



AGENDA REPORT

Meeting Date: November 20, 2007

Item Number: D-1A & D-1B

To: Honorable Mayor & City Council

From: Vincent P. Bertoni, AICP, Director of Community Development
Rita Naziri, Senior Planner
Larry Sakurai, Principal Planner

Subject: A) AN APPEAL FROM THE DECISION OF THE PLANNING COMMISSION CONDITIONALLY APPROVING A PLANNED DEVELOPMENT AND LOT LINE ADJUSTMENT TO ALLOW CONSTRUCTION OF A RETAIL, COMMERCIAL AND ENTERTAINMENT TALENT AGENCY OFFICE PROJECT FOR PROPERTY LOCATED AT 231-235 NORTH BEVERLY DRIVE, AND CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT FOR THE 231-235 NORTH BEVERLY DRIVE PROJECT.

B) CONSIDERATION OF A GENERAL PLAN AMENDMENT, ZONE CHANGE/ZONING CODE AMENDMENT, DEVELOPMENT AGREEMENT AND FINAL ENVIRONMENTAL IMPACT REPORT, TO ALLOW CONSTRUCTION OF AN ENTERTAINMENT TALENT AGENCY / COMMERCIAL PROJECT WITH 177,225 SQUARE FEET OF OFFICE SPACE AND 30,875 SQUARE FEET OF RETAIL/RESTAURANT/COMMERCIAL SPACE FOR PROPERTY LOCATED AT 231-265 BEVERLY DRIVE (BEVERLY WILSHIRE OWNERS)

Attachments:

Background Information including:

1. Memorandum on the Ad Hoc Committee Meeting
2. Responses to City Council Questions
3. Memorandum by Fehr & Peers
4. Appeal to the City Council
5. Planning Commission Resolutions

RECOMMENDATIONS

Appeal: Staff recommends that the City Council take the following actions related to the Applicant's appeal:

1. Requiring that 70% of the office space be leased to entertainment companies: Issue is associated with the Development Agreement and zoning amendment rather than a Planning Commission decision; therefore, this issue will be addressed through those other instruments. Because the Planning Commission's action is a recommendation rather than decision, it is not appealable.
2. Denial of the application to reduce the Bank of America covenant from 262 spaces to 189 spaces: DENY APPEAL, AFFIRM PLANNING COMMISSION'S DECISION.
3. Requiring free parking for all employees and visitors of the project: DENY APPEAL; however, adding an additional condition to clarify the issue by revising the relevant condition of approval.
4. Limiting the screening room to 100 seats; requiring a conditional use permit to increase the screening room seating to more than 100 seats; and requiring one additional parking space for each four seats: UPHOLD APPEAL, modifying the condition of approval to reflect an alternative approach.
5. Requiring the garage to be available to the public on weekday evening after 6:00 p.m. rather than 7:00 p.m.: UPHOLD APPEAL, revising the relevant condition of approval.
6. Requiring the design of the loading dock to be for two parallel truck loading spaces and one van loading space perpendicular to alley, rather than the original loading dock design: UPHOLD APPEAL, revising the relevant condition of approval.
7. Prohibiting leasing of parking to members of the general public: UPHOLD APPEAL, modifying the condition of approval to allow such leasing with City approval and exclude the Bank of America Building from the leasing restriction.
8. Certification of the EIR: Some of the EIR and environmental findings are tied to the aforementioned Planning Commission actions; such findings would be modified to the degree that they are affected by the City Council findings on the subject appeal points, and such modifications would be made prior to the City Council certification of the EIR.

Entitlements: Staff recommends the following actions related to the project entitlements:

1. Final EIR. Direct staff to prepare a resolution certifying the Final EIR with revisions based on Council direction on appeals.
2. Appeal of Planned Development approval. Give direction to staff on appeal items and direct staff to prepare the relevant resolution.
3. General Plan Amendment. Direct staff to prepare a resolution approving the General Plan amendment
4. Overlay Zone. Direct staff to prepare an ordinance approving the Overlay Zone and Zone Change, as modified by the recommendations of the ad hoc subcommittee (ad hoc committee recommendations are associated with the tenancy of William Morris).
5. Development Agreement. Direct staff to prepare an ordinance approving a development agreement and authorize the City Manager to execute the agreement.

INTRODUCTION

The project Applicant, Mark Egerman, on behalf of Beverly Wilshire Owner, LP (collectively, the "Applicant") proposes to construct a six-story office building on the 48,067 square-foot (1.1-acre) site. The office portion of the proposed building will be occupied by the William Morris Agency under a 20-year lease. The proposed building would be 208,100 gross square feet in size, including approximately 177,225 gross square feet of office space on floors two through six, and 30,875 gross square feet of retail space (up to 8,000 square feet of which will be restaurant space) on the ground floor. The Floor Area as defined by the Municipal Code is 170,793 square feet. A private screening room of up to 200 seats is proposed as a component of the talent agency function. A four-and-one-half level subterranean parking structure with 697 total parking spaces including tandem, compact, and tandem/compact spaces is proposed. At the City Council hearing of November 7, 2007, the Applicant agreed to provide 33 additional parking spaces on the fifth parking level, bringing the parking to 730 spaces, consistent with Code requirements and as required by the Planning Commission Resolutions No. 1489 and 1487 respectively that required code-compliant parking be provided. It should be noted that subsequent to the November 7 meeting the applicant has agreed to provide a total of 746 spaces by increasing the fifth level of the subterranean garage to a full level (see November 15, 2007 meeting below).

On October 30, 2007 appeals from the Planning Commission's October 25, 2007 decision were filed pertaining to conditionally approving a Planned Development and lot line adjustment, and certifying the Environmental Impact Report for the proposed project. The appeals were filed by Mark Egerman on behalf of the property owner, Beverly Wilshire Owner LP.

On November 15, 2007, an ad hoc committee of the City Council consisting of Mayor Delshad and Vice Mayor Brucker met with representative of Beverly Wilshire Owner, LP, The William Morris Agency, and staff to discuss major aspects of the project and the main points of the appeal of the Planning Commission decisions. This report reflects the points of consensus from that meeting. A memorandum from the Director of Community Development that summarizes the recommendations of the committee is attached to this report as Attachment No. 1.

Appeal Points. The Applicant has appealed the Planning Commission's certification of the Final EIR and the following conditions on the approval of the Planned Development:

1. Requiring that 70% of the office space be leased to entertainment companies.
2. Denial of the application to reduce the Bank of America covenant from 262 spaces to 189 spaces.
3. Requiring free parking for all employees and visitors of the project.
4. Limiting the screening room to 100 seats; requiring a conditional use permit to increase the screening room seating to more than 100 seats; and requiring one additional parking space for each four seats.
5. Requiring the garage available to the public on weekday evening after 6:00 p.m. rather than 7:00 p.m.

6. Requiring the design of the loading dock to be for two parallel truck loading spaces and one van loading space perpendicular to alley, rather than the original loading dock design
7. Prohibiting leasing of parking to members of the general public.

At the City Council hearing of November 7, 2007, the Applicant agreed to provide an additional 33 spaces, bringing the parking up to Code. The appeal period ended on November 9, 2007, and no other appeals have been filed.

Planning Commission Resolutions 1487 (Certification of the Final Environmental Impact Report, Environmental Findings, adopting a statement of overriding considerations, and adoption of a Mitigation Monitoring and Reporting Program), and Planning Commission Resolution 1489 (Planned Development and Lot Line Adjustment) were included in the agenda packet for the hearing of November 7, 2007.

DISCUSSION

The remainder of this report is organized as follows:

- ANALYSIS OF THE APPEALS
- SPECIFIC PROJECT ENTITLEMENTS

ANALYSIS OF THE APPEALS

The following items in connection with the Planning Commission's action on the Planned Development approval and the certification of the EIR were appealed:

Appellant's Item 1: Requiring that 70% of the office space be leased to entertainment companies.

Appellant: The appeal states that this action makes the project infeasible because financing cannot be obtained on commercially reasonable terms with such a condition in place.

Response: The Planning Commission's action is a recommendation on the Development Agreement and Overlay Zone. As it is not a decision on the project, it is not an appealable action.

Recommendation: None; this item will be considered by the City Council in connection with the Development Agreement and Overlay Zone, which are discussed later in this Agenda Report.

Note: Additional discussion is provided in the City Council Questions attachment (Issues No. 2, No. 3, and No. 4).

Appellant's Item 2. Denial of the application to reduce the Bank of America covenant from 262 spaces to 189 spaces and requiring an additional 33 spaces over the current garage design of 697 parking spaces.

At the City Council hearing of November 7, 2007, the Applicant agreed to provide an additional 33 spaces. This obviates the need to appeal this item.

Staff recommends that the City Council deny the appeal and affirm the Planning Commission decision.

Appellant's Item 3: Requiring free parking for all employees and visitors of the project.

Appellant: The appeal states that under the terms of the lease between Beverly Wilshire Owner, LP and the William Morris Agency, the William Morris Agency is given the exclusive use of well over 400 spaces, for which it must pay a normal monthly rental charge. Thus, all employees of William Morris Agency as well as its visitors have prepaid parking. [Lease, Article 28, pg. 51.] The appeal further states that this provision will prevent the Applicant from obtaining normal financing, as the parking garage operation is part of the normal income of a project that is used to service the debt. Without this income, the debt portion of the project related to the construction of the garage cannot be obtained.

Response: Parking in the proposed building would be provided for employees and visitors to both office uses and retail/restaurant. The Planning Commission imposed a condition of approval (Condition No. 20 of the Commission Resolution 1489) that requires the following:

The rates for parking at the project shall include the following:

- a. Parking shall be provided free of charge for all employees of building tenants
- b. Parking shall be provided free of charge for all visitors to the office tenants;
- c. Parking shall be provided free of charge for one hour for retail/restaurant visitors. After the first hour, rates shall be no more than the rates charged at the City's R Lot (the facility with the Williams Sonoma store).

The intent of the condition is that employees and visitors would have parking provided at no direct cost to the individual, and that visitors to the retail uses would have a period of free parking. The purpose of this condition is to ensure to the extent possible that employees are not parking off-site so that other parking supply in the area is used up. By removing the ability to charge employees for parking, the financial incentive to seek alternative, cheaper parking, such as in City structures, is removed. There was no intent to restrict the lease holder/tenant or individual retail tenants from payment of a rental charge for use of the parking facilities to the building owner as part of the income stream of the project via individual lease agreements. The condition of approval could be clarified as part of Council action.

Recommendation: Staff recommendation is that the appeal be upheld as to the specific wording of the condition of approval, and that Council action direct the condition language be modified as follows (added language is underlined>):

The rates for parking at the Project shall include the following:

- a. Parking shall be provided free of charge for all employees of building tenants;

- b. Parking shall be provided free of charge for all visitors to the office tenants;
- c. Parking shall be provided free of charge for one hour for retail/restaurant visitors. After the first hour, rates shall be no more than the rates charged at the City's R Lot;
- d. These parking provisions shall not preclude the property owner from assessing a monthly parking rental charge on tenants of the office, retail, or restaurant components of the project, provided that the tenant provides free or validated parking as described above.

Note: Additional discussion is provided in the City Council Questions attachment (Issue No. 9).

Appellant's Item 4. Limiting the screening room to 100 seats; requiring a conditional use permit to increase the screening room seating to more than 100 seats; and requiring one additional parking space for each four seats.

Appellant: The Applicant has appealed the limitation of 100 seats for the screening room based on several factors:

- a. This restriction is not acceptable to William Morris because it does not meet William Morris' current business needs.
- b. This restriction would be in violation to the lease terms between BEVERLY WILSHIRE OWNER, LP and William Morris which provides that the Applicant will as part of the landlord improvements provide William Morris with a screening room of between 170-200 seats. [Lease, Exhibit B, &2A., pg. B-1-2.] It is within the discretion of William Morris under the lease to determine the seating size of the screening room between 170-200 seats. With this condition the Applicant cannot comply with the terms of the lease, and William Morris is not obligated to accept the premises.
- c. To require the Applicant or William Morris to make a CUP application at this time would likely terminate the project because unless entitlements are obtained by December 29, 2007, the lease is no longer binding on William Morris. [Lease, &2.1, pg. 3.]
- d. The additional parking required for a screening room over 100 seats at one additional space for each four seats is contrary to the existing code. Current code requires parking at the ratio of one per 350 square feet. Uniformly, screening rooms have been treated by the City as ancillary uses to the business and require only one space per 350 feet. It should be noted that the City's practice has been to treat these facilities (screening rooms) as ancillary uses to the building as the seating capacity is limited. The facilities provide parking at a ratio of one space per 350 feet and are not treated as a public theater use.

The Applicant has offered the following alternative condition of approval to replace Condition Approval 26:

"The use of the screening room and terrace shall be subject to the following limitations:

1. The screening room and terrace shall be used by William Morris Agency (or a successor tenant) as an ancillary use of William Morris Agency's business. The screening room and terrace shall not be open to the general public, except through a City approved Special Event Permit.^a
2. The screening room and terrace shall be limited to business purposes only and shall only be used by tenants of the building and business associates. "Business associates" shall mean persons who have a business purpose for being in the building, have a business relationship with William Morris Agency (or a successor tenant), or persons invited by William Morris Agency (or a successor tenant) as part of its business.
3. If there is an event where more than 28 off-site people are using the screening room or terrace at one time, valet parking shall be provided, if needed, to create up to 38 additional parking spaces in the aisles of the parking structure to accommodate the off-site people using the screening room or terrace.
4. No exterior signage regarding the screening room or terrace shall be permitted.
5. Maximum seating capacity for the screening room shall be as set forth in the final plans for the project.
6. A Special Event^a is defined as an event that is not part of the normal business activity of the William Morris Agency (or a successor tenant) that is attended by off-site people. The term "Special Event"^a shall not include a use that is part of the functioning of the business or an event primarily for the employees or business associates of William Morris Agency (or a successor tenant). Special events^a planned for the screening room or terrace shall require a special events permit^a issued by the City or approved by the Community Development Director.
7. No advertising regarding the screening room shall be permitted in reference to a special event,^a except as provided in the special events permit^a approved by the Community Development Director.
8. During any event, any refreshments that may be served shall be provided at no charge to the patrons of the event.
9. In the event the use of the screening room or terrace does not conform to the conditions set forth herein so as to adversely affect the public safety, health, or welfare, the Director of Community Development may impose conditions limiting the use of the screening room or terrace to eliminate the adverse effect on the public safety, health, or welfare."

^a Throughout the Planning Commission hearings the term "special event" was applied to the functions in the screening room and/or terrace involving the gathering of non-clients that were not a routine part of the business. However, to distinguish the review procedure proposed in connection with this project from the City's Special Event Permit process, it is proposed to utilize the term "Screening Room Event Permit" in the formal documents adopted for the project.

Response: The project as originally proposed and as analyzed in the project's Environmental Impact Report included 100 seats in a footprint of approximately 2,500 square feet. During the planning process, the screening room increased to 180 seats in the same sized area of the building. The Draft Environmental Impact Report analyzed the screening room as an ancillary use, clearly secondary to the primary use of the talent agency and using the following assumptions provided by the Applicant:

1. Use for tenant for informal meetings of on-site staff members on a weekly basis.
2. Use by tenant for movie screenings during business hours approximately once every two weeks with attendance generally limited to on-site staff members; and
3. Use by tenant for movie screenings after business hours approximately once every two weeks, with attendance comprised of a mix of on-site staff and invited guests.

The project analysis originally assumed parking for the screening room based on the commercial rate of one space per 350 square feet because it was neither public nor for commercial use and did not appear to be a public theater. Further, a condition of approval (Condition 26 of Planning Commission Resolution 1489) was included in the project conditions to limit the facility's use in such a way that it would remain an ancillary use.

A central concern of the Planning Commission was whether a screening room with as large as 180 seats truly constituted an "ancillary use". Based on the information made available to the Commission on other ancillary screening rooms in the City, the Commission could find a sound basis for deeming a 100-seat screening room as an ancillary use. The Planning Commission felt that a screening room any larger than 100 seats should be reviewed through a Conditional Use Permit process to verify whether it would be ancillary in nature. As the Commission was not confident that a screening room in excess of 100 seats would be an ancillary use, it also applied the parking standard applicable to a theater that is open to the public.

SCREENING ROOM INFORMATION PROVIDED TO THE PLANNING COMMISSION	
BUSINESS	NO. OF SEATS
Creative Artists Agency	60
America On-Line	50
Endeavor	80
Gersh Agency	15
William Morris Agency (existing)	50

The Planning Commission also expressed concern that although the City has treated private screening rooms as ancillary uses for other projects, those buildings provided code-compliant parking for the commercial uses within them. At the time of Commission action, the project was determined to have a 33 space deficit if Code parking was required. The Commission limited the use of the screening room as follows (Condition No. 26c of Planning Commission Resolution 1489): *Maximum seating capacity of the screening room shall not exceed 100 seats unless a conditional use permit is first obtained and the project provides parking at a rate of one parking stall for each four seats in excess of 100 seats. Under no circumstances shall the total number of seats in the screening room exceed 180.*

Based on Planning Commission findings, a mitigation measure was included in the Final EIR certification that required the provision of 33 additional parking spaces to bring the project to code compliance (a total of 730 parking spaces). The mitigation measure also limited the screening room to 100 seats unless it could be found that

the screening room is an ancillary use, based in part on the finding that the project did not meet parking code requirements.

At the November 7, 2007 hearing the project was revised to provide all the parking as required by code, and condition of approval language has been added to limit the screening room use in such a way that it remains an ancillary use to the primary talent agency use. The Final EIR document would be revised to include the final parking total of 730 spaces.

An ad hoc committee of the City Council met with the applicant to discuss, among other matters, how to address this issue. The ad hoc committee and the applicant mutually agreed on an approach for consideration by the full City Council which consists of the following:

1. The applicant would provide 16 more parking spaces in addition to the 33 spaces pledged at the City Council meeting of November 7. These spaces would require further excavation of a fifth level of parking;
2. These spaces would allow the applicant to build out a screening room for the William Morris Agency with between 170 and 200 seats without the need for a further conditional use permit.

The applicant has indicated to the ad hoc committee that the project can meet these conditions and expressed a willingness to do so. In his appeal, the applicant has proposed a requirement for the valet to provide for up to 38 additional spaces in the garage aisles in the event that more than 28 off-site attendees are using the screening room or terrace. Conformance with the recommendations of the ad hoc committee would obviate the need for this measure.

The operation of the screening room would continue to be subject to the following conditions:

- The screening room, whether 100 or more seats, is a private facility to be used by William Morris for in-house meetings and client screenings as a part of their business activities, as well as after hours screening room events. This is reinforced by Condition of Approval 26, proposed mitigation language, as well as the Applicant's proposed alternate language.
- The screening room will not have signage nor be open to the public on a commercial basis or rental basis (which would change its status to a primary, commercial use requiring additional parking). This is reinforced by Condition of Approval 26 as well as the Applicant's proposed alternate language.
- The provision for imposition of a Screening Room Event Permit process involving a review by the City's Community Development Director for certain types of events during the day or by non-client invitees will retain City control of the conditions under which greater parking demand may be generated.

If the City Council upholds the appeal on the screening room based on the institution of the recommendations of the ad hoc committee, the Final EIR findings would be revised to eliminate the 100-seat parameter on the screening room, as the Final EIR states that the limitations placed on the screening room would mitigate the need for additional parking. The applicant proposes to meet the parking requirements of the

project, including the screening room, as dictated by the Planning Commission, and the overall size of the screening room would be limited to 200 seats. Mitigation Measure PSD1 would also be modified to match the City Council findings on the appeal.

Recommendation: Staff recommends that the City Council:

1. Uphold the appeal and institute the recommendations of the ad hoc committee.
2. Uphold the appeal on the Final EIR Certification due to the conditions placed on the use of the screening room and the changes in the project which result in code-compliant parking, and direct staff to prepare revised findings and mitigation measures related to the screening room use and mitigation.

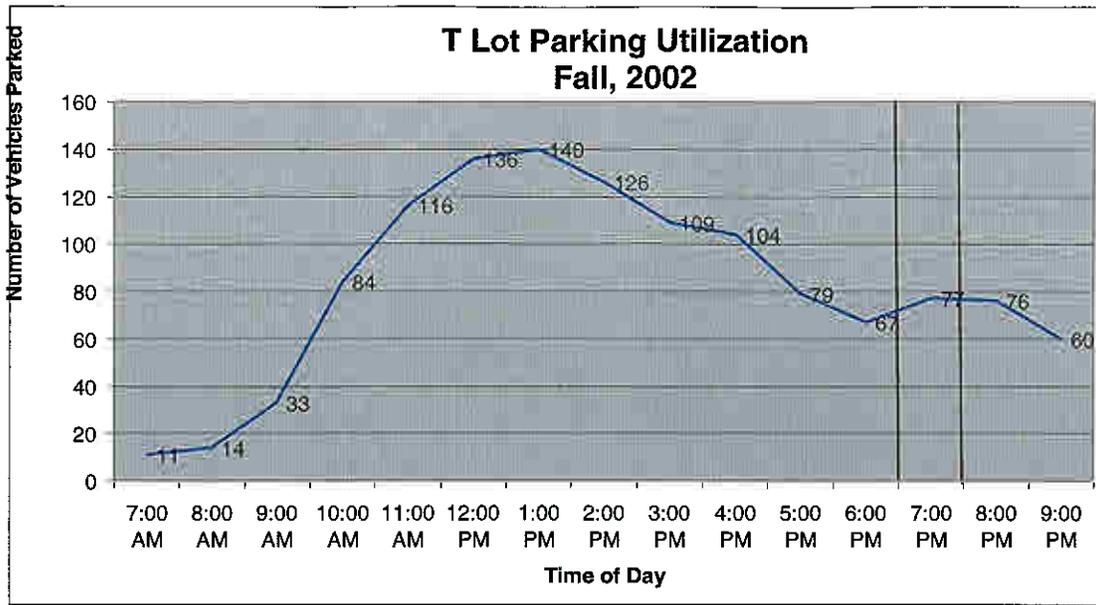
Note: Additional discussion is provided in the City Council Questions attachment (Issues No. 15, No. 16, no. 17, and No. 18).

Appellant's Item 5. Requiring the garage be available to the public on weekday evening after 6:00 p.m. rather than 7:00 p.m.

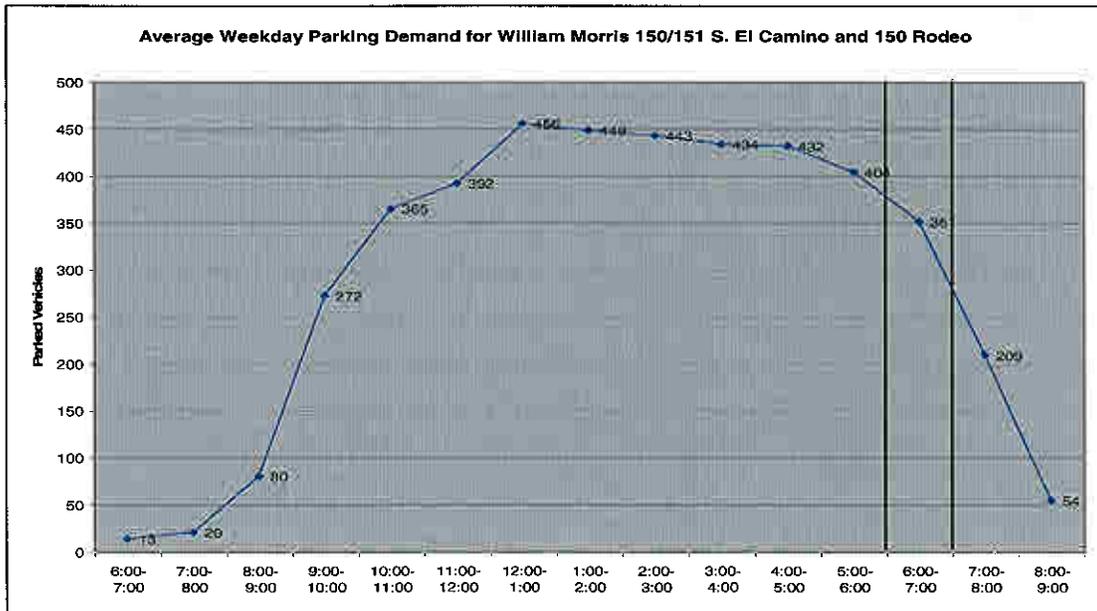
Appellant: The appeal indicates that William Morris Agency's normal hours of operation are 9:30 a.m. to 6:30 p.m. Many employees work longer and stay after 6:30 p.m. The Applicant has agreed to provide public parking in the evening and on week-ends at the same rates and conditions as charged in City lots. The Applicant believes the public parking in the evenings should commence at 7:00 p.m. to allow William Morris employees to leave the building, to insure there are spaces available to the public, and to prevent traffic jams in the garage. The Applicant believes that it is unreasonable to not allow William Morris the full use of the garage during its normal working hours and a reasonable time thereafter for its employees to vacate the garage.

Response: A condition of approval was originally proposed stating that the parking structure be made available to the public on weekday evenings after 7:00 pm and on the weekends. Planning Commission modified the language of the condition from 7:00 pm to 6:00 pm based on discussion of potential demand for public parking after hours for local retail and restaurant uses. Condition of Approval 20d. in Commission Resolution 1489 states: *The parking garage shall be available for public parking in the evenings (after 6:00 p.m.) on weekdays and all day on weekends.*

Information has been provided over past hearings related to the business hours of William Morris. These hours are shifted later in the working day than many businesses, ending at 6:30 p.m. Public parking being made available during work hours could result in potential parking conflicts.



The graph above shows the observed parking demand at the T Lot (site of the Montage Hotel and Public Gardens) before it was taken out of service. It appears to show that the parking demand in the area is about half of the peak demand observed during the midday. A visual survey of the Business Triangle in the vicinity of the project indicates that most retail businesses in the area other than eating places close at or before 6:00 p.m., though Beverly Drive itself does have a number of businesses that close at 7:00 p.m. or later (e.g. Levis, Anthropologie, Bebe Sport, Victoria Secret, others).



While not at its peak, at 6:00 p.m. most of William Morris' parking demand is still present, but has begun a significant decline. By 6:30, the demand has dropped by 105 spaces (23%). However, given that the parking demand at 6:00 p.m. in the

vicinity appears to be much lower than during the midday, it would appear that the additional public parking is not needed at that time of day.

Recommendation: Staff recommends that the City Council uphold the appeal on this item and modify Condition of Approval 20d of Resolution 1489 to require public parking beginning at 7:00 pm.

Note: Additional discussion is provided in the City Council Questions attachment (Issue No. 8).

Appellant's Item 6. Requiring the design of the loading dock to be for two parallel truck loading spaces and one van loading space perpendicular to alley, rather than the original loading dock design.

Appellant: The Applicant's appeal indicates that his team will move forward with the project based on either the design of the loading dock as proposed by the Applicant's architect, Gensler, or the design conditioned by the Planning Commission. The Applicant appeals the portion of the condition requiring a parallel/perpendicular loading dock because the Applicant believes that the original design is superior. Specifically, vans, which are the most common and most frequent type of delivery truck, are required to pull forward into a perpendicular loading zone and then after the delivery back out into the alley. The Applicant believes that backing out at a right angle to the alley is much more difficult and dangerous than the original design which would have the van pull forward into the alley at a 45° angle. In addition, while there are two loading areas for trucks parallel to the building, there is no elevated dock to allow trucks to unload at the level of the cargo bay. Further, given the limited space, it would be difficult for two trucks to unload at the same time.

Response: The Applicant's plans include three loading docks on the rear alley, oriented in a diagonal configuration that requires backing of trucks and vans into the spaces. The Planning Commission, based on past City recommendations for loading facilities as well as site visits during which trucks were parked in the alley rather than in existing loading docks, requested that the loading docks be re-oriented in a configuration parallel to the alley. Condition of Approval 14 of Planning Commission Resolution 1489 states that: *Three loading spaces consisting of two parallel truck loading space and one perpendicular van loading space shall be provided for the project as shown on the revised plans approved by the Planning Commission.*

Technical analysis of both concepts using truck and van turning templates show that both would function adequately. Based on staff and Commission observation of the current alley operations, trucks park and unload in the alley even when diagonal loading areas with docks are provided as they are for Two Rodeo Complex. Operationally, the parallel configuration will be more likely to be used than the diagonal configuration, resulting in less likelihood of blocking of the alley. However, Condition of Approval 23 requires a Loading Management Plan to be implemented with the approval of the Director of Community Development and requires the presence of a loading manager at all times to ensure that a clear path of travel is maintained.

Recommendation: Staff finds that either configuration can effectively serve the building while maintaining adequate circulation in the alley. The consensus from the November 15 ad hoc committee meeting supports the applicant's original loading

facility configuration. Therefore, it is recommended the City Council uphold the appeal and allow the project to proceed with the original loading facility configuration.

Note: Additional discussion is provided in the City Council Questions attachment (Issue No. 14).

Appellant's Item 7. Prohibiting leasing of parking to members of the general public.

Appellant: The Applicant believes that the owner should be allowed to lease spaces to the general public if the spaces are not needed for tenants of the project, the Bank of America, or to service the commercial space. To ensure there is sufficient parking, the Applicant is willing to condition leasing to the general public upon approval of the Director of Community Development.

Response: The existing parking structure leases space to Bank of America tenants, site tenants, and outside parties, including a valet company. A general practice that is of concern of the Planning Commission is where a building does not have enough parking available to satisfy its own parking demand because the owner has leased parking to outside parties. Because of concern that adequate parking be provided for building tenants, a condition of approval was placed upon the project that would prohibit the leasing of space to members of the general public (Condition No. 28 of Planning Commission Resolution 1489). The Condition reads: *Parking spaces in the proposed William Morris building and the existing Bank of America building shall not be leased or rented to persons who are not tenants of the buildings except pursuant the recorded covenant allowing Bank of America building parking in the William Morris building site.*

The existing structure on the site of the future William Morris building includes spaces leased to other parties, which take up capacity in the structure. This has not been an issue due to the under-utilization of the retail space in the existing building on the proposed building's site. The advisability of leasing of spaces in the new building would be based on the availability of excess spaces over need. The Overlay Zone requires annual monitoring of the parking structure by the City to evaluate its operations and identify any capacity or queuing problems. This monitoring could provide the basis for potential leasing of spaces in the future; however, because of the continuing questions of the ability of the proposed parking to adequately serve the William Morris uses, it is not advisable until the project operations have stabilized. Leasing potentially could be allowed if future monitoring documents on consistently positive monitoring reports show available space that could be leased without impacting the building's parking operations. Therefore, given the other safeguards in place, the condition could be modified to allow the leasing with the approval of the Director of Community Development. After operations have stabilized, the Applicant could then make a request to the City to allow the leasing of spaces, and the City would evaluate the operation of the garage before approving such a request.

It should be noted that the Bank of America Building is no longer a part of the application for the Overlay Zone or the General Plan Amendment, and thus this condition should not apply to that building.

Recommendation: Staff recommends that the City Council uphold the appeal and modify the Planning Commission's condition of approval to allow the leasing of surplus parking with the approval of the Director of Community Development, and to exclude the Bank of America Building from the leasing restriction (i.e., allow Bank of America tenants to meet its parking needs in the project), as it is no longer a part of the approvals.

