirty (30) days of notice from the City Attorney. The City shall promptly notify the Applicant of any claim, action or proceeding within the scope of this condition.

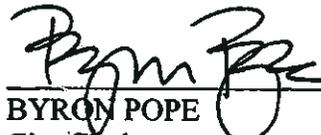
Section 9. The City Clerk shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his Certification to be entered in the Book of Resolutions of the City.

Adopted: April 21, 2011



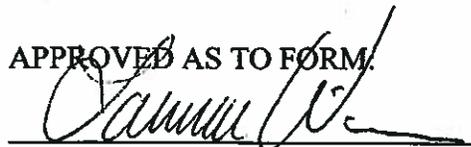
BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:



BYRON POPE (SEAL)
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



SUSAN HEALY KEENE
Director of Community Development

ATTACHMENT 4

Historic Consultant Analysis (April 5, 2011)


Historical Architecture & Preservation

6330 Green Valley Circle # 3301 Culver City CA 90230
Tel 310.410.0433 Mobile 310.874.8783 Fax 310.410.0433
e: taylorlouden@earthlink.net Ca license no. C-24087

GTL | HA

HISTORICAL MEMORANDUM FOR THE RECORD

05 April 2011 document issue

Project: Equinox Fitness Club, 9465 Wilshire Boulevard, Beverly Hills, CA

Historical Memorandum for the Record / Project approach review & recommendations

>Review of Kaplan Chen Kaplan letter dated 25 March 2011;
9465 Wilshire Boulevard – Historic Preservation Review

Summary: Initial review of approach for a design of the proposed Equinox Fitness Club facility that is compatible with the existing site context and the Wilshire Beverly Center commercial building.

Recommended actions are to pursue a project solution with no substantial adverse change to the subject building's significance or integrity of character, in conformance with the Secretary of the Interior's Standards for Rehabilitation.

Subject: Following is a review of the Kaplan Chen Kaplan letter dated 25 March 2011, titled 9465 Wilshire Boulevard, Beverly Hills – Historic Preservation Review

1 

At the request of Law Offices of Murray D. Fischer, I was asked to review the proposed modifications to the Wilshire Beverly building located at 9465 Wilshire Blvd, also known as Bank of America building ("Building"), in connection with the proposed Equinox Fitness Club.

The Building is currently not, and has never been, listed as a historic resource on Local, State or Federal register of historic resources. In 2006 & 2007 a survey ("Survey") of commercial buildings, primarily along the Wilshire Boulevard Corridor, was prepared for the City of Beverly Hills. This Survey included this Building along with 28 others identified as contributors to a potential Post World War II Commercial Buildings historic district ("District"). The Survey noted that a certain number of the

contributing buildings had lost integrity due to storefront alterations and re-modeling occurring over time. Some identified structures had since been demolished.

This potential District is currently not, and has never been, listed on a Local, State or Federal register of historic resources, nor is there any pending procedure for this District's registration or nomination for inclusion in any historic resource register.

Per California Public Resource Code Section 5020.1(k) "Local register of historic resources" means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution. Per California Public Resource Code Section 5024.1(g) a resource identified as significant in an historical resource survey maybe listed in the California Register if the survey meets all of the following criteria:

- 1. The survey has been or will be included in the State Historic Resource Inventory.*
- 2. The survey and the survey documentation were prepared in accordance with office procedures and requirements.*
- 3. The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.*
- 4. If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.*

I have been asked to review the proposed modifications to the Building's exterior as if there were a historic District and this Building were a contributor to such a District. Accepted design protocol would assume this to be the case, in order to provide sufficient protection for the potential resource which may be so defined in the future. It should be noted that this Building has undergone multiple substantial modifications and alterations of the ground floor exterior, which has already had effect on the integrity of the original architectural design of the Building's ground floor storefront.

In summary, upon my review of the proposed exterior modifications, I find that these changes:

- > are reversible in nature;
- > do not have significant adverse impact on the existing Building's overall architectural character;
- > do not have significant adverse impact on a potential historic District, if such were determined to exist in the future.

This building is listed in the City of Beverly Hills Historic Resources Survey Report dated June 2006 (revised April 2007) assessment by Jones & Stokes as a contributing building located within a potential historic district. This district evaluated and included commercial properties located along Wilshire Boulevard, in survey area 5.

From the DPR 523 form Primary Register description, evaluation date recorded as 9 June 2006:
Contributor to a potential California Register district of (Criterion 3) Post World War II modern office buildings. Architect: Victor Gruen Associates.

2

A printed copy set of the original contract document drawings dated 1-16-1961 and noted "Construction Issue" was reviewed at the office of the building, and is summarized along with subsequent projects with modifications to the structure and site.

Modifications:

A chronology of the dates of drawings found in the Office of the Building archives follows:

- Original "Construction Issue" set dated 16 January 1961, prepared by Victor Gruen Associates;
- Drawing set dated 14 November 1988, prepared by Viktor R. Peteris, Inc.:
 - (modifications to ground floor lobby and east tenant space interior redesign.)
- Drawing set dated 15 February 1995, prepared by Harold W. Levitt AIA & Associates:
 - (modifications described as "Alterations and Additions to Wilshire Beverly Center," with notes:
 - "All existing travertine walls (in lobby) to be removed";
 - "Remove existing planter cladding and replace with granite to match existing" at Beverly;
 - Removed all original exterior paving and replaced with "African multi-colored slate" pavers.
- Drawing set dated 28 December 1995, Gensler & Associates:
 - Ground floor plan remodel, and lobby interior remodel and redesign;
 - Replacement of and alterations to south exterior entrance to lobby and canopy soffit;
 - Wilshire Boulevard storefront modifications and replacement.
- An undated set of window replacement shop/installation drawings, for all windows above the ground floor storefront windows.

It should be noted that the defined Period of Significance dates for the potential district in the DPR 523D form is given as 1945 – 1979. All of the alterations to the original construction that have been documented above occur after this defined period. None of these modifications or alterations to the original construction, or replacement designs made in these separate projects, have acquired significance on their own merits.

We concur with Kaplan Chen Kaplan and Pam O'Conner's text concerning the importance and/or influence of Victor Gruen. For the most part, this letter restates a summary of the Jones & Stokes 2006 (rev 2007) survey findings. Our research of the original and subsequent architectural drawing sets in the office of the building indicates that some statements in the Kaplan Chen Kaplan letter have factual errors. Notably the caption to photograph 9, "original storefronts along Beverly Drive are intact", is not applicable to the integral planters or the paving finishes. Their summary of the alterations proposed incorrectly references modifications to entries; the existing entrance at Wilshire

Boulevard and at the corner to the existing bank space are unchanged. Also incorrectly mentioned are alterations at a high-rise level (there are none above the second floor,) and to the building's profile. Other references on page 5 to the "unique" aspects of the significance of the street intersection, with an identified contributor to a potential district on each corner, does not address the recently completed Montage hotel across the street and the MGM project next door to the north of the 9465 building in this potential district. Size, scale, and detailing of these two new structures raise questions of the subject potential district's continuity due to the amount of non-contributing buildings within the district's boundaries, not to mention at this "unique" corner.

Many previously altered elements of the structure are not noted in the June 2006/ Revised April 2007 Jones & Stokes survey, which notes the structure in the list of twenty-eight contributors without indicating an "altered" status. Over the years there have been multiple and numerous additions and alterations to the original structure. Notably nearly all of the original aluminum framed, single-glazed exterior windows and doors have been replaced at the floors above the ground level storefront. None of these appear to have replicated the original mullion details. The anodized aluminum storefront glazing systems at the ground level have been replaced at the Wilshire façade as part of one of the remodeling schemes in 1995. Alterations of the exterior soffit and walls at the Wilshire lobby entrance in the 1995 remodeling included demolishing the travertine stone panels in the lobby interior.

We conclude that there have been "significant" alterations made to the existing structure, most notably at the ground floor level. Considering recent assessment reviews, these alterations cumulatively do not have an apparent effect on the existing structure's ability to convey significance as a contributor building to a historic district.

As noted in the DPR 523D District Record form,

A certain number of the contributing buildings within the district have lost some integrity due to storefront alterations and re-modeling. However, within the upper floors, character defining features and original materials remain largely intact, conveying the original design intent of the building and architect. Many of the contributors are virtually unaltered from the ground up. Therefore, this district retains a relatively high degree of overall integrity.

In the case of the 9465 Wilshire building, the storefronts have been altered in their entirety (along Wilshire) or substantially (along Beverly.) It is the case that the building's upper floor levels have remained "largely intact," but the replacement of the windows throughout above the first level has reduced the integrity overall.

The following observations are documented in the Jones & Stokes Historic Resources Survey Report:

Post World War II Commercial Buildings, 28 contributors:

During the Post World War II period (1945 to 1975) an impressive collection of medium to large-scale office buildings was erected within Beverly Hills. These buildings were predominantly architect designed by practitioners offering a wide range of modernistic interpretations. Buildings include modest examples, mostly 4 to 5 stories in height, constructed after World War II, from the late 1940's to the mid 1950's. Later structures were larger in scale, and were built with higher construction budgets. Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

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A> The project design intent of the Equinox Fitness Club is to emphasize reversibility of proposed exterior alterations, and consequently conformance with the Secretary of the Interior's Standards for Rehabilitation;

B> Our design and detailing intent for the proposed exterior modifications are to not impact any significant original building fabric, particularly those identified as "character-defining features", that would impair any of the contributing features or this building's ability to convey significance. Modifications are located primarily at areas that have been previously modified. Those that are not, such as the proposed new storefront entrance at Beverly, will be designed to be compatible with the original modern style detailing and material selections. If necessary the original storefront may be archived on site so that if there is a desire to remove the alterations at a later time, the original material could be reinstalled.

C> We assert that the proposed alterations to the building for the Equinox Fitness Club that have any effect on exterior features will be designed and detailed so that there would be no irreversible loss of integrity. We accept that the building was noted as a contributor to a potential district in the 2006/2007 Jones & Stokes survey, and assert that our proposed design alterations and approach is consistent with the character of the structure including its later modifications. Proposed alterations are planned to be located at previously altered elements of the structure. Consequently there is no adverse effect on the original building's architecture.

Historical background notes:

The location of the Beverly Wilshire Center office structure is within an area described as the "golden triangle" near the center of the commercial district, at the intersection of Beverly and Wilshire Boulevards. Beverly Hills' twentieth century expansion has seen a densification of the area around the original business center, at the triangular central area formed at the south by Wilshire Boulevard, Beverly Boulevard to the northeast and Santa Monica Boulevard to the northwest. The developing city collected new hotels and office buildings which reflected the increasing association with the developing film and entertainment industry, such as the Beverly Wilshire in 1926. As the population grew, branches of downtown's exclusive department stores grew along Wilshire Boulevard. By the post World War II era, original smaller scale structures were gradually replaced by larger structures constructed in the modern style popular at the time. The Beverly Wilshire Centre (as originally named) represents this age of development.

Preliminary design observations/considerations:

- A> Alterations to the building and site context have generally maintained the integrity of the structure.
- B> There is a history of ongoing development and remodeling of this building and the adjacent properties.
- C> Later new construction has not always been performed in sympathetic response to the design of the original building and site.
- D> An overall articulation of massing and detailing of exterior features in a mid-twentieth century modern stylistic vocabulary with a materially appropriate character is present in the original 1960-1961 design.
- E> There is a consistency of massing forms with recessed, continuous horizontal openings, and generally a horizontal emphasis of fenestrations and surrounds with radiused corners and details.
- F> There is precedent for a unified color and material consistency for the building complex.

The following historical design considerations are recommended to be developed:

- > Develop a concept where modernist precedents and interventions are acknowledged.
- > Develop a design response where the pedestrian oriented district is acknowledged, and the west façade and south façade of the building are both enhanced.

The following character defining features summarized in the Jones & Stokes Historic Resources Survey are recommended to be referenced:

Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period.

Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

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Hard Facts:

- Office of the Building Archives, 9465 Wilshire;
- Office of Victor Gruen and Associates;
- City of Beverly Hills Historic Resources Survey Report dated June 2006 (revised April 2007) assessment by Jones & Stokes
- GTL|HA, overall site context reconnaissance and photography March- April 2011;
- GTL|HA, Paint chronology investigations, April 2011.

Internet Sources:

- City of Beverly Hills;
- Los Angeles Public Library

End of Historical Memorandum for the Record
Document issue date 05 April 2011

George Taylor Loudon AIA
Historical Architect
Historical Architecture Consultant

ATTACHMENT 5

Historic Consultant Analysis (June 17, 2011)

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GTL | HA

HISTORICAL MEMORANDUM FOR THE RECORD

17 June 2011 Document issue

Project: Equinox Fitness Club, 9465 Wilshire Boulevard, Beverly Hills, CA

Historical Memorandum for the Record / review of proposed exterior modifications

>Site review; Archive reviews; proposed project plan and detail reviews

Subject: >Summary of development of the site and original character defining elements of the building;
>Description with analysis of previous alterations to building form and detail;
>Review of reversible exterior modifications for the proposed Equinox Fitness Club facility that are compatible with the existing 1960-1961 Wilshire Beverly Center commercial building.

Summary: Proposed exterior modifications are found to be in conformance with the Secretary of the Interior's Standards for Rehabilitation. These modifications are compatible and reversible in nature of design and detail, posing no significant adverse change in any character defining elements of the building or its original design features.

Additionally, these modifications have no impact on the potential historic district (contiguous or non-contiguous) identified by Jones & Stokes of similar modern-era buildings in the identified district number five. Significant and irreversible alterations and modifications have occurred in the potential district since the June 2006 original issue date of their survey.

Following this executive summary is an analysis of significant character-defining architectural features present. Observations from review at the site and building archives research are followed by design review and conclusions:

>1. Background information of site and structure:

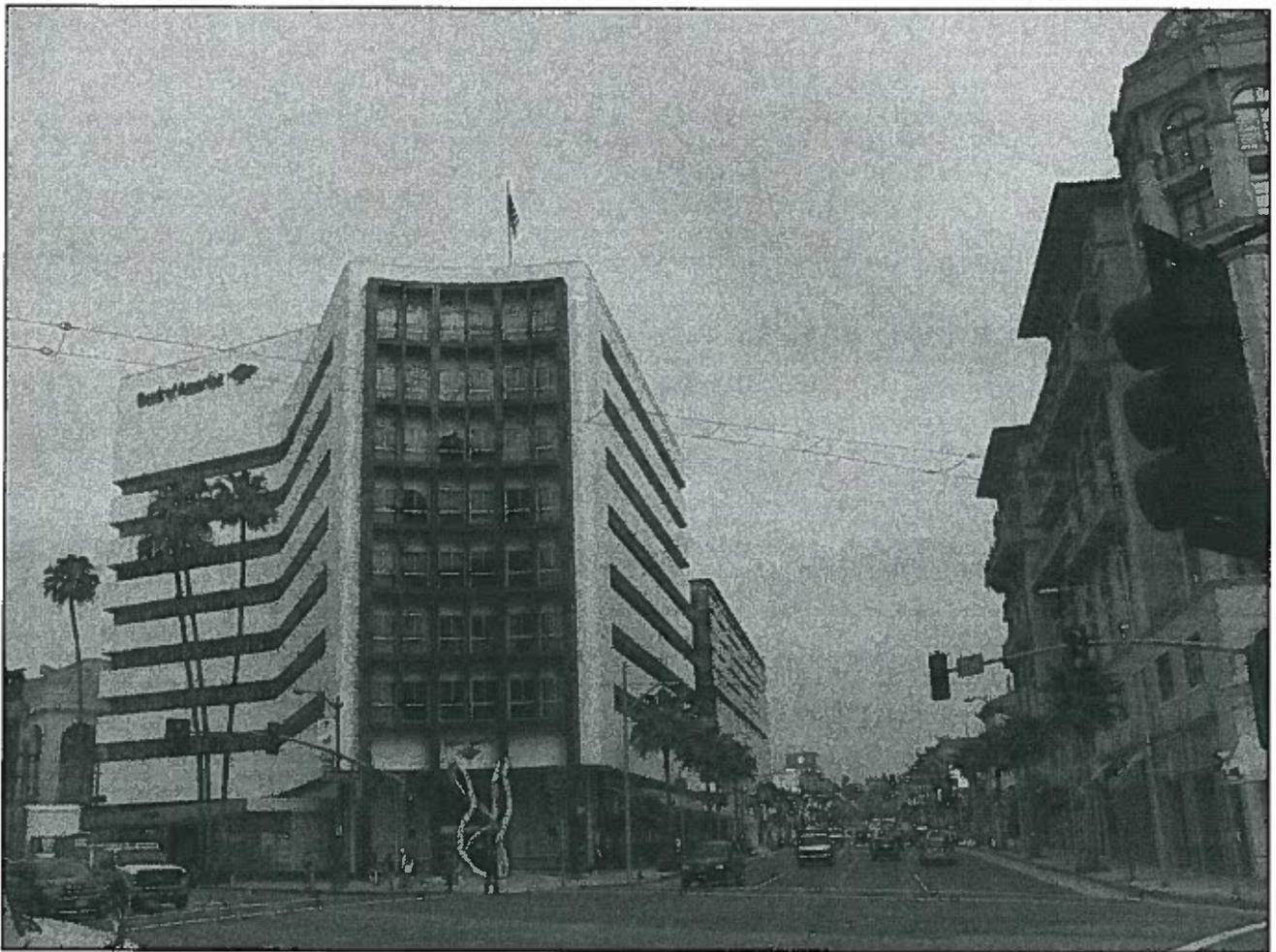
Site chronology, design of original 1960-1961 structure and documented later modifications;

>2. Existing site and structure conditions review:

Detail analysis from office of the building archive of previous project drawings for alterations of the subject building, coupled with analysis of existing conditions;

>3. Concluding analysis of proposed compatible exterior modifications:

Review of project design and detailing with concluding analyses related to conformance with the Secretary of the Interior's Standards for Rehabilitation.