Note: Additional discussion is provided in the City Council Questions attachment (Issue No. 10).

Appellant's Item 8. Planning Commission Certification of the Environmental Impact Report.

Background: As the Planning Commission's actions addressing the project's parking are based on its findings and analysis of the project's parking issues, in order for the Commission to certify the EIR, it needed a document that reflected its independent assessment of the situation. As such, the EIR was amended accordingly.

Appellant: As the EIR certified by the Planning Commission reflects findings that the Applicant disagrees with, the Applicant appealed the Planning Commission's certification as well.

Response: As noted above, an EIR is supposed to reflect the independent judgment of the decision-maker. If, after evaluating the facts in this case, the City Council draws different conclusions regarding any of the actions of the Planning Commission that are reflected in the EIR, the EIR would be amended accordingly to reflect the City Council's judgment.

SPECIFIC PROJECT ENTITLEMENTS

Certification of the Final Environmental Impact Report

The staff report for the hearing of November 7, 2007 outlined the contents of the Final Environmental Impact Report, Errata, and Statements of Overriding Considerations. The Applicant appealed the certification of the Final EIR based on the same items discussed in the appeal section above. Based on Planning Commission findings, a mitigation measure was included in the Final EIR and its findings that requires the provision of 33 additional spaces to bring the project to code compliance (a total of 730 spaces). The mitigation measure also limited the screening room to 100 seats, based in part on the finding that the project did not meet parking code requirements and thus the screening room should not be treated as an ancillary use for 80 of the proposed seats.

As discussed in the appeal section of this Agenda Report, the project has been revised to include code-compliant parking and condition of approval language has been added to limit the screening room use in such a way that it remains an ancillary use to the primary talent agency use. The Final EIR document would be revised to include the final parking total of 730 spaces. If the City Council upholds the appeal on the screening room number, the Final EIR findings should be revised to eliminate the screening room parameter of 100 seats, as the Final EIR states that the limitations placed on the screening room would mitigate the need for additional parking. Mitigation Measure PSD1 would also be modified to match the City Council findings on the appeal.

Recommendation:

1. Screening Room Parking. Depending on the City Council's direction on the screening room issue under appeal, the findings and Errata would be amended as needed to reflect the City Council's judgment on the matter.
2. Amend Mitigation Measure PSD1 to reflect the City Council's determination on the matter.
3. Direct staff to prepare a resolution making findings pursuant to the California Environmental Quality Act, certifying the Final EIR prepared for the project, adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring Program.

Planned Development Appeal

Should the City Council support components of the Applicant's appeal as discussed in this Agenda Report, Council should direct staff to prepare a revised resolution for the Planned Development approval including the requested lot line adjustment.

General Plan Amendment

As proposed, the project site would be designated as Medium Density, General Commercial in the General Plan text and associated land use map. This designation would allow for development of the project site with commercial retail and entertainment office uses with a maximum Floor Area of 3.6 to 1 (instead of 2.0:1) and a maximum height of six stories or 92 feet (instead of 3 stories or 45 feet). The proposed structure would be generally compatible in height to other nearby structures in the area, including the Bank of America and the Montage Hotel.

The General Plan Amendment was originally proposed to include the Bank of America Building as well as the proposed new building. Based on the Planning Commission discussion the language for the General Plan Amendment was modified to revise the property description to only include the new building and exclude the Bank of America building. The Amendment description includes the revised language as follows:

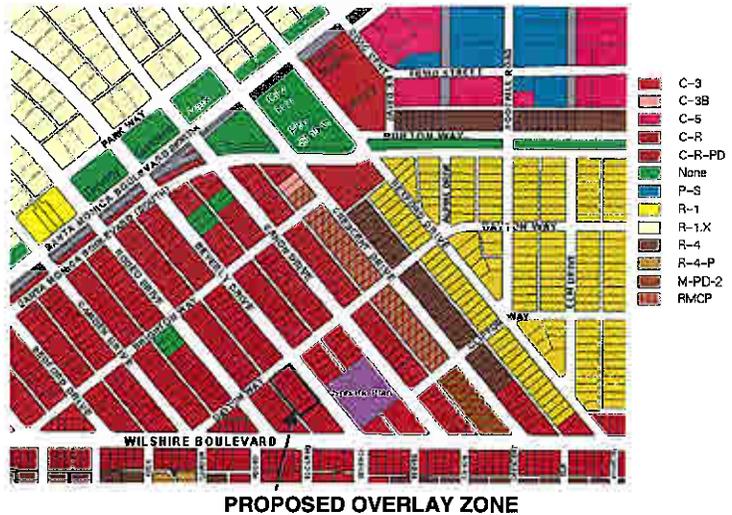
The Land Use portion of the General Plan, specifically Map 1 (Land Use Plan) is amended for the reasons set forth in the objectives of the Entertainment Office Planned Development Overlay Zone (E-O-PD):

The area in the map bounded on the south by the property presently occupied by the Bank of America Building (9461 Wilshire Boulevard), on the north by Dayton Way, on the east by Beverly Drive, and on the west by the alley between Beverly Drive and Rodeo Drive shall be designated Medium Density Commercial with a 3.6:1 Floor Area Ratio (FAR) and a maximum height of 92 feet.

As discussed in the responses to City Council and public questions, the Floor Area calculation is based on a Floor Area that excludes certain areas pursuant to Code definitions. The gross building area is 208,100 square feet, and the Floor Area as defined by Code is 170,793 square feet. This Floor Area has been confirmed by Planning staff in consultation with the Building and Safety Division based on project

plans. The Floor Area Ratio calculation is as follows: Floor Area (in square feet) ÷ site area (in square feet), or 170,793 square feet ÷ 48,067 square feet = 3.56 : 1. This has been rounded up to 3.6:1 for purposes of the General Plan Amendment and Overlay Zone. (See discussion No. 1 in the City Council Questions attachment.)

Note: Additional discussion is provided in the City Council Questions attachment (Issue No. 1).



Recommendation:

1. Direct staff to prepare a Resolution approving the General Plan Amendment.

Zone Change/Overlay

The Applicant has requested a zone amendment (Entertainment Office Planned Development Overlay Zone, or E-O-PD) in conjunction with the General Plan amendment to specifically allow for entertainment related uses in a commercial zone, as well as the additional height and density and the allowance of compact, tandem, and compact/tandem parking spaces within the building's parking structure.

The zone changes contemplated with regard to the project would be implemented by creating an overlay zone and applying the Overlay Zone to the property. The proposed E-O-PD overlay zone would allow the additional height and intensity. Elements of the overlay zone are discussed below:

- **Definitions.** The overlay zone would expand upon the definitions in the Municipal Code, adding definitions related to the overlay as well as a definition for tandem parking spaces.
- **Restricted Uses.** Uses with high parking needs would not be permitted in the overlay zone without the prior approval of the Planning Commission, including medical offices; commercial exercise clubs and training centers, medical laboratories, hair salons; nail salons, real estate offices; non-office retail establishments, except on the ground floor and any mezzanine; and restaurants in excess of 5% of the total gross square footage of the building.
- **Height.** The overlay zone would allow building heights of up to six stories, allowing a building of 88 feet, although up to 92 feet may be permitted at the discretion of the Director of Community Development due to technical difficulties during construction.
- **Floor Area Ratio.** The overlay zone would allow a maximum floor area ratio (FAR) of 3.6:1.
- **Parking Standards.** The overlay zone uses the parking ratios in the Municipal Code with no alteration. The parking related provisions of the overlay zone as modified by the Planning Commission allow for the use of compact spaces for up to 17% of the total, and tandem spaces subject to an approved parking program (of which 7% may

be compact tandem). A Parking Management Plan is required by the Overlay zone, including annual monitoring of parking operations.

- **Permitted Uses.** The overlay allows entertainment related uses as well as the uses in the underlying C-3 zoning as part of a planned development and prohibits certain uses with high parking demand unless approved by the Planning Commission.

The Commission made a recommendation (included in Section 10-3-1863 of the Draft Ordinance in Resolution 1488) that 70% of the office component of the building be required to be used for a talent agency, and if talent agency use fell below 70% that a Planned Development process be required. This was also made a part of the proposed Development Agreement. This issue was discussed in the November 15 City Council ad hoc committee meeting and is addressed below in the discussion of the Development Agreement.

Recommendation:

1. **70% Entertainment Use.** Give direction on the requirement that the building's office use be restricted to 70% entertainment talent agency use and direct staff to revise this provision to match.
2. Direct staff to prepare an ordinance establishing the Overlay Zone and approving the zone change.

Development Agreement

The proposed Development Agreement is intended to provide benefits to both the City and the Applicant. The Agreement vests the project entitlements for a two-year period, provides the public with additional two-hour free parking in the evenings and on weekends, and provides the City with infrastructure fees and additional fees that could not otherwise be required of the developer.

Planning Commission Resolution 1490 proposes that Development Agreement (Exhibit A of the subject resolution) include the following Developer's Obligations as recommended by the Planning Commission:

1. **Fees.** The Development Agreement includes several fees that will be paid to the City, including a \$370,000 Public Benefit and Infrastructure Fee, an Environmental Mitigation and Sustainability Fee paid each time the property transfers equal to \$4.50 for each \$1,000 of consideration or value of the property transferred, and a security camera contribution of \$25,000.
2. **Streetscape Improvements.** The developer will install granite sidewalks, flower pots, and street furniture along the Dayton Way and Beverly Drive frontages provided that the City adopts a program requiring similar conditions for other development in the business triangle.
3. **Green Building Standards.** If the City has not adopted Green Building Standards before the effective date of the Development Agreement, the developer will construct the project to a LEED Certified status.
4. **Discounted Public Parking.** This component matches the Planned Development Condition of Approval, requiring public parking after 6:00 pm and on weekends, at a rate no more than the rate charged at the City's R Lot (the Williams Sonoma Lot). The hours of the public parking have been appealed as discussed previously due to

a conflict with the working hours of William Morris. If the City Council grants the appeal, this section of the Development Agreement would be amended to match.

5. **Termination Fee.** The Commission made a recommendation (included in Resolution 1490, Section 4) to the City Council that an early termination fee or other mechanism be assessed in the event that William Morris terminates their 20-year lease before its initial term. This would be required to survive the term of the Development Agreement, which has a two-year term. SEE DISCUSSION BELOW.
6. **70% Entertainment Use.** The Commission made a recommendation (included in Resolution 1490) that 70% of the office component of the building be required to be used for a talent agency, and if talent agency use fell below 70% that a Planned Development process be required. This was also made a part of the Entertainment Office Overlay Zone text.

The ad hoc committee discussed points No. 5 and No. 6 with the applicant and tenant and came to the following consensus:

If William Morris' occupancy of the building falls below 100,000 square feet during the 14 years of its initial lease commitment, and any office space in the building is leased or subleased to another tenant, then the landlord (or William Morris as the sublessor) will pay a penalty of the City that amounts to 50 percent of any premium realized by leasing the space to a tenant or subtenant other than William Morris.

7. **Subway Portal.** The applicant owns both the William Morris project site and the Bank of America property (i.e. the entire block). Given that the William Morris Project and the Bank of America interests are intertwined (e.g. parking covenant, garage access), it has been suggested that the project presents an opportunity to obtain an irrevocable offer to dedicate a portal to a subway station should the Los Angeles County Metropolitan Transit Authority (Metro) extend the Purple Line along Wilshire Boulevard. The Environmental Impact Report for the project indicates that the project will have significant, unavoidable traffic impacts. The project's contribution of a portal could help to offset its traffic impacts to the area.

The applicant expressed to the ad hoc subcommittee a willingness to provide such a portal at no charge, subject to the following conditions:

1. That Metro requests the easement within a period of 15 years;
2. That Metro has adopted a Wilshire alignment for the subway through Beverly Hills;
3. That Metro agrees that there will be not less than two stations in Beverly Hills;
4. That Metro has secured funding for the construction of the station;
5. That the portal does not interfere with or limit access to the building or any commercial space on the ground floor;
6. That the portal does not cause the loss of any parking spaces in the building; and
7. That the portal and proposed station does not affect the structural integrity of the building.

Recommendation:

1. Public Parking. Give direction on the hours of public parking as discussed in the Appeal section of this Agenda Report and direct staff to revise this provision to match.
2. Termination Fee/70% Entertainment Use. Direct staff to include the recommendations of the ad hoc committee in the Development Agreement.
3. Direct staff to prepare an Ordinance approving a Development Agreement and authorize the Mayor to execute the agreement.

OTHER ISSUES

Issues Raised by the City Council at the November 7, 2007 meeting

The City Council asked staff to return to the November 20, 2007 meeting with additional information in response to a number of issues raised at the November 7, 2007 meeting. Those responses are included as Attachment No. 2 to this report. A memorandum has also been submitted by Fehr & Peers in response to queries regarding the parking demand studies, which is included as Attachment No. 3 to this report. The Fehr & Peers memorandum confirms that the methodology applied to the studies followed nationally-recognized and accepted professional standards, practices, and conventions.

Encroachments into Public Right-of-Way

After construction is completed, there will be a permanent subsurface encroachment under the sidewalk and Beverly Drive of 25 feet, four and one-half inches and sidewalk Dayton Way of four feet, six inches. This encroachment request requires the City Council approval. The Applicant has always declared intent to encroach into the public right-of-way, but has never actually filed an application to do so. Staff is working with the Applicant to submit the written application for the City Council's consideration and approval. A resolution will be prepared for consideration at a future date.

Construction Conditions

Based on Engineering Division recommendations, additional conditions during project construction are required which will be included in the Planned Development resolution. Conditions such as requirement of demolition process, removal and re-installation of street lights, street furniture, street trees, traffic lights, temporary traffic signal plan, pedestrian access, on Dayton Way and Beverly Drive, temporary relocation of all utilities under the side walk and the alley, storm drain plans and repaving of Beverly Drive, Dayton Way and Wilshire Boulevard. It is also required that the Applicant resubmit a multi phase construction management plan to include demolition, installation of shoring piles, excavation and construction of the garage and super structure, traffic stripping plans and sidewalk functionality during construction.

PUBLIC NOTICE AND COMMENTS

Notice of this meeting was mailed on November 9, 2007 to the Applicant and all property owners within a 300-foot radius of the subject property, as required by Code. A notice of this hearing was also published in the *Beverly Hills Courier* on November 9 and in the *Beverly Hills Weekly* on November 15, 2007 respectively.

In addition, staff has compiled a list of all persons who have contacted the City or expressed interest in the project and notice was also mailed to this list on November 9, 2007. As of the writing of this report staff no letters have been received.

FISCAL IMPACT

Firms such as William Morris Agency potentially produce a higher rate of direct and indirect tax revenue dollars than most other office based business in the City (please see the attached memo from City's Chief Financial Officer, provided again for the Council's convenience). In order to strengthen the City's financial health, it is essential to retain or attract businesses with world wide significance to the City to keep up the City's ability to provide the residents and businesses high levels of services. Additional benefits are provided through a proposed development agreement, as discussed above.

Vincent P. Bertoni, AICP
Director of Community Development



Approved By

ATTACHMENT 1

Memorandum on the Ad Hoc Committee Meeting



CITY OF BEVERLY HILLS

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Honorable Mayor & City Council
FROM: Vincent P. Bertoni, AICP, ^BDirector of Community Development
DATE: November 16, 2007
SUBJECT: Report on the Meeting of Ad Hoc Committee of the City Council on the William Morris Project

On Thursday, November 15th, a City Council ad hoc Committee of Mayor Delshad and Vice Mayor Brucker (the "Committee") met with representatives of William Morris Agency ("William Morris") and Beverly Wilshire Owners (the developer of the Project at 231-235 North Beverly Drive). Also in attendance were City Manager Rod Wood, City Attorney Larry Wiener and Director of Community Development Vince Bertoni.

As discussed at the November 7th City Council meeting, the Committee meeting was to address several issues that arose at the public hearing before the City Council. Based on the discussions with the developer and William Morris Agency, the Committee makes the following recommendations:

1. Keeping William Morris Agency in Beverly Hills

At the November 7th public hearing, City Council members indicated that the primary incentive for the City Council to grant the requested development entitlements is to provide an opportunity for William Morris to remain within the City of Beverly Hills. Thus, City Council members, Planning Commissioners and members of the public have expressed a desire to include measures in the development approvals to protect the City's interest in having William Morris remain within the City.

In order to achieve this purpose, the Planning Commission recommended that the zoning for the building provide that if 70% of the office space were not leased to entertainment uses, then a new Planned Development approval would be required. The Commission also recommended that William Morris pay a termination fee to the City if William Morris terminated its lease.

The Committee acknowledged that William Morris has already executed a long-term lease for the subject building that commits William Morris to remaining in Beverly Hills and to a substantial investment in tenant improvements. However,

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the Committee did not believe that the lease commitment, alone, was sufficient to address the public's concerns. The Committee also discussed the advantages and limitations of the measures recommended by the Planning Commission.

The Committee supports the intent behind the Planning Commission's recommendations and spent substantial time on November 15th developing measures to more concretely implement that intent. After much discussion with the developer and William Morris, the Committee recommends that the development agreement provide that if William Morris' occupancy of the building falls below 100,000 square feet during the 14 years of its initial lease commitment, and if any office space in the building is leased or subleased to another tenant, then the landlord (or William Morris as the sublessor) will pay a penalty to the City that amounts to 50% of any premium realized by leasing space to a tenant or subtenant other than William Morris. The Committee believes that this measure will provide a significant financial disincentive to William Morris leaving the City, will provide a penalty that will adjust to market conditions, and, in the event that any unpredictable circumstances result in William Morris appreciably reducing its occupancy of the site, then the public will realize a further benefit from the entitlements granted to this property.

2. Screening Room Parking

The lease between Beverly Wilshire Owners and William Morris provides William Morris with a screening room between 170 and 200 seats. The Planning Commission articulated a concern that any screening room in excess of 100 seats may create additional demand for parking and therefore should not be permitted without a conditional use permit that would include conditions to limit the impact of screening room events on parking. In order to address the Planning Commission's concerns, at the meeting with the Committee Beverly Wilshire Owners indicated that it would increase the number of parking spaces within its garage from 730 to 746. This increase will be achieved by further excavation of a fifth level of parking, and not solely by restriping parking spaces or parking in aisles. This parking would be in addition to the 33 spaces that were discussed at the City Council meeting of November 7th. Thus, in total, through financial commitments of both the developer and William Morris, forty-nine parking spaces have been added to the project since it was reviewed by the Planning Commission. With these additional parking spaces, the project will have more parking than is required by the Beverly Hills Municipal Code for the project, including a screening room of up to 200 seats.

With the additional parking, the Committee believes that there is no longer a need to limit the screening room to 100 seats.

3. Parking for Employees and Patrons of Tenants and Prohibition Against Leasing Parking to Non-Tenants

The developer has appealed the Planning Commission's imposition of a condition that required that parking to be provided free to employees and patrons of the project's tenants. After discussion with the Committee, the developer understood that this was a standard condition imposed on new development in Beverly Hills and agreed to accept the condition. The developer also agreed not to lease parking spaces to non-tenants except with the approval of the City upon a showing that parking is not required to serve the current tenants in the building. Thus, the Committee recommends that the City Council uphold the Planning Commission condition requiring free parking for employees and patrons of tenants and prohibiting leasing of parking to non-tenants, except with approval of the City.

4. Subway Portal

The developer has offered to dedicate to the Los Angeles County Metropolitan Transportation Authority ("Metro") an easement for a subway portal of up to ten feet in width and fifteen feet in length, at no charge to the Metro, subject to the following conditions: (1) The Metro requests the easement within a period of 15 years, (2) The Metro adopts a Wilshire alignment for its subway through Beverly Hills, (3) the Metro agrees that there will be at least two stations in Beverly Hills, (4) the Metro secures funding for construction of the station, (5) the portal does not interfere with or limit access to the building or any commercial space within the building, (6) the portal does not cause the loss of any parking spaces within the building, and (7) the portal and proposed station do not affect the structural integrity of the building.

The Committee believes that these are reasonable conditions on a dedication of a subway portal and recommends that the development agreement require the developer to offer the subway portal easement to the Metro subject to these conditions.

5. Public Parking in the Evenings and on Weekends

The developer had previously agreed to provide public parking in its garage, at City rates, in the evening and on the weekends. Due to the hours of operation of William Morris, both William Morris and the developer requested that the evening public parking begin at 7:00 p.m. rather than 6:00 p.m., as required by the Planning Commission. The Committee recommends that, due to operational concerns within the garage, public parking at City rates should begin at 7:00 p.m. in the evenings, rather than 6:00 p.m.

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6. Loading Spaces

The Committee discussed the advantages of two alternate loading space configurations. The Committee recommends approving the applicant's originally proposed angled loading configuration.

Mayor Delshad and Vice Mayor Brucker will also report orally on the Committee meeting at Tuesday's City Council meeting.

ATTACHMENT 2

Responses to City Council Questions

City Council Questions
Hearing Date: November 7, 2007

INTENSITY

1. *How is the Floor Area (FAR) calculated for the project?*

Response: City Code specifies how Floor Area Ratio is calculated. The Floor Area excludes certain areas such as elevator shafts, parking, and stairs. The gross building area is 208,100 square feet, and the Floor Area as defined by Code is 170,793 square feet. This Floor Area has been confirmed by staff in consultation with the Building and Safety Division based on project plans.

Thus the Floor Area Ratio calculation is as follows: Floor Area (in square feet) ÷ site area (in square feet), or:

170,793 square feet ÷ 48,076 square feet = 3.56 : 1

This was rounded to 3.6 for purposes of the Overlay Zone and General Plan Amendment.

FINANCING/BUSINESS TERMS

2. *Does limiting use of the building to 70% entertainment/talent agency uses impact the ability to obtain financing? Is there some lower percentage requirement that would not affect the ability to obtain financing that would be acceptable to the applicant?*

Response: A meeting between the applicant, William Morris, staff, and an ad hoc subcommittee of the City Council occurred on November 15, 2007. The results of this discussion propose a solution to this issue, which is included in the agenda report. The City's Chief Financial Officer will also provide a memorandum addressing this issued under separate cover and will be reported in the public hearing on November 20, 2007.

3. *What "Partnership" arrangement is there between George Comfort and William Morris?*

Response: Based on information provided by the applicant, there is no legal partnership between William Morris and George Comfort. A lease agreement has been signed, but no legal partnership has been formed.

4. *Can William Morris be included in the Development Agreement?*

Response: A meeting between the applicant, William Morris, staff, and an ad hoc subcommittee of the City Council occurred on November 15, 2007. The results of this discussion propose a solution to this issue, which is included in the agenda report and will be reported in the public hearing on November 20, 2007.

PARKING/LOADING/PARKING STRUCTURE OPERATIONS

5. ***The use of Beverly Drive secondary access will be restricted to employees only. This access should be open to visitors as well to allow for a more direct access from Beverly Drive for visitors. Have you considered not restricting the Beverly Drive secondary access to employees only?***

Response: The EIR traffic analysis did not assume any access restrictions (for either employees or visitors) at the Beverly Drive secondary access.

However, the use of the Beverly Drive secondary access by visitors is not recommended due to the following operational issues within the proposed parking facility:

- Because the garage is 100% valet operated for visitors (at least during weekday hours when the garage is being used by employees) significant circulation issues would arise if the Beverly Drive access would be opened to visitors. Visitors would not be able to access the valet station as proposed, and any transfer from visitor to valet would block the drive aisle reserved for employee access to the lower levels. If a second valet station were added access would still be restricted due to the tight turning radius.
 - The number of employees accessing the garage far exceeds visitors, thus generating need for access that bypasses the valet station.
 - The location of the valet station would not be accessible to visitors entering from the Beverly Drive secondary access and the addition of another valet station on level P1 would impact the drive aisle that would be used by employees and impact the unrestricted vehicle flow by employees to lower parking levels; and
 - The tight turning radius to use the down ramp from the Beverly Drive secondary access could cause issues for visitors and other users not familiar with the facility.
 - Signage on the Beverly Drive access will reduce confusion related to access in that location.
6. ***How many spaces are in the existing structure on-site and how does that compare with the number of spaces provided in the new building and traffic assumptions?***

Response: The existing parking structure includes 507 spaces. The proposed project now includes 746 spaces in the below-grade parking structure, with the addition of the 33 spaces as committed to by the applicant at the hearing of November 7, 2007, and another 16 spaces agreed to in his meeting with the ad hoc committee. Thus the project results in a net increase of 239 spaces over the existing structure. The traffic analysis does not assume any reduction in trips associated with displacing the existing parking facility on the project site since those trips generated by the existing land uses will continue to occur within the study area.

* If one did assume a constrained reassignment, no substantial increase in an adverse impact is expected to result, nor would the significant impacts and related mitigation measures be expected to change from what is documented in the EIR Beverly Drive access traffic analysis.

7. Is there excess parking available at the Montage?

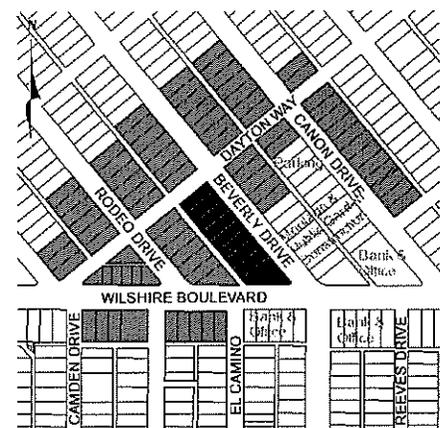
Response: The Montage project includes 1,172 parking spaces, of which 640 are dedicated for public parking. The remaining 432 spaces are dedicated for hotel and residential use.

8. What is the applicant's issue with the time periods for public parking (6:00 pm vs. 7:00 pm)? What time do businesses generally close in the area?

Response: The working hours of William Morris are from 9:30 a.m. to 6:30 p.m. Requiring public parking after 6:00 p.m. will conflict with the tenant's working hours, and could create conflicts in the parking structure for employees leaving and for the public looking for available spaces.

A visual survey of the area conducted on Tuesday, November 13, 2007 revealed that most businesses in the vicinity close at or before 6:00 p.m., but there are still a significant number of businesses that were observed open after 6:00 p.m., predominantly on Beverly, but also on Rodeo and on Canon. Among them were (not a complete listing):

- | | |
|-----------------------|---------------------|
| Ritz Camera | Ishkahans |
| Lush | Eddia |
| Jigsaw | The Wine Merchant |
| Levis | Kenworthy |
| Anthropology | Karen Lynn |
| Victoria Secret | Madame Chocolat |
| Divine | Celebrity |
| Lululemon Athletica | Rite Aid |
| Close Minded | Lapis |
| Bebe Sport | Persol |
| Il Fornaio | Cole Haan |
| Whatasushi | Tiffany |
| Great Earth Vitamin | Dior |
| Sno: LA | 208 Rodeo |
| Vida Emanuel | McCormick & Schmick |
| Progressive Shoe Shop | Selfish |
| Baskin Robbins | The Grill |



SURVEY AREA

- El Torito Grill
- Niketown
- Rustica Pizza

Staff observed over 100 ground floor businesses but did not check office spaces, financial institutions (most ground floor financial institutions were closed), or other upper-story businesses.

After meeting with the applicant, the tenant, and staff, the City Council ad hoc committee recommended that the public parking availability should commence at 7:00 p.m. rather than 6:00 p.m.

9. Free employee parking does not mean that the cost could not be passed on to the tenant. Please clarify the issue. Consideration could also be made of a daily flat rate for parking.

Response: This statement is correct: the applicant in his appeal to the Planning Commission's approval states that pre-paid parking will be provided, as the tenant William Morris will pay a monthly parking rental. The applicant believes that applying this requirement as a condition of approval will have an effect on the ability to obtain financing.

This type of condition has been placed on other projects in the City. Based on a review of recent approvals, this is a routine condition of approval and has been applied to projects including:

- 121 N. Crescent (Snyder's Crescent Project);
- 8767 Wilshire (Wilshire/Robertson);
- 9200 Wilshire (Legacy Mixed Use); and
- 8600 Wilshire (Colonial Partners Mixed Use).

Parking for employees and guests may be provided in a variety of ways; the project approvals did not restrict the ways in which parking may be provided to visitors other than to require one hour free for retail visitors and free office visitor parking, which could be provided through a validation. The Parking Management Plan required by the EIR mitigation measures will include the fee structure and payment mechanisms.

10. Why should employees be required to park on-site?

Response: Concern was expressed by the Planning Commission that if inadequate parking were provided on-site that employees would use public lots in the area, reducing the amount of parking available to the general public visiting the Business Triangle. The City does utilize the covenant mechanism when on-site parking does not meet code requirements; in those cases the covenanted spaces must be located within 500 feet of the building they serve.

11. Describe the difference between demand and code as it relates to the covenant. How many total passes are sold and why do the numbers not match?

Response: An existing covenant without expiration applies to the 265 North Beverly Drive property. The Bank of America building (9461 Wilshire Boulevard) provides 205 on-site parking spaces. The existing parking covenant requires the provision of 262 parking spaces for the Bank of America building) within the 265 N. Beverly Drive parking structure. The 262 covenant spaces are needed for the Bank of America building to comply with parking code requirements under the C-3 zone.

A demand study (June, 2007) was prepared by Fehr & Peers to determine the current parking space demand by Bank of America building employees of the covenanted parking spaces. The demand study concluded that the current demand for the Bank of America building employees was 189 spaces, not the 262 spaces called for in the covenant. According to the demand study, 73 fewer parking spaces are needed than specified in the covenant. The actual number of passes purchased by Bank of America building tenants over a 19-month period averaged 194, significantly less than the 262 covenant requirement.

As part of the demand study by Fehr & Peers, the number of monthly passes sold was reviewed. The study noted that the number of monthly passes sold for Bank of America building tenants varied (205 in November 2006, 226 in January 2007). In August 2007, Fehr & Peers collected subsequent data about the monthly passes for the period beginning January 2006 running through July 2007. The number of monthly passes sold to Bank of America building tenants ranged from a low of 173 to a high of 223, and an average of 194 passes over the 19-month period. November 2006 and January 2007 pass totals were revised to 192 and 194, respectively, as the previous number included passes of a tenant that was located in 235 N. Beverly rather than the Bank of America building.

The 262-space covenant number reflects the parking required by City code. The number of monthly passes sold for the Bank of America building reflects actual demand during that time period. Of the average of 194 passes sold to Bank of America tenants, it is not uncommon for actual demand to vary from code specified requirements, as demand would take into account a number of items, such as but not limited to, employees out of the office for business purposes or employees on vacation.

12. Clarify the parking code versus demand for the William Morris use and how demand was determined.

Response: The proposed project originally included 665 parking spaces. Through additional stripping on levels P2 through P4 an additional 32 spaces could be provided bringing the total up to 697 parking spaces. At the November 7, 2007 hearing the project applicant agreed to provide an additional 33 spaces bringing the project total up to 730 spaces. In addition, the applicant agreed to provide an additional 16 spaces at the November 15 ad hoc committee meeting, for a total of 746 spaces. 730 spaces is what the project requires to meet the current code standards for parking.

Table A below compares the breakdown of the code requirements by use to the parking demand anticipated for the office uses (both William Morris and Bank of America).

Table A Comparison of Code Requirements and Observed Parking Demand			
PARKING COMPUTATION	WILLIAM MORRIS	BANK OF AMERICA	TOTAL
Existing Code			
Office	408	262	670
Retail/restaurant	60		60
Total	468	262	730
Aggregate Peak Demand for William Morris ^a and Bank of America between 12:00 Noon and 1:00 p.m. ^b			
Office	456	181	637
Retail/restaurant	60		60
Total	516	181	697
Aggregate Peak Demand for William Morris ^a and Bank of America between 12:00 2:00 p.m. and 3:00 p.m. ^c			
Office	443	189	632
Retail/restaurant	60		60
Total	503	189	692
<u>Notes:</u>			
a. Based on the William Morris Agency's existing floor area of 119,018 square feet.			
b. This period represents the peak demand for the William Morris Agency.			
c. This period represents the peak demand for the Bank of America office building.			

The demand studies indicate that the existing William Morris Agency generates greater parking demand than reflected in the City's code requirements. However, the demand studies also indicate that the Bank of America Building is generating less than reflected in the City's code requirements. While the City codes require more parking than the combined demand indicated in the demand observations, the Planning Commission felt that it represented a fair balance between William Morris' greater demand and Bank of America's lower demand, and that based on the studies the code requirement would be adequate to address the parking demand of all the uses on the subject block, provided the facility is managed properly.

The issue specifically raised at the November 7 meeting was whether the parking allocated by Code to the William Morris Agency (408 spaces) represented a deficiency given that the demand studies indicate that William Morris Agency requires 456 spaces to meet its current demand. However, the William Morris parking and the parking provided for the Bank of America Building covenant (covenant reserves more than the demand studies indicate is needed) is undifferentiated in the garage. A single pool serves both uses and the parking management program required by the Planning Commission allows the garage to be managed efficiently to meet the shifting demands of the various uses served by the garage.

In a memorandum included as Attachment No. 3 to the agenda report, Fehr & Peers confirmed that the methodology applied to the aforementioned studies follows conventions and practices professionally recognized and accepted throughout the country.

13. Confirm that the William Morris committed spaces could not be sold/leased to others.

Response: In the project's conditions of approval, this restriction was placed on the approval, stating that spaces could not be leased to the general public. The applicant has appealed this condition as shown in the appeal documents provided to the City Council in

the agenda reports of November 7 and 20, 2007 respectively. The ad hoc committee recommended that the project be allowed to lease parking to the general public, provided that the regular monitoring shows that such spaces are in excess of what the building needs to meet its demand and City approval is obtained.

LOADING

14. Why does the applicant oppose the parallel loading? Has sight distance been reviewed for the loading activity?

Response: The applicant has stated that either scenario could be supported (see Appeal Attachment, page 9), but feels that the diagonal configuration is superior because loading docks may be provided and the diagonal movement for the vans would be superior to the perpendicular configuration as required by the Planning Commission. Based on observation of the alley and past recommendations on loading configurations in a City study, the Planning Commission felt that the parallel configuration would be more likely to be used and would reduce the amount of illegal parking in the alley by trucks unloading and making deliveries. However, staff finds that either configuration can work effectively.

SCREENING ROOM

15. What other screening rooms have been looked at in the City? What about the large screening room at Crescent/Wilshire at the Clarity building?

Response: Staff reviewed the conditions for the following private screening rooms in the City; the Clarity building's screening room has been reviewed at the request of the City Council:

• Creative Artists Agency	9830 Wilshire Boulevard	60 seats
• America On-line	331 North Maple Drive	50 seats
• Endeavor	9601 Wilshire Boulevard	80 seats
• Gersh Agency Inc.	232 North Canon Drive	15 seats
• William Morris Agency	150 El Camino Drive	50 seats
• Clarity Building	Crescent/Wilshire	121 seats

The Clarity building screening room was originally built for United Artists in the 1980s. Plans from that time show 121 seats. The Clarity building is 109,224 square feet in size according to City records. The Clarity screening room is parked at the office rate of 1 space per 350 square feet.

The City's practice has been to treat these facilities as ancillary uses to the building as the seating capacity is limited. The facilities provide parking at a ratio of 1 space per 350 feet and are not treated as a public theater use.

16. Why would the screening room not be an ancillary use? Why did the Planning Commission have issues with its determination as an ancillary use?

Response: The screening room would not be considered an ancillary use if it were used for public or commercial purposes or if it were not a function of the talent agency use. The City has several commercial screening rooms that are available for rent to the public. The

Planning Commission's concerns in the final analysis stemmed from the fact that other screening rooms in the city which were treated as ancillary uses with respect to parking were associated with buildings which met code requirements for parking. At the time of Planning Commission action, the new building had a parking deficit of 33 spaces. The applicant has indicated that the project will now provide not only the 33 spaces requested by the Planning Commission, but 16 additional spaces over those requested by the Planning Commission.

17. What is the difference between a party and a special event?

Response: In the context of the project, a "special event" is an event that is not a part of a the normal business activity of the William Morris Agency that is attended by non-client invitees. A "party" is not a term that is specifically used in the conditions imposed on the project. A gathering that is not a routine part of the conduct of the business and involves people other than clients comes under the scrutiny of the Community Development Director. To avoid confusion with the City's Special Event Permit process, it is proposed to refer to this project-specific procedure as a "Screening Room Event Permit" process. Regular gatherings of Agency personnel, routine gatherings involving Agency staff and clientele would not require a City review.

The City uses Special Event Permits to address special concerns related to activities which may affect traffic, parking, or other issues. Special Event Permits are required for events that close all or a portion of streets, that include red carpet areas, or that temporarily exceed normally-permitted building code occupancies. Some parties occur without special permits. These would typically occur after business hours and include a moderate number of guests.

18. Is there a way to limit outside users of the screening room?

Response: Yes, a condition of approval approved by the Planning Commission (Planned Development Condition of Approval #26 a) requires that the screening room be used only by the building tenant and may not be open to the general public except through a conditional use permit.

TRAFFIC

19. Have impacts of the project traffic on Charleville been analyzed?

Response: Yes, the EIR traffic impact study did analyze the Beverly Drive/Charleville Boulevard intersection (refer to attached Exhibit 5.4-1, Study Intersections, from the EIR). Based on City-established thresholds of significance, the addition of project-generated trips is forecast to not cause a significant impact at this study intersection.

In addition, the EIR traffic impact study includes an analysis of the Charleville Boulevard residential neighborhood roadway segment between Camden Drive and Rodeo Drive (refer to attached Exhibit 5.4-2, Residential Neighborhood Study Street Segment Locations, from the EIR). Based on City-established thresholds of significance, the addition of project-generated trips is forecast to not cause a significant impact at this residential neighborhood study roadway segment.

20. Why wasn't a turn lane or other mitigation required for the left turn movement from Beverly Drive onto Wilshire Boulevard?

Response: As documented on Exhibit 5.4-33, Forecast Outbound Trip Distribution for Proposed Project, in the EIR traffic section (and included as Attachment A), outbound project-generated trips destined for eastbound Wilshire Boulevard exit the project site at Dayton Way, proceed east on Dayton Way, turn right at Canon Drive, and turn left at Wilshire Boulevard. Left turns from southbound Beverly Drive onto eastbound Wilshire Boulevard are not permitted given the configuration of that intersection.

As documented in the EIR traffic analysis, other mitigation measures have been recommended to reduce the significant traffic impacts caused by the proposed project at the Beverly Drive/Wilshire Boulevard intersection to a level considered less than significant. However, the recommended mitigation measures at the Beverly Drive/Wilshire Boulevard intersection were found to be infeasible by City staff and the Planning Commission.

TRANSIT STOP

21. Why didn't the Planning Commission require the transit easement dedication for a future transit portal on Wilshire Boulevard?

Response: The Planning Commission removed the Bank of America building from the area subject to both the Overlay Zone and the Planned Development Permit. Given that the Bank of America building was no longer part of the proposed project, and the speculative nature of the location for the future transit line and/or station, the Planning Commission did feel it was appropriate to require the easement. The applicant has now agreed to provide the easement for a subway station portal.

22. Would the applicant consider an offer of dedication now?

Response: Yes, the applicant has agreed to dedicate an easement for a subway station portal.

23. Is there any limitation on a future ability to obtain the easement?

Response: At such time as a final transit alignment has been established by the Metropolitan Transportation Authority, Metro has the right to acquire land through negotiation or to condemn property to implement its plan. However, the applicant has agreed to provide an easement for a portal.

SHADE/SHADOW/VISUAL IMPACTS

24. How does the project impact the Montage and its associated public gardens from a shading perspective?

Response: The proposed project will result in some shadow impacts on the public gardens and Montage hotel. The greatest shading will occur in the spring (vernal equinox) and autumn (winter solstice), with shading also occurring in the summer (summer solstice). These impacts do not occur for a majority of the day (three or more hours), and the shadows are primarily confined to the public right-of-way and sidewalks. The shadow impacts associated with the proposed project are illustrated on Exhibits 5.4-9a through 5.4-9d in the EIR.

25. Was the view of the project from the Montage considered?

Response: The Montage Hotel project will be located directly east of the existing Bank of America building. The Public Gardens and Gardens Building will be located directly east of the southern part of proposed building. The Planning Commission was concerned with both the view from the Montage as well as the changed viewscape on Beverly Drive from both Wilshire Boulevard and Dayton Way. Visual simulations from Dayton Way looking south and Wilshire Boulevard looking north have been developed to provide a realistic view of Beverly Drive with both projects.

CONSTRUCTION

26. Will construction overlap with the Montage? How will parking/traffic flow be addressed?

Response: Yes, the construction schedules for the Montage and the proposed project may overlap by approximately 6 months. The City has required both projects to maintain four traffic lanes on Beverly Drive (two in each direction) as well as pedestrian access on Beverly Drive, and the City will continue to work with the contractors to coordinate construction activities to minimize the impacts of the two project to the public. While some metered parking spaces will be temporarily removed during the construction periods, the project applicants are required to reimburse the City for the loss of revenues from meters during that time.

ATTACHMENT 3

Memorandum by Fehr & Peers



November 12, 2007

Vince Bertoni
Director of Community Development
City of Beverly Hills
455 North Rexford Dr.
Beverly Hills, CA 90291

Re: Parking Demand Studies for the
231-265 North Beverly Drive Project

Ref.: 1850.06

Dear Mr. Bertoni:

I have prepared this letter to clarify some of the questions raised at the City of Beverly Hill City Council meeting of November 7, 2007 regarding the methodology used and the resulting credibility of the parking demand studies conducted for the Beverly Wilshire Project at 231 - 265 North Beverly Drive. As you know, Fehr & Peers/Kaku Associates was asked to address several issues associated with the parking system for the proposed project. The two primary issues involve:

1. The current parking demand generated in the parking structure at 265 North Beverly Drive by existing tenants of the adjacent Bank of America Building at 9465 Wilshire Boulevard.
2. The existing parking demand generated by the William Morris Company at its headquarters in Beverly Hills at 150/151 South El Camino Drive.

The following provides a detailed description of the methodologies used to conduct the necessary studies for each of these two issues.

EXISTING PARKING DEMAND OF BANK OF AMERICA TENANTS

The first major element of the work program for this project was to estimate the parking demand generated in the parking facility at 265 North Beverly Drive by current tenants of the Bank of America Building adjacent to the project site at 9465 Wilshire Boulevard. The Bank of America building has a written covenant on the 265 North Beverly Drive facility that requires the facility to guarantee 262 spaces to tenants of the Bank of America building. This covenant allows the tenants of the Bank of America building to purchase a permit for their employees that allow them to use the facility at 265 North Beverly Drive.

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fehrandpeers.com

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November 12, 2007
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The 265 North Beverly Drive facility acts as an overflow facility for the Bank of America building. Tenants who purchased passes at the 265 North Beverly Drive facility also lease spaces at Bank of America building facility. When spaces become available at the Bank of America building parking facility, they can be offered to employees who regularly park at the 265 North Beverly Drive facility.

A parking user survey was also conducted in the parking facility at 265 North Beverly Drive on four days spanning two separate seasons of the year. An initial survey was conducted on Thursday, November 9, 2006 and three follow-up surveys were conducted on Tuesday, Wednesday, and Thursday, February 6, 7, and 8, 2007. This study consisted of a utilization survey for all spaces hourly from 6:00 a.m. to 8:00 p.m., along with a direct user survey. The user survey was conducted by asking the drivers of the vehicles using this facility to respond to a short questionnaire. The survey was designed to assess the purpose of the user's trip to the parking facility and to determine whether they were an employee of a tenant of the Bank of America building, a visitor to one of the tenants of the Bank of America building, an employee working in a local building, or a shopper/diner from the general public. The data from the two surveys as well as discussions with the parking garage operator were used to determine the nature and magnitude of the use of the parking facility at 265 North Beverly Drive by Bank of America building tenants.

The results of the surveys indicated that on the days of the survey, the peak parking demand generated by the tenants of the Bank of America building in the parking facility at 265 North Beverly Drive is 150 spaces. According to revised data received by the garage operator in August 2007, on the day of the November survey, a total of 192 permits were purchased and on the days of the February survey, a total of 194 parking permits were purchased by Bank of America tenants.

Once again, the methods used are consistent with national standards and reflect best practices for conducting parking demand studies. The results are not unexpected and reflect a reasonable and accurate expectation of the actual daily parking demand generated by these tenants on a typical weekday when between 192 and 194 permits are purchased. These demand figures were adjusted from 150 to 189 spaces to reflect conditions if the Bank of America building were fully occupied. The building had 90 percent occupancy at the time of the surveys.

EXISTING PARKING DEMAND OF WILLIAM MORRIS COMPANY

At the July 25, 2007 Beverly Hills Planning Commission hearing, the five-member panel requested a study of existing parking demand generated by the William Morris Company. The William Morris Company currently operates out of its headquarters at 150/151 South El Camino Drive in the City of Beverly Hills. The office building occupied by the firm provides 119,018 square feet of office space. The William Morris Company is the building's only tenant. The firm

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November 12, 2007
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also uses a parking garage at 150 Rodeo Drive as an overflow facility for some of its employees.

The parking demand study for the company was estimated by conducting parking space utilization surveys at both of its facilities over a three-day period in August, 2007. Each of the spaces in the facility at 150/151 South El Camino Drive was observed on an hour- by-hour basis between 6:00 a.m. and 9:00 p.m. on Tuesday, Wednesday, and Thursday, August 14, 15, 16, 2007 to determine the number of occupied spaces on a typical weekday. Similar surveys were conducted for the parking supply at 150 Rodeo Drive on the same days as noted above. Because the 150 Rodeo Drive facility is used by tenants other than William Morris, the first four digits from the license plates of parked vehicles were recorded to separate William Morris demand from other tenants. The results of these parking utilization surveys resulted in the determination that on a typical weekday, the William Morris Company generates a peak parking demand of 456 spaces and this peak demand occurs between 12:00 p.m. and 1:00 p.m. The peak demand figure includes the parking demand generated by all of the employees, clients, guests, service people and other visitors of the William Morris Company on a typical weekday.

The methods used to conduct this parking demand analysis are consistent with those used by most professional parking analysts. Fehr & Peers/Kaku Associates has used these methods on several hundred different parking studies over the past 25 years for communities throughout the western U.S. on a variety of projects with similar land uses as well as other uses. It provides a realistic and accurate estimate of the total peak parking demand that the William Morris Company would generate on a typical workday in its new proposed facility at 231 - 265 North Beverly Drive.

SUMMARY OF ISSUES

Some of the comments at the City Council meeting on November 7, 2007 reflected a misunderstanding of some facts or issues that may be appropriate to clear up at this time.

One of the issues was directed at the fact that that the peak demand of Bank of America building tenants with permits in the 265 North Beverly Drive building represented only 77 percent of the total number of eligible users (i.e., purchasers of parking permits). It should be recognized that this is not unexpected and is consistent with the usage of most office parking facilities. It is typical for office tenants not to fully utilize a parking facility on a given day for a variety of reasons, including absence from work that day (illness, vacation, other days off, etc.), out on business that day, and out for personal reasons (lunch, errands, appointments, etc.).

The second issue was directed at the nature of the Bank of America building users of the 265 North Beverly Drive parking facility. These users are not representative of the customers of a bank, but are representative of a typical office building. The nature of their use is, therefore, reflective of a typical office user as described above.

To: Mr. Vince Bertoni
November 12, 2007
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I hope this explanation assists in clarifying some of the questions asked at the last council meeting and will the council members in understanding the parking issues associated with the project. If we can be of further assistance, please do not hesitate to contact me at (310) 458-9916.

Very truly yours,

Dick S. Kaku

ATTACHMENT 4

Appeal to the City Council

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN 14
CALENDAR DATES AFTER THE DATE OF THE DECISION**

APPEAL TO CITY COUNCIL COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

October 30, 2007

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Planning Commission (Official, Board, or Commission involved) rendered on October 25, 2007; which decision consisted of: The grounds submitted for this appeal are as follows: *(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)*

This is an appeal from a decision rendered by the Beverly Hills Planning Commission on October 25, 2007, entitled "RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A PLANNED DEVELOPMENT AND LOT LINE ADJUSTMENT TO ALLOW CONSTRUCTION OF A RETAIL, COMMERCIAL AND ENTERTAINMENT TALENT AGENCY OFFICE PROJECT FOR PROPERTY LOCATED AT 231-265 NORTH BEVERLY DRIVE (WILLIAM MORRIS AGENCY PROJECT)."

The grounds for the appeal and the items within the resolution being appealed are set forth on the attachment.

The undersigned discussed the decision being appealed with:

_____ on _____
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Mark Egerman, 9401 Wilshire Blvd., # 500, Beverly Hills, CA 90212

Name

Address

BWO, LP

By: Mark Egerman

Signature of appeal party

c/o Mark Egerman, 9401 Wilshire Blvd., # 500

Beverly Hills, CA 90212

Address

(310) 248-6299 [tel]; (310) 248-6288 [fax]

Telephone Number & Fax Number

RECEIVED
CITY OF BEVERLY HILLS
2007 OCT 30 PM 12: 04
CITY CLERK'S OFFICE

Fee Paid 4730.-

(For City Clerk's use)

DATE RECEIVED

LOG NO. 57x 07

Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney, Community Development/Planning
Involved Department

**ATTACHMENT TO APPEAL FROM THE PLANNING COMMISSION
TO THE CITY COUNCIL FROM A DECISION TAKEN ON
OCTOBER 25, 2007, ENTITLED "RESOLUTION OF THE
PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS
CONDITIONALLY APPROVING A PLANNED DEVELOPMENT
AND LOT LINE ADJUSTMENT TO ALLOW CONSTRUCTION
OF A RETAIL, COMMERCIAL AND ENTERTAINMENT
TALENT AGENCY OFFICE PROJECT FOR PROPERTY
LOCATED AT 231-265 NORTH BEVERLY DRIVE
(WILLIAM MORRIS AGENCY PROJECT)."**

APPLICANT: BWO, LP
PROJECT: 231-265 N. BEVERLY DRIVE (A.K.A. "THE WILLIAM MORRIS
PROJECT")

NOTE: THE ISSUES SET FORTH IN THIS APPEAL ARE IDENTICAL TO THE ISSUES SET FORTH IN THE APPEAL FROM THE RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE 231-265 NORTH BEVERLY DRIVE PROJECT, MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, EVEN THOUGH NOT ALL ISSUES MAY BE CONTAINED IN BOTH RESOLUTIONS, BECAUSE OF POSSIBLE OR IMPLIED INCLUSION BY REFERENCE.

ISSUES THAT ARE THE SUBJECT MATTER OF THIS APPEAL:

1. REQUIRING THAT 70% OF THE OFFICE SPACE BE LEASED TO ENTERTAINMENT COMPANIES.
2. DENIAL OF THE APPLICATION TO REDUCE THE BANK OF AMERICA COVENANT FROM 262 SPACES TO 189 SPACES.
3. REQUIRING FREE PARKING FOR ALL EMPLOYEES AND VISITORS OF THE PROJECT.
4. LIMITING THE SCREENING ROOM TO 100 SEATS; REQUIRING A CUP HEARING TO INCREASE THE SCREENING ROOM TO MORE THAN 100 SEATS; AND REQUIRING ONE ADDITIONAL PARKING SPACE FOR EACH FOUR ADDITIONAL SEATS.
5. REQUIRING THE GARAGE AVAILABLE TO THE PUBLIC ON WEEKDAY EVENINGS AFTER 6 P.M. RATHER THAN AFTER 7 P.M.

6. REQUIRING THE DESIGN OF THE LOADING DOCK TO BE FOR TWO PARALLEL TRUCK LOADING SPACES AND ONE VAN LOADING SPACE PERPENDICULAR TO ALLEY, RATHER THAN THE ORIGINAL LOADING DOCK DESIGN AS CONTAINED IN THE GENSLER PLANS PROVIDING FOR TWO TRUCK LOADING SPACES AND ONE VAN LOADING SPACE AT 45 DEGREES FROM THE ALLEY.
7. PROHIBITING THE LEASING OF PARKING TO MEMBERS OF THE GENERAL PUBLIC.

As set forth in the EIR and the Findings and Facts in Support of Findings made by the Planning Commission on October 25, 2007, the Project Objectives are as follows:

- A. Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills.
- B. Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.
- C. Build a subterranean parking structure:
- D. Build a project that provides pedestrian-friendly amenities at the street level.
- E. Build a project that is harmonious in scale and architectural style with the surrounding area.
- F. Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes."

This appeal includes, but is not limited to, the following issues:

1. **RESTRICTION ON USE: APPLICANT APPEALS FROM THE DECISION OF THE PLANNING COMMISSION REQUIRING THAT NOT LESS THAN 70% OF THE OFFICE SPACE BE LEASED TO ENTERTAINMENT COMPANIES.**

The Planning Commission's condition that not less than 70% of the office space be leased to entertainment companies effectively kills the project. The Applicant cannot get financing on the project with this restriction. Simply put, no commercial financial institution will give financing on commercially reasonable terms for a project that limits its use to such an

extent. In addition, even if financing were available, the developer will not undertake such a risk. At the expiration of William Morris Agency's lease in 20 years, no one can predict the rental market. No rational developer can risk investing \$60+ million dollars on a project with such a limitation.

The reality is that William Morris Agency has signed a 20 year lease with two options. The City of Beverly Hills has reasonable assurance in view of the lease that William Morris Agency will remain an outstanding corporate citizen for at least two more decades. The imposition of this limitation is unreasonable and unworkable. Because of this condition, none of the six objectives of the project can be met. A Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills will not be built because financing cannot be obtained. The development of a retail/commercial and entertainment office complex responsive to the City's needs and regional market forces will not be done. A subterranean parking structure will not be constructed. A project that provides pedestrian-friendly amenities at the street level will not be realized. There will be no project that is harmonious in scale and architectural style with the surrounding area. The City's economic base will not be augmented by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

2.-5. PARKING: APPLICANT APPEALS FROM THE DECISION OF THE PLANNING COMMISSION DENYING THE APPLICATION TO REDUCE THE COVENANT IN FAVOR OF BANK OF AMERICA FROM 262 SPACES TO 189 SPACES, REQUIRING AN ADDITIONAL 33 SPACES OVER THE CURRENT GARAGE DESIGN OF 697 SPACES, AND REQUIRING ADDITIONAL PARKING AT THE RATIO OF 1 SPACE PER EVERY FOUR SEATS THAT THE SCREENING ROOM IS OVER 100 SEATS.

A. HISTORY:

There currently exists on the project site a six story parking structure containing in excess of 500 spaces. The Bank of America Building has a covenant which allows it to use 262 spaces in the existing six story parking structure. At the commencement of the project, the applicant was aware that parking could be a serious financial issue because the new building would have a subterranean parking structure, would require 468 spaces under the current code, would require 262 covenanted spaces for the Bank of America Building, and the cost of developing parking spaces below the fourth level would be extremely expensive due to the low water table in Beverly Hills.

The submitted plans for the project calls for 4.25 level subterranean parking garage. The garage is designed to maximize the number of possible spaces and uses subsurface areas under Beverly Drive and Dayton Way. As initially designed the garage contained 665 spaces. Because there are tandem spaces and visitor parking is valet, the garage will be highly staffed with professional parking persons on every level. All parking will be either valet or assisted parking. The lease requires at least two attendants on every floor. [Lease, Exhibit J, pgs. 2-3.]

City staff and the applicant agreed that for the purpose of developing parking requirements for the overlay zone, a demand study should be conducted to determine the actual amount of parking needed for the new project. The consultants to the City and City Staff believe that a demand study for parking is more accurate in determining parking needs than the application of the general code provisions.

The City hired Fehr & Peers Associates to determine the actual parking demand needs of the project and the Bank of America. Fehr & Peers conducted a study dated June 2007, in which Fehr & Peers determined that the maximum number of spaces need for the Bank of America at peak hours adjusted to 100% occupancy was 189 spaces. Based on this demand analysis, an application was filed to reduce the number of spaces under the covenant from 262 spaces to 189 spaces. *"The conclusions of the technical studies summarized in the Draft EIR found that the adequate parking would be provided by the proposed project. Considering the results of the Bank of America parking demand study of 189 parking spaces, the project is required to provide 657 spaces and would provide 665 parking spaces, resulting a surplus of eight spaces; thus providing adequate parking."* [RBF Consulting Memorandum, October 18,2007, pg. 13-47.] This conclusion was reached by using a demand study analysis for the Bank of America and code required parking for the new building.

The Planning Commission asked that an additional demand study be done in reference to William Morris Agency. This study, also done by Fehr & Peers, found that William Morris Agency actually needed more parking spaces for its operation than that required by code. In a meeting to review the results of this study and the Bank of America study, City Staff concluded that applying a demand analysis to determine parking for both the Bank of America and the William Morris Project, the 665 space subterranean garage was short of meeting demand at peak hours by 27 spaces. The Applicant concurred with the conclusion of the City Staff. As a result, the Applicant redesigned the garage by eliminating a cut through drive aisle and dedicated the space to parking, picking up an additional 32

spaces, or five more than are necessary to meet all peak demand parking needs of both the Bank of America Building and the William Morris Project. At the present time the garage contains 697 spaces. It should also be noted that all drive aisles in the garage are 24 feet wide. There is in excess of 1200 lineal feet of aisle space. If the need arose, with proper staffing an additional 60-80 cars can be parked in the drive aisles with more than sufficient room remaining for traffic to pass. In addition to insure that future use would not involve business with high parking or traffic demands, the Applicant agreed that the following uses would not be permitted without the prior approval of the director of community development: "medical offices; commercial exercise clubs and training centers; medical laboratories; hair salons; nail salons; real estate offices; non-office retail establishments, except on the ground floor and any mezzanine; and restaurants in excess of 5% of the total gross square footage of the building." [Draft Ordinance, §10-3-1863 C.]

B. PLANNING COMMISSION ACTION ON BASE PARKING

REQUIREMENTS: The Planning Commission did not accept the demand studies of the City's consultant, the staff reports on parking requirements, or the testimony of the City's consultants. The Planning Commission determined that the covenant for the Bank of America should not be reduced and that the project should be required to supply current code parking of an additional 33 spaces, or a total garage capacity of 730 spaces.

C. BASIS OF APPEAL ON PARKING: The Planning Commission ignored the evidence presented by the City's consultants and the City's professional staff on the actual number of parking spaces needed at peak hours for the Bank of America and the William Morris Project. In addition, the Planning Commission did not take into consideration the cost of developing additional parking on the P-5 level in the water table. The cost per space to develop parking in the water table is over double that of normal spaces, in excess of \$100,000 per space. This extremely high cost per space for parking makes the project problematic from a financial perspective, depending on the total number of spaces that have to be constructed below the water table. To the extent the project is not financially viable, none of the project objectives will be met.

D. BASIS OF APPEAL ON FREE PARKING FOR EMPLOYEES AND VISITORS: First, it should be noted that under the terms of the lease between BWO, LP and the William Morris Agency, the William Morris Agency is given the exclusive use of well over 400 spaces, for which it must pay the normal month rental charge. Thus, all employees of William Morris Agency as well as its visitors have prepaid parking.

[Lease, Article 28, pg. 51.] The problem with this restrictive provision is that it will prevent the Applicant from obtaining normal financing. In any development, the parking garage operation is part of the normal income of a project that is used to service the debt. Without this income, the debt portion of the project related to the construction of the garage cannot be obtained. There is no rational reason to treat this project differently than any other private development and allow the garage to be operated in a normal fashion.

- E. BASIS OF APPEAL ON LIMITING THE SCREENING ROOM TO 100 SEATS, REQUIRING A CUP FOR A SCREENING ROOM GREATER THAN 100 SEATS, AND REQUIRING EXTRA PARKING AT 1 SPACE FOR EVERY 4 SEATS OVER 100:** The Planning Commission set an arbitrary limit on the number of seats for the screening room at 100, unless the Applicant or William Morris applies to the Planning Commission for a CUP. This restriction is not acceptable to William Morris in that it does not meet William Morris' current business needs. In addition it is in violation to the lease terms between BWO, LP and William Morris which provides that the Applicant will as part of the landlord improvements provide William Morris with a screening room of between 170-200 seats. [Lease, Exhibit B, ¶2A., pg. B-1-2.] It is within the discretion of William Morris under the lease to determine the seating size of the screening room between 170-200 seats. With this condition the Applicant cannot comply with the terms of the lease, and William Morris is not obligated to accept the premises. Thus, the project will not go forward.

Similarly, the Planning Commission's requirement that a CUP process be used if the size of the screening room exceeds 100 seats is unreasonable because the lease requires a screening room of 170-200 seats. To require the Applicant or William Morris to make a CUP application at this point in time is unreasonable and will terminate the project because unless entitlements are obtained by December 29, 2007, the lease is no longer binding on William Morris. [Lease, ¶2.1, pg. 3.] Further, the additional parking required for a screening room over 100 seats at one additional space for each four seats is unreasonable and contrary to the existing code. Current code requires parking at the ratio of 1 per 350 square feet. Uniformly, screening rooms have been treated by the City as ancillary uses to the business and require only 1 space per 350 feet. "It should be noted that the City's practice has been to treat these facilities (screening rooms) as ancillary uses to the building as the seating capacity is limited. The facilities provide parking at a ratio of 1 space per 350 feet and are not treated as a public theater use." [Staff Report for the Planning Commission Hearing of October 25, 2007, pg. 14.] In order to satisfy any concerns of the Planning Commission, the

Applicant voluntarily agreed to the following restrictive conditions on the screening room and terrace, which are substantially more restrictive than those suggested by staff and the Draft EIR:

"The use of the screening room and terrace shall be subject to the following limitations:

1. The screening room and terrace shall be used by William Morris Agency (or a successor tenant) as an ancillary use of William Morris Agency's business. The screening room and terrace shall not be open to the general public, except through a City approved special event permit.
2. The screening room and terrace shall be limited to business purposes only and shall only be used by tenants of the building and business associates. "Business associates" shall mean persons who have a business purpose for being in the building, have a business relationship with William Morris Agency (or a successor tenant), or persons invited by William Morris Agency (or a successor tenant) as part of its business.
3. If there is an event where more than 28 off-site people are using the screening room or terrace at one time, valet parking shall be provided, if needed, to create up to 38 additional parking spaces in the aisles of the parking structure to accommodate the off-site people using the screening room or terrace.
4. No exterior signage regarding the screening room or terrace shall be permitted.
5. Maximum seating capacity for the screening room shall be as set forth in the final plans for the project.
6. "Special Event" is defined as an event that is not part of the normal business activity of the William Morris Agency (or a successor tenant) that is attended by off-site people. The term "Special Event" shall not include a use that is part of the functioning of the business or an event primarily for the employees or business associates of William Morris Agency (or a successor tenant). Special events planned for the screening room or terrace shall require a special events permit issued by the City or approved by the Community Development Director.
7. No advertising regarding the screening room shall be permitted in reference to a special event, except as provided in the special events permit.