GTL | HA April 2011 recordation photograph; Context view from south with new adjacent construction behind to the north (MGM Building, previously known as William Morris Agency;) and to the east at right, the Montage Hotel, public park, and garage.

1 Background information of site and structure:

The 9465 Wilshire structure commenced construction in the summer of 1960, with completion of construction drawings in January 1961. Copies of subsequent construction drawings in the office of the building, and permit records in the City of Beverly Hills well illustrate the many later modifications documented for alterations to this structure.

A printed copy set of the original contract document drawings dated 1-16-61 and noted "Construction Issue" was reviewed at the office of the building, and is summarized along with subsequent modifications to the structure and site in Appendix 1/a.

This structure at 9465 Wilshire Boulevard at the northwest intersection of Beverly Drive was assessed by the firm of Jones & Stokes, and issued in June 2006 (revised April 2007) as part of their evaluation of structures primarily along Wilshire Boulevard for the City of Beverly Hills. They evaluated potential eligibility for either as an individual listing, or as a contributing building to a potential state register district. They found that 9465 Wilshire was a potential contributor to a potential district of Criterion 3 Post World War Two modern office buildings. From the DPR 523 form Primary Register description, evaluation date recorded as 9 June 2006:

Contributor to a potential California Register district of (Criterion 3) Post World War II modern office buildings. Architect: Victor Gruen Associates.

The designation "3CD" is given to the building, defining that it "appears eligible for the California Register as a Contributor to a California Register eligible district through a survey evaluation." **It should be noted that the building itself was not recommended in the Jones & Stokes survey evaluation as individually eligible for listing on the California Register.**

The following observations are documented in the Jones & Stokes Historic Resources Survey (issued June 2006, revised April 2007, Page 8)

City of Beverly Hills Commercial Area 5-Historic Resources Survey Update

Post World War II Commercial Buildings, 28 contributors:

During the Post World War II period (1945 to 1975) an impressive collection of medium to large-scale office buildings was erected within Beverly Hills. These buildings were predominantly architect designed by practitioners offering a wide range of modernistic

interpretations. Buildings include modest examples, mostly 4 to 5 stories in height, constructed after World War II, from the late 1940's to the mid 1950's. Later structures were larger in scale, and were built with higher construction budgets. Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district. Architects responsible for a number of the contributors to this district include: William Pereira, Charles Luckman, Maxwell Starkman, I.M. Pei, Victor Gruen Associates, Welton Becket and Associates, Craig Elwood, Langdon and Wilson, Edward Durrell Stone, Palmer and Krisel, and Anthony Lumsden. Worthy of particular note is the work of architect Sidney Eisenshtat, who is credited with seven of the contributing buildings along Wilshire Boulevard.

The subject district survey form DPR 523D includes the following statement in description of the district's significance: "A certain number of the contributing buildings within the district have lost some integrity due to storefront alterations and re-modeling. However, within the upper floors, character defining features and original materials remain largely intact, conveying the original design intent of the building and architect". This suggests that original character-defining features of the district contributors are mostly retained on the upper floors and not in the areas of subsequent modifications and alterations. A notable exception to this assessment, specifically relevant to this building, is that all of the upper floor ribbon windows were replaced in 2007 and 2008, occurring after the Jones and Stokes survey evaluation. There is a consequent loss to the original integrity of setting and material condition.

This structure was remodeled and revised multiple times over the years since completion, modified at both the interior and exterior.

Modifications:

A printed copy set of the original contract document drawings dated 1-16-61 and noted "Construction Issue" was reviewed at the office of the building manager on site. A chronology of the dates of drawings of alterations with substantial visual impact reviewed in the Office of the Building archives follows:

- Original "Construction Issue" set dated 16 January 1961, prepared by Victor Gruen Associates;
- Drawing set dated 14 November 1988, prepared by Viktor R. Peteris, Inc.:
 - (modifications to ground floor lobby and east tenant space interior redesign.)
- Drawing set dated 15 February 1995, prepared by Harold W. Levitt AIA & Associates:
 - (modifications described as "Alterations and Additions to Wilshire Beverly Center," with notes:
 - "All existing travertine walls (in lobby) to be removed";
 - "Remove existing planter cladding and replace with granite to match existing" at Beverly;
 - Removed all original exterior paving and replaced with "African multi-colored slate" pavers.

- Drawing set dated 28 December 1995, Gensler & Associates:
 - Ground floor plan remodel, and lobby interior remodel and redesign;
 - Replacement of and alterations to south exterior canopy soffit;
 - Wilshire Boulevard storefront modifications and replacement.
- An undated set of window replacement shop/installation drawings, for all windows above the ground floor storefront windows.

It should be noted that the defined Period of Significance dates for the potential district in the DPR 523D form is given as 1945 – 1979. All of the alterations that have been documented above occur after this defined period. None of these modifications or alterations to the original construction, or replacements made in these separate projects, have acquired significance on their own merit. Despite these modifications, this structure was still evaluated by the Jones & Stokes survey as a potential contributing building to the identified potential historic district. As noted in the above district survey text, most of the potential contributing buildings lost integrity due to storefront alterations and re-modeling and the character defining features conveying the original building design intent. Replacement of all original exterior windows above the ground level occurred after the release of the Jones & Stokes Historic Resources Survey. Impacts of this exterior modification to the building's character defining features by the removal of the original windows have therefore not been adequately analyzed.

In the time since the Jones & Stokes Survey's original June 2006 date of issue, the site context has been significantly altered from the previous review conditions. This would particularly include the William Morris Agency building (now named the MGM building) immediately adjacent to the north, and across the street to the east, the Montage Hotel, public park, and garage structures. These alterations to the site context are substantial and irreversible. The massiveness of their forms, particularly along what had once been the norm where the side streets leading from Wilshire were low in height and scale and did not compete with the more significant structures on Wilshire, are not in character with the historical pattern of development. These alterations act to diminish the singular visual emphasis of the Beverly Wilshire Center building. Significant and irreversible alterations and modifications have occurred in the potential district identified by Jones & Stokes since June 2006. Consequently the proposed Equinox project has no impact on this potential historic district, contiguous or non-contiguous, of similar modern-era building designs.

In summary, over the years there have been multiple and numerous additions and alterations to the original structure. As stated, notably nearly all of the original aluminum framed, single-glazed exterior windows and doors have been replaced at the floors above the ground level storefront. None of these appear to have replicated the original mullion details. The anodized aluminum storefront glazing systems at the ground level have been replaced at the Wilshire façade as part of one of the remodeling schemes in 1995. Drawings dated for the February 1995 remodeling indicate the travertine stone panels in the lobby interior were demolished and replaced. A partial chronology of building permits for the later development of the structure and site are provided in Appendix 1/b. Refer to the Appendices for additional background information on the site and structure.

2 Existing site and structure conditions review:

Summary Review:

In March and April 2011 GTL|HA reviewed the archives of the office of the building, and conducted visual observations of the ground floor interior and exterior conditions. An original "Construction Issue" set of contract drawings remain showing the original structure, bearing the date of 16 January 1961. These are generally complete, and exhibit a restrained palette of modern materials. As noted previously, there have been multiple alterations to the structure and site affecting the original building design. Proposed project modifications are located primarily at areas where modifications have previously occurred, and where feasible, restorations of original detail conditions have been considered in the project design.

Detail review narrative of existing conditions observations at the area of proposed modifications:

This building has been modified inside and out in multiple phases that have occurred mostly beyond the defined period of significance after 1979. In some instances these have been extensive modifications, exemplified by the replacement of all exterior sliding windows above the ground level storefront according to drawings and permits dating from 2007 through October 2008.

Following are summaries of detail modifications from the original drawings pertinent to the proposed project:

- Exterior planters at the Beverly Drive façade drawings, formerly a terrazzo material with radiused top.
 - Original planter cladding was removed (or altered *in-situ*) and replaced with granite veneer matching the original granite cladding;
- Exterior paving details, formerly believed to be a terrazzo material surface.
 - Original exterior paving was removed and replaced with either concrete or a slate paving material border. Design feature at the southeast site corner was reconfigured or replaced multiple times, with a current installation of a sculpture.
- Wilshire Boulevard entrance plaza and storefront underwent multiple alterations altering the original design and material selections.
 - This included replacement of the original aluminum and glass storefront, replacement of the exterior plaster soffit at the entrance, paver replacements, and signage features.

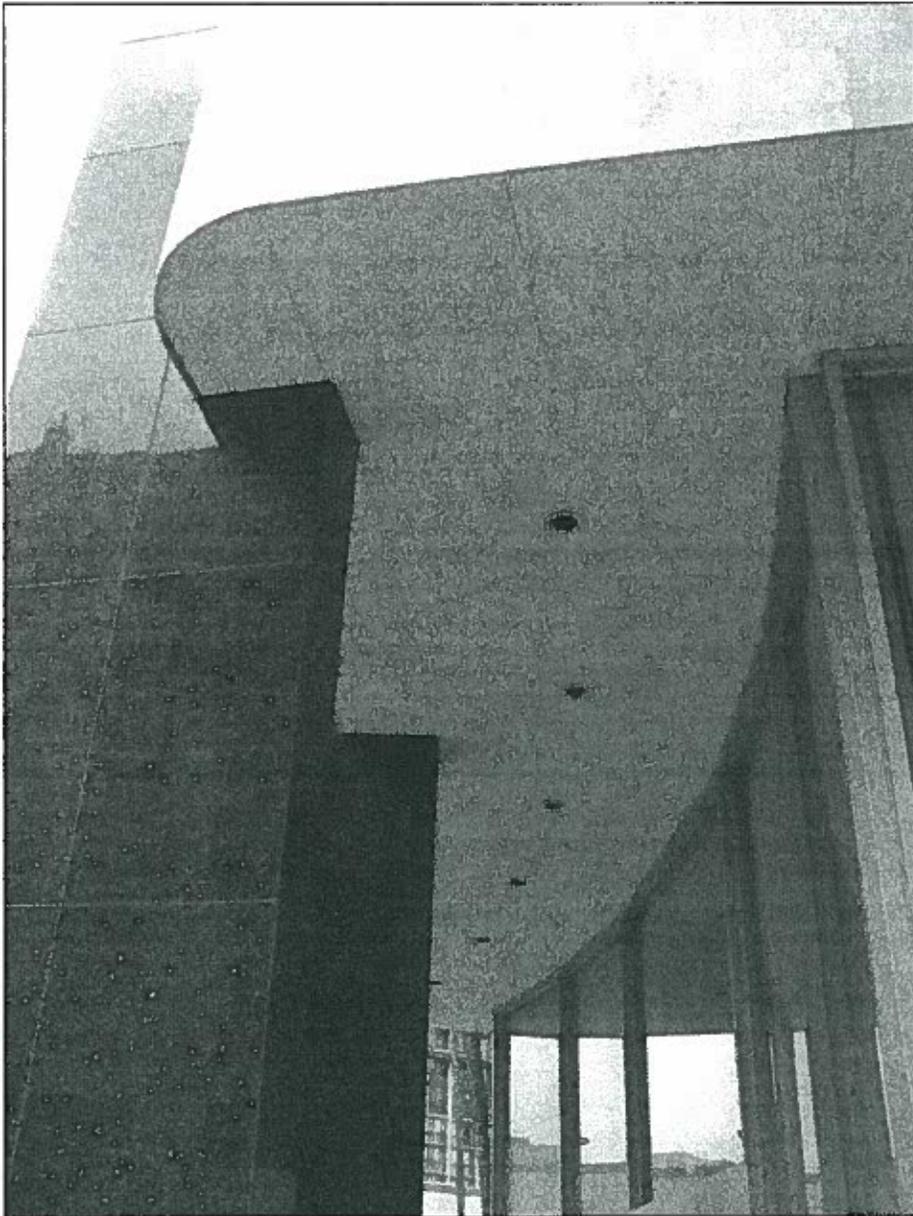
Building design elements dating from the original 1960-1961 design and construction are referenced in selected details photographed from the original construction set drawings, included in Appendix 2/a.

Summary of character- defining elements documented in the Jones & Stokes Historic Resources Survey (June 2006, revised April 2007, Page 8):

Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period.

Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

Observation review of character defining elements conditions is included in Appendix 2/b.



GTL | HA April 2011 recordation photograph; Detail view of southeast corner façade soffit and character defining features: granite, marble, aluminum and glass storefront.

3 Concluding analysis of proposed compatible exterior modifications

▪ **3.1 The following compatible design considerations have been developed:**

(Refer to Appendix 3/b3 for complete text of the Secretary of the Interior's Standards for Rehabilitation.)

A> New exterior detail interventions are purposefully intended to be "reversible" to be in conformance with the Secretary of the Interior's Standards for Rehabilitation, Standard #10.

B> Modernist-styled design interventions have a compatible yet separate character from existing original materials and features. This would be in conformance with the Secretary of the Interior's Standards for Rehabilitation, Standard #9.

C> Exterior modifications are placed at areas previously modified. Restoration of original conditions is considered where scoping is practical.

D> Acknowledge the city's emphasis on a pedestrian oriented district, while enhancing the west façade and south façade of the building.

E> Use a material and finish palette that references identified character-defining features. Again quoting from the 2007 Jones & Stokes Historic Resources Survey:

*...generous use of plate **glass**, exposed steel and concrete, **cladding of travertine, marble, and other contemporary materials** associated with Modern commercial highrise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district....*

▪ **3.2 The following exterior details are proposed as part of modifications required for the Equinox Fitness Club, referencing the appropriate Secretary of the Interior's Standards for Rehabilitation:**

Detailed drawings of proposed exterior modifications, reviewed as part of this Memorandum, are provided in Appendix 3/a/4.

A> New Beverly Drive entrance location:

This is consistent with the intent of the city to emphasize pedestrian oriented activities in this commercial district, relating to the recent development of adjacent new buildings on Beverly Drive. The new use of the portion of the structure will require minimal change to its distinctive materials, features, spaces, and spatial relationships, thereby conforming to Secretary of the Interior's Standards for Rehabilitation, standard #1.

B> New Beverly Drive granite paving materials:

Granite slab floor paving is proposed at a limited part of the exterior allowing access to the proposed new lobby entrance; this is consistent with a precept of modern era design where featured exterior materials "merge" stylistically. This is proposed to be the same material used at exterior pier and wall cladding, representing a compatible selection for material, type, color and finish. This feature is conforming to Secretary of the Interior's Standards for Rehabilitation, standard #9.

C> Beverly Drive entrance area planter materials:

These five planters were modified and original terrazzo material altered or removed in a 1995 remodel. The existing granite matches the original wall material. The center planter is removed for the proposed entrance door, and the remaining four planter boxes are proposed to be retained. Window displays are proposed to be made more visible by the replacement of the existing tall landscaping material selection with one of a reduced vegetation height profile. This feature is detailed in a manner that is conforming to Secretary of the Interior's Standards for Rehabilitation, standards # 6 and #9.

D> New Beverly Drive storefront and entrance door materials and detail configuration:

This new entrance door is proposed to be constructed of aluminum frame and glass storefront construction; as such it would be compatible with exterior doors and storefronts located elsewhere on this structure or typically in use during this era. This references a character defining element. The new entry door has a recessed configuration, consistent with other recessed entrance features currently present in the structure. This design revision is conforming to Secretary of the Interior's Standards for Rehabilitation, standard #9.

E> New Beverly Drive entrance door vertical signage panel: lighted metal "fin wall":

This proposed element is integral to the signage program, with signage graphics of internally-lighted acrylic letters. The background panels are proposed to be of black color to highlight the location of the Equinox facility entrance on the ground floor. This feature is detailed in a manner that is "reversible" in nature, conforming to Secretary of the Interior's Standards for Rehabilitation, standard #10.

F> New Beverly Drive and Wilshire Boulevard horizontal signage on canopy fascia panels:

These proposed pin-mounted letters are integral to the signage program identifying the new Equinox facility. The signage graphic is pin-mounted, internally lighted in a "halo" style. The intent is to limit modifications to the existing horizontal fascia. This feature is detailed in a manner that is "reversible" in nature, conforming to Secretary of the Interior's Standards for Rehabilitation, standard #10.

G> West façade, alley elevation: addition of mechanical louvres

This accommodation to serve new equipment requirements is located at existing windows, and will retain the existing (later) window mullion and frame spacing to limit modifications to the façade. A new louvre opening will be located in the existing building wall on the ground floor level; louvre framing will align with panel joints to coordinate with the façade. Existing granite veneer panels will be removed and reused at new construction as possible. Louvre color and appearance will coordinate and be compatible with existing louvres in the adjacent area, conforming to Secretary of the Interior's Standards for Rehabilitation, standard #9.

Please refer to the attached Appendix 3/a, for detailed information on proposed exterior modifications and other references.

End of Historical Memorandum for the Record

Issue date 17 June 2011

George Taylor Louden AIA

Historical Architect

Historical Architecture Consultant

Appendix 1: Background information of site and structure

Appendix 1/a Original drawing documentation

Details from original set of working drawings of present development of site:

Construction of the 9465 Wilshire structure commenced in the summer of 1960, ahead of contract document drawings completed by the office of Victor Gruen in January 1961. Particularly within the four decades that followed by the turn of the century, there were many documented modifications for subsequent interior and exterior construction. These are chronologically listed by building address in Appendix Section 1/b that follows.

A printed copy set of the original contract document drawings dated 1-16-61 and noted "Construction Issue" was reviewed at the office of the building for this Memorandum. These are here summarized along with subsequent modifications to the structure and site:

Summary of review and comments:

- A "Construction Issue" set of prints of the original contract document drawings dated 1-16-61 in the Office of the Building is generally complete, including structural and MEP drawings.