8. During any event, any refreshments that may be served shall be provided at no charge to the patrons of the event.

9. In the event the use of the screening room or terrace does not conform to the conditions set forth herein so as to adversely affect the public safety, health, or welfare, the Director of Community Development may impose conditions limiting the use of the screening room or terrace to eliminate the adverse effect on the public safety, health, or welfare."

F. BASIS OF APPEAL ON ALLOWING PUBLIC PARKING AT 6 P.M. RATHER THAN 7 P.M.: The William Morris Agency's normal hours of operation are 9:30 a.m. to 6:30 p.m. Many employees work longer and stay after 6:30 p.m. The Applicant has agreed to provide public parking in the evening and on week-ends at the same rates and conditions as charged in City lots. The Applicant believes the public parking in the evenings should commence at 7 p.m. to allow William Morris employees to leave the building, to insure there are spaces available to the public, and to prevent traffic jams in the garage. It is unreasonable to not allow William Morris the full use of the garage during its normal working hours and a reasonable time thereafter for its employees to vacate the garage.

6. LOADING DOCK: APPLICANT APPEALS FROM THE CONDITION OF THE PLANNING COMMISSION REQUIRING THE DESIGN OF THE LOADING DOCK TO BE FOR TWO PARALLEL TRUCK LOADING SPACES AND ONE VAN LOADING SPACE PERPENDICULAR TO ALLEY, RATHER THAN THE ORIGINAL LOADING DOCK DESIGN AS CONTAINED IN THE PLANS PROVIDING FOR TWO TRUCK LOADING SPACES AND ONE VAN LOADING SPACE AT 45 DEGREES FROM THE ALLEY.

The Applicant will move forward with the project based on either the design of the loading dock as proposed by the Applicant's architect Gensler or the design conditioned by the Planning Commission. The Applicant appeals from the condition of the Planning Commission requiring a hybrid parallel/perpendicular loading dock because the Applicant believes that the design required by the Planning Commission is inferior to the design proposed by Gensler. Specifically, vans, which are the most common and most frequent type of delivery truck, are required to pull forward into a perpendicular loading zone and then after the deliver back out into the alley. Backing out at a right angle to the alley is much more difficult and dangerous than the Gensler design which would have the van pull forward into the alley at a 45% angle. Similarly, while there are two loading areas for trucks parallel to the building, there is no elevated dock to allow trucks to unload at the level of the cargo bay. Further, given the limited space, it would be

difficult for two trucks to unload at the same time. Simply put, the design mandated by the Planning Commission is inferior to that designed by Gensler.

7. **PROHIBITING LEASING OF PARKING TO THE GENERAL PUBLIC:** APPLICANT APPEALS FROM THE CONDITION OF THE PLANNING COMMISSION PROHIBITING LEASING OF PARKING SPACES TO THE GENERAL PUBLIC. THE APPLICANT SHOULD BE ALLOWED TO LEASE SPACES TO THE GENERAL PUBLIC IF THE SPACES ARE NOT NEEDED FOR TENANTS OF THE PROJECT, THE BANK OF AMERICA, OR TO SERVICE THE COMMERCIAL SPACE. TO INSURE THERE IS SUFFICIENT PARKING, THE APPLICANT IS WILLING TO CONDITION LEASING TO THE GENERAL PUBLIC UPON APPROVAL OF THE DIRECTOR OF COMMUNITY DEVELOPMENT.

RESERVATION OF RIGHTS: THE APPLICANT RESERVES THE RIGHT TO SUPPLEMENT THIS APPEAL UPON REVIEW OF THE FINAL DRAFT OF THE RESOLUTIONS OF THE PLANNING COMMISSION.

**APPEAL PETITIONS MUST BE FILED WITH THE CITY CLERK'S OFFICE WITHIN 14
CALENDAR DATES AFTER THE DATE OF THE DECISION**

APPEAL TO CITY COUNCIL COMMISSION OR CITY COUNCIL

PLEASE TYPE OR PRINT CLEARLY IN BLACK INK

October 30, 2007

Date

In accordance with the appeals procedure as authorized by the provisions of the Beverly Hills Municipal Code, the undersigned hereby appeals from the decision of Planning Commission (Official, Board, or Commission involved) rendered on October 25, 2007; which decision consisted of: The grounds submitted for this appeal are as follows: *(WARNING: State all grounds for appeal. Describe how decision is inconsistent with law. Use extra paper if necessary.)*

This is an appeal from a decision rendered by the Beverly Hills Planning Commission on October 25, 2007, entitled "RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE 231-265 NORTH BEVERLY DRIVE PROJECT; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS; AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM."

The grounds for the appeal and the items within the resolution being appealed are set forth on the attachment.

The undersigned discussed the decision being appealed with:

_____ on _____
(Department Head(s) Involved) Date

It is requested that written notice of the time and place for the hearing on this appeal before the City Council be sent to:

Mark Egerman, 9401 Wilshire Blvd., # 500, Beverly Hills, CA 90212

Name

Address

BWO, LP

By: Mark Egerman

Signature of appeal party

c/o Mark Egerman, 9401 Wilshire Blvd., # 500

Beverly Hills, CA 90212

Address

(310) 248-6299 [tel]; (310) 248-6288 [fax]

Telephone Number & Fax Number

RECEIVED
CITY OF BEVERLY HILLS

2007 OCT 30 PM 12:04

CITY CLERK'S OFFICE

Fee Paid 4930.-

(For City Clerk's use)

DATE RECEIVED

LOG NO. 56 x 07

Written Notice mailed to appellant:

Copies to: City Council, City Manager, City Attorney,

Community Development / Planning
Involved Department

ATTACHMENT TO APPEAL FROM THE PLANNING COMMISSION TO THE CITY COUNCIL FROM A DECISION TAKEN ON OCTOBER 25, 2007, ENTITLED "RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE 231-265 NORTH BEVERLY DRIVE PROJECT; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS; AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM"

APPLICANT: BWO, LP
PROJECT: 231-265 N. BEVERLY DRIVE (A.K.A. "THE WILLIAM MORRIS PROJECT")

NOTE: THE ISSUES SET FORTH IN THIS APPEAL ARE IDENTICAL TO THE ISSUES SET FORTH IN THE APPEAL FROM THE RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A PLANNED DEVELOPMENT, EVEN THOUGH NOT ALL ISSUES MAY BE CONTAINED IN BOTH RESOLUTIONS, BECAUSE OF POSSIBLE OR IMPLIED INCLUSION BY REFERENCE.

ISSUES THAT ARE THE SUBJECT MATTER OF THIS APPEAL:

1. REQUIRING THAT 70% OF THE OFFICE SPACE BE LEASED TO ENTERTAINMENT COMPANIES.
2. DENIAL OF THE APPLICATION TO REDUCE THE BANK OF AMERICA COVENANT FROM 262 SPACES TO 189 SPACES.
3. REQUIRING FREE PARKING FOR ALL EMPLOYEES AND VISITORS OF THE PROJECT .
4. LIMITING THE SCREENING ROOM TO 100 SEATS; REQUIRING A CUP HEARING TO INCREASE THE SCREENING ROOM TO MORE THAN 100 SEATS; AND REQUIRING ONE ADDITIONAL PARKING SPACE FOR EACH FOUR ADDITIONAL SEATS.
5. REQUIRING THE GARAGE AVAILABLE TO THE PUBLIC ON WEEKDAY EVENINGS AFTER 6 P.M. RATHER THAN AFTER 7 P.M.
6. REQUIRING THE DESIGN OF THE LOADING DOCK TO BE FOR TWO PARALLEL TRUCK LOADING SPACES AND ONE VAN LOADING SPACE PERPENDICULAR TO ALLEY, RATHER THAN THE ORIGINAL LOADING DOCK DESIGN AS CONTAINED IN THE GENSLER PLANS PROVIDING FOR TWO TRUCK LOADING SPACES AND ONE VAN LOADING SPACE AT 45 DEGREES FROM THE ALLEY.

7. **PROHIBITING THE LEASING OF PARKING TO MEMBERS OF THE GENERAL PUBLIC.**

As set forth in the EIR and the Findings and Facts in Support of Findings made by the Planning Commission on October 25, 2007, the Project Objectives are as follows:

- A. Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills.
- B. Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.
- C. Build a subterranean parking structure:
- D. Build a project that provides pedestrian-friendly amenities at the street level.
- E. Build a project that is harmonious in scale and architectural style with the surrounding area.
- F. Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes."

This appeal includes, but is not limited to, the following issues:

1. **RESTRICTION ON USE: APPLICANT APPEALS FROM THE DECISION OF THE PLANNING COMMISSION REQUIRING THAT NOT LESS THAN 70% OF THE OFFICE SPACE BE LEASED TO ENTERTAINMENT COMPANIES.**

The Planning Commission's condition that not less than 70% of the office space be leased to entertainment companies effectively kills the project. The Applicant cannot get financing on the project with this restriction. Simply put, no commercial financial institution will give financing on commercially reasonable terms for a project that limits its use to such an extent. In addition, even if financing were available, the developer will not undertake such a risk. At the expiration of William Morris Agency's lease in 20 years, no one can predict the rental market. No rational developer can risk investing \$60+ million dollars on a project with such a limitation.

The reality is that William Morris Agency has signed a 20 year lease with two options. The City of Beverly Hills has reasonable assurance in view of the lease that William Morris Agency will remain an outstanding corporate citizen for at least two more decades. The imposition of this limitation is unreasonable and unworkable. Because of this condition, none of the six objectives of the project can be met. A Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills will not be built because financing cannot be obtained. The development of a retail/commercial and entertainment office complex responsive to the City's needs and regional market forces will not be done. A subterranean parking structure will not be constructed. A project that provides pedestrian-friendly amenities at the street level will not be realized. There will be no project that is harmonious in scale and architectural style with the surrounding area. The City's economic base will not be augmented by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

2.-5. PARKING: APPLICANT APPEALS FROM THE DECISION OF THE PLANNING COMMISSION DENYING THE APPLICATION TO REDUCE THE COVENANT IN FAVOR OF BANK OF AMERICA FROM 262 SPACES TO 189 SPACES, REQUIRING AN ADDITIONAL 33 SPACES OVER THE CURRENT GARAGE DESIGN OF 697 SPACES, AND REQUIRING ADDITIONAL PARKING AT THE RATIO OF 1 SPACE PER EVERY FOUR SEATS THAT THE SCREENING ROOM IS OVER 100 SEATS.

A. HISTORY:

There currently exists on the project site a six story parking structure containing in excess of 500 spaces. The Bank of America Building has a covenant which allows it to use 262 spaces in the existing six story parking structure. At the commencement of the project, the applicant was aware that parking could be a serious financial issue because the new building would have a subterranean parking structure, would require 468 spaces under the current code, would require 262 covenanted spaces for the Bank of America Building, and the cost of developing parking spaces below the fourth level would be extremely expensive due to the low water table in Beverly Hills.

The submitted plans for the project calls for 4.25 level subterranean parking garage. The garage is designed to maximize the number of possible spaces and uses subsurface areas under Beverly Drive and Dayton Way. As initially designed the garage contained 665 spaces. Because there are tandem spaces and visitor parking is valet, the garage will be highly staffed with professional parking persons on

every level. All parking will be either valet or assisted parking. The lease requires at least two attendants on every floor. [Lease, Exhibit J, pgs. 2-3.]

City staff and the applicant agreed that for the purpose of developing parking requirements for the overlay zone, a demand study should be conducted to determine the actual amount of parking needed for the new project. The consultants to the City and City Staff believe that a demand study for parking is more accurate in determining parking needs than the application of the general code provisions.

The City hired Fehr & Peers Associates to determine the actual parking demand needs of the project and the Bank of America. Fehr & Peers conducted a study dated June 2007, in which Fehr & Peers determined that the maximum number of spaces need for the Bank of America at peak hours adjusted to 100% occupancy was 189 spaces. Based on this demand analysis, an application was filed to reduce the number of spaces under the covenant from 262 spaces to 189 spaces. *"The conclusions of the technical studies summarized in the Draft EIR found that the adequate parking would be provided by the proposed project. Considering the results of the Bank of America parking demand study of 189 parking spaces, the project is required to provide 657 spaces and would provide 665 parking spaces, resulting a surplus of eight spaces; thus providing adequate parking."* [RBF Consulting Memorandum, October 18, 2007, pg. 13-47.] This conclusion was reached by using a demand study analysis for the Bank of America and code required parking for the new building.

The Planning Commission asked that an additional demand study be done in reference to William Morris Agency. This study, also done by Fehr & Peers, found that William Morris Agency actually needed more parking spaces for its operation than that required by code. In a meeting to review the results of this study and the Bank of America study, City Staff concluded that applying a demand analysis to determine parking for both the Bank of America and the William Morris Project, the 665 space subterranean garage was short of meeting demand at peak hours by 27 spaces. The Applicant concurred with the conclusion of the City Staff. As a result, the Applicant redesigned the garage by eliminating a cut through drive aisle and dedicated the space to parking, picking up an additional 32 spaces, or five more than are necessary to meet all peak demand parking needs of both the Bank of America Building and the William Morris Project. At the present time the garage contains 697 spaces. It should also be noted that all drive aisles in the garage are 24 feet wide. There is in excess of 1200 lineal feet of aisle space. If the need arose, with proper staffing an additional 60-80 cars can be

parked in the drive aisles with more than sufficient room remaining for traffic to pass. In addition to insure that future use would not involve business with high parking or traffic demands, the Applicant agreed that the following uses would not be permitted without the prior approval of the director of community development: "medical offices; commercial exercise clubs and training centers; medical laboratories; hair salons; nail salons; real estate offices; non-office retail establishments, except on the ground floor and any mezzanine; and restaurants in excess of 5% of the total gross square footage of the building." [Draft Ordinance, §10-3-1863 C.]

B. PLANNING COMMISSION ACTION ON BASE PARKING REQUIREMENTS:

The Planning Commission did not accept the demand studies of the City's consultant, the staff reports on parking requirements, or the testimony of the City's consultants. The Planning Commission determined that the covenant for the Bank of America should not be reduced and that the project should be required to supply current code parking of an additional 33 spaces, or a total garage capacity of 730 spaces.

C. BASIS OF APPEAL ON PARKING:

The Planning Commission ignored the evidence presented by the City's consultants and the City's professional staff on the actual number of parking spaces needed at peak hours for the Bank of America and the William Morris Project. In addition, the Planning Commission did not take into consideration the cost of developing additional parking on the P-5 level in the water table. The cost per space to develop parking in the water table is over double that of normal spaces, in excess of \$100,000 per space. This extremely high cost per space for parking makes the project problematic from a financial perspective, depending on the total number of spaces that have to be constructed below the water table. To the extent the project is not financially viable, none of the project objectives will be met.

D. BASIS OF APPEAL ON FREE PARKING FOR EMPLOYEES AND VISITORS:

First, it should be noted that under the terms of the lease between BWO, LP and the William Morris Agency, the William Morris Agency is given the exclusive use of well over 400 spaces, for which it must pay the normal month rental charge. Thus, all employees of William Morris Agency as well as its visitors have prepaid parking. [Lease, Article 28, pg. 51.] The problem with this restrictive provision is that it will prevent the Applicant from obtaining normal financing. In any development, the parking garage operation is part of the normal income of a project that is used to service the debt. Without this income, the debt portion of the project related to the construction of the garage cannot be obtained. There is no rational reason to treat

this project differently than any other private development and allow the garage to be operated in a normal fashion.

- E. BASIS OF APPEAL ON LIMITING THE SCREENING ROOM TO 100 SEATS, REQUIRING A CUP FOR A SCREENING ROOM GREATER THAN 100 SEATS, AND REQUIRING EXTRA PARKING AT 1 SPACE FOR EVERY 4 SEATS OVER 100:** The Planning Commission set an arbitrary limit on the number of seats for the screening room at 100, unless the Applicant or William Morris applies to the Planning Commission for a CUP. This restriction is not acceptable to William Morris in that it does not meet William Morris' current business needs. In addition it is in violation to the lease terms between BWO, LP and William Morris which provides that the Applicant will as part of the landlord improvements provide William Morris with a screening room of between 170-200 seats. [Lease, Exhibit B, ¶2A., pg. B-1-2.] It is within the discretion of William Morris under the lease to determine the seating size of the screening room between 170-200 seats. With this condition the Applicant cannot comply with the terms of the lease, and William Morris is not obligated to accept the premises. Thus, the project will not go forward.

Similarly, the Planning Commission's requirement that a CUP process be used if the size of the screening room exceeds 100 seats is unreasonable because the lease requires a screening room of 170-200 seats. To require the Applicant or William Morris to make a CUP application at this point in time is unreasonable and will terminate the project because unless entitlements are obtained by December 29, 2007, the lease is no longer binding on William Morris. [Lease, ¶2.1, pg. 3.] Further, the additional parking required for a screening room over 100 seats at one additional space for each four seats is unreasonable and contrary to the existing code. Current code requires parking at the ratio of 1 per 350 square feet. Uniformly, screening rooms have been treated by the City as ancillary uses to the business and require only 1 space per 350 feet. "It should be noted that the City's practice has been to treat these facilities (screening rooms) as ancillary uses to the building as the seating capacity is limited. The facilities provide parking at a ratio of 1 space per 350 feet and are not treated as a public theater use." [Staff Report for the Planning Commission Hearing of October 25, 2007, pg. 14.] In order to satisfy any concerns of the Planning Commission, the Applicant voluntarily agreed to the following restrictive conditions on the screening room and terrace, which are substantially more restrictive than those suggested by staff and the Draft EIR:

"The use of the screening room and terrace shall be subject to the following limitations:

1. The screening room and terrace shall be used by William Morris Agency (or a successor tenant) as an ancillary use of William Morris Agency's business. The screening room and terrace shall not be open to the general public, except through a City approved special event permit.
2. The screening room and terrace shall be limited to business purposes only and shall only be used by tenants of the building and business associates. "Business associates" shall mean persons who have a business purpose for being in the building, have a business relationship with William Morris Agency (or a successor tenant), or persons invited by William Morris Agency (or a successor tenant) as part of its business.
3. If there is an event where more than 28 off-site people are using the screening room or terrace at one time, valet parking shall be provided, if needed, to create up to 38 additional parking spaces in the aisles of the parking structure to accommodate the off-site people using the screening room or terrace.
4. No exterior signage regarding the screening room or terrace shall be permitted.
5. Maximum seating capacity for the screening room shall be as set forth in the final plans for the project.
6. "Special Event" is defined as an event that is not part of the normal business activity of the William Morris Agency (or a successor tenant) that is attended by off-site people. The term "Special Event" shall not include a use that is part of the functioning of the business or an event primarily for the employees or business associates of William Morris Agency (or a successor tenant). Special events planned for the screening room or terrace shall require a special events permit issued by the City or approved by the Community Development Director.
7. No advertising regarding the screening room shall be permitted in reference to a special event, except as provided in the special events permit.
8. During any event, any refreshments that may be served shall be provided at no charge to the patrons of the event.
9. In the event the use of the screening room or terrace does not conform to the conditions set forth herein so as to adversely affect the public safety, health, or welfare, the Director of Community Development may impose conditions limiting the use of the screening

room or terrace to eliminate the adverse effect on the public safety, health, or welfare.”

- F. BASIS OF APPEAL ON ALLOWING PUBLIC PARKING AT 6 P.M. RATHER THAN 7 P.M.:** The William Morris Agency’s normal hours of operation are 9:30 a.m. to 6:30 p.m. Many employees work longer and stay after 6:30 p.m. The Applicant has agreed to provide public parking in the evening and on week-ends at the same rates and conditions as charged in City lots. The Applicant believes the public parking in the evenings should commence at 7 p.m. to allow William Morris employees to leave the building, to insure there are spaces available to the public, and to prevent traffic jams in the garage. It is unreasonable to not allow William Morris the full use of the garage during its normal working hours and a reasonable time thereafter for its employees to vacate the garage.

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The Applicant will move forward with the project based on either the design of the loading dock as proposed by the Applicant’s architect Gensler or the design conditioned by the Planning Commission. The Applicant appeals from the condition of the Planning Commission requiring a hybrid parallel/perpendicular loading dock because the Applicant believes that the design required by the Planning Commission is inferior to the design proposed by Gensler. Specifically, vans, which are the most common and most frequent type of delivery truck, are required to pull forward into a perpendicular loading zone and then after the deliver back out into the alley. Backing out at a right angle to the alley is much more difficult and dangerous than the Gensler design which would have the van pull forward into the alley at a 45% angle. Similarly, while there are two loading areas for trucks parallel to the building, there is no elevated dock to allow trucks to unload at the level of the cargo bay. Further, given the limited space, it would be difficult for two trucks to unload at the same time. Simply put, the design mandated by the Planning Commission is inferior to that designed by Gensler.

- 7. PROHIBITING LEASING OF PARKING TO THE GENERAL PUBLIC: APPLICANT APPEALS FROM THE CONDITION OF THE PLANNING COMMISSION PROHIBITING LEASING OF PARKING SPACES TO THE**

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RESERVATION OF RIGHTS: THE APPLICANT RESERVES THE RIGHT TO SUPPLEMENT THIS APPEAL UPON REVIEW OF THE FINAL DRAFT OF THE RESOLUTIONS OF THE PLANNING COMMISSION.

ATTACHMENT 5

Planning Commission Resolutions

- **Planning Commission Resolution Certifying the Environmental Impact Report including Adopting Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program**
- **Planning Commission Resolution Recommending Approval of a Request for a General Plan Amendment and to Create an Entertainment Office Planned Development Overlay Zone (E-O-PD) including the Draft Ordinance Creating the Entertainment Office Planned Development Overlay Zone (E-O-PD)**
- **Planning Commission Resolution Recommending Approval for a Development Agreement between the City of Beverly Hills and Beverly Wilshire Owner, LP, including Draft Development Agreement and Deal Points**
- **Planning Commission Resolution Approving a Planned Development and Lot Line Adjustment**

RESOLUTION NO. 1487

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE 231-265 NORTH BEVERLY DRIVE PROJECT; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS; AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM.

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

Section 1. Formal applications were submitted by Mark Eggerman, on behalf of Beverly Wilshire Owner, LP (the "Applicant") to allow construction of an office and retail building with subterranean parking (the "Project"), totaling 208,100 square feet. A Draft Environmental Impact Report (the "Draft EIR") dated August 2007 was prepared for the Project. In accordance with the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code §21000 *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. §15000 *et seq.*) promulgated with respect thereto, the City analyzed the Project's potential impacts on the environment.

Section 2. Pursuant to Section 15063 of the Guidelines, the City prepared an Initial Environmental Study (the "Initial Study") for the Project. The Initial Study concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources and governmental services, including land use, aesthetics, population and employment, traffic, parking, air quality, noise, geology and soils, hydrology, hazardous materials, and public services and utilities.

Section 3. Pursuant to Guidelines Sections 15064 and 15081, and based upon information contained in the Initial Study, the City ordered the preparation of an environmental impact report ("EIR") for the Project. The City contracted with various independent consultants for the preparation of the technical studies for the EIR and on August 11, 2006, prepared and sent a Notice of Preparation of the EIR to responsible, trustee, and other interested agencies and persons in accordance with Guidelines Section 15082(a). In response to design modifications and an increase of 5,000 square feet in the proposed building size, a Revised Notice of Preparation was sent to the same list of responsible, trustee, and other interested agencies and persons on February 16, 2007.

Section 4. The City completed the Draft EIR, together with those certain technical appendices (the "Appendices"), on July 10, 2007. The City circulated the Draft EIR and the Appendices to the public and other interested parties between July 10, 2007 and August 23, 2007, for a 45-day comment period, consistent with the 45-day public comment period required by Guidelines Sections 15087(c) and 15105. The Planning Commission held duly noticed public hearings on July 25, 2007, August 9, 2007, September 5, 2007, September 6, 2007, September 27, 2007, October 11, 2007, and October 25, 2007 (the "PC Hearings"), at which times it received oral and documentary evidence from the public regarding the Project and the Draft EIR. During the public comment period on the Draft EIR, the City received eight (8) written comment letters regarding the adequacy of the Draft EIR.

Section 5. As a result of the comments received during the public comment period and the PC Hearings, as well as concerns raised by the Commission itself, the Planning Commission recommended various modifications to the Project. Accordingly, the City

augmented the traffic technical analysis of the Draft EIR to fully analyze the potential environmental consequences associated with the modifications recommended by the Planning Commission or otherwise raised during the PC Hearings.

~~Section 6. The City prepared written responses to all comments received on~~
the Draft EIR and made revisions to the Draft EIR, as appropriate, in response to those comments. The City completed the written responses to comments on the Draft EIR on October 17, 2007. Because no public agencies commented on the environmental aspects of the Draft EIR, Public Resources Code Section 21092.5 is inapplicable to this Project. The written responses to comments were made available for public review in the City Clerk's Office, the Department of Community Development, and the Beverly Hills Public Library. After reviewing the responses to comments and the revisions to the Draft EIR, the City concluded that the information and issues raised by the comments, the responses thereto and the additional analysis in response to Project revisions did not constitute new information requiring recirculation of the Draft EIR.

Section 7. The Final Environmental Impact Report (the "Final EIR") is comprised of the Draft EIR, including Appendices, dated July 10, 2007; the Comments and Response to Comments on the Draft EIR, including errata pages; and the Mitigation Monitoring and Reporting Program.

Section 8. The findings made in this Resolution are based upon the information and evidence set forth in the EIR and upon other substantial evidence which has been presented at the PC Hearings and in the record of the proceedings. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials constitute the

record of proceedings on which this Resolution is based are on file for public examination during normal business hours in the Department of Community Development and with the Director of Community Development, who serves as the custodian of these records. Each of the those documents is incorporated herein by reference.

Section 9. The Planning Commission finds that agencies and interested members of the public have been afforded ample notice and opportunity to comment on the EIR.

Section 10. The Planning Commission has independently reviewed and considered the contents of the Final EIR prior to deciding whether to approve the Project and recommend approval of legislative components of the Project to the City Council. The Planning Commission hereby finds that the Final EIR reflects the independent judgment of the City and the Planning Commission. The Planning Commission further finds that the additional information provided in the staff reports, in the responses to comments received after circulation of the Draft EIR, and in the evidence presented in written and oral testimony presented at the PC Hearings, does not constitute new information requiring recirculation of the EIR under CEQA. None of the information presented to the Planning Commission has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the Project or a feasible mitigation measure or alternative that the City has declined to implement.

Section 11. The Planning Commission finds that the comments regarding the Draft EIR and the responses to those comments have been received by the City; that the Planning Commission received public testimony regarding the adequacy of the EIR; and that

the Planning Commission, as a decision-making body for the lead agency, has reviewed and considered all such documents and testimony prior to acting on the Project. Pursuant to Guidelines Section 15090, the Planning Commission hereby certifies that the Final EIR has been completed in compliance with CEQA.

Section 12. Based upon the Final EIR and the record before the Planning Commission, the Planning Commission finds that the Project will not cause any significant environmental impacts after mitigation except in the areas of traffic; cumulative traffic; air quality; cumulative air quality from construction emissions; and cumulative solid waste impacts. Explanations for why the impacts other than traffic, air quality, and solid waste were found to be less than significant are contained in the Environmental Findings set forth in Exhibit A to this Resolution and more fully described in the EIR and the Initial Study which is included as Appendix A to the EIR.

Section 13. Based upon the Final EIR and record before the Planning Commission, the Planning Commission finds that the Project will create significant unavoidable impacts to traffic, specifically at three intersections for forecast year 2009: (1) North Santa Monica Boulevard/Wilshire Boulevard, (2) Rodeo Drive/Wilshire Boulevard, and (3) Beverly Drive/Wilshire Boulevard. Additionally the Final EIR concludes that the Project will have impacts to a Los Angeles County Congestion Management Program ("CMP") intersection at North Santa Monica Boulevard/Wilshire Boulevard, as well as cumulative traffic impacts. These significant impacts are further described in the "Findings and Facts in support of Findings," set forth in Exhibit A, which is attached hereto and incorporated herein by this reference, and in the Final EIR.

Section 14. Based upon the EIR and record before the Planning Commission, the Planning Commission finds that the Project will create significant unavoidable short-term project impacts to air quality as well as cumulative impacts from construction activity emissions generated by this and other projects. These significant impacts are further described in the "Findings and Facts in Support of Findings" set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and in the Final EIR.

Section 15. Based upon the EIR and record before the Planning Commission, the Planning Commission finds that the Project will create significant unavoidable cumulative impacts to solid waste. These significant impacts are further described in the "Findings and Facts in Support of Findings" set forth in Exhibit A, which is attached hereto and incorporated herein by reference, and in the Final EIR.

Section 16. The EIR describes, and the Planning Commission has fully considered a reasonable range of alternatives to the Project. These alternatives include "Alternative One: No Project/No Development Alternative," "Alternative Two: Code Conforming Alternative," "Alternative Three: Office and Retail Alternative," and "Alternative Four: Office Alternative." With respect to each of the alternatives analyzed in the EIR, the Planning Commission hereby makes the findings set forth in Exhibit A, which is attached hereto and incorporated by reference, and in the Final EIR.

Section 17. For the traffic, air quality, and solid waste impacts identified in the Final EIR as "significant and unavoidable," the Planning Commission hereby adopts the "Statement of Overriding Considerations" as set forth in Exhibit B, which is attached hereto and incorporated herein by reference. The Planning Commission finds that each of the

overriding benefits, by itself, would justify proceeding with the Project despite and significant unavoidable impacts identified in the Final EIR or alleged to be significant in the record of proceedings.

~~Section 18.~~ The Planning Commission hereby adopts the mitigation measures set forth in the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit C and incorporated herein by this reference, and imposes each mitigation measure as a condition of Project approval. The Planning Commission further adopts the "Mitigation Monitoring and Reporting Program," attached hereto and incorporated herein by reference. City staff shall implement and monitor the mitigation measures as described in Exhibit C.

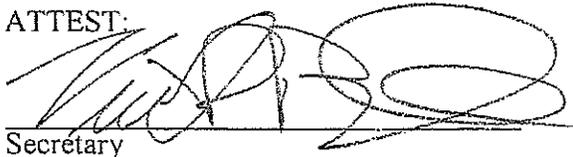
Section 19. The Secretary shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered into the Book of Resolutions of the Planning Commission of the City.

Adopted: October 25, 2007



Noah D. Furie
Chair of the Planning Commission
of the City of Beverly Hills, California

ATTEST:


Secretary

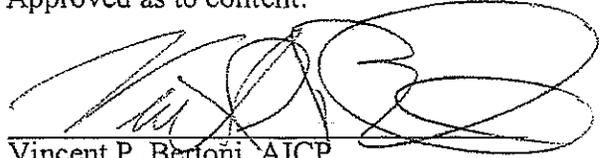
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Approved as to form:

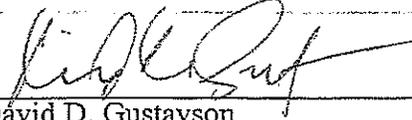


David M. Snow
Assistant City Attorney

Approved as to content:



Vincent P. Bertoni, AICP
Director of Community Development



David D. Gustavson
Director of Public Works & Transportation

EXHIBIT A

Findings and Facts in Support of Findings

I. Introduction.

The California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (the "Guidelines") provide that no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that will occur if a project is approved or carried out unless the public agency makes one or more of the following findings:

A. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the EIR.