Drawing sets showing subsequent modifications to the building as reviewed:

- Drawing set in the Office of the Building dated 14 November 1988 includes modifications to the plaza and repairs to stone on the exterior façade.
- Drawing set in the Office of the Building dated 15 February 1995 includes alterations to exterior features such as the planters along Beverly Drive, and a removal of exterior features at the Wilshire Boulevard entrance and lobby areas.
- Drawing set in the Office of the Building dated 28 December 1995 includes alterations to exterior features and replacement of the Wilshire Boulevard entrance and lobby area finishes and details. Some aspect of this work is noted on the permit application as "cosmetic repair."
- Drawing set in the Office of the Building consisting of an undated set of window replacement drawings noting all exterior windows above the ground floor level storefront are replaced. This set can be dated by the permit history available in the following Section 1/b as taking place from May 2007 through early 2008.

Appendix 1/b Summary of permit documentation**Chronology of building permits for development of site:**

Following are a summary of permits relevant to the exterior building elements, and character-defining interior elements which have a direct effect on exterior resources.

Source, City of Beverly Hills, Building & Safety Division, 455 North Rexford Drive, Beverly Hills, CA 90210; 310.285.1158.

Address: 9461-9499 Wilshire Boulevard, Permit list from Record Department:

Permit Number	Project Description	Date Issued
▪ 600831	Excavation, soldier beams, shoring	07-28-1960
▪ 601073	New construction, foundation work, east walls only	09-23-1960
▪ 601402	New construction 8 story office building	09-23-1960
▪ 720937	Storefront only	08-23-1972

Address: 9461 Wilshire Boulevard, Permit list from Record Department:

Permit Number	Project Description	Date Issued
▪ 92001554	Remove 5 existing signs, install 4 new signs	04-23-1992
▪ 92002216	Install signs on building, 3 signs at top of bldg, 1 over front entrance	06-10-1992

Address: 9465 Wilshire Boulevard, Permit list from Record Department:

Permit Number	Project Description	Date Issued
▪ 88001002	New interior finishes main lobby	03-02-1988
▪ 88002864	Commercial emergency repair on granite façade	06-10-1988
▪ 89000169	Interior remodel-entire first floor	01-16-1989
▪ 94003461	Canopy for pedestrian protection	08-10-1994
▪ 94003462	Exterior stone renovation and painting of window mullions	08-10-1994
▪ 96000281	TI, first floor mechanical lobby & corridor	01-22-1996
▪ 96000458	Remodel ground floor lobby & plaza & cosmetic repair & subt. garage	01-31-1996

▪ 96000999	Install new light fixtures, outlets in first floor main lobby & entrance	03-05-1996
▪ 96003024	Remove existing sunshades (awnings) from rear of building	06-27-1996
▪ 96003566	Mount flag poles/ brackets to building	07-31-1996
▪ 99000184	Parapet remodel- remove & replace with glass guardrail	01-12-1999
▪ 99001432	Glass parapet partition at deck/penthouse	03-17-1999
▪ 99005068	Interior remodel and replace storefront for MGM office	08-25-1999

Address: 9465 Wilshire Boulevard, "#150" Permit list from Record Department:

Permit Number	Project Description	Date Issued
▪ 99005068	Interior remodel & replace storefront for MGM office	08-25-1999

Address: 9465 Wilshire Boulevard, Window Replacement Permit list from Record Department:

Permit Number	Project Description	Date Issued
▪ PL0714315	Architectural review permit: glazing replacement on exg. office bldg.	05-16-2007
▪ BS0758066	Window replacement, after hours	10-11-2007
▪ BS0766225	Window replacement, after hours	11-16-2007
▪ BS0771839	Replace existing windows, after hours permit	12-20-2007
▪ BS0713004	Replace glass in 8 story office building	01-15-2008
▪ BS0802334	Replace existing windows, after hours permit	01-18-2008

Summary and conclusion:

The original excavation permit was issued on 07-28-1960. The initial building permits were issued on 09-23-1960, for shoring and foundations, also referencing the new eight story office building. The set of original contract document drawings noted as "Construction Issue" located in the Office of the Building are dated 1-16-61. A preponderance of the later exterior work was permitted in the 1990's, including repairs of the stone façade and painting of the exterior window mullions. Also occurring during this time was a complete remodel of the entire first floor and the Wilshire Boulevard entrance lobby. Replacement of the ground level storefront for the "MGM" office at the southwest side of the building on Wilshire Boulevard up to the building lobby, changes in the exterior plaza paving materials, and replacement of the Beverly Drive planter material all occur by the end of the decade. Replacement of all exterior windows above the ground floor level storefront was performed in 2007 through 2008. The main southeast exterior plaza was altered once again in summer 2010 by replacement of the exterior paving, and installation of the "spaghetti" sculpture.

Following the release of the final Jones & Stokes Historic Resources Survey Report dated June 2006, and revised in April 2007, several significant changes to this structure were reviewed and permitted. These changes most notably were to the exterior windows above the ground level storefront. This started with an Architectural Review of the glazing replacement in May 2007, and window replacements permitted from October 2007 through January 2008.

There have been multiple changes to the exterior of the building, including in some instances to materials and/or details considered character-defining. While many substantial alterations were made before the 2006/2007 Jones & Stokes survey of the building was completed, some dramatic ones were permitted by the city following the release of the report. Window replacements can be considered generally to present a potentially significant impact to the ability of a structure to continue to convey significance, due in large part to their loss of integrity. In the case of this structure, no such concern appears to have been present.

It is recommended to conclude that the alterations proposed for this project present no impacts, direct or indirect, to the ability of this structure to continue to convey its significance. This is believed to be the case even given the substantial extent of recent changes to the immediate context. What modifications are proposed for the Equinox project are reversible in nature.

Appendix **1/C** Site analysis summary history of context

Historical background notes before present development of site:

Beverly Hills developed in the first quarter of the twentieth century on a broad area on the south east facing down slope of the Santa Monica mountain range, initially inhabited by the native indigenous where tribes of both the Chumash and Tongva (later named Gabrieleño following the establishment of the Mission in San Gabriel) coexisted in the region. DePortola's expedition famously recorded their passage through this area on 3 August 1769. During the subsequent Spanish colonialization in the eighteenth and nineteenth century, this area had sufficient seasonal water to support agricultural and cattle grazing uses as part of the *Rancheros* era. The site was part of the *Rancho Rodeo de las Aguas*, which Maria Rita Valdez claimed and secured title to in 1831.

Limited agricultural "rangeland" uses, once the dominant visual character of the Los Angeles basin grasslands, would rapidly be superseded by continual growth of the community and other acts of progress in the twentieth century. By the end of the nineteenth century this site was still undeveloped with no indications of streets or infrastructure to come. Spurred by the arrival of water from the Los Angeles aqueduct in 1913, resultant growth dramatically transformed the natural and the subsequent built environments. By the second decade of the twentieth century Los Angeles County and the City of Beverly

Hills were at the threshold of a rapid population growth.

Beverly Hills was incorporated as a city on 2 January 1914, developed by the Rodeo Land and Water Company. The opening of the Beverly Hills Hotel in 1912, and the map of the Pacific Electric Railway from the same year showed the infrastructure in place for what later became by design a center of exclusivity in the context of a rapidly expanding regional population. The dawn of this modern age in the West coincided with a growth in the entertainment industry. With the intent of Beverly Hills to be an exclusive community, separate from Los Angeles, the large lots attracted “movie stars” who built impressive homes in the area. Office buildings developed along the Wilshire “corridor” to serve various needs of the community, and to reflect the intent of this independent and exclusive place.

The location of the Beverly Wilshire Center office structure is at the lower right corner of an area described as the “golden triangle” roughly defining the center of the commercial district, at the intersection of Beverly Drive and Wilshire Boulevard. Beverly Hills’ twentieth century expansion has seen a densification of the area around the original business center, at this triangular central area formed at the south by Wilshire Boulevard, Beverly Drive to the northeast and Santa Monica Boulevard to the northwest. The developing city collected new hotels and office buildings which reflected the increasing association with the developing film and entertainment industry, such as the Beverly Wilshire in 1926. As the population grew, branches of downtown’s exclusive department stores grew along Wilshire Boulevard. By the post World War II era, original smaller scale structures were gradually replaced by larger structures constructed in the modern style popular at the time. The Beverly Wilshire Centre (as originally named) represents this age of development.

Following the post war construction boom ending approximately by 1979, (corresponding with the end date of a defined period of significance for a potential district,) a new era of construction transformed the immediate site context along Beverly Drive. Within the past ten years, the city of Beverly Hills undertook an extensive street and sidewalk infrastructure construction program. Construction of the Montage Hotel and an associated park above a subterranean parking garage immediately across Beverly from the subject property, and construction of the “William Morris Agency” (known now as the MGM building) immediately adjoining the subject property to the north have dramatically transformed the neighborhood context. A paradigm for developing pedestrian – oriented activity is reflected in these two structures by the desired prototype of mixed-use development: ground floor retail with office or hotel uses above, and subterranean parking below. The adjacent MGM building to the north is connected with the subject property’s subterranean garage.

Appendix **1/d** Site analysis photographic chronology

Background documentation before present development of site:

Following are photographs that show the relatively low scale development of Beverly Hills in general and

the specific site area along Wilshire Boulevard prior to and following World War Two. The site of 9465 Wilshire had been developed solely as a parking lot for a large part of the twentieth century prior to the building construction in 1961.



Los Angeles Public Library Photo Collection, image # 000 20257: *Aerial view of Beverly Hills from South c. 1920; Beverly Drive is the wider street from the bottom of the image.*

George Taylor Louden AIA

Historical Architecture & Preservation

Equinox Fitness Club, 9465 Wilshire

Historical Memorandum for the Record / Project approach review & recommendations

>Appendix 1

17 June 2011 Document issue / Page 8/19



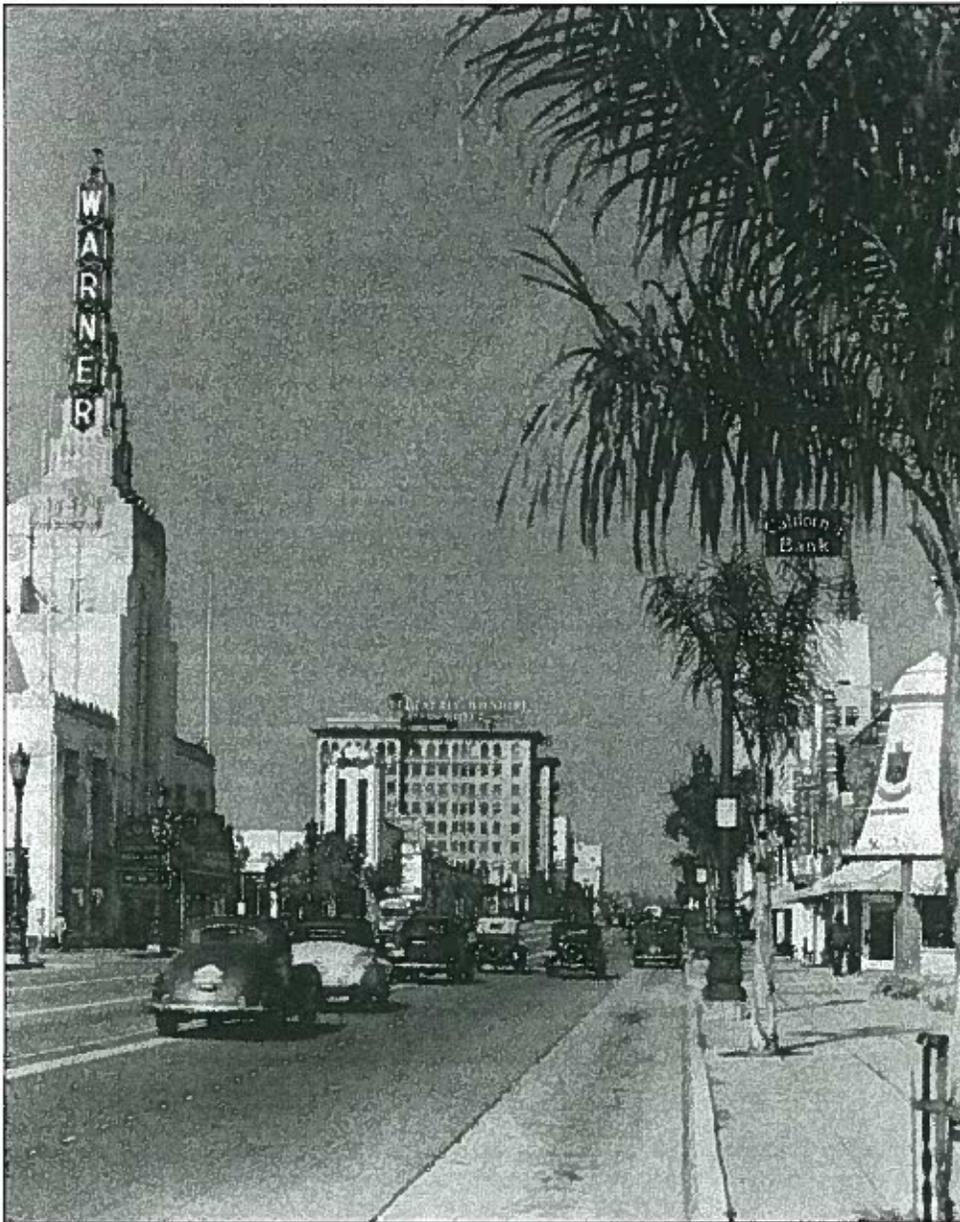
Los Angeles Public Library Photo Collection, image # 000 58478: *Overhead view of site from South c. 1930-35; Corner of site at lower left*



Los Angeles Public Library Photo Collection, image # 000 20301: *Context view just east of site, view east c. 1930.*



Los Angeles Public Library Photo Collection, image # 000 20219: *Wilshire at street level, view east c. 1935*



Los Angeles Public Library Photo Collection, image # 000 72199: *Wilshire at street level, view west c. 1935*



Los Angeles Public Library Photo Collection, image # 000 43244: *Aerial view of corner of Rodeo Drive and Wilshire Boulevard, view northwest; site just beyond view at lower right, c. 1955-60.*



Los Angeles Public Library Photo Collection, image # 000 20248: *Aerial view of Beverly Wilshire Hotel prior to construction of south tower, view north; site at upper right, c. 1960*



Aaron Richter/ Equinox, April 2010 recordation photograph, shows non-original plaza planter construction prior to its removal for arrival of sculpture. Detailing of the black granite planter was similar to the modifications of the planters along Beverly Drive.

Appendix 1/e Site analysis chronology of present site development

Project background: original 1960-1961 Victor Gruen design for Beverly Wilshire Centre:

Victor Gruen's office was established in Los Angeles after World War II. They became well known for their designs of larger scale urban design and architectural projects, including shopping centers popular in the immediate post war era. A theme of their office was a merge of various scales of planning design, all integrated with architecture in a modern idiom. Their office grew to encompass architectural and structure design as an integrated practice. Still in practice over three decades after Victor Gruen's direct contribution ceased, they are the architects for the proposed modifications for the Equinox Fitness Club.

Wikipedia biography, no citations established:

BIOGRAPHY,

Gruen was born in Vienna and studied architecture at the Vienna Academy of Fine Arts. A committed socialist, from 1926 until 1934 he ran the "political cabaret at the Naschmarkt"-theatre. At that time he came to know Felix Slavik, the future mayor of Vienna, and they became friends. When Germany annexed Austria in 1938, he emigrated to the United States. Short and stout, he landed "with an architect's degree, eight dollars, and no English." Arriving in New York he changed his name to Gruen from Grünbaum and started to work as a draftsman.

In 1941 he moved to Los Angeles and in 1951 he founded the architectural firm "Victor Gruen Associates", which was soon to become one of the major planning offices of that time.

*After the war, he designed the first suburban open-air shopping facility called Northland Mall near Detroit in 1954. After the success of the first project, he designed his best known work for the owners of Dayton Department stores, the 800,000-square-foot (74,000 m²) Southdale Mall, the first enclosed shopping mall in the country in Edina, Minnesota. Opening in 1956, Southdale was meant as the kernel of a full-fledged community. The mall was commercially successful, but the original design was never fully realized, as the intended apartment buildings, schools, medical facilities, park and lake were not built. Because he invented the modern mall, Malcolm Gladwell, writing in *The New Yorker*, suggested that "Victor Gruen may well have been the most influential architect of the twentieth century."²*

Gruen was the principal architect for a luxury housing development built on the 48-acre (190,000 m²) site of Boston, Massachusetts' former West End neighborhood. The first of several Gruen towers and plazas was completed in 1962. This development, known as Charles River Park is regarded by many as a dramatically ruthless re-imagining of a former immigrant tenement neighborhood (Gans, O'Conner, The Hub).

Gruen also designed the Greengate Mall in Greensburg, Pennsylvania which opened in 1965, as well as the Lakehurst Mall in 1971 for Watkegan, IL. Despite Gruen's efforts in the United States, in 1978, two years before his death in a country house outside Vienna, Gruen disavowed other shopping mall developments as having "bastardized" his ideas.

Article on Victor Gruen in The New Yorker, 15 March 2004:

Annals of Commerce

The Terrazzo Jungle

FIFTY YEARS AGO, THE MALL WAS BORN. AMERICA WOULD NEVER BE THE SAME.

by Malcolm Gladwell March 15, 2004

Victor Gruen was short, stout, and unstoppable, with a wild head of hair and eyebrows like unpruned hedgerows. According to a profile in Fortune (and people loved to profile Victor Gruen), he was a "torrential talker with eyes as bright as mica and a mind as fast as mercury." In the office, he was famous for keeping two or three secretaries working full time, as he moved from one to the next, dictating non-stop in his thick Viennese accent. He grew up in the well-to-do world of prewar Jewish Vienna, studying architecture at the Vienna Academy of Fine Arts—the same school that, a few years previously, had turned down a fledgling artist named Adolf Hitler. At night, he performed satirical cabaret theatre in smoke-filled cafés. He emigrated in 1938, the same week as Freud, when one of his theatre friends dressed up as a Nazi Storm Trooper and drove him and his wife to the airport. They took the first plane they could catch to Zurich, made their way to England, and then boarded the S.S. Statendam for New York, landing, as Gruen later remembered, "with an architect's degree, eight dollars, and no English."

Read more http://www.newyorker.com/archive/2004/03/15/040315fa_fact1#ixzz1OXmgYXAb

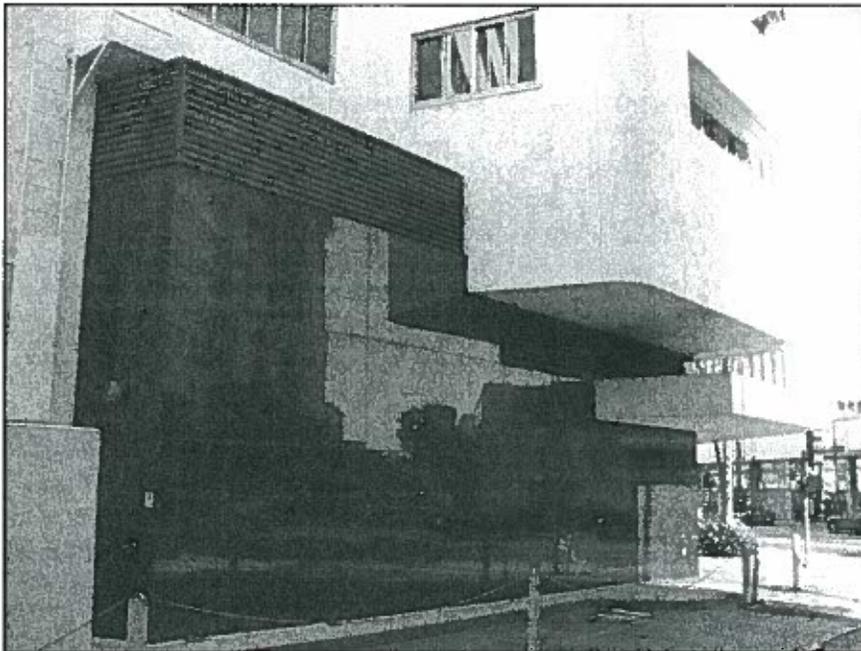
Summary stylistic assessment of the Beverly Wilshire Centre:

Stylistically the building has been termed as "modern", with stone veneer panels used for emphases at ground floor level storefront, and spandrel panels used to develop a strong horizontal emphasis at each floor level and the rooflines. "International Style" influences can be seen in the continuous horizontal "ribbon" windows, flat unadorned surfaces, and the site development with a plaza created by setback of the structure from the southeast property line corner. The 1961 date of construction coincided with the development of the modern urban planning concept of the "tower and plaza" prototype, defined in the New York Planning regulations adopted that same year. The acute angle formed by the intersection of Beverly Drive and Wilshire Boulevards provided the geometry for a design opportunity to organize the upper floor levels in a series of very dynamic forms. Placement of this structure on what had been a very underused, yet important site, was significant for the future development of the "Golden Triangle" of Beverly Hills' business district. This site forms the lower right corner of this theoretical triangle.

Features that are characteristic of the style and still present in the building most notably include quarried stone veneered panels of light-colored marble used typically at the upper floor levels, with dark-colored “Labrador Chiaro” granite used at the base floor and at a *brise-soleil* feature at the southeast corner. Other contributing features characteristic of this era and original to this building include recessed circular light fixtures, metal louvered screens and trims, and aluminum and glass storefront. These features are further detailed in Appendix 2/b.

The building plan is a study in compound compositions of curves, volumetrically engaging the recessed strip windows by radiused stone veneer returns. Individual building elements are generally arranged asymmetrically and set in asymmetrical compositions with each other. Access to a subterranean parking garage occupies the northern part of the structure, where entrance and exit ramps feed into the lower level. Entrance features are recessed in plan and volume. Continuous horizontal strip windows are recessed behind of projected bands of white marble at sill and head. In keeping with the simplified nature of the secondary façades, the strip windows at the north and west façades are set flush with the adjacent building face. This façade is setback from the rounded returns of the east façade along Beverly Drive and the alley to the west.

A canopy at the ground floor level is continuous along the primary street frontages, stopping short at the southeast corner to highlight the dominant entrance composition of a projected grid of black granite in a *brise-soleil* form. The canopy turns the corner at the southwest, terminating at the west façade up to the alley.

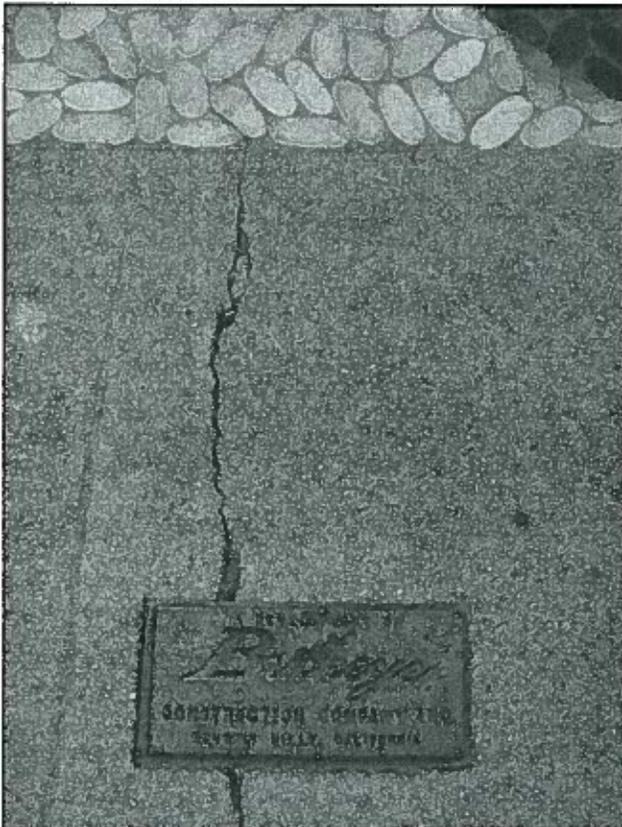


GTL | HA, May 2011 site recordation photograph; return detail of canopy at west façade alley.

Investigations performed for this project suggests that the original color scheme of the building exteriors was similar to that existing. Paint colors of the metal louvres are a dark black/grey, similar to the granite. Metal windows are constructed of mill finish aluminum. Stone materials used at the exterior remain generally intact, although there is evidence of some replacement panel pieces that are visually incompatible with the original material.

Chronological summary of present site development:

The structure was constructed by the Buckeye Construction Company of Beverly Hills. Work was begun in the summer of 1960 with the demolition of the existing parking lot, followed by excavation and foundation work. The complex was substantially completed by 1962. A selection of permits indicating the timing of the original construction is noted in Appendix 1/b.



GTL | HA, March 2011 recordation photograph; sidewalk building constructor's icon, Wilshire Boulevard. The paving material at the top is not original construction, dating from the permitted construction related to the installation of the southeast entrance plaza sculpture in summer 2010.

Obituary of the founder of Buckeye, Los Angeles Times, 09 December 2001:

George Konheim, 84; Leading Developer, Philanthropist

Obituaries

December 09, 2001 DENNIS McLELLAN | TIMES STAFF WRITER

George Konheim, founder of one of Los Angeles' major real estate development firms and a leading philanthropist, died Saturday. He was 84.

Konheim, who at 77 in 1994 became one of the oldest people to receive a heart-lung transplant, died of complications of pneumonia and renal and heart failure at Cedars-Sinai Medical Center in Los Angeles.

Konheim launched his Beverly Hills-based construction company in 1947, the year he and his family moved to Los Angeles.

Buckeye Construction Co., named in honor of Konheim's home state of Ohio, initially built homes throughout Beverlywood and Cheviot Hills. But after beginning a partnership with Bram Goldsmith, the current chairman of the board of City National Bank, in 1950, Konheim focused on commercial construction.

Until the company was sold in 1986, it built millions of square feet of office space throughout Beverly Hills and the Los Angeles area, including such landmarks as the City National Bank building in downtown Los Angeles, the Bank of America building in Beverly Hills and the Academy of Motion Picture Arts and Sciences headquarters on Wilshire Boulevard.

Born in Akron in 1917, Konheim never knew his father, who died in an explosion in his tailor shop shortly before his son's birth. At age 8, to help support his mother--and a brother and two sisters--Konheim began selling newspapers in the morning before school and selling bagels in the evening.

He dropped out of high school in the 10th grade and bought the first of several vegetable pushcarts. But while continuing to earn money for his family, he studied engineering in night school, and during World War II he worked at Pratt & Whitney, which manufactured military airplane engines.

Supported Local and National Organizations

Before moving to Los Angeles, he owned and operated an Ohio gas station chain--George's Super Service Gas Stations--and an auto-painting franchise called Deb.

As Konheim's construction company flourished, the Beverly Hills resident devoted time and money to a long list of organizations, including the Boy Scouts of America, the Child Welfare League of America, City of Hope, the Jewish Federation of Los Angeles, the Los Angeles County Museum and the Music Center Foundation, of which he was a founder.

End of Historical Memorandum for the Record, Appendix 1.

Issue date 17 June 2011

George Taylor Loudon AIA

Historical Architect

Historical Architecture Consultant

Appendix 2: Existing site & structure conditions review

Appendix 2/a

Review of conditions where compatible modifications to Beverly Wilshire Centre are proposed:

In March and April of 2011 GTL|HA reviewed the archives of the office of the building, and conducted visual observations of the ground floor interior and exterior conditions.

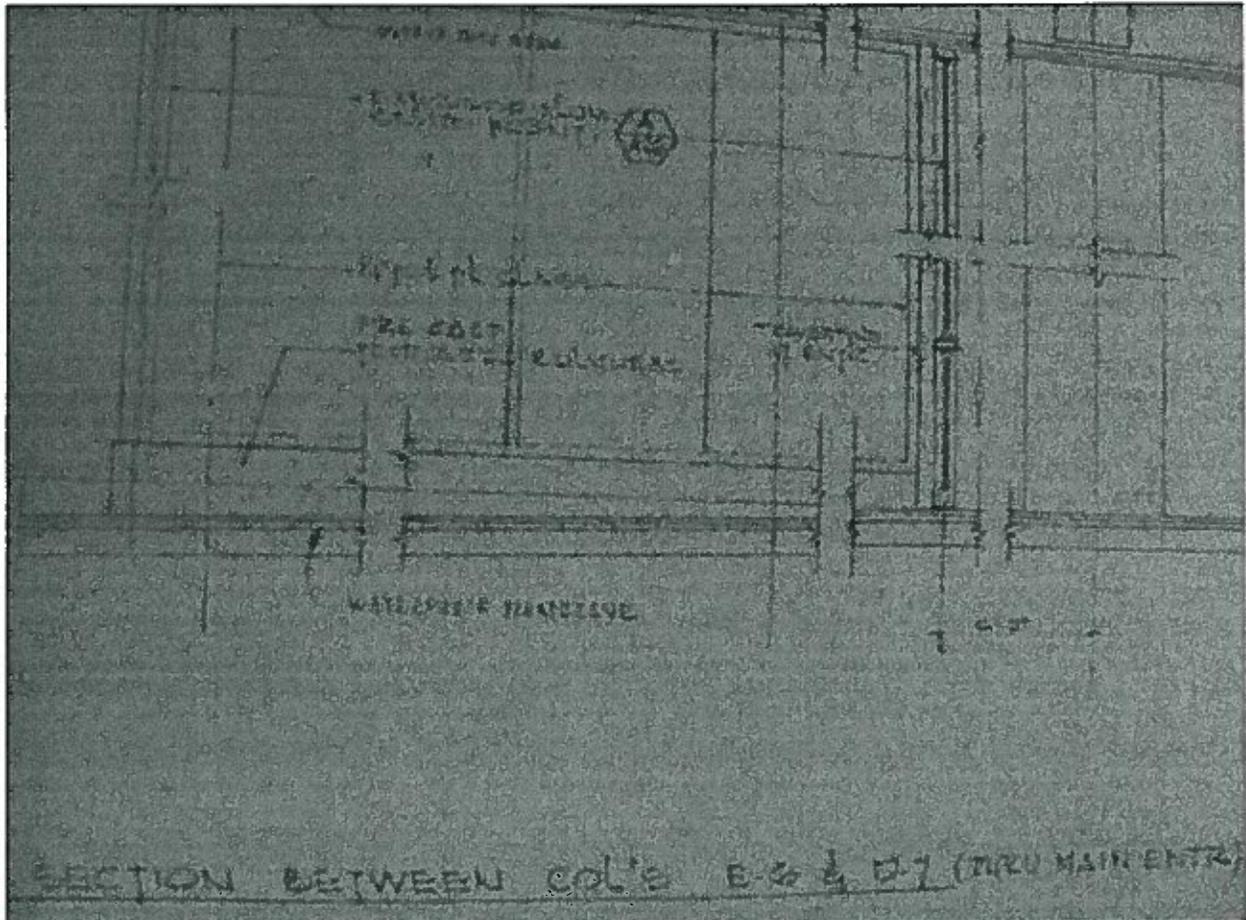
Limited areas of exterior modifications to the Beverly Wilshire Building are planned to accommodate the proposed Equinox Fitness Club. These occur in two areas of the building. One is at the proposed Beverly Drive entrance in the center bay of the existing five-bay storefront at the ground level, where one bay of the existing aluminum and glass storefront is proposed to be removed to accommodate the entrance to the facility. The second area is the fascia of a projecting canopy that is continuous along both of the primary street frontages, where a lit signage element is proposed above the proposed entrance on Beverly Drive, and a second signage on Wilshire Boulevard near the western edge of the canopy. It is understood that there have been previous alterations to the original 1960-1961 building at both of these features. It is proposed that modifications for the Equinox project will be designed, detailed, and undertaken in such a way that they will be reversible, thereby conforming to the Secretary of the Interior's Standards for Rehabilitation.

Design elements dating from the original 1960-1961 design and construction are referenced in the following selected details photographed from the original construction set drawings located in the Office of the Building. These details have been photographed rather than scanned, so the image quality and orthogonal character is less than perfect. However, the detail level is sufficient to convey at least the original design intent and the detail notes are clear.

It is recommended to address all of the exterior removals proposed for the project via a controlled, "disassembly" methodology rather than by a "demolition" approach in order to limit effects on the surrounding material to be retained. The drawing details referenced are from the "construction" issue, and are supplemented by site recordation photographs taken by the author.

The following images describe each of the areas proposed to be modified:

Proposed new entrance at Beverly Drive:

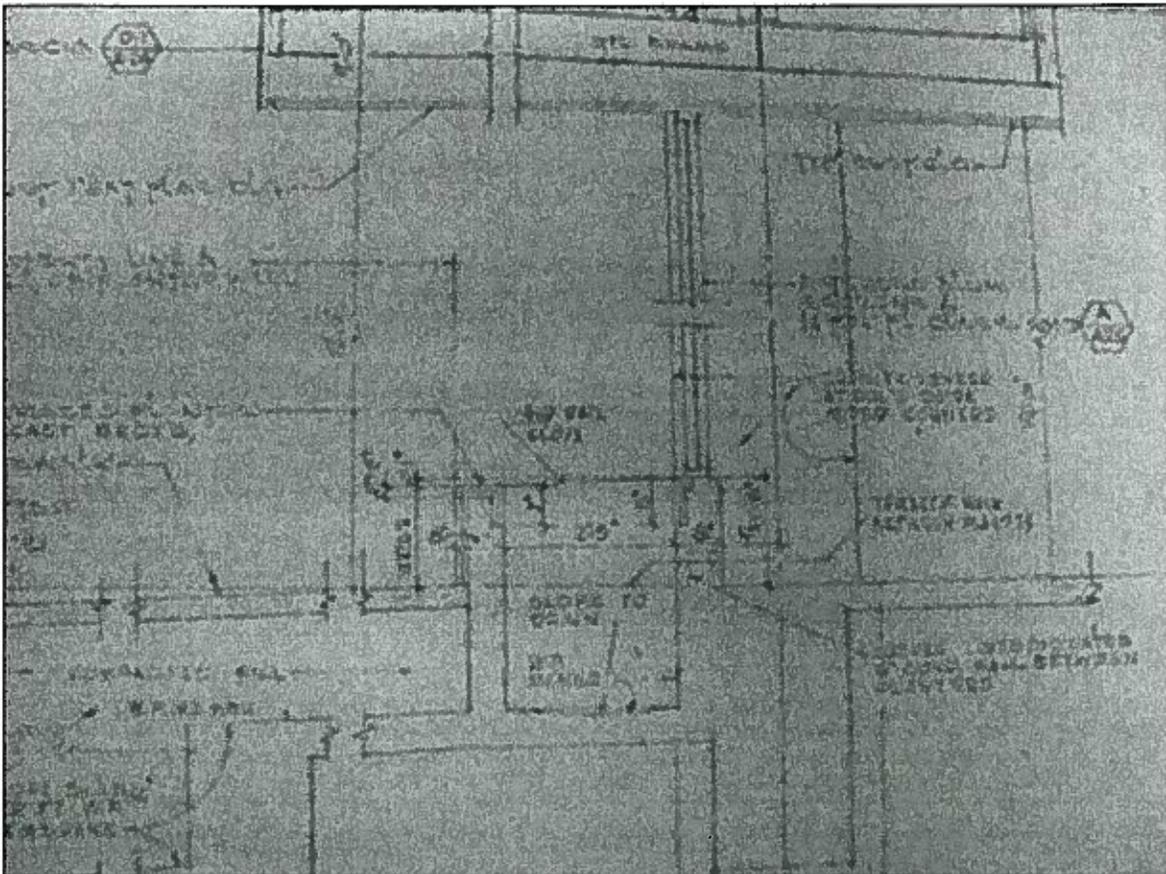


GTL | HA, March 2011 recordation photograph; source is the office of Victor Gruen construction document issue dated 1-16-61, and noted as "Construction Issue," sheet A-18.