B. Such changes or alterations are within the responsibility of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

C. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.¹

Pursuant to the requirements of CEQA, the Planning Commission hereby makes the following environmental findings in connection with the proposed construction of the office and retail building with subterranean parking totaling 208,100 square feet (the "Project"), as more fully described in the EIR and as approved by the Planning Commission. These findings are based upon evidence presented in the record of these proceedings, both written and oral, the EIR and all of its contents, the Comments and Responses to Comments on the Draft EIR, and staff and consultants' reports presented to the Planning Commission.

II. Project Objectives.

As set forth in the EIR, objectives which the Project Applicant seeks to achieve with this Project (the "Project Objectives") are as follows:

A. Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills:

1. To attract and provide additional opportunities for quality entertainment-related businesses that would not otherwise be encouraged by the underlying zone, in order to maintain and strengthen the economic base of the City.

¹ Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15091.

2. To provide for an additional building project for single and multi-tenant entertainment-related business uses not currently available in the City.

3. To attract and provide high-class retail/commercial space and eating facilities.

4. To provide for the enhancement of employment and commerce within the project area on an underdeveloped site.

B. Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.

C. Build a subterranean parking structure:

1. To place parking below grade to allow for the most efficient use of above-grade property in the project area.

2. To provide sufficient and convenient parking for site uses.

3. To allocate a specific number of parking spaces for use by the Bank of America building, in order to accommodate existing covenanted parking obligations for the Bank of America building.

D. Build a project that provides pedestrian-friendly amenities at the street level.

E. Build a project that is harmonious in scale and architectural style with the surrounding area.

F. Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

III. Effects Determined to be Less Than Significant/No Impact in the Initial Study/Notice of Preparation.

The City of Beverly Hills conducted an Initial Study in August 2006 to determine significant effects of the project. In the course of this evaluation, certain impacts of the Project were found to be less than significant due to the inability of a project of this scope to create such impacts or the absence of project characteristics producing effects of this type. The following effects were determined not to be significant for the reasons set forth in the Initial Study, and were not analyzed in the Draft EIR, (refer to Appendix A, Initial Study/Notice of Preparation, in the Draft EIR).

A. AESTHETICS

1. The Project will not have a substantial adverse effect on a scenic vista.

2. The Project will not substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.

B. AGRICULTURAL RESOURCES

1. The Project will not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.

2. The Project will not conflict with existing zoning for agricultural use, or a Williamson Act Contract.

3. The Project does not involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use.

C. BIOLOGICAL RESOURCES

1. The Project will not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

2. The Project will not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

3. The Project will not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.

4. The Project will not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.

5. The Project will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

6. The Project will not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

D. CULTURAL RESOURCES

1. The Project will not cause a substantial adverse change in the significance of an historical resource as defined in Section 15064.5 of the Guidelines.
2. The Project will not cause substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5 of the Guidelines.
3. The Project will not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.
4. The Project will not disturb any human remains, including those interred outside of formal cemeteries.

E. GEOLOGY AND SOILS

1. The Project will not rupture a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area, or based on other substantial evidence of a known fault.
2. The Project will not cause landslides.
3. The Project will not have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.

F. HAZARDOUS AND HAZARDOUS MATERIALS

1. The Project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
2. The Project will not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.
3. The Project will not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.
4. The Project is not located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would not create a significant hazard to the public or the environment.
5. The Project is not located within an airport land use plan or, where such plan has not been adopted, within two miles of a public airport or public use airport, and thus the Project would not result in a safety hazard for people residing or working in the Project area.

6. The Project is not located within the vicinity of a private airstrip, and thus would not result in a safety hazard for people residing or working in the Project area.

7. The Project will not expose people or structures to a significant risk of loss, injury or death involving wildland fires. Further, the Project Site is not adjacent to wildlands or where residences are intermixed with wildlands.

G. HYDROLOGY AND WATER QUALITY

1. The Project will not substantially alter the existing drainage of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff which would result in flooding on- or off-site.

2. The Project will not create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.

3. The Project will not place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map.

4. The Project will not place within a 100-year flood hazard area structures which would impede or redirect flood flows.

5. The Project will not cause or be impacted by inundation by seiche, tsunami, or mudflows.

H. LAND USE

1. The Project will not physically divide an established community.

2. The Project will not conflict with any applicable habitat conservation plan or natural community conservation plan because the site is not located within any such plan.

I. MINERAL RESOURCES

1. The Project will not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state.

2. The Project will not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan.

J. NOISE

1. The Project is not located within an airport land use plan or within two miles of a public airport or public use airport, and thus would not expose people residing or working in the Project area to excessive noise levels from airport activities.

2. The Project is not located within the vicinity of a private airstrip, and thus would not expose people residing or working in the Project area to excessive noise levels from airstrip activities.

K. POPULATION AND HOUSING

1. The Project will not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere because no housing exists on the Project site.

2. The Project will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere, because no housing exists on the Project site.

L. PUBLIC SERVICES

1. The Project will not result in adverse impacts on schools.

2. The Project will not result in adverse impacts on parks.

M. RECREATION

1. The Project will not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated.

2. The Project does not include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment.

N. TRANSPORTATION/TRAFFIC

1. The Project will not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.

2. The Project will not result in inadequate emergency access.

3. The Project will not conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

O. UTILITIES AND SERVICE SYSTEMS

1. The Project will not require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

IV. Effects Determined to be Less Than Significant Without Mitigation in the EIR

The EIR found that the proposed Project would have a less than significant impact without the imposition of mitigation on a number of environmental topic areas listed below. A less than significant environmental impact determination was made for each of the following topic areas listed below, based on the more expansive discussions contained in the EIR.

A. LAND USE

1. The proposed Project is not inconsistent with the applicable goals and policies of the City of Beverly Hills General Plan.
2. The proposed Project does not conflict with the City of Beverly Hills Zoning Code.
3. Development of the proposed Project, in conjunction with other related cumulative projects, would not result in cumulatively considerable land use and planning impacts.

B. POPULATION AND EMPLOYMENT

1. Project implementation would not induce significant population growth in the City.
2. Project implementation would not induce significant employment growth in the City.
3. Development of the proposed Project, in conjunction with other related cumulative projects, would not result in significant cumulative population and employment impacts.

C. AESTHETICS, LIGHT, AND GLARE

1. Development of the proposed Project would not substantially degrade the existing visual character or quality of the site and its surroundings.
2. Development of the proposed Project would not introduce new sources of light and glare into the Project area, such as vehicle headlights on adjacent roadways and parking areas, interior and exterior building lights, and incremental degradation of nighttime atmospheric conditions.

3. Development of the proposed Project would not introduce significant shade and shadow effects onto shadow sensitive uses within the Project area. Construction of the Project in the vicinity of the Beverly Hills Gardens (the "Gardens") and Montage Hotel project across Beverly Drive to the east, cumulative impacts due to shading and shadows from the proposed Project have the potential to be significant. Specifically, the Gardens is a shadow-sensitive recreational land use that would experience shade from the Montage Hotel (which is presently under construction) during morning hours, and from the proposed Project during afternoon hours. Although the cumulative shade and shadow impacts on the Gardens would affect the duration of direct sunlight during various times of the year, direct sunlight in the Gardens would not be obstructed during a substantial portion of the day, and thus are considered to be less than significant.

D. TRAFFIC

1. Construction activities associated with the proposed Project would not result in significant adverse impacts to the local traffic system except as discussed in Sections V and VI below.

2. Development of the proposed Project would not result in significant public transit impacts.

3. Development of the proposed Project would not result in significant impacts to weekday residential street traffic volumes for the eleven residential street segments studied in the EIR, as set forth in Table 5.4-29 in the Draft EIR.

E. SITE ACCESS AND CIRCULATION

1. The design of the proposed Project's parking structure would not result in adverse impacts related to garage access.

2. The design and operation of the proposed Project's parking structure would not result in adverse impacts related to the function of valet parking operations.

3. The design and operation of the proposed Project's truck loading docks would not result in adverse impacts related to loading dock operations or adequacy of alley access.

F. PARKING SUPPLY AND DEMAND

1. Development of the proposed Project would not result in parking space types that could be inconsistent with the proposed Overlay Zone.

2. Construction of the proposed Project would not create a demand for parking that exceeds available parking supply in the study area during weekday and/or weekend conditions.

3. Operation of the proposed Project would not create a demand for parking that exceeds off-site parking supply during weekday and/or weekend conditions.

4. Development of the proposed Project, in conjunction with other related cumulative projects, would not create a demand for parking that exceeds available parking.

G. AIR QUALITY

1. Year 2009 air quality emissions would not result in an overall increase in the local and regional pollutant load due to direct impacts from vehicle emissions and direct impacts from electricity and natural gas consumption.

2. Localized operational emissions would not result in an overall increase in the local pollutant load due to indirect impacts from electricity and natural gas consumption.

3. Localized carbon monoxide hot-spots would not result due to increases in localized traffic volumes.

4. The proposed Project would not conflict with the 2003 Air Quality Management Plan.

5. Regional air quality emissions resulting from the operation of the proposed Project and other related cumulative projects would not significantly impact existing regional air quality levels on a cumulative basis.

H. NOISE

1. Grading and construction associated with the proposed Project would not result in temporary vibration impacts to nearby noise sensitive receptors.

2. Traffic generated by the proposed Project would not contribute to existing traffic noise levels exceeding the City's established standards.

3. The proposed Project would not result in noise levels in excess of the City of Beverly Hills noise standards.

4. The proposed Project would not result in an increase in ambient noise levels due to the generation of on-site noise.

5. Development associated with the proposed Project and other related cumulative development would not result in significant cumulative noise impacts from mobile noise and operational activities.

I. GEOLOGY AND SOILS

1. Development associated with the proposed Project would not result in substantial wind or water soil erosion or the loss of topsoil, either on- or off-site.

2. Development associated with the proposed Project, in conjunction with other related cumulative projects, would not result in cumulatively considerable geology, soils, and seismicity impacts.

J. HYDROLOGY, DRAINAGE, AND WATER QUALITY

1. Development associated with the proposed Project would not result in adverse groundwater quality impacts.
2. Development associated with the proposed Project, in conjunction with other related cumulative projects, would not contribute to cumulative hydrology and water quality impacts.

K. HAZARDS AND HAZARDOUS MATERIALS

1. Development of the proposed Project would not result in potentially significant risks to people or the environment from lead in drinking water.
2. Development of the proposed Project would not result in potentially significant risks to people or the environment from listed hazardous materials sites.
3. Development of the proposed Project would not conflict with, or otherwise adversely affect, adopted emergency response or evacuation plans.

L. WATER

1. Development of the proposed Project would not result in an increased demand for water service.
2. Operation of the proposed Project would not result in an increased demand for water service.
3. Development of the proposed Project, in conjunction with other related cumulative projects, would not result in significant cumulative impacts to water supplies and distribution infrastructure.

M. WASTEWATER

1. Construction of the proposed Project would not generate wastewater that could exceed the capacity of the conveyance and treatment facilities that serve the Project area.
2. Operation of the proposed Project would not generate wastewater that could exceed the capacity of conveyance and treatment facilities that serve the Project area.
3. Development of the proposed Project, in conjunction with other related cumulative projects, would not result in significant cumulative impacts to wastewater conveyance and treatment capacity.

N. POLICE PROTECTION

1. Development of the proposed Project, in conjunction with other related cumulative projects, would not result in significant cumulative impacts to police protection services and facilities.

V. Potentially Significant Environmental Impacts Determined to be Mitigated to a Less Than Significant Level.

The EIR identified the potential for the Project to cause significant environmental impacts in the areas of aesthetics, light, and glare; traffic; site access and circulation; parking supply and demand; parking management during construction; parking management during operation; noise; geology and soils; hydrology and water quality; hazards and hazardous materials; solid waste; fire protection; and police protection. With the exception of the specific impacts to traffic, cumulative traffic, air quality and cumulative air quality from construction activities, and cumulative solid waste, as discussed in Article VI below, measures were identified that would mitigate all of these impacts to a less than significant level.

The Planning Commission finds that the feasible mitigation measures for the Project identified in the Final EIR, and would reduce the Project's impacts to a less than significant level, with the exception of those unmitigable impacts discussed in Article VI below. The Planning Commission adopts all of the feasible mitigation measures for the Project described in the Final EIR as conditions of approval of the Project and incorporates those into the Project.

A. AESTHETICS, LIGHT, AND GLARE

The Project's potential in regard to aesthetics that can be mitigated or are otherwise less than significant are discussed in Section 5.3, Aesthetics, Light, and Glare, of the Draft EIR. Identified impacts include short-term construction, and cumulative aesthetic, light, and glare impacts.

1. Short-Term Construction Impacts

The EIR analyzes in detail the potential of the Project's construction activities to impact the visual character of the Project site and the surrounding area and to introduce new sources of light and glare. Development of the proposed Project, including potential night-time construction, security lighting, staging of construction materials and construction activities could result in temporary alterations in the visual character of the Project site and the surrounding area, which consists of existing commercial, retail, and office land uses, as well as residential condominium uses under construction in conjunction with the Montage Hotel project.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant short-term construction related environmental effect as

identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

AES1 Construction equipment staging areas shall use appropriate screening (i.e., temporary fencing with opaque material) to buffer views of construction equipment and material, when feasible. Staging locations shall be indicated on Final Development Plans and Grading Plans.

AES2 All construction-related lighting shall include shielding in order to direct lighting down and away from adjacent hotel and residential uses and consist of the minimal wattage necessary to provide safety at the construction site. A construction safety lighting plan shall be submitted to the City for review concurrent with Grading Permit application.

(b) Facts in Support of Findings

The potential aesthetic impacts from short-term construction related activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR. Demolition operations, grading, construction, construction material and equipment storage, and truck traffic visible during the demolition and construction process each could be visible from areas adjacent to the Project site and thus have the potential to impact the aesthetic character of the area. However, incorporation of appropriate screening as required by mitigation measure AES1, reduces potential impacts to a less than significant level. The screening in conjunction with the shielding of lighting sources, the use of the minimal lighting levels necessary to maintain safety on the Project site, and adherence to the construction safety lighting plan required by mitigation measure AES2 will have the effect of reducing light and glare that might otherwise emanate from the Project site during construction related security lighting. With the implementation of these mitigation measures, the Project's construction related aesthetic impacts will be less than significant.

2. Cumulative Aesthetic Impacts

Development of the proposed Project, in conjunction with related cumulative projects, could result in significant cumulative aesthetic, light, and glare impacts.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the mitigation measures AES1 and AES2, as set forth in Section III.A.1(a) above, imposed upon the Project mitigate impacts to less than significant levels.

(b) Facts in Support of Findings

The proposed Project would introduce greater intensity of lighting in the area than the current uses consisting of ground floor retail/commercial space and parking structure above. This incremental impact in conjunction with other cumulative projects has the potential to result in cumulatively significant impacts in the vicinity of the Project site. However, adherence to the

requirements of the City's General Plan and municipal codes, including the City's architectural review process ensures that the potentially significant cumulative impacts will be mitigated to a less than significant level. Impacts of individual development project are often mitigated, as in this case, through careful site design, avoidance of significant visual features, the use of building materials that are consistent with the general character of the area, landscape design and proper lighting techniques to direct light on-site and away from adjacent properties. Further, compliance with the construction level mitigation measures will ensure that cumulative construction impacts will be reduced to less than significant levels.

B. TRAFFIC

The Project's potential traffic impacts that can be mitigated or are otherwise less than significant are discussed in *Section 5.4, Traffic*, of the Draft EIR. The traffic impacts that are reduced to less than significant levels include weekday and weekend impacts to residential streets and intersections, and impacts to Los Angeles County Congestion Management Program facilities. These mitigable impacts are discussed further below, and the unmitigable impacts are discussed in Section VI below.

1. 2009 With Project - Weekday and Weekend Conditions of Local Traffic System

Development of the proposed Project could result in significant adverse impacts to the local traffic system under forecast year 2009 **weekday and weekend** conditions that can be mitigated for the following intersections:

- North Santa Monica Boulevard/Wilshire Boulevard (Weekday AM and PM peak hour; Weekend Mid-day)
- South Santa Monica Boulevard/Wilshire Boulevard (Weekday AM, PM and Mid-Day peak hour)
- Beverly Drive/North Santa Monica Boulevard (Weekday AM, Mid-Day, PM, and Weekend Mid-day peak hours)
- Beverly Drive/South Santa Monica Boulevard (Weekday AM, Mid-Day, and PM peak hours, and Weekend Mid-day peak hours)
- Beverly Drive/Dayton Way (Weekday AM, Mid-Day, and PM peak hours and Weekend Mid-day)

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. First, the Project Applicant, at the request of the Planning Commission, incorporated a second point of access to compliment the initially proposed sole access point from Dayton Way. The Planning Commission finds that this revision had the result of reducing significant impacts to a

greater degree than did the initially proposed Project, including elimination of a potentially significant impact at Rodeo Drive and Dayton Way.. Further, the following mitigation measures imposed upon the Project mitigate impacts to the above listed intersections to less than significant levels:

TR1 South Santa Monica Boulevard/Wilshire Boulevard – The Project Applicant shall make a fair share contribution to widen the eastbound Wilshire Boulevard approach at South Santa Monica Boulevard from two through lanes and one shared through/right-turn lane to consist of three through lanes and one dedicated right-turn lane.

Implementation of this mitigation measure requires narrowing and relocation of the existing sidewalk and relocation of utilities adjacent to the existing Starbucks along eastbound Wilshire Boulevard.

The Planning Commission finds that this mitigation is feasible.

TR2 Beverly Drive/North Santa Monica Boulevard – The Project Applicant shall make a fair share contribution to widen the eastbound North Santa Monica Boulevard approach at Beverly Drive from one dedicated left-turn lane, one through lane and one shared through/right-turn lane to consist of one dedicated left-turn lane, two through lanes and one dedicated right-turn lane.

Implementation of this mitigation measure require narrowing of the existing landscaped area located at the southwest corner of the intersection, adjacent to the existing City-operated parking facility and relocation of existing curb, utilities, and signal post.

The Planning Commission finds that this mitigation is feasible.

TR3 Beverly Drive/South Santa Monica Boulevard – The Project Applicant shall make a fair share contribution to widen the southbound Beverly Drive approach at South Santa Monica Boulevard from one through lane and one shared through/right-turn lane to consist of two through lanes and one dedicated right-turn lane.

Implementation of this mitigation measure requires restriping of Beverly Drive between North Santa Monica Boulevard and South Santa Monica Boulevard and tapering of the southbound Beverly Drive curb at South Santa Monica Boulevard.

The Planning Commission finds that this mitigation is feasible.

TR4 Beverly Drive/Dayton Way – At the northeastern corner of the Project site, the Project Applicant shall restripe (by removing the parking lane) the eastbound Dayton Way approach at Beverly Drive from one shared left-turn/through lane and one shared through/right-turn lane to consist of one shared left-turn/through lane, one through lane, and one dedicated right-turn lane.

The Planning Commission finds that this mitigation is feasible.

TR5 North Santa Monica Boulevard/Wilshire Boulevard – The project applicant shall make a fair share contribution to re-stripe the southbound North Santa Monica Boulevard approach at Wilshire Boulevard from two through lanes, one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing.

Modification to the westbound Wilshire Boulevard approach would require relocation of the existing sidewalk and utilities adjacent to the existing Budget Car & Truck Rental surface lot along Wilshire Boulevard, thus impacting a portion of the existing Budget Car & Truck Rental surface lot. Therefore, widening of the westbound Wilshire Boulevard approach at North Santa Monica Boulevard would require acquisition of private property, and therefore is considered infeasible, as discussed in Section VI below. Thus the Planning Commission finds that only the portion of this mitigation measure that consists of restriping the southbound North Santa Monica Boulevard approach at Wilshire Boulevard is feasible. Implementation of the feasible aspect of mitigation measure TR5 mitigates impacts during the Weekday AM and PM peak hour; Weekend Mid-day, but not Weekday mid-day.

(b) Facts in Support of Findings

During the Planning Commission's consideration of the proposed Project, and at the request of the Commission, the Project Applicant revised the Project to provide two points of access to the parking structure rather than the single point of access from Dayton Way as proposed in the initial Project design. In response to the revised access plan, the traffic study for the proposed Project was updated by the City's environmental consultant by a memorandum dated September 20, 2007. The update memorandum analyzed the Project as revised to include a second access point (from Beverly Drive, and which will be accessible to Bank of America and William Morris Agency pass-holders) in addition to the initially proposed access point from Dayton Way. The City plans improvements (which are expected to be completed prior to occupancy of the proposed Project) to widen the eastbound Wilshire Boulevard approach at North Santa Monica Boulevard from one left-turn lane, one shared left-turn/through lane, one through lane, and one shared through/right lane to consist of two left-turn lanes, two through lanes, and one shared through/right-turn lane, and the prohibition of eastbound Wilshire Boulevard left-turn movement at South Santa Monica Boulevard. These improvements in conjunction with the feasible mitigation will reduce the impacts at the above intersection to less than significant levels.

In addition to the City planned improvements, implementation of the improvements identified by mitigation measure TR1 will mitigate impacts at the intersection of South Santa Monica Boulevard and Wilshire Boulevard to a less than significant level. The Project Applicant is required to pay its fair share of the cost of the improvements, thereafter the City will oversee implementation of the necessary improvements.

Implementation of the improvements identified by mitigation measure TR2 will mitigate the impacts at the intersection of Beverly Drive/North Santa Monica Boulevard to a less than

significant level, with the exception of during the Weekday Mid-day peak period, which is discussed in more detail in Section VI below. The Project Applicant is required to pay its fair share of the improvement costs, and thereafter the City will oversee implementation of the necessary improvements.

Implementation of the improvements identified by mitigation measure TR3 will mitigate the impacts at the intersection of Beverly Drive/South Santa Monica Boulevard to a less than significant level. The Project Applicant is required to pay its fair share of the improvement cost, and thereafter the City will oversee implementation of the necessary improvements.

Implementation of the improvements identified by mitigation measure TR4 will mitigate the impacts at the intersection of Beverly Drive/Dayton Way to a less than significant level. The Project Applicant is required to pay its fair share of the improvement cost, and thereafter the City will oversee implementation of the necessary improvements. The City expects that the improvements called for by TR4 will be completed prior to the occupancy of the proposed building.

Mitigation Measure TR5 is deemed only partially feasible. Measure TR5, as set forth in the traffic analysis, contains two components – the first deals with re-striping the southbound North Santa Monica approach to Wilshire Boulevard from two through lanes; one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing. Restriping the lanes can be accommodated within the existing right-of-way, and thus is feasible. The Project Applicant is required to pay its fair share of the cost of the improvements, thereafter the City will oversee implementation of the restriping. The City expects that the restriping improvements called for by TR5 will be completed prior to the occupancy of the proposed building. The restriping component of measure TR5 reduces impacts at the intersection to less than significant levels during the AM and PM peaks, but not during the Weekday Mid-day peak.

The second component of mitigation measure TR5 involves actual widening of the westbound Wilshire Boulevard approach to North Santa Monica Boulevard from one dedicated left turn lane, two through lanes, and one shared through/right-turn lane to consist of one dedicated left-turn lane, three through lanes and one dedicated right-turn lane. However, implementation of this component of measure TR5 would require the acquisition of private property in order to obtain the necessary right-of-way width to accommodate the reconfigured intersection. The necessity of acquiring property already developed and in use for right-of-way renders this aspect of mitigation measure TR5 infeasible, as discussed more fully in Section VI below.

The potential impacts from weekday and weekend impacts to residential streets and intersections in the forecast year 2009, although not deemed significant, will benefit from the mitigation measures identified in the Draft EIR.

2. Congestion Management Program Impacts

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or

substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the feasible portion of mitigation measure TR5 would reduce impacts during the AM, PM and Weekend Mid-day peak-periods, to less than significant, although the impact would remain significant during the Weekday Mid-day peak period, as discussed more fully in Section VI below.

(b) Facts in Support of Findings

The Congestion Management Program intersection for purposes of this study is also an intersection study for Project level impacts. That intersection is North Santa Monica/Wilshire Boulevard. Implementation of the feasible restriping improvements at this intersection (which is already required by mitigation measure TR5) improves the operation of the intersection and reduces potentially significant impacts to less than significant impacts during the Weekday AM and PM peaks, as well as the Weekend Mid-day peak, although the Weekday Mid-Day peak will remain significant, as discussed more fully in Section VI below.

The potential impacts to Los Angeles County Congestion Management Program facilities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

3. Cumulative Impacts

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, feasible mitigation measures TR1 through TR5 fully mitigate a number of otherwise significant cumulative impacts of the Project and the cumulative projects.

(b) Facts in Support of Findings

The proposed Project's impacts, when other cumulative projects are taken into account, are cumulatively considerable for the following intersections:

- North Santa Monica Boulevard/Wilshire Boulevard (Weekday AM, PM, and Weekend Mid-day)
- South Santa Monica Boulevard/Wilshire Boulevard (Weekday AM, Mid-day, and PM; Weekend Mid-day)
- Rodeo Drive/North Santa Monica Boulevard (Weekday AM, Mid-day and PM; Weekend Mid-day)
- Beverly Drive/South Santa Monica Boulevard (Weekday AM, Mid-day, and PM; Weekend Mid-day)
- Beverly Drive/Dayton Way (Weekday AM, Mid-day, and PM; Weekend Mid-day)

However, implementation of mitigation measures TR1 through TR4, and the feasible portion of mitigation measure TR5, reduce the cumulative impacts at these intersections to less than significant levels.

C. SITE ACCESS AND CIRCULATION

The Project's potential in regard to site access and circulation that can be mitigated or are otherwise less than significant are discussed in Section 5.5, Site Access and Circulation, of the Draft EIR. Identified impacts include access restrictions during construction and design of the parking structure.

1. Construction Impacts Related to Site Access and Circulation

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigate impacts to less than significant levels:

AC1 The construction contractor shall create a site access point that would not interfere with any construction vehicles turning left from the northbound lanes into the Project site, subject to review and approval by the City of Beverly Hills.

(b) Facts in Support of Findings

Excavation, shoring, and garage construction will involve extension of a barricade approximately 28.5 feet from the property line into the North Beverly Drive right-of-way. This encroachment into the public right-of-way would reduce the width of travel lanes, and would necessitate temporary removal of on-street parking to accommodate four traffic lanes. Overall, site access would be maintained throughout the proposed Project's construction period and would provide adequate circulation at and around the Project Site. The potential construction-related impacts to site access and circulation have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure AC1 identified in the Draft EIR.

2. Parking Structure Design/Internal Garage Circulation and Parking Function

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

AC2 In order to mitigate potential internal circulation and parking accessibility impacts in the proposed parking structure, full-time valet parking shall be required for all building visitors.

(b) Facts in Support of Findings

Parking level P1 includes a central valet station and parking stalls for visitors and disabled persons, whereas levels P2 through P4.5 would be staffed by parking attendants, in part due to tandem parking spaces. Provision of valet service for all visitors allows valets familiar with the parking layout to efficiently and effectively park vehicle of persons who are not regular parkers in the building, whereas regular parkers on lower levels would not require such assistance. In addition, the project has been modified to incorporate an additional access point from Beverly Drive to further improve the ability to enter the parking garage. The potential impacts related to the parking structure's design and the internal garage circulation and parking function have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

D. PARKING SUPPLY AND DEMAND

The Project's potential in regard to parking supply and demand that can be mitigated or is otherwise less than significant are discussed in Section 5.6, *Parking Supply and Demand*, of the Draft EIR, as well as in information presented to the Planning Commission regarding parking demand studies undertaken by the City's environmental consultants. The Planning Commission, exercising its independent judgment, concludes that operation of the proposed Project could create a demand for parking that exceeds on-site parking supply during weekday and/or weekend conditions.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as determined by the Planning Commission. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

PSD1 The project, as conditioned by the Planning Commission to allow a maximum of 100 screening room seats, shall be required to provide 730 parking spaces based on the City's parking code, all of which shall be provided on-site. However, the Applicant shall have the option of reducing the building area to reduce the parking need based on the City's Code. Evidence of provision of adequate parking shall be provided prior to the issuance of a building permit.

(b) Facts in Support of Findings

The Draft EIR concluded that the Project would not have significant impacts provided that a minimum of 665 parking spaces are developed to serve the building. During the Planning Commission's hearing process, the Project Applicant revised the parking layout to achieve a total of 697 on-site parking spaces by removing certain drive aisles and restriping the parking

area. The Planning Commission, in its independent judgment, concludes that a total of 730 parking spaces are necessary to ensure that the Project provides a sufficient quantity of parking, provided that the screening room does not exceed 100 seats. The Commission bases its conclusion, in part, on the determination that a 100-seat screening room constitutes an ancillary use for the proposed entertainment office, and that parking would be adequate provided all 730 spaces are located on-site. The Planning Commission determined that an additional 33 parking spaces are necessary for the building and must be provided on-site, and that the screening room would be limited to no more than 100 seats.

The Planning Commission determined that the potentially significant impact from a parking deficiency could be mitigated by provision of parking on-site in compliance with the standards of the City's codes, and by limiting the maximum number of seats in the screening room to not more than 100. With the implementation of the Mitigation Measure PSD1, the Commission concludes that the potentially significant parking impact will be mitigated to a less than significant level.

E. PARKING MANAGEMENT DURING CONSTRUCTION

The Project's potential in regard to parking management during construction that can be mitigated or are otherwise less than significant is discussed in Section 5.7, Parking Management During Construction, of the Draft EIR. Identified impacts include the functioning of parking systems during construction due to the proposed Project's construction management plan.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

PMCI In order to address parking for construction workers during demolition, excavation, and shoring activities, the following steps shall be implemented:

- Whenever possible, park the crews at the Project site.
- When the crews cannot park at the Project site, they shall be permitted to use available parking at 9465 Wilshire Boulevard during the off-peak hours.
- For peak hour parking needs that cannot be accommodated on-site, the Project Applicant shall procure 20 spaces on a monthly basis in nearby parking structures with excess capacity.

(b) Facts in Support of Findings

The Project Applicant's parking and transportation plan calls for construction worker parking at the Beverly Center, with shuttle service transporting the workers to the Project site. Further,

the Applicant's Construction Management Plan contemplates non-traditional work hours (which will require issuance of an after hours construction permit from the City) and small crews during demolition, excavation and shoring, with the parking needs met on-site or at the adjacent Bank of America Building (which is owned by the Project site owner), or other nearby parking facilities. When actual construction of the building is in progress, a maximum of 125 workers would be on-site, and their parking needs would be met off-site at the Beverly Center, with appropriate shuttle service to and from the Project site.