While this detail actually shows a cross section of the main entrance on Wilshire Boulevard, it is a similar detail to the condition on Beverly in terms of materials. Reference the "Extruded aluminum storefront", and the "1/4" polished plate glass" notes.

Alterations to the original 1960-1961 building can be interpreted by two notes referencing the "Pre-cast Terrazzo Bulkhead" at the sill of the window system, and the "Travertine at Entrance." Both of these materials were removed according to the demolition notes on the drawings for the "Alterations and Additions to the Beverly Wilshire Center" prepared by Harold W. Levitt AIA & Associates, dated 2-15-1995.

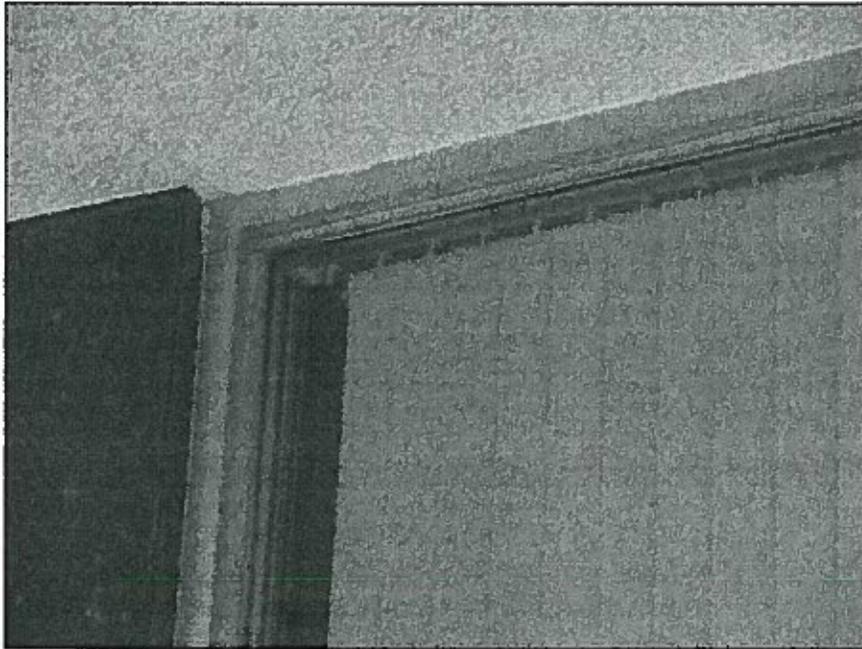
Proposed new entrance at Beverly Drive:



GTL |HA, March 2011 recordation photograph; source is the office of Victor Gruen construction document issue dated 1-16-61, and noted as "Construction Issue," sheet A-18, section between columns B.5 and B.6.

This section detail shows the specific bay condition on Beverly Drive where the proposed entrance is located. The planter construction and the aluminum storefront shown that are located at the central bay of five bays would be removed for this project. The remaining four bays would be retained *in situ*.

Alterations to the original 1960-1961 building can be interpreted by notes referencing the "Pre-cast Terrazzo Planter" and the "Terrazzo Walk Between Planters" notes. This terrazzo material was removed according to the demolition notes on the drawings for the "Alterations and Additions to the Beverly Wilshire Center" prepared by Harold W. Levitt AIA & Associates, dated 2-15-1995. Note in particular the "Granite Veneer at Columns, Quirk Miter Corners" note. The exact detail of the proposed storefront system and how it meets the existing exterior granite veneer will be verified in the field upon disassembly.

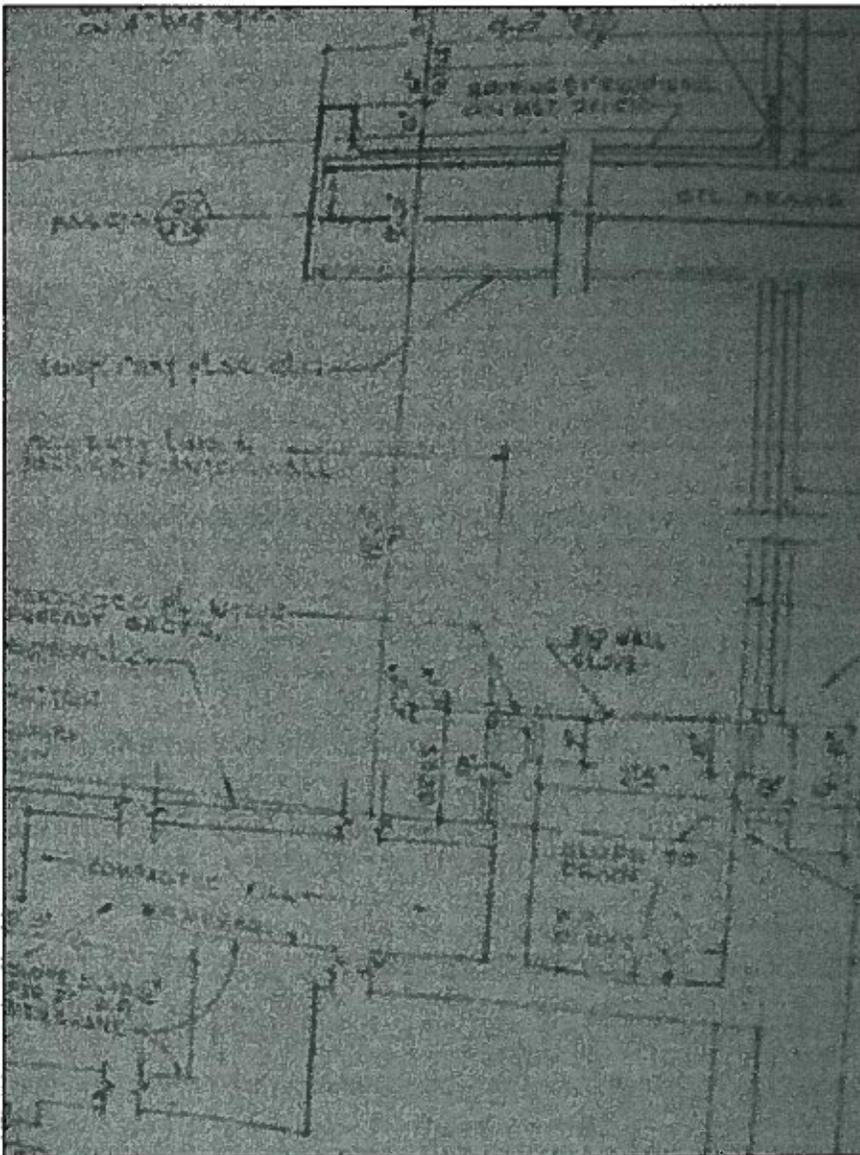


GTL | HA, May 2011 site recordation photograph; head detail of storefront at proposed entrance bay.



GTL | HA, May 2011 site recordation photograph; sill detail at planter at proposed entrance bay. The extent of modification required for the granite veneer at the return will be verified at the site upon controlled removal of the planter. Slate paver surface is not original construction.

Proposed new entrance at Beverly Drive:

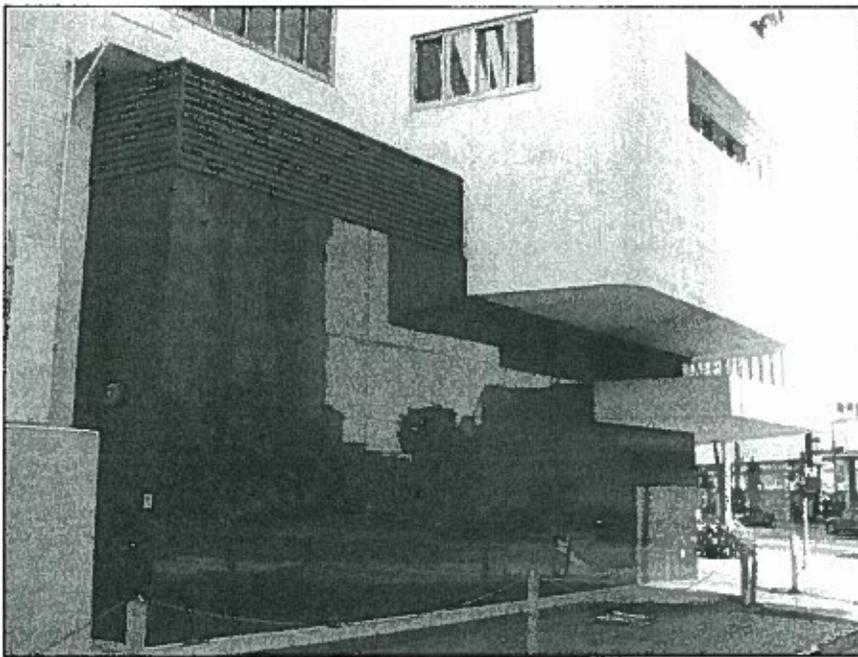


GTL | HA, March 2011 recordation photograph; source is the office of Victor Gruen construction document issue dated 1-16-61, and noted as "Construction Issue," sheet A-18, section between columns B.5 and B.6..

This detail is a larger view of the previous detail, showing the relationship with the canopy above.



Google Earth, c 2008 site recordation photograph; detail of canopy at southwest façade along Wilshire Boulevard, showing previous signage.



GTL | HA, May 2011 site recordation photograph; return detail of canopy at west façade at alley.

Appendix **2/b** Character Defining Features

Character- defining elements conditions observations review:

Materials for this structure are typical of modern commercial structure of this post war era. This was constructed of steel and monolithically placed concrete, with veneer stone panel façades carefully composed in horizontal banding with radiused corners. The dominant entrance composition at the southeast corner altered the typical horizontally organized façade design with a projected grid of black granite in a *brise-soleil* style pattern.



GTL | HA, March 2011 recordation photograph; Beverly Drive façade nocturnal view to the north. Lighted "Gersh" sign at upper façade level above the canopy is a recent modification.

Individual building elements are asymmetrically arranged along the geometry of the boundary streets, set in asymmetrical compositions with each other. At the upper floor levels a “Y” plan arrangement is separated by deep canopies above the ground floor level storefront. Entrance features are recessed in plan and volume. Continuous horizontal strip windows at the upper floors are recessed behind a projected screen wall volume composed of white marble at sill and head.



GTL | HA, March 2011 recordation photograph; base story of southwest (Wilshire Boulevard) façade canopy. Pavers, lobby entrance materials (floor pavers, entry doors, ceiling, & lighting) storefront at southwest corner, and upper floor levels aluminum framed windows and glazing are not dating from the period of significance.



GTL | HA, March 2011 recordation photograph; view to the southeast on Beverly Drive. The new structure in the foreground is the "MGM Building." At the top floor of the Beverly- Wilshire building, note the glass parapet/ guardrail. City permits for this are dated 12 January and 17 March 1999.

The dominant entrance composition at the southeast corner alters the typical horizontally organized façade design of marble veneer stone panels with radiused corners by featuring a projected *brise-soliel* style grid composed of black granite veneer. As this grid extends from the freestanding columns at the ground floor level, the rounded corners of the white marble volume of the upper floor levels continue behind at this significant corner.

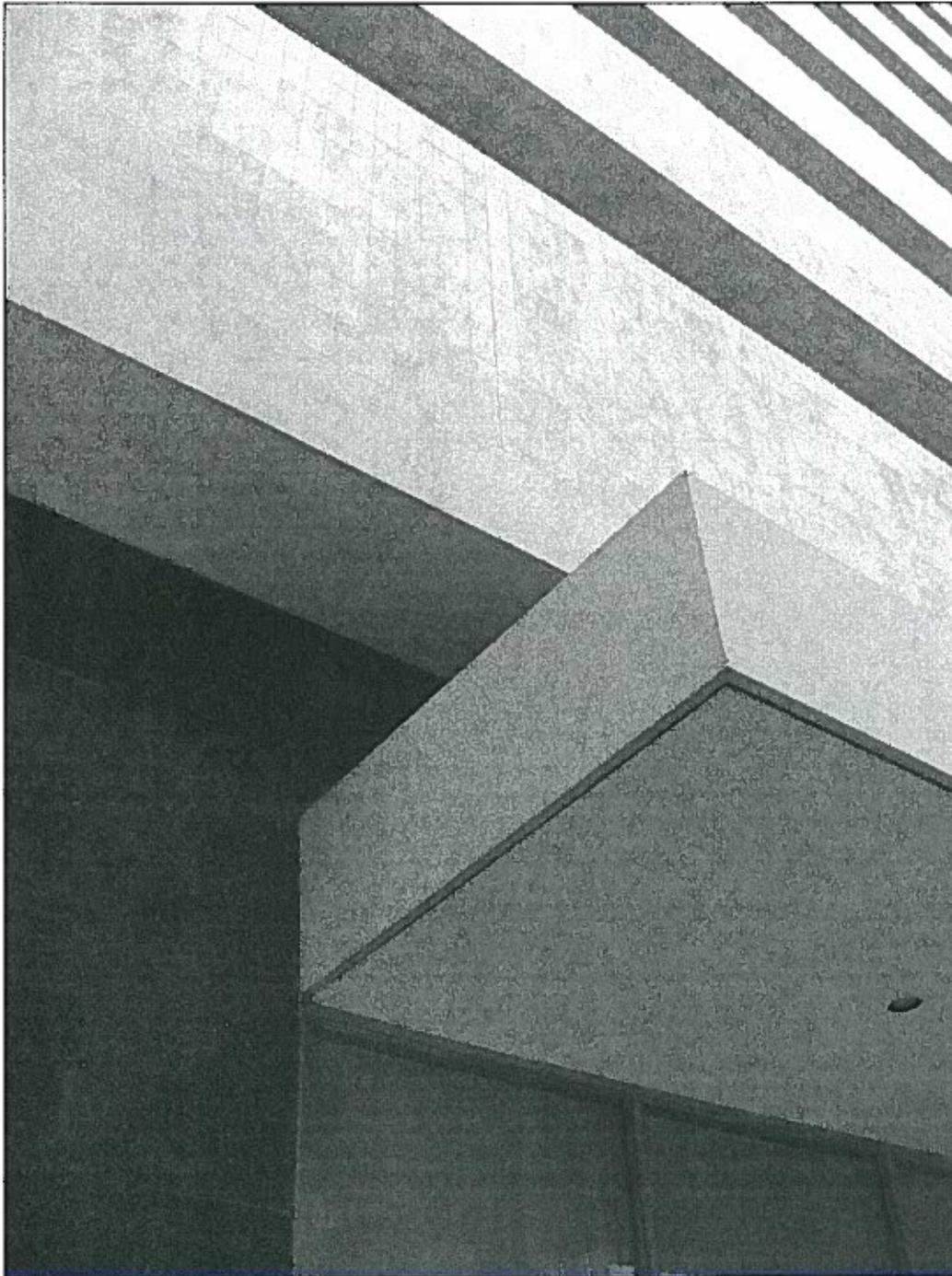


GTL |HA, March 2011 recordation photograph; Base of southeast façade *brise-soliel* detail. Paving materials and design, sculpture, and upper level aluminum framed windows and glazing are not dating from the period of significance.

Visible from this axial view of the southeast corner are the terminations of the two canopies along Wilshire Boulevard to the left and Beverly Drive to the right. Compositionally these are held back from the *brise-soliel* grid at the corner, emphasizing this entrance feature.



Aaron Richter/ Equinox, April 2010 recordation photograph, shows non-original plaza planter construction prior to installation of sculpture.



GTL | HA, March 2011 recordation photograph; Beverly Drive east façade detail of original soffit, fascia, storefront, and granite and marble panels.



GTL | HA, March 2011 recordation photograph; East façade ground level storefront detail. Pavers and planter finishes are later modifications.

Summarizing the character-defining features of the Wilshire-Beverly Center can be limited to the simple listing noted in the Jones & Stokes Historic Resources Survey dated June 2006, revised April 2007, page 8:

Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period.

Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

Within the modern idiom stated, this list of generic features applies to this structure and multiple other similar ones along Wilshire Boulevard in Beverly Hills, and elsewhere in the Los Angeles metropolitan area.

Using a typical modern material palette, Gruen produced a design that both responded to and ignored this site, transcending this simple (and incomplete) list. Quoting again the second paragraph, “*Scale, set back and massing that responded to the street or intersection of streets where they were constructed....*,” it is clear this structure has a messy complexity beyond set-backs that correspond to streets and intersections. At the ground floor canopy level, a general reinforcing of the street alignments is made, then broken at the southeast corner. This corner explodes outwards and upwards, where a *brise-soleil* frame is created that controls to some extent the undulating building volume following a wildly different Y-shaped plan above the ground floor. None of these features are affected by the proposed Equinox project.