Displacement of parking for existing commercial employees, and in particular those who use the parking on the site pursuant to the recorded covenant in favor of the adjacent Bank of America building would occur during demolition and construction activities. However, the Applicant will procure replacement parking in privately-owned parking facilities within walking distance of the existing Bank of America building. As documented in the Draft EIR, there is sufficient parking supply (a minimum of 425 spaces) available in the vicinity such that the Project Applicant will be able to obtain the temporary replacement parking. The Project Applicant has identified locations for 120 monthly parking permits, including 239 North Canon Drive, 301 North Canon Drive, 9320 Wilshire Boulevard, 9480 Dayton Way, 9701 Wilshire Boulevard, and 9777 Wilshire Boulevard. Procuring replacement parking for the covenanted parking during the temporary construction period, as contemplated in the Construction Management Plan, the background availability of 425 parking spaces, and compliance with mitigation measure PMC1 reduces impacts related to providing adequate parking during construction to less than significant levels.

F. PARKING MANAGEMENT DURING OPERATION

The Project's potential in regard to parking management during operation that can be mitigated or are otherwise less than significant is discussed in Section 5.7, Parking Management During Operation, of the Draft EIR. Identified impacts include function of parking garage's internal circulation and valet and parking attendant system for the parking garage because the parking structure access and control systems could result in adverse impacts related to internal garage circulation and parking function.

1. Parking Structure Access and Control Systems Impact on Internal Garage Circulation and Parking Function

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

PMO1 Signage and/or striping shall be installed to direct visitors to the central valet station upon entering the garage, in accordance with a signage and striping plan as approved by the Director of Community Development.

PMO2 The valet company shall be responsible for maintaining the correct directional flow of vehicles through the central valet station at all times, and especially during periods of high demands by visitors and pass-holders.

PMO3 For egress from of the structure, signage and/or striping shall be installed to direct visitors to use the Dayton Way exit in accordance with a signage and striping plan as approved by the Director of Community Development. A right-turn-only sign and/or arrow shall direct visitors to Dayton Way.

(b) Facts in Support of Findings

The proposed Project will be designed to accommodate valet services for visitors to the building, while regular building employees (pass-holders) would have the ability to self-park with the assistance of attendants due to the tandem parking layout. Pass-holders would be able to bypass the valet station in order to ensure orderly traffic flow and to reduce stacking at the valet station. Signage will direct visitors to the valet station. Further, the redesign of the Project to allow pass-holder access to the parking levels will further enhance the in-garage circulation. Adherence to mitigation measures PMO1, PMO2 and PMO3 will ensure proper function of the parking operations in the on-site parking structure, and would reduce impacts related to the safe and efficient storage and movement of project-related vehicles would be reduced to less than significant levels. The potential impacts related to the parking structure's access and control systems have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

2. Valet and Parking Attendant System Could Result in Adverse Impacts Related to the Function of the On-site Parking Operations

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

PMO4 The Project Applicant shall submit a Parking Operations Plan concurrent with the submittal of plans for building permit. The Parking Operations Plan shall be approved by the Director of Community Development prior to the issuance of a building permit. At a minimum, the Parking Operations Plan shall address the following:

- Parking allocation in the garage;
- Garage access and control systems;
- Valet and/or attendant assistance; and

- Staffing levels.

The Parking Operations Plan shall demonstrate that traffic does not back up onto Dayton Way. Through adequate staffing and other measures, the Parking Operations Plan shall ensure that parking aisles are kept clear, and vehicle flow for valet and/or attendant assistance is properly maintained. In doing so, the Parking Operations Plan shall prevent queues from backing up onto Dayton Way and keep the garage operations from impacting traffic circulation around the Project site. In addition, the Parking Operations Plan shall consider, but is not limited to, the following menu of methods to ensure adequate parking supply is maintained based on final floor plans submitted for building permit:

- Limit restaurant hours. Limitation of restaurant hours during peak hours from 11:00 AM to 2:00 PM.
- Use of an on-street valet. If the restaurant is open from 11:00 AM to 2:00 PM, all patrons must use an on-street valet that who park the cars in an adjacent off-site parking lot. The valet operations must be consistent with the City's Daytime Valet Guidelines. In addition, should this option be exercised, it would require a separate approval from the City.
- The valet may stack vehicles in the drive aisles, as long as circulation is maintained.
- Reduction in retail and/or restaurant square footage to reduce parking and/or valet demand.

(b) Facts in Support of Findings

The proposed parking structure contains a number of tandem parking stalls, which will require valet and attendant operations to ensure safe and efficient operation of the parking. The valet system will increase the efficiency of the available spaces by requiring that all visitors relinquish control of their vehicles to drivers familiar with the parking layout. This also allows for greater flexibility in use of the parking area through double parking, limited use of drive aisle space and efficient use of tandem parking that will be ensured by the valets' ability to rearrange and move vehicles when needed to allow ingress or egress by the vehicle owners. On lower parking levels utilized primarily by building tenants or vehicles utilizing the Bank of America covenanted parking spaces, attendant assistance will be provided in order to make efficient use of the tandem parking spaces on those levels and to maximize the operational capacity of the parking areas. Adherence to the parking operations plan, to be approved by the Director of Community Development, ensures that the on-site parking operations will function properly and will not result in impacts to adjacent streets. The potential impacts related to the parking structure's valet and parking attendant system and on-site parking operations have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure identified in the Draft EIR.

G. NOISE

The Project's potential impacts in regard to noise that can be mitigated or are otherwise less than significant is discussed in Section 5.10, Noise, of the Draft EIR. Identified impacts include project-related and cumulative construction noise.

1. Short-Term Noise Impacts from Grading and Construction Activities

Grading and construction associated with the proposed Project could result in temporary noise impacts to nearby noise sensitive receptors.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

NOI-1 Prior to grading permit issuance, the construction contractor shall demonstrate to the satisfaction of the City of Beverly Hills Community Development Department, the following:

- Construction contracts shall specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers that exceed state requirements for muffler attenuation devices.
- All residential units located within one-quarter mile of the construction site shall be sent a notice regarding the construction schedule of the proposed Project. A sign, legible at a distance of 50 feet, shall also be prominently posted at the construction site. All notices and signs shall indicate the dates and duration of construction activities, as well as provide a telephone number of a contact person with whom residents can discuss the construction process and register complaints. The contact person shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint.
- A "noise disturbance coordinator" shall be established. The noise disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The noise disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within one-quarter mile of the construction site and all signs posted at the construction site shall list the telephone number for the noise disturbance coordinator. The noise disturbance coordinator shall be required to maintain a log of complaints for the City's inspection. The log shall include the source of complaint, the complaint, time received, and the action taken in

response. The noise disturbance coordinator shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint.

- Staging of construction vehicles is prohibited on streets within the City of Beverly Hills. All construction vehicle staging shall occur on La Cienega Boulevard. During construction, stockpiling and vehicle staging areas shall be located as far as practical from noise sensitive receptors.
- Construction noise reduction methods such as shutting off idling equipment, installing temporary acoustic barriers around stationary construction noise sources, maximizing the distance between construction equipment staging areas and occupied residential areas, and use of electric air compressors and similar power tools, rather than diesel equipment, shall be employed where feasible.
- During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers.

NOI-2 Prior to grading permit issuance, the Project Applicant shall demonstrate to the satisfaction of the City of Beverly Hills, that a "Nighttime Construction Noise Mitigation Plan" has been developed to address nighttime construction noise impacts. The plan shall incorporate provisions for noise attenuation barriers, truck routing, location of staging areas, worker parking and other appropriate measures for achieving an overall attenuation of construction noise of at least 8 dBA.

(b) Facts in Support of Findings

The Project entails demolition of approximately 25,000 square feet of commercial space and 154,148 square feet of parking garage over an approximately 4-month period. Demolition activities would be followed by approximately 5 months of grading and foundation work, and 12 months for construction of the proposed structures. Demolition and grading activities would require haul trucks to transport the displaced materials and soils. Hauling is not permitted in the City's central commercial district (also referred to as the Business Triangle) during business hours. Therefore, during excavation and grading, construction activity would take place both during the daytime and nighttime hours. Daytime work, from 8:00 AM to 6:00 PM, would not involve hauling activities whereas nighttime work, from 10:00 PM to 7:00 AM would allow the hauling activities. The nighttime activity is only necessary during demolition, excavation and shoring, which is expected to last for a total of 9 months. The Project Applicant must obtain a permit from the City before nighttime construction activities can commence.

During demolition activities, haul trucks would utilize a haul route consisting of an approach to the Project site along southbound Highland Avenue, westbound travel along Santa Monica Boulevard, and south on Beverly Drive to the Project site. Exiting haul trucks would follow the same roadways in reverse directions to access U.S. Route 101 north. Haul trucks involved with excavation and construction activities would approach the Project site traveling west on I-10 to

northbound La Cienega Boulevard, to westbound Wilshire Boulevard, and northbound on Beverly Drive to the Project site. Exiting haul trucks would travel south on Beverly Drive, east on Pico Boulevard, south on La Cienega to I-10. Excavation materials would be hauled only between 10:00 PM and 7:00 AM, whereas hauling of construction materials would occur between 9:00 AM and 4:00 PM, using the same routes. During construction, the proposed Project would be prohibited from staging vehicles or equipment along streets of the City of Beverly Hills. Staging of demolition hauling trucks will occur on La Cienega Boulevard to avoid residential neighborhoods, and idling between 10:00 PM and 7:00 AM would be limited to no more than 2 minutes.

In addition to noise associated with construction related traffic, construction activities will increase noise levels in the vicinity of the Project site. Average construction period noise levels are expected to range from 77 dBA L_{eq} , to 86 dBA L_{eq} at a distance of 50 feet. Based on standard attenuation rates of 6dBA for each doubling of distance for point sources, the worst-case construction-period noise level of 86 dBA L_{eq} at a distance of 50 feet would be approximately 80 dBA L_{eq} at 100 feet and 74 dBA L_{eq} at 200 feet. The nearest sensitive receptor is approximately 500 feet from the Project site, thus the worst case noise level at the sensitive receptor would be approximately 68 dBA L_{eq} . This noise level would be further reduced due to the presence of intervening structures between the sensitive receptors and the Project site. The requirements of mitigation measure NOI-1 serve to minimize impacts and provide mechanisms to ensure that permissible noise levels are not exceeded. Thus these impacts are reduced to less than significant.

Nighttime on-site construction could reach 74 dBA at 200 feet from the proposed Project, and 68 dBA at the nearest sensitive receptors located approximately 500 feet from the Project site. Intervening structures would further reduce the noise level to 63 dBA or less. When added to the ambient nighttime noise level of 50 dBA, a 13 dBA increase in noise levels would occur. However, mitigation measure NOI-2 requires implementation of measures to reduce the noise increase to no more than 5 dBA, thus mitigating the impact to a less than significant level. The potential impacts related to the temporary Project-related construction noise on sensitive receptors have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

2. Development Associated with the Proposed Project and Other Related Cumulative Development Could Result in Significant Cumulative Construction Noise Impacts

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measures NOI-1 and NOI-2, set forth above, mitigate the potential cumulatively significant construction noise impacts to a less than significant level.

(b) *Facts in Support of Findings*

Eighty related projects have been identified within the Project study area, including 24 in the City of Beverly Hills, 39 in the City of West Hollywood, and 17 in the City of Los Angeles.

The Montage Hotel project, which is currently under construction, is on the opposite side of Beverly Drive from the proposed Project. The Montage Hotel project has completed the demolition and excavation work, which is typically the noisiest of construction activities.

Construction-related noise for the proposed Project and each of the cumulative projects would be localized, thus quantitative analysis to project potential noise levels would be unduly speculative. With respect to the Montage Hotel project, the Project's loudest construction activities would be completed before residential occupancy, which is expected no earlier than October 2008. As such, significant impacts are not expected, and compliance with mitigation measures NOI-1 and NOI-2 serve as further mitigation to ensure that significant impacts do not result. The potential impacts related to the cumulative project-related construction noise have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

H. GEOLOGY AND SOILS

The Project's potential in regard to geology and soils that can be mitigated or are otherwise less than significant is discussed in Section 5.11, *Geology and Soils*, of the Draft EIR. Identified impacts include seismic groundshaking, ground failure, expansive soils, and corrosive soils.

1. Development Associated with the Proposed Project Could Expose People or Structures to Potential Substantial Adverse Effects from Seismic Groundshaking

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

GEO1 The Project Applicant shall incorporate all applicable recommendations of the *Geotechnical Report* into the design of proposed structures to address seismic groundshaking and other earthquake-related seismic hazards.

(b) *Facts in Support of Findings*

Groundshaking accompanying earthquakes on faults near the Project site would be felt on the site. Such groundshaking is common throughout Southern California and the proposed Project would pose no greater risk to public safety of destruction of property by exposing people, property, or infrastructure to seismic hazards than already exists for the region. Nonetheless, proposed structures are required to be designed, engineered, and constructed in compliance with all applicable local and State seismic safety requirements, including the *Uniform Building Code* and *Title 9, Building and Property Health and Safety Regulations* of the City of Beverly Hills Municipal Code. Furthermore, the *Geotechnical Report* prepared for the Project includes Project-specific design recommendations to mitigate seismic impacts. Mitigation measure GEO1 requires the implementation of each of the recommendations in the *Geotechnical*

Report. The potential impacts related to seismic groundshaking have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR and compliance with applicable construction regulations.

2. Ground Failure

Development of the proposed Project could expose people or structures to potential substantial adverse effects from ground failure, including settlement, subsidence, ground lurching, liquefaction, or lateral spreading.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measure GEO1, discussed above, imposed upon the Project mitigates impacts to less than significant levels.

(b) Facts in Support of Findings

The Project site is not prone to seismically induced settlement, however, compliance with mitigation measure GEO1 and applicable building codes would preclude the potential for adverse structural impacts from liquefaction or other ground failure. Dewatering may be required for the proposed structure, however the Project is not expected to extract substantial amounts of water and thus adherence to dewatering permit requirements would ensure that risk of subsidence would be less than significant. The potential impacts related to ground failure have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure GEO1.

3. Expansive Soils

On-site expansive soils could pose a risk to people and structures associated with the proposed development.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically mitigation measure GEO1, discussed above, imposed upon the Project mitigates impacts to less than significant levels.

(b) Facts in Support of Findings

The Project site is underlain with alluvial soils with varying content of clay materials, and thus is considered potentially expansive when exposed to moisture. Given the shrink-swell potential of on-site soils, implementation of the recommendations regarding expansive soils in the *Geotechnical Report* will ensure that the potential impacts are reduced to a level of less than significant. Mitigation measure GEO1 requires implementation of the *Geotechnical Report* recommendations.

4. Corrosive Soils

Corrosive soils could pose a risk to people and structures associated with proposed development.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

GEO2 The Project Applicant shall implement all applicable recommendations related to corrosion control contained in Appendix A of the *Geotechnical Report*.

(b) Facts in Support of Findings

The Project site contains soils that range from “moderately corrosive” to “corrosive” as to ferrous metals but not copper or concrete. As such, these soils could corrode iron metallic pipes under the proposed structure. Recommendations for pipe protection include in Appendix A of the Geotechnical Report serve to reduce impacts from soil corrosion to less than significant levels. The potential impacts related to corrosive soils have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measure GEO2, as set forth above.

I. **HYDROLOGY AND WATER QUALITY**

The Project’s potential in regard to hydrology and water quality that can be mitigated or are otherwise less than significant is discussed in *Section 5.12, Hydrology and Water Quality*, of the Draft EIR. Identified impacts include surface water hydrology impacts, surface water quality impacts, operational surface water quality impacts, and groundwater hydrology impacts.

1. Surface Water Hydrology Impacts

Development associated with the proposed Project could result in adverse surface water hydrology impacts.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HWQ1 The Project Applicant shall complete a wet year (high water table) analysis to (1) quantify the amount of discharge associated with groundwater

dewatering, and (2) identify the capacity available in the system into which the water will be discharged. The analysis shall be completed prior to the commencement of construction.

If the analysis concludes that there is not sufficient capacity in the system to accept the discharge, the Project Applicant shall be required to either: (a) increase the capacity of the system, or (b) design the building foundation such that ongoing dewatering is not required.

(b) Facts in Support of Findings

The Project site is currently developed and is served by the City's existing stormwater conveyance system. Development of the proposed building, therefore, would not result in substantial changes to the site's drainage pattern or associated rate or volume of runoff or the current conveyance of stormwater flows to Ballona Creek Channel via existing drainage infrastructure. The site does not contain any drainage courses. Nonetheless, the Project may require permanent or periodic dewatering from the proposed subterranean garage due to elevated groundwater conditions. Use of pumps to remove groundwater from under the foundation slab or behind retaining walls would convey the water to the local municipal separate stormdrain system (MS4), which is subject to issuance of a groundwater discharge permit from the Los Angeles Regional Water Quality Control Board, as well as a dewatering permit from the City of Beverly Hills. The potential impacts related to surface water hydrology have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure HWQ1, which requires preparation of a wet year analysis.

2. Construction-Related Surface Water Quality Impacts

Implementation of the proposed Project could result in adverse surface water quality impacts during construction activities.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

HWQ2 Prior to issuance of grading or building permits, the Project Applicant shall prepare and receive approval of a Stormwater Pollution Prevention Plan, in order to comply with the NPDES General Permit for Construction Activities.

HWQ3 The Project Applicant shall comply with all applicable requirements of City Ordinance 06-O-2506 relating to construction dewatering and discharges of groundwater.

(b) Facts in Support of Findings

Construction activities that expose soils to potential mobilization by rainfall, runoff and wind, can be the primary source of sediments. Such activities include removal of existing hardscape and structures from the site, grading and excavation of the site, and trenching for infrastructure improvements. Other pollutants of concern during construction relate to construction materials and non-stormwater flows and include waste construction materials such as chemicals, liquid products, petroleum hydrocarbon products used in building construction or the maintenance of heavy equipment, and demolition debris, as well as concrete related waste streams. Any such demolition impacts would be minimized through compliance with the NPDES General Construction Permit, and preparation and implementation of a Storm Water Pollution Prevention Plan (SWPPP) containing best management practices to control construction related pollutants. Best management practices include erosion control measures, sediment controls, slope stabilization, re-vegetation, hydro-seeding, or using tackifiers on exposed areas and stockpiles, installation of energy dissipators, drop structures, catch basin inlet protection, construction materials management, and cover and containment of construction materials and waste. The proposed Project would reduce or prevent erosion and sediment transport and transport of other potential pollutants from the Project site during the construction phase through the implementation of Best Management Practices in order to prevent or minimize environmental impacts and to ensure that discharges during the construction phase would not cause or contribute to any exceedance of water quality standards in the receiving waters. The SWPPP will address proper handling of petroleum products on the construction site, such as spill response practices and the Best Management Practices must effectively prevent the release of hydrocarbons to runoff per Best Conventional Pollutant Control Technology standards. Compliance with the Waste Discharge Requirements would further assure that the impacts of discharges from dewatering and non-stormwater sources are less than significant.

The potential impacts related to surface water quality during construction have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measures identified in the Draft EIR, including HWQ2 and HWQ3.

3. Operational Surface Water Quality Impacts

Operation of the proposed Project could result in adverse surface water quality impacts.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project, in conjunction with HWQ1 set forth above, mitigates impacts to less than significant levels:

HWQ4 The Project Applicant shall prepare and receive approval of a Water Quality Management Plan for project operation, in order to comply with the County Standard Urban Stormwater Mitigation Plan requirements of the NPDES MS4 permit.

(b) Facts in Support of Findings

Water quality impacts could result from Project operation due to motor vehicle operations, landscape maintenance, littering, and potential dewatering for the underground garage. Pollutants associated with the proposed parking areas are expected to include airborne pollutants from vehicle exhaust, tire rubber residue, brake dust, petroleum hydrocarbons, like gasoline and diesel, and oil and grease. Such materials can enter stormwater runoff when precipitation is sufficient to mobilize particles and residues and wash them from on-site surfaces. Because the parking in the building is underground, typical parking lot pollutant loads would have a much lower potential to enter the stormwater flows directly from the parking structure. Mitigation is required to prevent the introduction of substantial pollutant loads into the stormwater conveyance system from proposed parking areas. Compliance with a Standard Urban Stormwater Mitigation Plan (SUSMP) is required. Further, the Project includes treatment devices such as downspout filters, sizes FG-DS4 and FG-DS6, and a catch basin filter inserts by Kristar Enterprises.

The potential impacts related to surface water quality during Project operation have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

4. Groundwater Impacts

Development associated with the proposed Project could result in adverse groundwater hydrology impacts.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measure HWQ1 set forth above, mitigates impacts to less than significant levels.

(b) Facts in Support of Findings

The Project site is currently developed for urban uses, and therefore does not provide for groundwater recharge given the lack of pervious surfaces. Although the Project would result in total coverage of the site with impervious surfaces, groundwater levels can fluctuate over time. The Project plans indicate that the lowest point in the proposed parking structure would extend up to 43 feet below ground level. Further, any such dewatering must comply with the requirements of dewatering permits from the Los Angeles Regional Water Quality Control Board or the City. Because the proposed Project would not result in a substantial adverse effect on groundwater levels or groundwater hydrology, impacts related to groundwater hydrology have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

J. HAZARDS AND HAZARDOUS MATERIALS

The Project's potential in regard to hazards and hazardous materials that can be mitigated or are otherwise less than significant is discussed in Section 5.13, Hazards and Hazardous Materials, of the Draft EIR. Identified impacts include transport of hazardous materials, undiscovered hazardous materials, asbestos-containing materials, lead-based paint, contaminated soils, and cumulative hazards.

1. Transport, Use, or Disposal of Hazardous Materials

Development of the proposed Project could result in potentially significant risks to people or the environment from the routine transport, use, or disposal of hazardous materials.

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HAZ1 The Project Applicant and individual tenants shall comply with all applicable City, County, State, and Federal regulations with respect to the storage, handling, transportation, and disposal of hazardous wastes.

(b) *Facts in Support of Findings*

It is possible that future occupants of the Project may include use and storage of various kinds of common petroleum products and/or cleaning solvents, although none of these products would be acutely hazardous or radioactive substances. Chemical storage of any kind over small quantities must be publicly reported in accordance with California Proposition 65. Business plans for businesses storing substances above certain levels must be prepared and kept on file with the Fire Department. Thereafter the Fire Department would inspect such businesses every year for adequate storage, handling, and labeling practices. Further Proposition 65 requires a material safety data sheet (MSDS) be kept at businesses, which outlines the chemical components used and stored at each business, and safety handling measures to be followed by employees. Provided that all hazardous materials are treated and disposed of in compliance with applicable laws and regulations, risks related to the routine transport, use or disposal of hazardous materials would be minimized. The potential impacts related to transport of hazardous materials have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measure HAZ1, set forth above.

2. Undiscovered Hazardous Materials

Development of the proposed Project could result in potentially significant risks to people or the environment from the release of undiscovered hazardous materials into the environment.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HAZ2 If unknown wastes or suspect materials are discovered during demolition or construction by the contractor which he/she believes may involve hazardous waste/materials, the contractor shall:

- Immediately stop work in the vicinity of the suspected contaminant and remove workers and the public from the area;
- Notify the project engineer of the implementing agency;
- Secure the areas directed by the project engineer;
- Notify the implementing agency's Hazardous Waste/Materials Coordinator; and
- Implement required corrective actions, including remediation, if applicable.

(b) Facts in Support of Findings

Based on the historic past uses of the Project site as a gas station and parking lot, there is the potential for discovery of previously unidentified hazardous materials during demolition and construction activities. Any existing contamination that is identified would be remediated to the satisfaction of the regulatory agencies prior to construction and occupancy of the proposed structures. If such hazardous materials are discovered during demolition or construction, applicable mitigation would be identified and implemented to address each discovery and reduce any health risks to acceptable levels. With the implementation of applicable mitigation measures, impacts related to undiscovered contamination from past uses and hazardous materials releases would be less than significant. The potential impacts related to undiscovered hazardous materials have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measure HAZ2 set forth above.

3. Asbestos-Containing Materials

Development of the proposed Project could result in potentially significant risks to people or the environment from asbestos-containing materials ("ACMs").

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HAZ3 Damaged or deteriorated (unsealed ends, nicks, loose pieces of insulation, abraded floor tiles, etc.) friable and non-friable asbestos-containing materials shall be repaired by properly trained personnel. Proper respiratory protection and containment shall be provided should these materials need to be disturbed for building maintenance or renovation. Prior to demolition, renovation, or any other such activity, suspect materials observed in the subject buildings shall be sampled and tested for asbestos. Additionally, if an Operations and Maintenance (O&M) Plan does not exist, one shall be developed, and the identified materials shall be included.

(b) Facts in Support of Findings

Some of the buildings on the Project site were built prior to 1978, and based on prior sampling activities, are known to contain ACMs. Because ACMs were found on the Project site, abatement of asbestos would be required prior to any demolition activity. Compliance with mitigation measures HAZ3 and South Coast Air Quality Management District Rule 1403, which prohibits the release of ACMs into the air, would reduce potential impacts to a less than significant level.

4. Lead-Based Paint

Demolition associated with the proposed Project could result in potentially significant risks to people or the environment from lead-based paint.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HAZ4 Based on the age of the property buildings (mid-1930s and early 1960s), it is possible that lead-based paint is present on-site. As such, prior to demolition and removal of on-site structures, paint shall be sampled and analyzed for the presence of lead-based paint. If lead-based paint is found to occur within the subject buildings, proper removal, handling, and disposal of such materials shall be performed pursuant to applicable rules and regulations, to the satisfaction of regulatory agencies with oversight authority.

(b) Facts in Support of Findings

Given the age of the buildings, it is possible that lead based paints may exist on the Project site. If lead-based paint is discovered during demolition, it must be removed separately (chemically or physically) before other demolition activities. Compliance with mitigation requiring independent evaluation and paint abatement, as well as compliance with State regulations regarding lead-based paints eliminates or substantially lessens impacts to a level of less than significant.

5. Contaminated Soils

Development of the proposed Project could result in potentially significant risks to people or the environment from contaminated soils.

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

HAZ5 Based on the historical site uses, primarily on the northwestern end of the site, soils shall be closely monitored during excavation work for any future redevelopment activities. If unusual odors or discolored soils are encountered during the excavation phase of the Project, soil samples from the area of potential concern shall be collected and analyzed. Qualified environmental personnel shall be present on-site to assist in characterizing and segregating impacted soils, if encountered. This work shall be conducted subsequent to building demolition work but before the commencement of mass excavation activities. If any such contaminated soils are encountered on-site, they shall be excavated and removed, or otherwise remediated, in accordance with applicable State law to the satisfaction of regulatory agencies with oversight authority.

(b) *Facts in Support of Findings*

Past uses of the Project site include a gasoline station and parking lot fueling area. Therefore, there is a possibility that on-site soils could be contaminated with petroleum hydrocarbons or metals. Impacted soils, if exposed during excavation activities, could pose a health risk to people working in the area. Monitoring the grading activities, soil sampling, analysis, and remediation (if necessary) of impacted soils would reduce the risks associated with any such materials. The potential impacts related to contaminated soils have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure HAZ5 identified in the Draft EIR.

6. Cumulative Hazards and Hazardous Materials Impacts

Development of the proposed Project, in conjunction with other related cumulative projects, could result in potentially significant cumulative hazards and hazardous materials impacts.

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Mitigation Measures HAZ1 through HAZ5, discussed above, mitigate the impacts to a less than significant level. No additional mitigation measures are required.

(b) Facts in Support of Findings

The Project site is located within an urbanized area with other construction projects and business activities, thus creating the potential for cumulative impacts related to hazards and hazardous materials. However, the potential impacts related to cumulative hazards and hazardous materials have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measures HAZ1 through HAZ5 identified in the Draft EIR.

K. SOLID WASTE

The Project's potential in regard to solid waste that can be mitigated or are otherwise less than significant is discussed in Section 5.16, Solid Waste, of the Draft EIR. Identified impacts include the lifespan of landfills and solid waste generated during construction and operation.

1. Construction-Related Impacts

Construction of the proposed Project could generate solid waste, which could incrementally decrease the disposal capacity and lifespan of landfills.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

SW1 Prior to the issuance of building permits, a source reduction program shall be prepared and submitted to the City's Solid Waste Superintendent to achieve a minimum 50 percent reduction in waste disposal rates, including green waste and construction debris.

(b) Facts in Support of Findings

Site preparation, demolition and construction activity will generate construction debris and potentially hazardous waste products. The wastes generated by the Project would result in an incremental and intermittent increase in solid waste within Los Angeles County. However, there is currently no shortfall in inert waste disposal capacity in Los Angeles County due to the easier siting and permitting process for such facilities. Further, demolition waste will be recycled to the extent practicable, and a construction waste reduction program will be developed and implemented to reduce the amount of construction debris requiring landfill disposal. The potential impacts related to construction-related solid waste generation have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measure SW1 identified in the Draft EIR.

2. Project Specific Operational Impacts

Operation of the proposed Project could generate solid waste, which could incrementally decrease the capacity and lifespan of the Puente Hills Landfill.

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

SW2 The location of recycling/separation areas shall be in close proximity to dumpsters for non-recyclables, elevators, loading docks, and primary internal and external access points.

SW3 The location of recycling/separation areas shall not be in conflict with any applicable Federal, State, or local laws relating to fire, building, access, transportation, circulation, or safety.

(b) *Facts in Support of Findings*

The proposed Project, in a worst case scenario involving no recycling programs, would generate up to .83 tons per day of solid waste, or 301.2 tons per year. However, compliance with City source reduction measures, are expected to reduce the amount of waste generated by 50 percent, down to .42 tons per day. The Puente Hills Landfill, which would serve the Project, has a remaining capacity that would extend through 2020. Despite the substantial increase in solid waste generation from the proposed Project, this amount would represent only .0003 percent of the daily permitted tonnage at the Puente Hills Landfill. As such, the potential impacts of this Project's operation-related solid waste generation have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measures SW2 and SW3. However, cumulative impacts, as discussed in Section VI below, remain significant.

L. FIRE PROTECTION

The Project's potential in regard to fire protection impacts that can be mitigated or are otherwise less than significant is discussed in Section 5.17, Fire Protection, of the Draft EIR. Identified impacts include the increased demand for fire protection services during construction and operation, as well as the cumulative fire protection service impacts.

1. Construction-Related Impacts

Construction associated with the proposed Project could result in an increased demand for fire protection services.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels.

FS1 Adequate emergency vehicle access to all buildings on the Project site shall be provided throughout the building construction process.

FS2 Adequate water availability shall be provided to meet construction activity needs, including potential fire suppression needs.

(b) Facts in Support of Findings

The Project site is currently developed with structures with fire protection infrastructure, including sprinklers. These protective mechanisms will be demolished and removed, thus temporarily increasing the fire risk during construction activities. The potential impacts related to construction-related fire protection services have been eliminated or substantially lessened to a level of less than significant by virtue of mitigation measures FS1 and FS2 identified in the Draft EIR.

2. Operational Impacts

Development associated with the proposed Project could result in an increased demand for fire protection and emergency medical services.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

FS3 The proposed Project shall comply with all applicable Building Code and Fire Code requirements, subject to review and approval by the Beverly Hills Fire Department.

(b) Facts in Support of Findings

The proposed Project must comply with all applicable building and fire code requirements, thus ensuring that Project operations would not diminish the staffing or the response times of existing fire stations in the City, and would not create special fire protection problems or result in a decline in existing service levels in the area. The potential impacts related to operation-related fire protection services have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

3. Cumulative Impacts

Development of the proposed Project, in conjunction with other related cumulative projects, could result in significant cumulative impacts to fire protection services and facilities.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Mitigation Measures FS1 through FS3, set forth above, mitigate the impact to a less than significant level. No additional mitigation measures are required.

(b) Facts in Support of Findings

With the implementation of mitigation measures, operations of cumulative projects would not diminish the staffing or the response times of the existing fire stations in the area, and would not create a special fire protection problem or result in a decline in existing service levels in the area or pose unacceptable fire risk to people or structures. The potential impacts related to cumulative Project fire protection services have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR.

M. POLICE PROTECTION

The Project's potential in regard to police protection that can be mitigated or are otherwise less than significant is discussed in Section 5.18, Police Protection, of the Draft EIR. Identified impacts include the increased demand for police protection services during construction and operation.

1. Construction-Related Impacts

Construction associated with the proposed Project could increase the demand for police protection services.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

PP1 During construction, private security patrols shall be utilized to protect the Project site.

(b) Facts in Support of Findings

Construction activities would increase the demand for police protection services due to both an increase in the number of persons at the site, and the presence of building materials and equipment on the site that can attract vandalism and theft. Therefore, there is an increased

potential for calls for police service at the site during construction. However, the potential impacts related to construction-related police protection services have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure PP1 identified in the Draft EIR, which requires private security to offset need for police protection services.

2. Operational Impacts

Development of the proposed Project could result in an increased demand for police protection services during Project operation.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

PP2 As final building plans are submitted to the City for approval in the future, Beverly Hills Police Department (BHPD) design requirements which reduce demands for service and ensure adequate public safety (such as those pertaining to site access and site security lighting) shall be incorporated into the building design.

PP3 Project design shall provide lighting, to the satisfaction of the BHPD, around and throughout the development to enhance crime prevention and enforcement efforts.

PP4 Project design shall provide clearly visible (during the day and night) address signs and/or building numbers for easy identification during emergencies.

(b) Facts in Support of Findings

Although the proposed Project would not directly induce substantial population growth warranting additional police personnel, facilities or equipment, potential impacts to police services could arise due to Project design, landscape materials, and building orientation. Incorporation of safety design features mitigates potential impacts. The potential impacts related to operation-related police protection services have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures PP2 through PP4 identified in the Draft EIR.

VI. Environmental Effects that Remain Significant and Unavoidable After Mitigation

In the environmental areas of traffic, air quality, and solid waste, there are instances where environmental impacts would remain significant and unavoidable after mitigation. These areas are discussed below.

A. TRAFFIC

1. Project Specific and Cumulative Impacts

Implementation of the proposed Project would result in significant unavoidable project-specific and cumulative traffic impacts for the forecast year 2009 with Project weekday and weekend conditions. Significant unavoidable impacts would occur at the following three intersections for forecast year 2009:

- North Santa Monica Boulevard/Wilshire Boulevard (Weekday Mid-day peak and Congestion Management Plan (CMP) Scenario);
- Rodeo Drive/Wilshire Boulevard (Weekday AM, Mid-day and PM peak hours, and Weekend Mid-day peak hour); and
- Beverly Drive/Wilshire Boulevard (Weekday AM, Mid-day and PM peak hours, and Weekend Mid-day peak hour)

Additionally, the proposed Project would result in significant unavoidable traffic impacts to the designated Los Angeles County CMP intersection at North Santa Monica Boulevard/Wilshire Boulevard (also noted above), as well as cumulative traffic impacts.

(a) Findings

(1) Changes or alterations have been required in, or incorporated into the Project that substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measures TR1 through TR4 and part of TR5, have been deemed feasible, and will reduce the overall traffic impacts from the Project, a discussed above.

(2) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation that would require the widening of westbound Wilshire Boulevard at North Santa Monica Boulevard.

(3) There are no feasible mitigation measures beyond TR1 through TR4 and the striping portion of TR5 that would reduce the remaining significant impacts to a less than significant level. Thus, the impacts are significant and unavoidable.

(b) Facts in Support of Findings

The proposed Project's impacts associated with traffic remain significant for the intersections set forth in Section VI.A.1. above under the Project and the Cumulative Impact scenarios, as well as the CMP scenario for the North Santa Monica/Wilshire Boulevard intersection. The following facts and foregoing findings apply equally to each of those unmitigable traffic impacts.

North Santa Monica Boulevard/Wilshire Boulevard

The intersection of North Santa Monica Boulevard and Wilshire Boulevard currently operates at a Level of Service (LOS) of F during the Weekday AM peak hour, Weekday Mid-day peak hour, Weekday PM peak hour and Weekend Mid-day peak hour. Operation of the proposed Project would result in additional trips through this heavily impacted intersection. Based on the City's thresholds of significance, a signalized intersection currently operating at LOS F will be considered impacted by a project if the addition of project trips causes an increase in the volume to capacity (V/C) ratio .020 or greater. An increase in the V/C capacity represents more traffic and more congestion. The September 20, 2007 memorandum from the City's environmental consultant concludes that the Project will have a significant impact only during the Weekday Mid-day peak hour because the V/C ratio is increased from 1.226 to 1.250, which is a change of more than .020. However, the Project will not have a significant adverse impact during the Weekday AM, Weekday PM or Weekend Mid-day peak hours.

Feasible mitigation, in the form of re-striping of the southbound North Santa Monica Boulevard approach at Wilshire Boulevard from two through lanes, one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing, has been identified and required through mitigation measure TR5. Implementation of this mitigation measure would result in a decrease in the V/C ratio for the Weekday Mid-day peak hour from 1.250 to 1.248, in addition to improving conditions during the Weekday AM peak hour and Weekend Mid-day peak hour. This feasible mitigation, however, does not reduce the Weekday Mid-day peak hour impact to a less than significant level because even with mitigation the change in the V/C ratio is .022, although it does improve the conditions.

The second part of mitigation measure TR5 suggests that widening westbound Wilshire Boulevard at the intersection with North Santa Monica Boulevard is a means of further reducing the impact at this intersection. However, acquisition of private property and relocation of existing sidewalks and utilities would be required in order to implement such a widening project. Acquisition of private property for this widening project is deemed economically, socially, and legally infeasible, because the City cannot require the owner of that property to make its property available for public use short of the exercise of its powers of eminent domain. Further, if the City required the Project Applicant to acquire the necessary right-of-way to accommodate the Wilshire Boulevard widening, the owner of the property could make the acquisition economically infeasible by setting an unreasonable price for the property. The Project

Applicant, a private entity, does not have the power of eminent domain through which to obtain the right-of-way. It is not the City's practice to exercise its powers of eminent domain to obtain property from one owner in order to enable another private property owner's project. Thus the widening aspect of the mitigation measure is socially infeasible. Based on the foregoing, the widening aspect of mitigation measure TR5 is hereby deemed infeasible, and is rejected on that basis.

Rodeo Drive and Wilshire Boulevard

The intersection of Rodeo Drive and Wilshire Boulevard currently operates at a Level of Service (LOS) of E during the Weekday Mid-day peak hour, LOS C during the Weekday AM and LOS D during the Weekday PM and Weekend Mid-day peak periods. Operation of the proposed Project would result in additional trips through this heavily impacted intersection. Based on the City's thresholds of significance, a signalized intersection currently operating at LOS E will be considered impacted by a project if the addition of project trips causes an increase in the volume to capacity (V/C) ratio .020 or greater, and intersections operating at LOS D will be impacted if the V/C increases by .040 or more. The September 20, 2007 memorandum from the City's environmental consultant concludes that the Project will have a significant impact during the Weekday AM, Mid-day and PM peak hours and the Weekend Mid-day peak hour because the V/C ratio is increased from above the threshold of significance during each of these peak periods.

No feasible mitigation measures have been identified or proposed that would lessen the impact or reduce the impact to a less than significant level. The EIR considered a mitigation measure that would require the Project Applicant to make a fair share contribution to widen the westbound Wilshire Boulevard approach at Rodeo Drive from two through lanes and one dedicated right-turn lane by narrowing the existing sidewalk and relocating existing utilities along the north side of Wilshire Boulevard at the northeast corner of the intersection along with right-turn overlap phasing at the eastbound Wilshire Boulevard approach at Rodeo Drive from permitted left turn phasing to protected left-turn phasing. However, implementation of this mitigation measure would require narrowing the existing sidewalk along Wilshire Boulevard adjacent to Two Rodeo. Narrowing the sidewalk is deemed socially and economically infeasible because narrowed sidewalks would conflict with the City goals and plans for this area to be pedestrian friendly with ample sidewalks sufficient to handle the existing pedestrian traffic and what is expected in the future. Further, implementation of the right-turn overlap phasing may conflict with pedestrian traffic at this location, which conflicts with the City's goals and plans for the area. For the foregoing reasons, this mitigation is deemed infeasible.

Beverly Drive and Wilshire Boulevard

The intersection of Beverly Drive and Wilshire Boulevard currently operates at a Level of Service (LOS) of E during the Weekday Mid-day peak hour and Weekday PM peak hour and LOS D during the Weekday AM peak hour and Weekend Mid-day peak hour. Operation of the proposed Project would result in additional trips through this heavily

impacted intersection. Based on the City's thresholds of significance, a signalized intersection currently operating at LOS E will be considered impacted by a project if the addition of project trips causes an increase in the volume to capacity (V/C) ratio .020 or greater, and intersections operating at LOS D will be impacted if the V/C increases by .040 or more. The September 20, 2007 memorandum from the City's environmental consultant concludes that the Project will have a significant impact during the Weekday AM, Mid-day and PM peak hours and the Weekend Mid-day peak hour because the V/C ratio is increased from above the threshold of significance during each of these peak periods.

No feasible mitigation measures have been identified or proposed that would lessen the impact or reduce the impact to a less than significant level. The EIR considered a mitigation measure that would require the Project Applicant to make a fair share contribution to re-stripe the northbound Beverly Drive approach at Wilshire Boulevard from one dedicated left-turn lane, two through lanes and one dedicated right-turn lane to consist of two dedicated left turn lanes, one through lane and one shared through/right-turn lane. However, implementation of this mitigation measure would require narrowing the existing sidewalks at the intersection. Narrowing the sidewalks is deemed socially and economically infeasible because narrowed sidewalks would conflict with the City goals and plans for this area to be pedestrian friendly with ample sidewalks sufficient to handle the existing pedestrian traffic and what is expected in the future. For the foregoing reasons, this mitigation is deemed infeasible.

The overriding social, economic, and other considerations set forth in the Statement of Overriding Considerations and in the Findings regarding Alternatives provide additional facts in support of these findings. Any remaining, unavoidable significant effects after available EIR mitigation measures are implemented are acceptable when balanced against the facts set forth therein.

B. AIR QUALITY

1. The proposed Project would result in significant unavoidable air quality impacts for:

- Short-Term Construction Emissions; and
- Cumulative Short-Term Construction Emissions.

(a) Findings

(1) Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Mitigation includes:

AIR-1 During clearing, grading, earth moving, or excavation operations, excessive fugitive dust emissions shall be controlled by regular water or other dust preventive measures using the following procedures, as specified in the

South Coast Air Quality Management District Rule 403. Prior to the issuance of grading permits, the Project Applicant shall demonstrate to the City of Beverly Hills how the Project operations shall comply with the South Coast Air Quality Management District Rule 403.

- On-site vehicle speed shall be limited to 15 miles per hour;
- All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice daily with complete coverage, preferably in the late morning and after work is done for the day;
- All material transported on-site or off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust;
- The area disturbed by clearing, grading, earth moving, or excavation operations shall be minimized so as to prevent excessive amounts of dust;
- A wheel washing system shall be installed and used to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project site.
- All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed Project. A sign, legible at a distance of 50 feet shall also be posted in a prominent and visible location at the construction site, and shall be maintained throughout the construction process. All notices and signs shall indicate the dates and duration of construction activities, as well as provided a telephone number where residents can inquire about the construction process and register complaints.
- These control techniques shall be indicated in Project specifications. Compliance with the measure shall be subject to periodic site inspections by the City; and
- Visible dust beyond the property line emanating from the Project shall be prevented to the maximum extent feasible.

AIR-2 All trucks that are to haul excavated or graded material on-site shall comply with *State Vehicle Code* Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F), (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the Project Applicant shall demonstrate to the City of Beverly Hills how the Project operations subject to that specification during hauling activities shall comply with the provisions set forth in Sections 23114(b)(F), (e)(4).

AIR-3 Prior to approval of the Project plans and specifications, the Public Works Director, or his designee, shall confirm that the construction bid

packages include a separate "Diesel Fuel Reduction Plan." This plan shall identify the actions to be taken to reduce diesel fuel emissions during construction activities (inclusive of grading and excavation activities). Reductions in diesel fuel emissions can be achieved by measures including, but not limited to, the following: a) use of alternative energy sources, such as compressed natural gas or liquefied petroleum gas, in mobile equipment and vehicles; b) use of "retrofit technology," including diesel particulate traps, on existing diesel engines and vehicles; and c) other appropriate measures. Prior to the issuance of a grading permit, the Diesel Fuel Reduction Plan shall be filed with the City of Beverly Hills. The Diesel Fuel Reduction Plan shall include, at a minimum, the following provisions:

- All diesel fueled off-road construction equipment shall be California Air Resources Board certified or use post-combustion controls that reduce pollutant emissions to the same level as California Air Resources Board certified equipment. California Air Resources Board certified off-road engines are engines that are three years old or less and comply with lower emission standards. Post-combustion controls are devices that are installed downstream of the engine on the tailpipe to treat the exhaust. These devices are now widely used on construction equipment and are capable of removing over 90 percent of the PM₁₀, carbon monoxide, and volatile organic compounds from engine exhaust, depending on the specific device, sulfur content of the fuel, and specific engine. The most common and widely used post-combustion control devices are particulate traps (i.e., soot filters), oxidation catalysts, and combinations thereof.
- All diesel fueled on-road construction vehicles shall meet the emission standards applicable to the most current year to the greatest extent possible. To achieve this standard, new vehicles shall be used or older vehicles shall use post-combustion controls that reduce pollutant emissions to the greatest extent feasible.
- The effectiveness of the latest diesel emission controls is highly dependant on the sulfur content of the fuel. Therefore, diesel fuel used by on-road and off-road construction equipment shall be low sulfur (>15 ppm) or other alternative low polluting diesel fuel formulation.

AIR-4 The Project shall comply with South Coast Air Quality Management District Rule 1113, which limits the reactive organic gases (ROG) content of architectural coatings used in the Basin or to allow the averaging of such coatings, as specified, so actual emissions do not exceed the allowable emissions if all the averaged coatings had complied with the specified limits.

AIR-5 The Project shall comply with South Coast Air Quality Management District Rule 1403, Asbestos Emissions from Demolition/Renovation Activities, which specifies work practice requirements to limit asbestos emissions from building demolition and renovation activities, including the removal and

associated disturbance of asbestos containing materials. The requirements for demolition and renovation activities include asbestos surveying, notification, asbestos containing materials removal procedures and time schedules, asbestos-containing materials handling and clean-up procedures, and storage, disposal, and landfilling requirements for asbestos-containing waste materials. All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.

(2) Impacts associated with short-term construction air quality emissions, and the Project's contribution to cumulative short-term construction air quality emissions, have been reduced to the extent feasible. However, after implementation of the mitigation measures, the impacts would remain significant and unavoidable.

(3) The overriding social, economic, and other considerations set forth in the Statement of Overriding Considerations and in the Findings regarding Alternatives provide additional facts in support of these findings. Any remaining, unavoidable significant effects after available Draft EIR mitigation measures are implemented are acceptable when balanced against the facts set forth therein.

(b) Facts in Support of Findings

Construction activities associated with development of the proposed Project would result in short-term air quality impacts. The EIR concluded that construction air emissions of reactive organic gasses (ROG), carbon monoxide (CO), particulate matter - 10 microns or smaller in size (PM₁₀), particulate matter, - 2.5 microns and smaller (PM_{2.5}) and oxides of sulfur (SO_x) would not be significant during any of the three years of construction activity. However, the EIR concluded that construction generated NO_x would exceed South Coast Air Quality Management District thresholds during Year 1 of construction, but not in Years 2 and 3, even with implementation of mitigation measures. Localized construction emission of PM₁₀ and PM_{2.5} would also exceed the Localized Significance threshold of significance in Year 1 of construction.

Feasible mitigation measures, set forth above, have been adopted to mitigate impacts to the extent feasible, and these mitigation measures serve to reduce the level of impact from the Project and the Project's contribution to cumulative air quality impacts from construction activities, although not to a less than significant level. No other feasible mitigation measures have been identified that would further reduce the level of significance of the NO_x and localized PM₁₀ and PM_{2.5} impacts or the short-term cumulative construction impacts.

After implementation of all feasible mitigation measures, significant unavoidable air quality impacts will result.

C. SOLID WASTE

1. Implementation of the proposed Project and other related cumulative projects would result in significant unavoidable cumulative impacts to solid waste services with regard to long-term operations, since the adequacy of Class III landfill capacity in the region cannot be guaranteed in the long-term.

(a) Findings

(1) Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures lessen the significant impacts:

SW1 Prior to the issuance of building permits, a source reduction program shall be prepared and submitted to the City's Solid Waste Superintendent to achieve a minimum 50 percent reduction in waste disposal rates, including green waste and construction debris.

SW2 The location of recycling/separation areas shall be in close proximity to dumpsters for non-recyclables, elevators, loading docks, and primary internal and external access points.

SW3 The location of recycling/separation areas shall not be in conflict with any applicable Federal, State, or local laws relating to fire, building, access, transportation, circulation, or safety.

(2) Impacts have been reduced to the extent feasible. However, after implementation of the mitigation measures contained in the Draft EIR, the cumulative impacts would constitute a significant and unavoidable impact.

(3) The overriding social, economic, and other considerations set forth in the Statement of Overriding Considerations and in the Findings regarding Alternatives provide additional facts in support of these findings. Any remaining, unavoidable significant effects after available Draft EIR mitigation measures are implemented are acceptable when balanced against the facts set forth therein.

(b) Facts in Support of Findings

The proposed Project will generate solid waste that would be disposed of at Class III landfills in or around Los Angeles County. The remaining capacity at such landfills is approximately 300 million cubic yards. Based on projections, the remaining Class III landfill capacity in Los Angeles County would last for approximately four years without new landfills or further expansion of existing landfills. The proposed Project in conjunction with other cumulative projects in the area, would result in approximately 53.1 tons per day of solid waste, in a worst case scenario that assumes no diversion through recycling or other programs. Assuming the 50 percent diversion as mandated by State law, it is estimated that the cumulative projects would generate approximately 26.6 tons per day or 9,709 tons per year. Although this amount of

waste constitutes a small percentage of waste disposed in the region, this impact is considered significant because of the limited remaining disposal capacity of affected landfills.

Mitigation measures SW1 through SW3 mitigate the impacts to the extent feasible, but not to a level of less than significant. No additional mitigation measures that would further reduce the impacts have been identified.

The proposed Project's and cumulative projects' impacts associated with solid waste services with regard to long-term operations of landfills remain significant despite the implementation of the mitigation measures contained in the Draft EIR.

VII. Project Alternatives

The City considered a range of reasonable alternatives discussed below. In determining what alternatives to analyze, the City considered, but rejected, other potential alternatives including construction of the Project at another location in the City. An alternate location alternative was determined not to be feasible because the Project Applicant already owns the Project site, and investment in another site in the area would be cost prohibitive and economically infeasible given the relatively high property values in Beverly Hills. Further, development at another site is not likely to reduce or avoid the unmitigable traffic, construction related air quality, or solid waste impacts. Traffic impacts are likely to occur, although maybe at different intersections, as well as air quality impacts related to construction and cumulative construction, regardless of where the project is located, thus an alternate location would not alleviate these impacts. Similarly, the waste generated by the Project, regardless of the specific location within the City, would still contribute to the cumulative solid waste impact by using similar quantities of declining landfill space. Therefore, this alternative was not considered to be feasible.

A. ALTERNATIVE ONE: NO PROJECT/NO DEVELOPMENT ALTERNATIVE

1. Summary of Alternative

The No Project/No Development Alternative assumes that the Project would not be implemented and the Project site would remain in its current condition. With this Alternative, the proposed General Plan Amendment, Zoning Code Amendment, Zone Change, Planned Development Permit, Development Agreement, lot line adjustment, lot tie covenant, and associated ministerial permits would not be needed. Further, development of new office, retail, and restaurant uses (208,100 gross square feet), would not occur, nor would the four-and-one-half level subterranean parking structure be constructed. The existing single-story commercial retail building and six-story above ground parking structure with ground-floor retail uses would remain on-site, and would be re-occupied by appropriate commercial and retail uses.

2. Reasons for Rejecting Alternative

The No Project/No Development Alternative would result in reduced impacts for land use, traffic, parking supply and demand, parking management during construction, parking

management during operation, air quality, noise, geology, hydrology and water quality, hazardous and hazardous materials, water supply, wastewater, solid waste, fire protection, and police protection. This Alternative would result in comparable impacts to population and employment, aesthetics, light, and glare, and site access and circulation. The No Project/No Development Alternative does not require a General Plan Amendment or Zone Change, and eliminates the significant unavoidable impacts for traffic, air quality, and solid waste.

The No Project/No Development Alternative would not implement the overall objectives of the proposed Project, which include achieving the development of a visually compatible, successful development with entertainment-related, retail, and restaurant uses to meet market demands and increase the City's economic base. Under this Alternative, the existing zoning for the site would be maintained, the proposed new building and entertainment-related office uses would not be developed although the existing underutilized commercial uses on the site would likely be re-occupied by commercial, retail, and potentially restaurant uses. The existing building would not generate the symbiotic benefits of the concentration of office occupants who may utilize the ground floor retail and restaurant uses as would the Project. Specifically, this Alternative's ability meet each of the proposed project's objectives is summarized below:

(a) Objectives Fully Met by Alternative:

(1) Build a project that provides pedestrian-friendly amenities at the street level.

(b) Objectives Partially Met by Alternative:

(1) Build a project that is harmonious in scale and architectural style with the surrounding area.

(c) Objectives Not Met by Alternative:

(1) Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills

- to attract and provide additional opportunities for quality entertainment-related businesses that would not otherwise be encouraged by the underlying zone, in order to maintain and strengthen the economic base of the City;
- to provide for an additional building project for single and multi-tenant entertainment related business uses not currently available in the City;
- to attract and provide high-class retail/commercial space and eating facilities; and
- to provide for the enhancement of employment and commerce within the project area on an underdeveloped site.

(2) Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.

(3) Build a subterranean parking structure (a) to place parking below grade to allow for the most efficient use of above-grade property in the project area, (b) to provide sufficient and convenient parking for site uses, and (c) to allocate a specific number of parking spaces for use by the Bank of America building, in order to accommodate existing covenanted parking obligations for the Bank of America building.

(4) Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

Therefore, only one of the Project objectives identified in *Section 3.6, Project Objectives*, would be fully met, and one of the objectives would be partially met, under the No Project/No Development Alternative. The majority of the Project objectives would not be met.

This Alternative would avoid the unmitigable impacts to traffic (because the new traffic generating office use would not be developed), air quality (because the construction impacts would not occur) and solid waste (because generation would largely stay at the existing generation rates).

The Planning Commission hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative One as infeasible and by itself, independent of any other reason, would justify rejection of Alternative One as infeasible.

B. ALTERNATIVE TWO: CODE CONFORMING ALTERNATIVE

1. Summary of Alternative

The Code Conforming Alternative would retain the existing land use and zoning designations for the Project site. Development of the Project site would occur in accordance with the existing General Plan and zoning designations of Low Density General Commercial and Commercial (C-3), respectively. Development of the site with commercial uses would occur at a maximum floor area ratio of 2.0:1 and maximum height of 45 feet or three stories, whichever is less. Based on the maximum floor area ratio under the C-3 zoning district, the existing General Plan and Zoning Alternative would allow for development of up to 95,832 square feet of office and commercial uses. For the purposes of this comparative analysis, a proportion of retail and office uses similar to that of the proposed project is assumed, resulting in 30,000 square feet of retail uses and 65,832 square feet of office uses.

2. Reasons for Rejecting Alternative

The Code Conforming Alternative would result in reduced impacts for land use, aesthetics, light, and glare, traffic, parking supply and demand, air quality, noise, geology, hydrology and water quality, hazardous and hazardous materials, water supply, wastewater, solid waste, fire protection, and police protection. However, these impacts are already mitigated to less than

significant levels under the Project scenario. This Alternative would result in comparable impacts to population and employment, site access and circulation, parking management during construction, and parking management during operation. The Code Conforming Alternative does not require a General Plan Amendment or Zone Change, and reduces but does not eliminate the significant impacts for traffic, air quality, and solid waste.

The Code Conforming Alternative would implement some of the overall objectives of the proposed Project, which include achieving the development of a visually compatible, successful development with entertainment-related, retail, and restaurant uses to meet market demands and increase the City's economic base. Under this Alternative, the existing zoning for the site would be maintained, commercial office and retail uses would be developed at a lower intensity, and the existing underutilized commercial uses would be removed from the site. However, this Alternative would not provide opportunities for entertainment-related uses on-site, and would not provide commercial uses at the intensity provided by the proposed Project. Specifically, this Alternative's ability meet each of the proposed Project's objectives is summarized below:

(a) Objectives Fully Met by Alternative:

(1) Build a project that is harmonious in scale and architectural style with the surrounding area.

(b) Objectives Partially Met by Alternative:

(1) Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.

(2) Build a subterranean parking structure (a) to place parking below grade to allow for the most efficient use of above-grade property in the project area, (b) to provide sufficient and convenient parking for site uses, and (c) to allocate a specific number of parking spaces for use by the Bank of America building, in order to accommodate existing covenanted parking obligations for the Bank of America building.

(3) Build a project that provides pedestrian-friendly amenities at the street level.

(4) Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

(c) Objectives Not Met by Alternative:

(1) Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills

- to attract and provide additional opportunities for quality entertainment-related businesses that would not otherwise be encouraged by the underlying zone, in order to maintain and strengthen the economic base of the City;
- to provide for an additional building project for single and multi-tenant entertainment related business uses not currently available in the City;
- to attract and provide high-class retail/commercial space and eating facilities; and
- to provide for the enhancement of employment and commerce within the project area on an underdeveloped site.

Therefore, only one of the Project objectives identified in Section 3.6, Project Objectives, would be fully met, and four of the objectives would be partially met, under the Code Conforming Alternative. This Alternative would not provide opportunities for entertainment-related office uses on site or allow for retention of a valued business citizen in the City.

Although this alternative would reduce certain environmental impacts compared to the proposed Project, it would not eliminate the significant unavoidable impacts to traffic, air quality and solid waste, and as such would provide only nominal environmental benefit without the full benefits expected from the proposed Project, and is rejected on that ground.

The Planning Commission hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative Two as infeasible and by itself, independent of any other reason, would justify rejection of Alternative Two as infeasible. Not the least of which is that this Alternative does not mitigate any of the unmitigable Project impacts to less than significant.

C. ALTERNATIVE THREE: OFFICE AND RETAIL ALTERNATIVE

1. Summary of Alternative

The Office and Retail Alternative would involve implementation of the Project as proposed with the exception of restaurant uses. With this Alternative, the proposed zoning changes would still occur, although the Project site would be developed with office and retail uses only, and no restaurant uses would be included. Consequently, this Alternative would result in 177,225 square feet of office uses on the second through sixth floors and 22,875 square feet of retail uses on the ground floor. The retail uses would be arranged along the Beverly Drive frontage to maintain a pedestrian-oriented presence on the ground floor. Parking would continue to be provided within a four and one-half-level subterranean parking structure.

2. Reasons for Rejecting Alternative

The Office and Retail Alternative would result in reduced impacts for traffic, air quality, noise, geology, water supply, wastewater, solid waste, fire protection, and police protection, however,

these impacts were fully mitigated with the proposed Project. This Alternative would result in comparable impacts for land use, population and employment, aesthetics, light, and glare, site access and circulation, parking supply and demand, parking management during construction, parking management during operation, hydrology and water quality, and hazards and hazardous materials. The Office and Retail Alternative does require a General Plan Amendment and Zone Change. However, this Alternative reduces but does not eliminate the significant impacts for traffic, air quality, and solid waste.

The Office and Retail Alternative would implement most of the overall objectives of the proposed Project, which include achieving the development of a visually compatible, successful development with entertainment-related, retail, and restaurant uses to meet market demands and increase the City's economic base. Under this Alternative, the proposed zoning changes for the site would be implemented, commercial office and retail uses would be developed, but without restaurant uses, and the existing underutilized commercial uses would be removed from the site. However, this Alternative would not provide restaurant uses on-site, and therefore would not provide services and associated tax revenues to the extent the proposed project would. Specifically, this Alternative's ability meet each of the proposed Project's objectives is summarized below:

(a) Objectives Fully Met by Alternative:

(1) Build a project that is harmonious in scale and architectural style with the surrounding area.

(2) Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.

(3) Build a subterranean parking structure (a) to place parking below grade to allow for the most efficient use of above-grade property in the project area, (b) to provide sufficient and convenient parking for site uses, and (c) to allocate a specific number of parking spaces for use by the Bank of America building, in order to accommodate existing covenanted parking obligations for the Bank of America building.

(4) Build a project that provides pedestrian-friendly amenities at the street level.

(5) Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills

- to attract and provide additional opportunities for quality entertainment-related businesses that would not otherwise be encouraged by the underlying zone, in order to maintain and strengthen the economic base of the City;
- to provide for an additional building project for single and multi-tenant entertainment related business uses not currently available in the City;



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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Aesthetics, Light, and Glare AES1 Construction equipment staging areas shall use appropriate screening (i.e., temporary fencing with opaque material) to buffer views of construction equipment and material, when feasible. Staging locations shall be indicated on Final Development Plans and Grading Plans.	Community Development Department	A Construction Management Plan shall be prepared by the applicant and reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
AES2 All construction-related lighting shall include shielding in order to direct lighting down and away from adjacent hotel and residential uses and consist of the minimal wattage necessary to provide safety at the construction site. A construction safety lighting plan shall be submitted to the City for review concurrent with Grading Permit application.	Community Development Department	As part of the construction Management Plan, the project applicant shall prepare a construction safety lighting plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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		the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.			
Traffic					
TR1	Department of Public Works/ Civil Engineering and Community Development Department	The Department of Public Works, Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.		
TR2	See above.	See above.	See above.		



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	Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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	<p>eastbound North Santa Monica Boulevard approach at Beverly Drive from one dedicated left-turn lane, one through lane, and one shared through/right-turn lane to consist of one dedicated left-turn lane, two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires narrowing of the existing landscaped area located at the southwest corner of the intersection, adjacent to the existing City-operated parking facility and relocation of existing curb, utilities, and signal post.</p>					
TR3	<p>Beverly Drive/South Santa Monica Boulevard - The project applicant shall make a fair share contribution to widen the southbound Beverly Drive approach at South Santa Monica Boulevard from one through lane and one shared through/right-turn lane to consist of two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires restriping of Beverly Drive between North Santa Monica Boulevard and South Santa Monica Boulevard and tapering of the southbound Beverly Drive curb at South Santa Monica Boulevard.</p>	See above.	See above.	See above.		
TR4	<p>Beverly Drive/Dayton Way - At the northeastern corner of the project site, the project applicant shall restripe (by removing the parking lane) the eastbound Dayton Way approach at Beverly Drive from one shared left-turn/through lane and one shared through/right-turn lane to consist of one shared left-turn/through</p>	See above.	See above.	See above.		