The individual identity of this building has accommodated multiple alterations and removals over the years, up to and including one year ago in 2010, without any diminishment of its integrity. The presence of this structure shows that even with the documented modifications made over the five decades since completion, the Beverly-Wilshire Center has retained an overall appearance that still reads consistently well. However, the same comment about continuity cannot be stated of the surrounding site context and previously identified potential district, which has in the past five years been substantially and irreversibly altered. The ability of the identified potential district to retain sufficient integrity for eligibility is seriously compromised, due to the alterations, demolitions, modifications and new construction both within the overall district (contiguous or otherwise), and immediately adjacent to the Beverly – Wilshire Center.

End of Historical Memorandum for the Record, Appendix 2.

Issue date 17 June 2011

George Taylor Loudon AIA

Historical Architect

Historical Architecture Consultant

Appendix 3

Appendix 3/a Analysis of proposed compatible exterior modifications

▪ **3/a.1 Preliminary considerations for recommended design approach:**

A> Previous alterations have not posed irreversible or adverse effects to the integrity of the structure.

B> There is a history of ongoing development and remodeling of this building and the adjacent properties.

C> Later new construction has not always been performed in sympathetic response to the design of the original building and site.

D> All of the following building elements are non-original: exterior site hardscape paving, Wilshire lobby entrance and interior lobby surfaces, southwest storefront on Wilshire Blvd, all upper floor windows (replacement performed after the 2006-2007 Evaluation Report,) Beverly Drive planter materials.

E> An overall articulation of massing and detailing of exterior features in a mid-twentieth century modern stylistic vocabulary is present in the original 1960-1961 design.

F> There is a consistency of massing forms with continuous horizontal articulations of recessed window openings, and generally a horizontal emphasis of fenestrations and surrounds with radiused corners and minimalist modern detailing.

G> There is precedent for a unified color consistency for the building complex, with white (marble) veneer panels at the upper floor levels, and black (granite) veneer panels at the ground floor and at the featured "brise-soleil" detail forming the southeast entrance plaza design statement.

H> Recommended design approach: Alterations to the structure should be considered and detailed in such a way as to be compatible with the overall original design intent; be consistent with and deferential to the identified character-defining elements; be reversible in detail and execution.

▪ **3/a.2 It is recommended to maintain and minimize impacts to the following character defining features as summarized in the 2006/2007 Jones & Stokes Historic Resources Survey:**

Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period.

Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

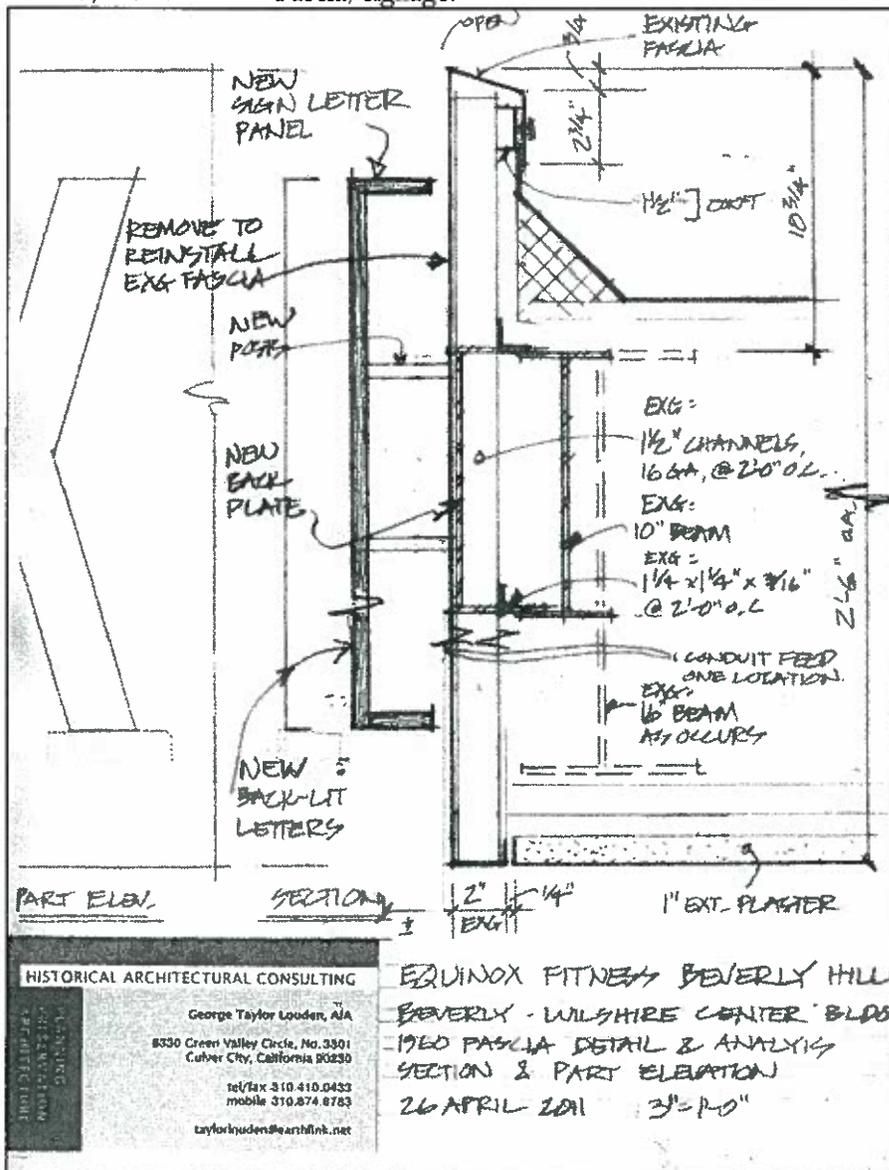
None of the listed character defining features has been compromised in an irreversible manner by the proposed project. Use of new materials and incorporation of proposed work at areas previously modified are compatible with both the existing original materials present, and the listed character defining features.

▪ **3/a.3 Precedent details and materials remaining from the 1960-1961 Gruen design include:**

- A> Granite & marble cladding at exterior building façades;
- B> Aluminum and glass storefront, Beverly Drive façade;
- C> Planter location and dimensions, but not existing granite facing material, Beverly Drive façade;
- D> Window dimensions and spacing, massing of building elements, west alley façade;
- E> Overall massing and forms of building at ground floor and upper levels;
- F> Upper level horizontal ribbon windows set back behind a recessed screen wall at head and sill;
- G> Continuous metal veneered panel fascia at ground floor along principal street frontages;
- H> Southeast corner granite framework *brise – soleil* at southeast entrance to tenant space;
- I> Exterior roughly textured plaster soffits, portion of Wilshire and along Beverly;
- J> Lighting design, recessed round downlights in plaster soffits.

- 3/a.4 The following exterior details have been developed in support of the executive architect's work in creating a project in conformance with the Secretary of the Interior's Standards for Rehabilitation:

3/a.4 A> Fascia/signage:



GTL | HA, April 2011 schematic development of canopy fascia for determination of signage, based on original construction document section details.

Review of the following project construction document drawings, developed by Gruen and Associates, were included in the development of the analysis for this Historical Memorandum for the Record:

- Drawings Issued for Architectural Commission Review, dated 05.18.2011.

Appendix **3/b** Sources and research

3/b.1 Hard Facts:

- Office of the building archives;
- Office of Victor Gruen and Associates;
- Jones & Stokes Historic Resources Survey Report, June 2006, revised April 2007, Part II, Area 5, Commercial Properties;
- GTL|HA, overall site context reconnaissance and photography March- May 2011;
- GTL|HA, Paint chronology investigations, May 2011.

3/b.2 Internet Sources:

- City of Beverly Hills;
- Los Angeles Public Library Photo Collection;
- University of California, Los Angeles Library Photo Collection;
- Wikipedia, as noted;
- Los Angeles Times online source, as noted;
- The New Yorker magazine online source, as noted;
- California State Library, California History Section.

3/b.3 Design reference Sources:

National Parks Service:

Secretary of the Interior's Standards for Rehabilitation;
Preservation Briefs;
Preservation Tech Notes.

Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

3/b.4 Qualifications of author/c.v.

George Taylor Louden AIA

Historical Architectural Consulting

Culver City, California e: taylorlouden@earthlink.net mobile: 310 874 8783

EDUCATION

Columbia University, Master of Architecture, 1980

University of Virginia, Bachelor of Science in Architecture, 1976

Polytechnic of Central London, Diploma Program, 1975

PROFESSIONAL REGISTRATIONS

Licensed Architect in California 1992 and New York 1982

PROFESSIONAL MEMBERSHIPS

American Institute of Architects; National Trust for Historic Preservation; California Preservation Foundation; Los Angeles Conservancy; The Association for Preservation Technology International; Beverly Hills Conservancy; Partial list of Preservation Offices, City of Los Angeles; Board Chair and two-term Architect representative for the City of Los Angeles Planning Department on the Miracle Mile North Historic Preservation Overlay Zone Design Review Board

RECOGNITIONS

Preservation Design Award, LA Conservancy 2001 (Doheny Library), 2004 (Old Administration Building); National Trust for Historic Preservation, Stanford University Projects Recognition 2001 (Encina Hall); Historic Preservation Award, The Old Riverside Foundation for Historic Preservation, 2010 (Rouse/ Culver Center)

Education Committee member, California Preservation Foundation, 2009-present

Programs Committee member, California Preservation Foundation Conference; 2008, 2009, 2011, 2012

Study Tour Presenter, Will Rogers Ranch Restoration Project, California Preservation Foundation Conference, 2007 & 2011

Moderator/Presenter, "Historic District Infill Design" for the Preservation Practice Track Education Session, California Preservation Foundation Conference, 2008

Moderator/Presenter, "Historic District Infill Design", "Construction Administration for Historical Structures", and "Amboy California Historic Structure Report" for the Preservation Practice Track Education Session, California Preservation Foundation Conference, 2009

Moderator/Presenter, "Historical Sustainable Design" for the Sustainability Track Education Session, California Preservation Foundation Conference, 2010

Presenter, "Design Roundtable" for the Community Character Track Education Session, California Preservation Foundation Conference, 2011

Speaker, California Preservation Foundation Workshop, Secretary of the Interior's Standards, Ventura 2008

Speaker, California Preservation Foundation Workshop, Secretary of the Interior's Standards, San Francisco 2008

Speaker, AIA/Los Angeles Dwell Design conference, Historical Preservation Zones and Sustainable design, 2009

Speaker, California Preservation Foundation Workshop, Historical Sustainable Design Practice, Riverside 2010

Guest Lecturer: USC Historic Preservation Summer Program, 2003;

Guest Lecturer: Los Angeles Planning Department / HPOZ Basic Training Educational Seminar series, 2005, 2006;

Guest Lecturer: Santa Barbara County Historic Landmarks Advisory Commission, 2004

Design jury member, Los Angeles Conservancy Preservation Design Awards, 2006

Design jury member, Temple University School of Architecture, Philadelphia PA, Historical Design Studio, 2008

Design jury member, FIDM, Los Angeles CA, Historical Design Studio, 2008

Design jury member, University of Southern California, Los Angeles CA, Design Studio, 2010

SELECTED PROJECTS

CONSTRUCTION PROJECTS

El Pueblo Historic Monument, LA County Department of Public Works, Los Angeles, CA

LA Plaza de Cultura y Artes, El Pueblo Historic Monument, Los Angeles, CA

Wadsworth Chapel / All Faiths Chapel, Department of Veterans Affairs, West Los Angeles, CA

Will Rogers State Historic Park/ Ranch House Preservation, Pacific Palisades, CA

Will Rogers State Historic Park/ Guest House Preservation & Adaptive Reuse, Pacific Palisades, CA

Will Rogers State Historic Park/ Jim Rogers' Barn Reconstruction, Pacific Palisades, CA

Will Rogers State Historic Park/ Historical Equestrian Site & Structures Reconstruction, Pacific Palisades, CA

Rouse Building Adaptive Reuse/ Barbara and Art Culver Center of the Arts, UC Riverside, Riverside, CA

Doheny Memorial Library, University of Southern California, Los Angeles, CA

Encina Hall, Stanford University, Stanford, CA

Chamber of Commerce Building Rehabilitation/ Adaptive Reuse/ Pioneer Village, Bakersfield, CA

Old Administration Building, Los Angeles County/USC Medical Center, Los Angeles, CA

Du-Par's Restaurant Rehabilitation, Farmers Market, Los Angeles, CA

"Almidor House," Private Residence, Woodland Hills, CA

King Street Station Rehabilitation, Seattle, WA

United States Customs House, Manhattan, New York

Carnegie Hall, Manhattan, New York

SELECTED PROJECTS

REPORTS, EVALUATIONS, ASSESSMENTS

Equinox Fitness Club tenant improvement, Historical Memo for Record, Beverly Wilshire Center, Beverly Hills, CA

Town of Amboy Historic Structure Report, National Park Service, Amboy, San Bernardino County, Mojave Desert, CA

Veterans Administration San Francisco Medical Center, Vivarium project, San Francisco, CA

Griffith Observatory, Los Angeles, CA

University Heights School Annex Number One, City of San Diego, San Diego, CA

Friars Club, Historic Significance Report Assessment, Beverly Hills, CA

Potential Historic Significance Report Assessments, City of Pomona Planning Division, Pomona, CA

Marion Davies Estate & North Guest House/415 Pacific Coast Highway, Feasibility Study, Santa Monica, CA

The Thacher School Master Plan, Ojai, CA

Montecito Country Mart, thematic shopping center restoration document, JR Rosenfield, Santa Barbara, CA

End of Historical Memorandum for the Record, Appendix 3.
Issue date 17 June 2011

George Taylor Louden AIA
Historical Architect
Historical Architecture Consultant

ATTACHMENT 6

Architectural Commission Approval Letter

Shena Rojemann

From: Shena Rojemann
Sent: Tuesday, May 24, 2011 4:37 PM
To: Luba Senatorova (luba.senatorova@equinox.com)
Cc: Sabina Cheng <cheng@gruenassociates.com> (cheng@gruenassociates.com)
Subject: EQUINOX - AC Review 5/18/2011 - Case No. PL 110 4716

THIS LETTER IS NOT A PERMIT.

RE: Case No. PL 110 4716
EQUINOX
9465 Wilshire Boulevard
Façade remodel and sign accommodation

Dear Mr. Senatorova,

At the Architectural Commission (AC) meeting on May 18, 2011, the Commission reviewed your application for a façade remodel and sign accommodation for EQUINOX located at 9465 Wilshire Boulevard (Case Number: PL 110 4716). Based on the information presented at the public hearing, as well as the AC deliberations, the AC has directed that the project be **APPROVED AS PRESENTED with the following conditions:**

- 1. Final plans shall substantially conform to the plans submitted to and reviewed by the Architectural Commission on May 18, 2011.**
- 2. This approval by the Architectural Commission is for design only; the project is subject to all applicable City regulations for the construction of the project (including zoning, building codes and Public Works requirements.)**
- 3. Any future modifications to this approval shall be presented to staff for a determination as to whether the change may be approved by staff (minor) or requires review by the Commission. Changes made without City approval may be required to be restored to match the City approved plans.**
- 4. Any projections within the public-right-of way shall be reviewed and approved by the Public Works and Transportation Department.**
- 5. A copy of the City's approval letter shall be scanned onto the final plans.**

Decisions of the Architectural Commission may be appealed by any interested party to the City Council within fourteen (14) days of the date of the Commission's decision. Appeals must be filed in writing with the City Clerk at 455 North Rexford Drive, Beverly Hills, and must be accompanied by an appeal fee.

If you would like to listen to the discussion of the Commission at the meeting on May 18, 2011, you can access a taping of the meeting at www.beverlyhills.org (click on the "Video on Demand" icon at the bottom of the page, then select the Architectural Commission icon).

Since the subject project has been conditionally approved by the Architectural Commission, the project may now be submitted to the Building & Safety Division for Plan Check Review. **Please call 310.285.1141 during regular business hours** to make an appointment with a **Plan Review Engineer (PRE) and Planner** in the Community Development Department to review your approved plans and file for appropriate permits. Please bring a copy of this letter with you so that the PRE and Planner can reference your AC review file. If the attached conditions require you to submit revised plans prior to a permit being issued, please contact the Project Planner for an appointment.

The Community Development Department will discard unclaimed plans after ninety (90) days following the appeal period, if you have not obtained your permit. After that time, you may need to provide duplicate plans subject to a reprocessing fee for conformity review. Any significant revisions to the previously approved plans may also require further Architectural Review and therefore be subject to separate additional fees.

Best regards,

Shena Rojemann, Associate Planner
for the Architectural Commission

ATTACHMENT 7

Architectural Commission Staff Report – May 18, 2011

(includes report from April 27, 2011)



STAFF REPORT
CITY OF BEVERLY HILLS

**For the Architectural Commission
Meeting of May 18, 2011**

TO: Architectural Commission

FROM: Shena Rojemann, Associate Planner

SUBJECT: EQUINOX
9465 Wilshire Boulevard
Request for approval of a façade remodel and sign accommodation.
(PL 110 4716)

Continued from the April 27, 2011 meeting.

PROJECT INFORMATION

Applicant	Ashok Vanmali, Gruen Associates
Address	9465 Wilshire Boulevard
Project Name	Equinox
Project Type	<ul style="list-style-type: none">• Façade remodel• Sign accommodation

PROJECT DESCRIPTION

The project is located on the north side of the 9400 block of Wilshire Boulevard, between Beverly Drive and Rodeo Drive. The applicant is requesting the approval of a façade remodel, a sign accommodation to allow multiple business identification signs and a sign accommodation to allow a business identification sign to be located along an elevation abutting an alley. This project was initially reviewed by the Commission on April 27, 2011. At that meeting the Commission had the following comments:

Continued on the next page.

Architectural Commission Requests from April 27, 2011	Applicant's Response
1. The dark canopy design is not desirable. Maintain the existing white canopy and use black for the canopy signs.	1. The applicant is now proposing to maintain the existing white awning. The signs are proposed to be black.
2. Remove the window decals along the Wilshire elevation and the Beverly elevation.	2. The window decals have been removed from both elevations.
3. The Commission agreed that the fin sign along Beverly Drive was permissible.	3. The applicant has maintained the fin sign.
4. The Commission reviewed an alternative window vinyl option for the Wilshire elevation. This alternative included a display window. The Commission agreed that this alternative option is preferred.	4. The applicant is proposing the same alternate window vinyl (which includes the window display) along the Wilshire Boulevard as was reviewed at the April 27, 2011 meeting.
5. The Commission commented that canopy signs along the alley and along the Wilshire elevation were to close together. One sign is preferred in this area. Consider one sign along the alley only or alternatively along the Wilshire elevation only.	5. The applicant has removed the canopy sign along the alley. The Wilshire Boulevard canopy sign has been moved to the left toward the edge of the canopy.
6. The canopy signs should be raised on the canopy so as to allow spacing between the sign and the top and bottom edges of the canopy.	6. The applicant has adjusted the signs to allow spacing between the signs and the top and bottom edges of the canopy.

A material board will be presented at the meeting.

ANALYSIS

The proposed façade remodel and signs are intended to update the appearance of the existing building and add architectural details of the building. The proposed façade remodel and signage proposes quality materials. The use of quality materials and modern style shall be cohesive with, and sometimes superior to, the facades found along Wilshire Boulevard. The proposed design offers a revitalized appearance with a clean finish.

ARCHITECTURAL CRITERIA

Pursuant to Municipal Code Section 3-3010 the Architectural Commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction after consideration of the following criteria:

(a) The plan for the proposed building or structure is in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

The proposed façade remodel and signs create a dynamic façade and interesting visuals. The materials proposed are of a high quality. The proposed business identification signs are simplistic in design. The design appears in keeping with (and in some cases superior to) the quality of nearby shops and other businesses. The proposed facade remodel and business identification signs appear to be in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

(b) The plan for the proposed building or structure indicates the manner in which the structure is reasonably protected against external and internal noise, vibrations, and other factors which may tend to make the environment less desirable.

The proposed façade remodel and new signs do not appear to modify any existing barriers to external or internal noise and is not anticipated to make the environment less favorable.

(c) The proposed building is not in its exterior design and appearance of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.

The materials proposed for the facade remodel and new signs do not appear to be inferior in quality or execution and would therefore not degrade the local environment in appearance or value.

(d) The proposed building or structure is in harmony with the proposed developments on land in the General area, with the General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

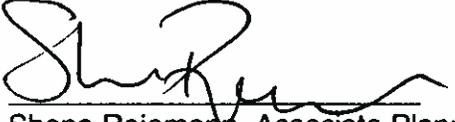
The proposed facade remodel and signage is in conformity with the prevailing uses in the general area and with other similar projects approved by the Commission. Furthermore, the overall composition and design of the façade and signage would be in harmony with proposed or future uses in the area as would be allowed in compliance with the current General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

(e) The proposed building or structure is in conformity with the standards of this Code and other applicable laws insofar as the location and appearance of the buildings and structures are involved.

Subject to review of the final construction documents, the proposed façade remodel and new signage are in conformity with the standards of the Beverly Hills Municipal Code and other applicable laws insofar as the location and appearance of the buildings and structures involved.

RECOMMENDATION

Based on the foregoing analysis and pending the information and conclusions that may result from testimony received at the public hearing, as well as Architectural Commission deliberations, staff recommends the Architectural Commission either provide the applicant with further direction and return the item for restudy, or approve the project with any conditions the Commission may wish to add, in addition to the standard conditions of approval (attached).



Shena Rojemann, Associate Planner

Attachments

Exhibit A – Standard Conditions of Approval

Exhibit B - Staff report from the April 27, 2011 AC meeting

EXHIBIT A
Standard Conditions of Approval

1. Final plans shall substantially conform to the plans submitted to and reviewed by the Architectural Commission on May 18, 2011.
2. This approval by the Architectural Commission is for design only; the project is subject to all applicable City regulations for the construction of the project (including zoning, building codes and Public Works requirements.)
3. Any future modifications to this approval shall be presented to staff for a determination as to whether the change may be approved by staff (minor) or requires review by the Commission. Changes made without City approval shall be required to be restored to match the City approved plans.
4. Any projections within the public-right-of way shall be reviewed and approved by the Public Works and Transportation Department.
5. A copy of the City's approval letter shall be scanned onto the final plans.

EXHIBIT B
April 27, 2011 AC staff report



STAFF REPORT
CITY OF BEVERLY HILLS

For the Architectural Commission
Meeting of April 27, 2011

TO: Architectural Commission

FROM: Shena Rojemann, Associate Planner

SUBJECT: EQUINOX
9465 Wilshire Boulevard
Request for approval of a façade remodel and sign accommodation
(PL 110 4716)

PROJECT INFORMATION

Applicant	Ashok Vanmali, Gruen Associates
Address	9465 Wilshire Boulevard
Project Name	Equinox
Project Type	<ul style="list-style-type: none">• Façade remodel• Sign accommodation

PROJECT DESCRIPTION

The project is located on the north side of the 9400 block of Wilshire Boulevard, between Beverly Drive and Rodeo Drive. The applicant is requesting the approval of a façade remodel, a sign accommodation to allow multiple business identification signs and a sign accommodation to allow a business identification sign to be located along an elevation abutting an alley. The following elements are proposed:

Beverly Drive Façade:

- The existing canopy fascia would be powder-coated black to match the existing granite color.
- The plaster at the underside of the canopy will be removed and replaced with metal panels, powder-coated black, with a z-clip connection.
- New stainless steel window frames are proposed (to match the existing).
- A new entry door with walnut wood frame is proposed.
- A new fin wall (cladded in granite) is proposed adjacent to the entry.
- New black granite (to match the existing) will be added below the windows.
- New black granite planters (to match the existing) will be added at the ground.

Wilshire Boulevard Façade:

- The existing canopy fascia would be powder-coated black to match the existing granite color.

- The plaster at the underside of the canopy will be removed and replaced with metal panels, powder-coated black, with a z-clip connection.
- Opaque window film is proposed on all the windows.

Alley Elevation:

- The existing canopy fascia would be powder-coated black to match the existing granite color.
- The plaster at the underside of the canopy will be removed and replaced with metal panels, powder-coated black, with a z-clip connection.
- An existing second story window is proposed to be sealed shut and an opaque gray film is to be applied to the back side of the glazing.
- New mechanical grilles are proposed.
- A new mechanical screen wall (clad in granite) is proposed.

Business Identification Signs:

The applicant is requesting multiple business identification signs along the Beverly Drive elevation and Wilshire Elevation of the building. Pursuant to the Beverly Hills Municipal Code §10-4-604(D.2), the Architectural Commission may grant a sign accommodation to allow multiple business identification signs on multiple building elevations (abutting public streets) so long as the cumulative sign area does not exceed 130 square feet. The applicant is also asking for a business identification sign along the alley elevation of the building. Pursuant to Beverly Hills Municipal Code §10-4-604(D.1) the Architectural Commission may grant a sign accommodation to allow a sign to be located on a wall abutting an alley or private property¹. The applicant is proposing the following signage:

Beverly Drive Elevation:

- One business ID sign located on the building canopy. This sign would contain one line of text reading "EQUINOX". This sign would contain reverse halo LED illuminated aluminum channel letters with a satin finish. The sign would be a total of 30 square feet.
- One business ID sign located on the new fin wall adjacent to the entry. This sign would contain one line of text reading "EQUINOX" and the company logo. The sign would be composed of a pin mounted aluminum plate with halo back lighting and a stain finish. This sign would be a total of 4.5 square feet.
- Two business ID signs located on the entry doors. These signs would contain one line of text reading "EQUINOX" and the company logo. The signs would be vinyl. Each sign would be 2 square feet (4 SF total).
- Two business ID signs located on the façade windows. These signs would contain one line of text reading "EQUINOX" and the company logo. The signs would be vinyl. Each sign would be 12.5 square feet (25 SF total).

¹ BHMC §10-4-604(D.1): Furthermore, the sign affixed to that portion of the exterior wall which abuts an alley or private property must not exceed 75% of the area otherwise permissible if the wall abutted a public street (2 SF/1 linear ft, 100 SF maximum).

Wilshire Boulevard Elevation:

- One business ID sign located on the building canopy. This sign would contain one line of text reading "EQUINOX". This sign would contain reverse halo LED illuminated aluminum channel letters with a satin finish. The sign would be a total of 30 square feet.
- One business ID sign located on the façade windows. This sign would contain one line of text reading "EQUINOX" and the company logo. The sign would be vinyl and would be 12.5 square feet.

BUSINESS IDENTIFICATION SIGNS			
Type of Sign	Permitted by Code with a Sign Accommodation	Permitted by Code without a Sign Accommodation	Proposed
Business ID Signage	Multiple business identification signs (located on multiple building elevations containing street frontage) not to exceed 130 SF	Beverly Drive: 1 sign – maximum 2 SF/1 foot of linear street frontage occupied by the tenant (maximum 100 SF) and one smaller sign not to exceed 5 SF (only for business name, address and other operating hours)	106 SF (8 signs)
		Wilshire Blvd: 1 sign – maximum 2 SF/ 1 foot of linear street frontage occupied by the tenant (maximum 30 SF) and one smaller sign not to exceed 5 SF (only for business name, address and other operating hours)	

Alley Elevation:

- One business ID sign located on the building canopy. This sign would contain one line of text reading "EQUINOX". This sign would contain reverse halo LED illuminated aluminum channel letters with a satin finish. The sign would be a total of 30 square feet.

BUSINESS IDENTIFICATION SIGNS			
Type of Sign	Permitted by Code with a Sign Accommodation	Permitted by Code without a Sign Accommodation	Proposed
Business ID Signage	One sign not to exceed 75% of the area otherwise permissible if the wall abutted a public street (2 SF/1 linear foot, maximum 100 SF x 75% = Maximum 75 SF)	Alley signage not permitted	30 SF (1 sign)

A material board will be presented at the meeting.

ANALYSIS

The proposed façade remodel and signs are intended to update the appearance of the existing building and add architectural details of the building. The proposed façade remodel and signage proposes quality materials. The use of quality materials and modern style shall be cohesive with, and sometimes superior to, the facades found along Wilshire Boulevard. The proposed design offers a revitalized appearance with a clean finish.

ARCHITECTURAL CRITERIA

Pursuant to Municipal Code Section 3-3010 the Architectural Commission may approve, approve with conditions, or disapprove the issuance of a building permit in any matter subject to its jurisdiction after consideration of the following criteria:

(a) The plan for the proposed building or structure is in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

The proposed façade remodel and signs create a dynamic façade and interesting visuals. The materials proposed are of a high quality. The proposed business identification signs are simplistic in design. The design appears in keeping with (and in some cases superior to) the quality of nearby shops and other businesses. The proposed facade remodel and business identification signs appear to be in conformity with good taste and good design and in general contributes to the image of Beverly Hills as a place of beauty, spaciousness, balance, taste, fitness, broad vistas and high quality.

(b) The plan for the proposed building or structure indicates the manner in which the structure is reasonably protected against external and internal noise, vibrations, and other factors which may tend to make the environment less desirable.

The proposed façade remodel and new signs do not appear to modify any existing barriers to external or internal noise and is not anticipated to make the environment less favorable.

(c) The proposed building is not in its exterior design and appearance of inferior quality such as to cause the nature of the local environment to materially depreciate in appearance and value.

The materials proposed for the facade remodel and new signs do not appear to be inferior in quality or execution and would therefore not degrade the local environment in appearance or value.

(d) The proposed building or structure is in harmony with the proposed developments on land in the General area, with the General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

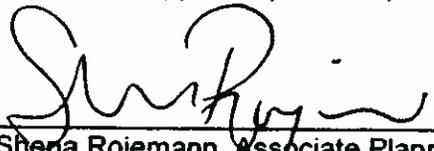
The proposed facade remodel and signage is in conformity with the prevailing uses in the general area and with other similar projects approved by the Commission. Furthermore, the overall composition and design of the facade and signage would be in harmony with proposed or future uses in the area as would be allowed in compliance with the current General Plan for Beverly Hills, and with any precise plans adopted pursuant to the General Plan.

(e) The proposed building or structure is in conformity with the standards of this Code and other applicable laws insofar as the location and appearance of the buildings and structures are involved.

Subject to review of the final construction documents, the proposed facade remodel and new signage are in conformity with the standards of the Beverly Hills Municipal Code and other applicable laws insofar as the location and appearance of the buildings and structures involved.

RECOMMENDATION

Based on the foregoing analysis and pending the information and conclusions that may result from testimony received at the public hearing, as well as Architectural Commission deliberations, staff recommends the Architectural Commission either provide the applicant with further direction and return the item for restudy, or approve the project with any conditions the Commission may wish to add, in addition to the standard conditions of approval (attached).


Sheri Rojemann, Associate Planner

Attachments

Exhibit A – Standard Conditions of Approval

EXHIBIT A
Standard Conditions of Approval

1. Final plans shall substantially conform to the plans submitted to and reviewed by the Architectural Commission on April 27, 2011.
2. This approval by the Architectural Commission is for design only; the project is subject to all applicable City regulations for the construction of the project (including zoning, building codes and Public Works requirements.)
3. Any future modifications to this approval shall be presented to staff for a determination as to whether the change may be approved by staff (minor) or requires review by the Commission. Changes made without City approval shall be required to be restored to match the City approved plans.
5. Any projections within the public-right-of way shall be reviewed and approved by the Public Works and Transportation Department.
6. A copy of the City's approval letter shall be scanned onto the final plans.

ATTACHMENT 8

Kaplan Chen Kaplan Historic Assessment - 3/25/2011



Kaplan Chen Kaplan
Architects & Planners
2526 Eighteenth Street
Santa Monica CA 90405

March 25, 2011

Todd Elliott, Esq.
Truman & Elliott LLP
626 Wilshire Boulevard, Suite 550
Los Angeles, California 90017

Re: 9465 Wilshire Boulevard
Beverly Hills, California

Kaplan Chen Kaplan was asked to evaluate the building at 9465 Wilshire Boulevard, known as the Bank of America Building, in Beverly Hills California for its potential eligibility as a historic resource.

The building at 9465 Wilshire Boulevard is 51 years old and was constructed in 1960 and designed by mid-century architect Victor Gruen. It is sited on the northwest corner prominent intersection, Wilshire Boulevard and Beverly Drive.

In 2007, the City of Beverly Hills conducted the attached *Historic Resources Survey Report, Commercial Properties (2007)*. The City's Department of Planning and Community Development retained Jones & Stokes to update the City's Historic Resources Survey (HRS) for Area 5 Commercial. Phase I of the HRS was prepared in 1985-86 and included a windshield survey of 2,790 properties. Of those properties, 371 were recorded on Department of Parks and Recreation historic resources inventory forms (DRP 523 forms), and 27 of them were recorded in Commercial Area 5. The 1985-86 HRS essentially used a 50-year age criterion, and therefore evaluated very few properties constructed after 1945. In 2004, PCR Services Corp. prepared Phase II of the HRS, preparing update DPR 523 forms for the 371 Phase I properties and preparing reconnaissance level DPR 523 forms for Area 4 Multi-Family Residence Survey. The purpose of the Phase III survey of Area 5 Commercial was to: 1) provide update DPR 523 forms on the 27 Phase I properties, and 2) conduct a reconnaissance survey of properties constructed after 1935 but before 1965.

Telephone 310.452.7505
Facsimile 310.452.1494

The project methodology follows that of the reconnaissance level survey effort documented on DPR 523 forms according to California Office of Historic Preservation Instructions *for Recording Historical Resources*. Identified properties were evaluated for significance according to the criteria of the National Register of Historic Places (National Register), California Register of Historical Resources (California Register), and Title 10 of the Beverly Hills Municipal Code. This report provided an "Expanded Historic Context", 1950s and 1960s:

"During the Post World War II period (1945-1975) a large number of medium to large-scale office buildings were erected along the commercial corridors of Beverly Hills, with the largest concentration, and the most prominent examples found on Wilshire Boulevard. These buildings were predominantly architect designed by practitioners offering a wide range of modernistic interpretations. They represent an impressive collection of designs from the period...Architects responsible for a number of the contributors to this district include: William Pereira, Charles Luckman, Maxwell Starkman, I.M. Pei, Victor Gruen Associates, Welton Becket and Associates, Craig Elwood, Langdon and Wilson, Edward Durrell Stone, Palmer and Krisel, and Anthony Lumsden. Worthy of particular note is the work of Sidney Eisenshtat, who is credited with seven of the commercial buildings along Wilshire Boulevard." ¹

The *Historic Resources Survey Report, Commercial Properties* identified "Post World War II Commercial Buildings" Historic District with 28 contributing buildings. The Survey was submitted to the State Office of Historic Preservation in April 2007 and a DPR 523A Form was prepared for each property contained in the Survey Report. The *Survey Report* noted that the buildings in this Historic District:

"...include modest examples, mostly 4 to 5 stories in height, constructed after World War II, from the late 1940s to the mid 1950s. Later structures were larger in scale and were built with higher construction budgets. Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial highrise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district." ²

¹ *City of Beverly Hills Historic Resources Survey Report, Survey Area 5: Commercial Properties*, pp. 4-5.

² *City of Beverly Hills Historic Resources Survey Report, Survey Area 5: Commercial Properties*, p. 7.



Twenty-eight buildings were identified as contributors to the "Post World War II Commercial Buildings" Historic District. They include:

Address	Year	Architect	Status
404 Roxbury	1955	Welton Becket & Assoc/Lou Naidorf	3CD
8929 Wilshire	1957	unknown	3CD ALTERED
9725 Wilshire	1957	Herman Light	3CD
9033 Wilshire	1958	unknown	3CD ALTERED
9111 Wilshire	1958	William Pereira	3CD
8530 Wilshire	1959	Reigyl & Starkman	3CD
9171 Wilshire	1959	Sidney Eisenshtat	3CD
8665 Wilshire	1960	unknown unknown	3CD
9460 Wilshire	1960	Sidney Eisenshtat	3CD
9465 Wilshire	1960	Victor Gruen	3CD
9601 Wilshire	1961	Charles Luckman & Max Horwitz	3CD
9720 Wilshire	1961	Edward Durrell Stone	3CB
8500 Wilshire	1962	unknown	3CD
8730 Wilshire	1962	Sidney Eisenshtat	3CD
9300 Wilshire	1962	Sidney Eisenshtat	3CD
8671 Wilshire	1963	Richard Dorman Assoc	3CD
8920 Wilshire	1963	Palmer & Krisel	3CD
9777 Wilshire	1965	Sidney Eisenshtat	3CD
9450 Wilshire	1968	Langdon Wilson	3CD
8383 Wilshire	1970	unknown	3CD
9401 Wilshire	1971	unknown	3CD
9665 Wilshire	1971	Craig Elwood	3CD
441 Camden	1972	unknown	3CD
8484 Wilshire	1972	William Pereira	3CB
9595 Wilshire	1972	unknown	3CD
8949 Wilshire	1973	Sidney Eisenshtat	3CD
9701 Wilshire	1973	Anthony Lumsden	3S
414 Camden	1974	unknown	3CD

3CD = Appears eligible for California Register (CR) as a contributor to a CR eligible district through a survey evaluation
 3CB = Appears eligible for CR both individually and as a contributor to a CR eligible district through a survey evaluation
 3S = Appears eligible for National Register (NR) as an individual property through survey evaluation



Under Public Resources Code Section 15064.5 a (2) "[a] resource located in a local register of historical resources, as defined in section 5020.1 (k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements of 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant." The City's *Historic Resources Survey Report, Commercial Properties* indicates the building at 9465 Wilshire Boulevard is a contributing building to a potential historic district. Buildings that are contributors to historic districts are themselves treated as historically significant. Public Resources Code Section 15064.5 a (2). The DPR 523L form in the 2007 Survey for 9465 Wilshire Boulevard indicates that character defining features contributing to the building's significance include generous use of plate glass, exposed steel and concrete, cladding, travertine, and other contemporary materials associated with modern commercial high-rise office buildings of the period. Scale, set back and massing that responds to the street or intersection of the streets where it was constructed are identifying qualities that are consistently presented within the majority of the contributing buildings in this district.

The Bank of America Building was constructed in 1960 and designed by Victor Gruen Architects. Located on an iconic corner in the Beverly Hills Golden Triangle, this late mid-century building was designed by the inventor of the "regional shopping centre". Malcolm Gladwell, writing in *The New Yorker*, suggested that "Victor Gruen may well have been the most influential architect of the twentieth century." However, Gruen also came to recognize the self-sustaining city by constructing large buildings to serve the business and commercial needs in key nodes of the City. The Bank of America Building represents this model by maintaining office uses on the upper floors with an intended use of retail and pedestrian-focused uses on the ground floor, inviting the pedestrian to come inside with courtyards and patio-like open space areas. The exterior design of the structure also represents the post-war era with its curved façade shaped inward away from the public as if inviting the public, while simultaneously displaying the awe of the structure with large ground floor windows and stone columns.

Of the 28 buildings listed on *Historic Resources Survey Report Commercial Properties Post WWII Commercial Buildings*, all constructed between 1955 and 1974, twelve buildings are over 50 years old. A recent field review of these twelve buildings revealed two have undergone significant alterations since the 2007 survey. Thus only ten of the over 50-year old buildings that contribute to the "Post World War II Commercial Buildings" Historic District retain historic integrity. The subject building at 9465 Wilshire Boulevard is one of these buildings. A building must be 45 years old to be eligible for listing on the California



Register of Historic Places, and 50 years old to be eligible for listing on the National Register of Historic Places.

The subject building is located at a unique intersection on which each corner contains a building identified as historic in the *Historic Resources Survey Report*. The subject building, 9465 Wilshire Boulevard, is located on the northwest corner of Wilshire Boulevard and Beverly Drive. The southwest corner contains 9460 Wilshire Boulevard designed by Sidney Eisenshtat in 1960. On the southeast corner is 9450 Wilshire Boulevard, designed by Langdon and Wilson in 1968. All of these buildings were evaluated as 3CD, "appears eligible for California Register (CR) as a contributor to a CR eligible district through a survey evaluation." On the northeast corner is 9429 Wilshire Boulevard, the California Bank Building, also identified in the *Historic Resources Survey Report*. Built in 1929, this Art Deco building was rated as 3CS "Appears eligible for California Register as an individual property through survey evaluation." On the south side of Wilshire Boulevard, one block west of Beverly Drive, is the Beverly Wilshire Hotel, constructed in 1926, and is listed on the National Register of Historic Places.

This group of historic buildings, which includes the subject building at 9465 Wilshire Boulevard, defines this corner by creating a street wall for Wilshire Boulevard from both a corridor perspective and at the pedestrian level. All the buildings in this geographic group are at least California Register eligible buildings either as district contributors or as individual landmarks. Accordingly, this particular corner of Beverly Hills' Commercial District is especially significant as it is located in the heart of the City's commercial core and features significant historic buildings at every corner worthy of preservation and eligible for listing on either the California Register or National Register.

The building at 9465 Wilshire Boulevard should be considered as a historic resource based on its status as a contributing building to a "Post World War II Commercial Buildings" Historic District as identified in the *"City of Beverly Hills Historic Resources Survey Report, Survey Area 5: Commercial Properties"*. In addition it is significant because of its location at an intersection where each corner contains a historic building.

The architectural integrity of the building at 9465 Wilshire Boulevard retains its character-defining features as a high-rise along the Wilshire Boulevard corridor, with its street-wall. The street-level character-defining features of the building are also significant in terms of the pedestrian street level. Alterations proposed for this building at the street level, and high-rise level, including modifications to storefronts, entries and building profiles must undergo proper environmental review to identify potential significant impacts to the character-defining features and architectural integrity of the building.



Todd Elliott, Esq., Truman & Elliott, LLP
9465 Wilshire Boulevard - Historic Preservation Review
March 25, 2011
Page 6

Sincerely,



Pam O'Connor, Principal Preservation Planner

Attachments: Photographs (1-9)
 Historic Resources Report, Commercial Properties (2007)
 Bank of America (DPR 523 Form)
 DPR 523 L Form
 Curriculum Vitae



Kaplan Chen Kaplan
Architects & Planners

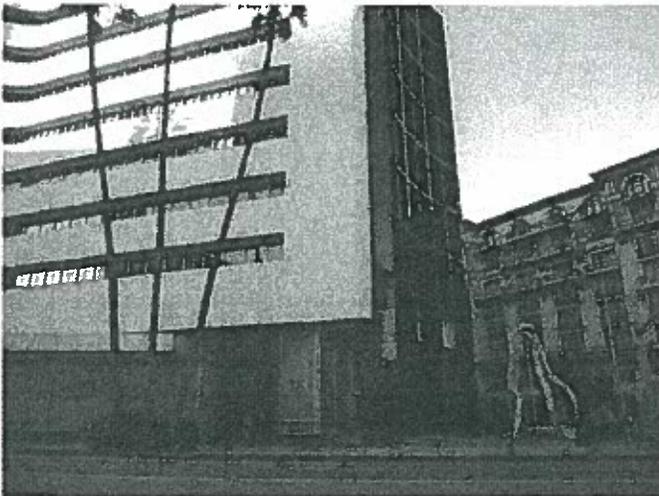
Photographs



1. 9465 Wilshire Blvd. building at Beverly Drive

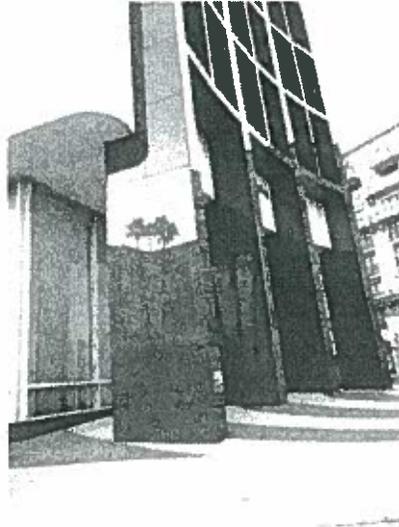


2. Corner storefront and plaza



3. Corner on Wilshire Blvd at Beverly Drive





4. Storefronts along Wilshire. 5. Storefront and corner arcade



6. Wilshire Boulevard entry





7. View along Beverly Drive toward Wilshire Blvd corner. 9465 Wilshire is on right.



8. Storefronts along Beverly Drive looking south





9. Original storefronts along Beverly Drive are intact.



Primary # _____
HR # _____
Triennial _____
NRHP Status Code 3CD

PRIMARY RECORD

Other Listings: _____
Review Code _____ Reviewer _____ Date _____

Page 1 of 1

- * Resource Name or #: 9461-9465 Wilshire Blvd.
- P1. Other Identifier: Wilshire Beverly Center
- * P2. Location: Not for Publication Unrestricted a. County Los Angeles
- b. USGS 7.5' Quad _____ Date _____ T _____; R _____; _____ 1/4 of _____ 1/4 of Sec _____; _____ B.M.
- c. Address 9461-9465 Wilshire Blvd. City Beverly Hills Zip _____
- d. UTM: (Give more than one for large and/or linear feature) Zone _____, _____ mE/ _____ mN
- e. Other Locational Data: (e.g. parcel #, legal description, directions to resource, elevation, additional UTM's, etc. as appro

- * P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries.) Contributor to a potential California Register district of (Criterion 3) Post World War II modern office buildings. Architect: Victor Gruen Associates.

Architect: Victor Gruen Assoc.

- * P3b. Resource Attributes: (List attributes and codes) _____

- * P4. Resources Present: Building Structure Object Site District Element of District Other (Isolates, etc.)



- P6b. Description of Photo: (View, date, etc.)
May 2006

- * P6. Date Constructed/Age and Sources:
 Prehistoric Historic Both
1960 (Estimated)

- * P7. Owner and Address:

- * P8. Recorded by: (Name, affiliation, address)
John English & Portia Lee
Jones & Stokes
811 W 7th ST, Suite 800
Los Angeles, CA 90017

- * P9. Date Recorded: 6/9/2006

- * P10. Survey Type: (Describe)

- * P11. Report Citation: (Cite survey report/other sources or "none")

- * Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure, and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record Artifact Record
 Photograph Record Other: (List) _____

D1. Historic Name: _____
 D2. Common Name: _____

*D3. Detailed Description (Discuss overall coherence of the district, its setting, visual characteristics, and minor features. List all elements of district.): This district is a

During the Post World War II period (1945 to 1975) an impressive collection of medium to large-scale office buildings was erected within Beverly Hills. These buildings were predominantly architect designed by practitioners offering a wide range of modernistic interpretations.

Buildings include modest examples, mostly 4 to 5 stories in height, constructed after World War II, from the late 1940's to the mid 1950's. Later structures were larger in scale, and were built with higher construction budgets. Character defining features include: generous use of plate glass, exposed steel and concrete, cladding of travertine, marble, and other contemporary materials associated with Modern commercial high-rise office buildings of the period. Scale, set back and massing that responded to the street or intersection of streets where they were constructed, is another identifying quality that is consistently present within the majority of the contributing buildings in this district.

Architects responsible for a number of the contributors to this district include: William Pereira, Charles Luckman, Maxwell Starkman, I.M. Pei, Victor Gruen Associates, Welton Becket and Associates, Craig Elwood, Langdon and Wilson, Edward Durrell Stone, Palmer and Krisel, and Anthony Lumsden. Worthy of particular note is the work of architect Sidney Eisenshtat, who is credited with seven of the contributing buildings along Wilshire Boulevard.

*D4. Boundary Description (Describe limits of district and attach map showing boundary and district elements.):

The district is predominantly located along the Wilshire Boulevard Corridor, with a few examples located within the downtown commercial triangle.

The limits of the discontinuous boundary are the commercial areas within the City Limits of Beverly Hills, and specifically the Area 5 Survey boundaries. When other areas of the City are surveyed in the future, it is possible that additional contributors to this district may be identified.

*D5. Boundary Justification:

D6. Significance: Theme Post World War II Modern Commercial Architecture, subset Office Buildings.
 Area City of Beverly Hills
 Period of Significance 1945 - 1979
 Applicable Criteria _____ (Discuss district's importance in terms of its historical context as defined by theme, period of significance, and geographic scope. Also address the integrity of the district as a whole.)

A certain number of the contributing buildings within the district have lost some integrity due to storefront alterations and re-modeling. However, within the upper floors, character defining features and original materials remain largely intact, conveying the original design intent of the building and architect. Many of the contributors are virtually unaltered from the ground up. Therefore, this district retains a relatively high degree of overall integrity.

Page 2 of 2 *Resource Name or # (Assigned by recorder)
 *Recorded by: John English and Portia Lee *Date 06/09/2006 Continuation Update

The district appears to be eligible for listing in the California Register under Criterion 3, as a substantial, and clearly identifiable grouping of buildings that exhibit a high degree of quality in their architectural design, and, for the importance of the individual architects that define the Modernist aesthetic of the group.

Contributing Properties:

414 N. Camden Drive	9171 Wilshire Boulevard
414 N. Camden Drive	9245 Wilshire Boulevard
404 N. Roxbury Drive	9300 Wilshire Boulevard
8383 Wilshire Boulevard	9401 Wilshire Boulevard
8484 Wilshire Boulevard	9450 Wilshire Boulevard
8500 Wilshire Boulevard	9460 Wilshire Boulevard
8530 Wilshire Boulevard	9461 Wilshire Boulevard
8665 Wilshire Boulevard	9595 Wilshire Boulevard
8671 Wilshire Boulevard	9601 Wilshire Boulevard
8730 Wilshire Boulevard	9665 Wilshire Boulevard
8920 Wilshire Boulevard	9701 Wilshire Boulevard
8929 Wilshire Boulevard	9720 Wilshire Boulevard
8949 Wilshire Boulevard	9725 Wilshire Boulevard
9033 Wilshire Boulevard	9777 Wilshire Boulevard
9111 Wilshire Boulevard	

*D7. References (Give full citations including the names and addresses of any informants, where possible.):

Merchell, Anthony A. and Marmol, Leonardo E., AIA. *Commercial Architecture: The Making of Modern Los Angeles* (Tour Sunday, March 9, 2003), Los Angeles, Real Architecture Press, 2003.

*D8. Evaluator: Portia Lee Date: 06/2006
 Affiliation Jones and Stokes
 Address: 811 West 7th Street, Suite 800, Los Angeles, CA 90017



Kaplan Chen Kaplan

Architects & Planners
2526 Eighteenth Street
Santa Monica CA 90405

Pam O'Connor
Principal Preservation Planner

Education:

Master of Science, Planning/Historic Preservation, Eastern Michigan University, 1986
Master of Liberal Studies, Technology Management, Eastern Michigan University, 1986
Bachelor Science, Journalism, Southern Illinois University, 1971

Selected Consulting Projects:

Los Angeles City College, Historic Resources Survey, 2002
Santa Barbara Botanical Gardens, Historic Resource Evaluation, Santa Barbara, 2008
West End Lofts, Historic Resource Impacts, Santa Ana, 2006
California Endowment, Context Report, North Main/Alameda Streets Area, Los Angeles, 2002
Los Angeles City Hall Seismic Rehabilitation, Historic Preservation Consulting and Construction Monitor, 1997-2001
University of California Los Angeles (UCLA) Historic Buildings, Historic Resources Surveys, Seismic Repair Studies and Construction Projects, 1991-2002
University of Southern California (USC) Historic Buildings, Seismic Repair Studies and Construction Projects, 1994-2002
San Bernardino Unified School District, Historic Resources Survey, 2000-2001
California State University, Channel Islands, Historic Resources Survey (Camarillo State Hospital), 1999
La Quinta Historic Resources Survey, 1997
Warner Brothers Studios Historic Resources Survey, Burbank, 1993

Awards:

California Preservation Foundation (CPF) Design Awards: USC Doheny Library, 2002; CSU Channel Islands, 2000; UCLA Royce Hall, 1998; UCLA Powell Library, 1997, CPF Milton Marks Legislator of the Year Award, 1999. LA Conservancy Award, UCLA Royce Hall, 1999. Governor's Award for Historic Preservation, UCLA Powell Library Ceiling Restoration, 1996.

Other Experience:

Program Manager, National Trust for Historic Preservation, Historic Preservation Partners for Earthquake Response, Northridge Earthquake Recovery Program, 1994
Planner, City of Pasadena, Growth Management and Urban Conservation, 1988-1990
Research Associate, Institute for Social Research, University of Michigan, 1978-1987

Professional Affiliations:

American Planning Association, National Trust for Historic Preservation, California Preservation Foundation, Society for Architectural Historians Southern California Chapter, Vernacular Architecture Foundation, Association for Preservation Technology

Other Affiliations and Activities:

Councilmember, City of Santa Monica (1994-present; Mayor 1997, 1999); Director, Los Angeles County Metropolitan Transportation Authority (2001-present); Southern California Association of Governments Regional Council (1996-present); various speaking engagements including: USC Historic Preservation Program (1999-2002)

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ATTACHMENT 9

Architectural Plans (Under separate cover)