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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TR5 lane, one through lane, and one dedicated right-turn lane. North Santa Monica Boulevard/Wilshire Boulevard - The project applicant shall make a fair share contribution to re-stripe the southbound North Santa Monica Boulevard approach at Wilshire Boulevard from two through lanes, one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing. Additionally, the project applicant shall make a fair share contribution to widen the westbound Wilshire Boulevard approach at North Santa Monica Boulevard from one dedicated left-turn lane, two through lanes, and one shared through/right-turn lane to consist of one dedicated left-turn lane, three through lanes and one dedicated right-turn lane. The westbound Wilshire Boulevard approach requires relocation of the existing sidewalk and utilities adjacent to the existing Budget Car & Truck Rental surface lot along Wilshire Boulevard, thus impacting a portion of the existing Budget Car & Truck Rental surface lot. Widening of the westbound Wilshire Boulevard approach at North Santa Monica Boulevard would require acquisition of private property, and therefore, based on comments from City staff, is considered infeasible. Hence, according to City staff, only the portion of this mitigation measure that consists of restriping the	See above.	See above.	See above.		



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<p>southbound North Santa Monica Boulevard approach at Wilshire Boulevard is considered to be feasible.</p>					
Site Access and Circulation					
<p>AC1 The construction contractor shall create a site access point that would not interfere with any construction vehicles turning left from the northbound lanes into the project site, subject to review and approval by the City of Beverly Hills.</p>	Community Development Department	<p>The site access point will be identified in the Final Construction Management Plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.</p>	<p>This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.</p>		
<p>AC2 In order to mitigate potential internal circulation and parking accessibility impacts in the proposed parking structure, full-time valet parking shall be required for all building visitors.</p>	Community Development Department	<p>The project applicant will prepare a Parking Operations Plan. This measure will be included in</p>	<p>The Parking Operation Plan is effective immediately upon issuance of building permits for the</p>		

Final

Mitigation Monitoring/Reporting Program



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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		the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	project, and shall remain effective throughout the life of the project.		
Parking Supply and Demand PSD1	Community Development Department	The project applicant will comply with this mitigation by providing spaces on- or off-site. The revised plans filed with the Building & Safety division shall comply with this requirement. The plan check engineers will review the revised plans to ensure that they comply with this requirement.	This measure shall be met prior to issuance of building relevant permits.		
Parking Management During Construction PMC1	Community Development	In order to address parking for construction workers during demolition, excavation, and shoring activities, the following steps			
			The primary contractor shall submit to the department a		The program and affidavit shall be



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<p>shall be implemented:</p> <ul style="list-style-type: none"> • Whenever possible, park the crews at the project site. • When the crews cannot park at the project site, they shall be permitted to use available parking at 9465 Wilshire Boulevard during the off-peak hours. • For peak hour parking needs that cannot be accommodated on-site, the project applicant shall procure 20 spaces on a monthly basis in nearby parking structures with excess capacity. 	Department	program and an affidavit attesting to the compliance with this measure as part of the Construction Management Plan which will be reviewed by the Community Development Department / Building & Safety Department.	submitted prior to the commencement of any work on the project site. This measure shall be in effect until the issuance of the certificate of occupancy.		
Parking Management During Operation					
<p>PMO1</p> <p>Signage and/or striping shall be installed to direct visitors to the central valet station upon entering the garage, in accordance with a signage and striping plan as approved by the Director of Community Development.</p>	Community Development Department	This measure will be included in the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	The Parking Operation Plan is effective immediately upon issuance of building permits for the project, and shall remain effective throughout the life of the project.		
<p>PMO2</p> <p>The valet company shall be responsible for maintaining the correct directional flow of vehicles through the central valet station at all</p>	Community Development	See above	See above.		



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Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<p>times, and especially during periods of high demands by visitors and pass-holders.</p> <p>PMO3 For egress out of the structure, signage and/or striping shall be installed to direct visitors to use the Dayton Way exit in accordance with a signage and striping plan as approved by the Director of Community Development. A right-turn only sign and/or arrow shall direct visitors to Dayton Way.</p>	<p>Department</p> <p>Community Development Department</p>	<p>See above.</p>	<p>See above.</p>		
<p>PMO4 The project applicant shall submit a parking operations plan concurrent with the submittal of plans for building permit. The parking operations plan shall be approved by the Director of Community Development prior to the issuance of a building permit. At a minimum, the parking operations plans shall address the following:</p> <ul style="list-style-type: none"> • Parking allocation in the garage; • Garage access and control systems; • Valet and/or attendant assistance; • Staffing levels. <p>The parking operations plan shall demonstrate that traffic does not back up onto Dayton Way. Through adequate staffing and other measures, the parking operations plans shall ensure that parking aisles are kept clear, and vehicle flow for valet and/or attendant assistance is properly maintained. In doing so, the parking operations plans shall prevent queues from backing up onto Dayton Way and keep the garage operations from impacting traffic circulation around the project site. In addition, the parking</p>	<p>Community Development Department</p>	<p>See above. In addition, any measures applicable to the restaurant operations shall be imposed to a lease agreement with a prospect tenant. Such measure shall be disclosed to any prospect tenant prior to execution of a lease agreement.</p>	<p>See above. Prior to application of a tenant improvement permit, the prospective tenant shall provide the preferred methods selected to operate the restaurant parking per the Community Development Director review and approval.</p>		



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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<p>operations plans shall consider, but is not limited to, the following menu of methods to ensure adequate parking supply is maintained based on final floor plans submitted for building permit:</p> <ul style="list-style-type: none"> • Limit restaurant hours. Limitation of restaurant hours during peak hours from 11:00 AM to 2:00 PM. • Use of an on-street valet. If the restaurant is open from 11:00 AM to 2:00 PM, then all patrons must use an on-street valet that will park the cars in an adjacent off-site parking lot. The valet operations must be consistent with the City's Daytime Valet Guidelines. In addition, should this option be exercised, it would require a separate approval from the City. • The valet may stack vehicles in the drive aisles, as long as circulation is maintained. • Reduction in retail and/or restaurant square footage to reduce parking and/or valet demand. 					
<p>Air Quality AIR1</p> <p>During clearing, grading, earth moving, or excavation operations, excessive fugitive dust emissions shall be controlled by regular water or other dust preventive measures using the following procedures, as specified in the South Coast Air Quality Management District Rule 403. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations shall comply with the South Coast Air Quality Management District Rule 403.</p>	Community Development Department	The project applicant shall submit a construction management plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development	This measure shall be met during the during construction period. This measure shall be in effect until the issuance of certificate of occupancy.		



231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program				
Mitigation Measure	Responsible Department	Monitoring Action	Verification of Completion	
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<ul style="list-style-type: none"> On-site vehicle speed shall be limited to 15 miles per hour; All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice daily with complete coverage, preferable in the late morning and after work is done for the day; All material transported on-site or off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust; The area disturbed by clearing, grading, earth moving, or excavation operations shall be minimized so as to prevent excessive amounts of dust; A wheel washing system shall be installed and used to remove bulk material from tires and vehicle undercarriages before vehicles exit the project site. All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be posted in a prominent and visible location at the construction site, and shall be maintained throughout the construction process. All notices and the signs shall indicate the dates and duration of construction activities, as well as provided a telephone number where residents can inquire about the construction process and register complaints. 		<p>Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>		



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ENVIRONMENTAL IMPACT REPORT

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check-Box	Date
<ul style="list-style-type: none"> These control techniques shall be indicated in project specifications. Compliance with the measure shall be subject to periodic site inspections by the City; and Visible dust beyond the property line emanating from the project shall be prevented to the maximum extent feasible. 					
<p>AIR2</p> <p>All trucks that are to haul excavated or graded material on-site shall comply with State Vehicle Code Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F), (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations subject to that specification during hauling activities shall comply with the provisions set forth in Sections 23114(b)(F), (e)(4).</p>	Community Development Department	See above.	See above.		
<p>AIR3</p> <p>Prior to approval of the project plans and specifications, the Public Works Director, or his designee, shall confirm that the construction bid packages include a separate "Diesel Fuel Reduction Plan." This plan shall identify the actions to be taken to reduce diesel fuel emissions during construction activities (inclusive of grading and excavation activities). Reductions in diesel fuel emissions can be achieved by measures including, but not limited to, the following:</p> <ul style="list-style-type: none"> a) use of alternative energy sources, such as compressed natural gas or liquefied petroleum gas, in mobile equipment and vehicles; b) use of "retrofit technology," including diesel particulate traps, on existing diesel engines and vehicles; and c) other appropriate measures. Prior to the issuance of a grading permit, the Diesel Fuel Reduction Plan shall be filed with the City of Beverly Hills. 	See above.	See above.	See above.		



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<p>The Diesel Fuel Reduction Plan shall include, at a minimum, the following provisions:</p> <ul style="list-style-type: none"> All diesel fueled off-road construction equipment shall be California Air Resources Board certified or use post-combustion controls that reduce pollutant emissions to the same level as California Air Resources Board certified equipment. California Air Resources Board certified off-road engines are engines that are three years old or less and comply with lower emission standards. Post-combustion controls are devices that are installed downstream of the engine on the tailpipe to treat the exhaust. These devices are now widely used on construction equipment and are capable of removing over 90 percent of the PM₁₀, carbon monoxide, and volatile organic compounds from engine exhaust, depending on the specific device, sulfur content of the fuel, and specific engine. The most common and widely used post-combustion control devices are particulate traps (i.e., soot filters), oxidation catalysts, and combinations thereof. All diesel fueled on-road construction vehicles shall meet the emission standards applicable to the most current year to the greatest extent possible. To achieve this standard, new vehicles shall be used or older vehicles shall use post-combustion controls that reduce pollutant emissions to the greatest extent feasible. The effectiveness of the latest diesel emission controls is highly dependant on the sulfur content of the fuel. 					



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AIR4	Therefore, diesel fuel used by on-road and off-road construction equipment shall be low sulfur (>15 ppm) or other alternative low polluting diesel fuel formulation. The project shall comply with South Coast Air Quality Management District Rule 1113, which limits the ROG content of architectural coatings used in the Basin or to allow the averaging of such coatings, as specified, so actual emissions do not exceed the allowable emissions if all the averaged coatings had complied with the specified limits.	See above.	See above.		
AIR5	The project shall comply with South Coast Air Quality Management District Rule 1403, Asbestos Emissions From Demolition/Renovation Activities, which specifies work practice requirements to limit asbestos emissions from building demolition and renovation activities, including the removal and associated disturbance of asbestos containing materials. The requirements for demolition and renovation activities include asbestos surveying, notification, asbestos containing materials removal procedures and time schedules, asbestos-containing materials handling and clean-up procedures, and storage, disposal, and landfilling requirements for asbestos-containing waste materials. All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.	See above.	See above.		
Noise					
NO/1	Prior to grading permit issuance, the construction contractor shall demonstrate, to the satisfaction of the City of Beverly Hills Community Development Department, the following:	Community Development Department	The project applicant shall submit a construction management plan to the	This measure shall be met during the during construction period.	



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<ul style="list-style-type: none"> Construction contracts shall specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers that exceed state requirements for muffler attenuation devices. All residential units located within one-quarter mile of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be prominently posted at the construction site. All notices and signs shall indicate the dates and duration of construction activities, as well as provide a telephone number of a contact person with whom residents can discuss the construction process and register complaints. The contact person shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint. A "noise disturbance coordinator" shall be established. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within one-quarter mile of the construction site and all signs posted at the construction site shall list the telephone number for the disturbance coordinator. The noise disturbance coordinator shall be required to maintain a log of 		<p>Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>	<p>This measure shall be in effect until the issuance of certificate of occupancy.</p>	



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ENVIRONMENTAL IMPACT REPORT**

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<p>complaints for the City's inspection. The log shall include the source of complaint, the complaint, time received, and the action taken in response. The noise disturbance coordinator shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint.</p> <ul style="list-style-type: none"> Staging of construction vehicles is prohibited on streets within the City of Beverly Hills. All construction vehicle staging shall occur on La Cienega Boulevard. During construction, stockpiling and vehicle staging areas shall be located as far as practical from noise sensitive receptors. Construction noise reduction methods such as shutting off idling equipment, installing temporary acoustic barriers around stationary construction noise sources, maximizing the distance between construction equipment staging areas and occupied residential areas, and use of electric air compressors and similar power tools, rather than diesel equipment, shall be employed where feasible. During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers. 					
NO12	Community Development Department	A "Nighttime Construction Noise Plan" shall be submitted to the Director of Community prior to issuance	The measure shall be met during the construction period. This measure shall be in		



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<p>plan shall incorporate provisions for noise attenuation barriers, truck routing, location of staging areas, worker parking and other appropriate measures for achieving an overall attenuation of construction noise of at least 8 dBA.</p>		<p>of any grading or construction permits. The Construction Management Plan shall be reviewed by the Planning Division and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the Construction Management Plan.</p>	<p>effect until the issuance of the certificate of occupancy.</p>		
<p>The project applicant shall incorporate all applicable recommendations of the <i>Geotechnical Report</i> into the design of proposed structures to address seismic groundshaking and other earthquake-related seismic hazards.</p>	<p>Community Development/ Building & Safety Division</p>	<p>The construction plans filed with the Department of Community Development/ Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this</p>	<p>This requirement shall be met prior to the issuance of relevant building permits</p>		
<p>Geology GEO1</p>					

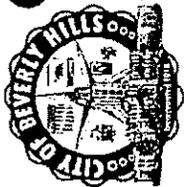


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Mitigation Monitoring and Reporting Program

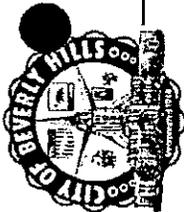
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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GEO2	See above.	requirement. See above.	See above.		
Hydrology and Water Quality					
HWQ1	Community Development Department	The project applicant shall prepare a wet year analysis to file with the Department of Community Development/Building & Safety Division to comply with this requirement.	This requirement shall be met prior to the issuance of relevant building permits.		
HWQ2	Community Development Department	The project applicant shall prepare Storm water Pollution Prevention Plan.	Prior to issuance of grading and building permits.		
HWQ3	Community Development Department	The project applicant shall comply with all applicable requirements of City Ordinance 06-O-2506 relating to construction dewatering and discharges of groundwater.	Project applicant compliance with City Ordinance 06-O-2506.		
HWQ4	Community Development Department	The project applicant shall prepare and receive approval of a Water Quality Management Plan for project operation, in order to comply with the County Standard Urban Stormwater Mitigation	Prior to issuance of grading and building permits.		



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Plan requirements of the NPDES MS4 permit.					
Hazards and Hazardous Materials					
HAZ1 The project applicant and individual tenants shall comply with all applicable City, County, State, and Federal regulations with respect to the storage, handling, transportation, and disposal of hazardous wastes.	Community Development/Building & Safety Division Department of Public Works	The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.	This measure shall be in effect until the issuance of the certificate of occupancy.		
HAZ2 If unknown wastes or suspect materials are discovered during demolition or construction by the contractor, which he/she believes may involve hazardous waste/materials, the contractor shall: <ul style="list-style-type: none"> • Immediately stop work in the vicinity of the suspected contaminant, removing workers and the public from the area; • Notify the project engineer of the implementing agency; • Secure the areas directed by the project engineer; and • Notify the implementing agency's Hazardous Waste/Materials Coordinator. • Implement required corrective actions, including remediation if applicable. 	See above.	See above.	See above.		



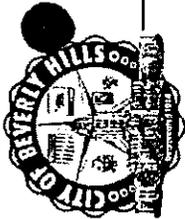
231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program					
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HAZ3 Damaged or deteriorated (unsealed ends, nicks, loose pieces of insulation, abraded floor tiles, etc.) friable and non-friable asbestos-containing materials shall be repaired by properly trained personnel. Proper respiratory protection and containment shall be provided should these materials need to be disturbed for building maintenance or renovation. Prior to demolition, renovation, or any other such activity, suspect materials observed in the subject buildings shall be sampled and tested for asbestos. Additionally, if an Operations and Maintenance (O&M) Plan does not exist, one shall be developed, and the identified materials shall be included.	See above.	See above.	See above.		
HAZ4 Based on the age of the property buildings (mid-1930s and early-1960s), it is possible that lead-based paint is present on-site. As such, prior to demolition and removal of on-site structures, paint shall be sampled and analyzed for the presence of lead-based paint. If lead-based paint is found to occur within the subject buildings, proper removal, handling, and disposal of such materials shall be performed pursuant to applicable rules and regulations, to the satisfaction of regulatory agencies with oversight authority.	See above.	See above.	See above.		
HAZ5 Based on the historical site uses, primarily on the northwestern end of the site, soils shall be closely monitored during excavation work for any future redevelopment activities. If unusual odors or discolored soils are encountered during the excavation phase of the project, soil samples from the area of potential concern shall	See above.	See above.	See above.		



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<p>be collected and analyzed. Qualified environmental personnel shall be present on site to assist in characterizing and segregating impacted soils, if encountered. This work shall be conducted subsequent to building demolition work but before the commencement of mass excavation activities. If any such contaminated soils are encountered on-site, they shall be excavated and removed, or otherwise remediated, in accordance with applicable State law to the satisfaction of regulatory agencies with oversight authority.</p>					
<p>Solid Waste SW1 Prior to the issuance of building permits, a source reduction program shall be prepared and submitted to the City's Solid Waste Superintendent to achieve a minimum 50 percent reduction in waste disposal rates, including green waste and construction debris.</p>	<p>Department of Community Development, Department of Public Works</p>	<p>A Source Reduction Program shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The responsible departments shall review the program to ensure that the plan is in compliance with this measure during construction and after completion of the project. The plan check engineers will also review the plan to ensure that the plan complies with this requirement in order to issue the building permits.</p>	<p>This measure shall apply to both construction and operational activities. It is effective upon the issuance of building permits and shall remain effective throughout the life of the project.</p>		



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SW2 The location of recycling/separation areas shall be in close proximity to dumpsters for non-recyclables, elevators, loading docks, and primary internal and external access points.	See above.	See above.	See above.		
SW3 The location of recycling/separation areas shall not be in conflict with any applicable Federal, State, or local laws relating to fire, building, access, transportation, circulation, or safety.	See above.	See above.	See above.		
Fire Protection Services					
FS1 Adequate emergency vehicle access to all buildings on the project site shall be provided throughout the building construction process.	Community Development/ Building & Safety Division Fire Department	The Construction Management Plan shall be reviewed by the Community Development/ Building & Safety Division and Fire Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		



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FS2 Adequate water availability shall be provided to meet construction activity needs, including potential fire suppression needs.	See above.	See above.	See above.		
FS3 The proposed project shall comply with all applicable Building Code and Fire Code requirements, subject to review and approval by the Beverly Hills Fire Department.	See above.	See above.	See above.		
Police Protection Services					
PP1 During construction, private security patrols shall be utilized to protect the project site.	Community Development Department/ Building & Safety Division Police Department	The Construction Management Plan shall be reviewed by the Community Development Department Building & Safety Division and Police Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
PP2 As final building plans are submitted to the City for approval in the future, BHPD design requirements which reduce demands for service and ensure adequate public safety (such as those pertaining to site access and site security lighting) shall be	See above.	See above.	See above.		



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Mitigation Monitoring and Reporting Program

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incorporated into the building design. PP3 Project design shall provide lighting, to the satisfaction of the BHPD, around and throughout the development to enhance crime prevention and enforcement efforts.	See above.	See above.	See above.		
PP4 Project design shall provide clearly visible (during the day and night) address signs and/or building numbers for easy identification during emergencies.	See above.	See above.	See above.		

RESOLUTION NO. 1488

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING APPROVAL OF A REQUEST FOR A GENERAL PLAN AMENDMENT TO ESTABLISH A MEDIUM DENSITY GENERAL COMMERCIAL LAND USE DESIGNATION AND APPLY IT TO THE PROJECT SITE, AND A ZONE TEXT AMENDMENT AND ZONE CHANGE TO CREATE AN ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE (E-O-PD) AND APPLY IT TO THE PROJECT SITE LOCATED AT 231-265 NORTH BEVERLY DRIVE.

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

Section 1. Mark Egerman, on behalf of Beverly Wilshire Owner, LP (the "Applicant"), has applied for a General Plan Amendment, a Zoning Code Amendment to create the Entertainment Office Overlay Zone (E-O-PD), a Zoning Map Amendment to apply the E-O-PD overlay zone to the subject property, a Planned Development Permit, a Lot Line Adjustment and a proposed Development Agreement for an entertainment talent agency office building with street level retail and commercial use (the "Project") at property known as 231-265 North Beverly Drive bounded by Beverly Drive on the east, Dayton Way on the north, an alley on the west and the existing Bank of America site (9461 Wilshire Boulevard) to the south (the "Project Site"). The intended office building occupant is the William Morris Agency.

The Planning Commission's role as to the General Plan Amendment, Zoning Code Amendment, Zoning Map Amendment and Development Agreement is solely advisory to the City Council, however the Commission has the role of approving or conditionally approving the Planned Development Permit and Lot Line Adjustment components of the Project.

Section 2. The approvals requested by the Applicant include but are not limited to the following:

2.1 General Plan Amendment: a request to amend the General Plan to create the Medium Density Commercial Land Use category, and amending the Land Use Plan Map to designate the Project Site as Medium density Commercial, with a maximum allowable height of 92 feet and floor area ratio (FAR) not to exceed 3.6:1;

2.2 Zoning Code Amendment: a request to create an overlay zone to allow for entertainment talent agency uses (the Entertainment Office Planned Development Overlay Zone (E-O-PD)) and set specific development standards for such uses including a maximum height of 88 feet, with allowance for up to 92 feet only in the event of technical difficulty encountered during construction, and a floor area ratio of no more than 3.6:1; and

2.3 Zone Change: a request to apply the Entertainment Office Planned Development Overlay Zone (E-O-PD) to the Project Site.

Section 3. The Planning Commission held its first duly noticed Public Hearing on July 25, 2007. The primary purpose of that hearing was to discuss the Draft Environmental Impact Report ("DEIR") which was released for public review on July 10, 2007. The hearing was continued on August 9, September 5, September 6, September 27 and October 11, 2007 to allow the Applicant to present the Project, the public to comment on the Project, the Applicant to revise the Project in accordance with direction and comments from the Planning Commission. The evidence, both written and oral, was presented at said hearings. In addition, the Commission conducted site visits on July 12, 2007 and September 27, 2007. The DEIR was released for a 45-day public review period on July 10, 2007. The 45-day comment

period ended on August 23, 2007. Responses to the comments received were prepared, and are contained in the Final EIR prepared by RBF Consulting, the City's environmental consultant.

Section 4. 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. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to CEQA Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an EIR for the Project to analyze the Project's potential impacts on the environment. The Planning Commission, by separate Resolution No. 1487, (a) made certain CEQA findings and determinations, (b) certified the EIR, (c) adopted a Statement of Overriding Considerations, and (d) adopted a Mitigation Monitoring and Reporting Program. The documents and other materials that constitute the record on which this decisions is based are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 5. The objectives of the proposed Overlay Zone are set forth in Section 10-3-1861 of the proposed ordinance, as fully set forth in the Draft Ordinance attached hereto as Exhibit "A."

Section 6. Section 10-3-3908 of the Beverly Hills Municipal Code provides that the Planning Commission may recommend General Plan Amendments and Zone Changes to the City Council if it determines that the public interest, health, safety, morals, peace, comfort, convenience or general welfare warrants the reclassification of the subject property.

Section 7. Based upon the evidence presented, the Planning Commission hereby finds the following with regard to the requests for a General Plan Amendment, Zone Text Amendment and Zone Change:

7.1 General Plan Amendment. The Project proposes amending the General Plan, which would establish a new land use category of Medium Density Commercial. The Project Site would be designated as Medium Density Commercial in the Land Use Map. This designation would allow for development of the Project site with commercial retail and entertainment office uses with a maximum Floor Area of 3.6 to 1 and a maximum height of six stories or 92 feet. The proposed language for the amendment is as follows:

“The Land Use portion of the General Plan, specifically Map 1 (Land Use Plan) is amended as follows for the reasons set forth in the objectives of the Entertainment/Office Planned Development Overlay Zone (E-O-PD): The area in the map bounded on the south by the property presently occupied by the Bank of America Building (9461 Wilshire Boulevard), on the north by Dayton Way, on the east by Beverly Drive, and on the west by the alley between Beverly Drive and Rodeo Drive shall be designated Medium Density Commercial with a maximum 3.6:1 Floor Area Ratio (FAR) and a maximum height of 92 feet.”

7.2 Zone Text Amendment and Zone Change. The proposed Zone Text Amendment to create the Entertainment Office Planned Development Overlay Zone (E-O-PD) and Zone Change to apply the overlay zone to the subject property is warranted because both further the public interest, health, safety, morals, peace, comfort, convenience or general welfare. The proposed Overlay Zone would allow additional height, increase of floor area, tandem and

compact parking spaces and screening room as an ancillary use to the primary entertainment talent agency use.

The proposed Overlay Zone will create appropriate standards and criteria that will ensure that the uses within the Overlay Zone are compatible with uses allowed within the underlying zone and on adjacent properties, and will maintain the public interest, health, safety, morals, peace, comfort, convenience or general welfare. The Amendment of the General Plan to allow for retail/commercial and entertainment agency uses and the application of the Overlay Zone to the subject property furthers these same objectives and are also warranted.

Section 8. Based upon the evidence presented, the Planning Commission hereby recommends that the City Council approve the proposed General Plan Amendment, approve the Zoning Text Amendment, and apply the Entertainment Office Planned Development Overlay Zone to the Project Site as set forth in the Draft Ordinance attached hereto as Exhibit "A."

Section 9. The Secretary of the Planning Commission 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 Planning Commission of the City.

Adopted: October 25, 2007



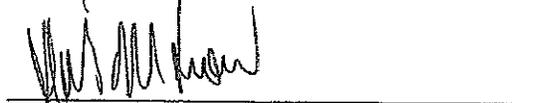
Noah D. Furie
Chairman of the Planning Commission of the City
of Beverly Hills, California

Attest:



Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Vincent P. Bertoni, AICP
Director of Community Development

EXHIBIT A
DRAFT ORDINANCE

DRAFT ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
CREATING THE ENTERTAINMENT OFFICE PLANNED
DEVELOPMENT OVERLAY ZONE (E-O-PD) ZONE,
AMENDING THE BEVERLY HILLS MUNICIPAL CODE,
AND APPLYING THE ENTERTAINMENT OFFICE
PLANNED DEVELOPMENT OVERLAY ZONE TO
PROPERTY KNOWN AS 231-265 NORTH BEVERLY DRIVE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1. Legislative Findings. Due to special circumstances surrounding the property at 231-265 North Beverly Drive, the City Council finds that certain commercially zoned properties in the City may be appropriately used for entertainment talent agency purposes and that such uses are unique and warrant specific development standards and criteria. The objectives of the Entertainment Office Planned Development Overlay Zone (E-O-PD) shall include those objectives set forth in the proposed section 10-3-861 of the Overlay Zone, as set forth in full in Section 5 below.

Section 2. The Planning Commission considered this Ordinance at duly noticed public hearings on July 25, August 9, September 5, September 6, September 27, October 11, and October 25, 2007. Evidence both written and oral was presented during the hearings. After considering the evidence, the Planning Commission recommended that the City Council adopt this Ordinance.

Section 3. The City Council considered this Ordinance at a duly noticed public hearing on _____. Evidence, both written and oral, was presented at said hearing.

Section 4. 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. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to CEQA Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an EIR for the Project to analyze the Project's potential impacts on the environment. The Planning Commission, by Resolution 1487, (a) made certain CEQA findings and determinations, (b) certified the EIR (c) adopted a Statement of Overriding Considerations and (d) adopted a Mitigation Monitoring and Reporting Program. The documents and other material that constitute the record on which this decision is based are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 5. A new Article 18.6 is hereby added to Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

"ARTICLE 18.6. ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE (E-O-PD Overlay Zone)

10-3-1860: CREATION OF THE OVERLAY ZONE:

There is hereby created an overlay zone designated as the Entertainment Office Planned Development Overlay Zone (E-O-PD Overlay Zone).

10-3-1861: OBJECTIVES OF THE E-O-PD OVERLAY ZONE:

The objectives of the E-O-PD Overlay Zone shall be as follows:

- A. To provide additional opportunities to locate a major quality talent agency that would not otherwise be allowed by the underlying zone due to height and floor area ratio limitations, in order to maintain and strengthen the economic base of the City;
- B. To encourage the development and redevelopment of the property at 231-265 North Beverly Drive to provide for single and multi-tenant entertainment talent agency business not currently available in the city;
- C. To provide for the enhancement of employment and commerce within the Project area by locating new entertainment talent agency offices in the area;
- D. To provide retail/commercial and entertainment talent agency business uses responsive to the city's needs and regional market forces;
- E. To encourage the provision of pedestrian-friendly amenities at the street level;
- F. To augment the city's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the entertainment talent agency business, and increase in assessed land and building values, which should generate additional property taxes.
- G. To protect the health, safety, and welfare of residents, businesses and visitors of the E-O-PD Overlay Zone and surrounding areas;

H. To foster development in the E-O-PD Overlay Zone that is environmentally sensitive;

I. To ensure that development, which includes floor area in excess of the density or other zoning limitations of an underlying zone and deviations from the parking stall size and configuration standards of an underlying zone, shall not be a right of the property owner, but instead shall be permitted only upon a determination that such development would meet the objectives set forth in this section as well as the amendment section contained in article 39 of this chapter and the planned development process contained in article 18.4 of this chapter;

J. To ensure that development in the E-O-PD Overlay Zone will not materially and adversely affect the businesses adjacent to the E-O-PD Overlay Zone;

10-3-1862: DEFINITIONS:

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

ANCILLARY COMMERCIAL: Commercial uses that are ancillary to an entertainment business, such as food service, reprographics, news stands, and similar service oriented activities.

OVERLAY ZONE: A zoning district which governs the same territory as an underlying zone, but provides alternative development standards for a specified type of development or use.

PLANNED DEVELOPMENT: A development that is approved pursuant to the procedures of article 18.4 of this chapter.

ENTERTAINMENT TALENT AGENCY: Entertainment talent agency shall mean a business establishment with representation in all sectors of the entertainment industry, including motion pictures, television, music, modeling, Broadway theatre, book publishing, and commercial endorsements.

TANDEM SPACE: A parking space that can only be accessed through another parking space.

UNDERLYING ZONE: The primary zone designation which would govern development on a particular site if such development were not otherwise governed by an overlay zone.

10-3-1863: USES PERMITTED

Except as otherwise provided or restricted by this article, no lot, premises, building or portion thereof in the E-O-PD Overlay Zone shall be used for any purpose except the following:

A. Uses permitted in the applicable underlying zone that meet the development standards of the underlying zone, provided that a minimum of 70% of the office space shall be used as entertainment talent agency. If more than 30% of the office space will be used by uses other than entertainment talent agency, the uses in the underlying zone shall be permitted only through the planned development process in pursuant to article 18.4 of this chapter.

B. Entertainment related businesses and ancillary uses approved by the Planning Commission as part of a planned development pursuant to article 18.4 of this chapter. Entertainment related businesses may include convenience service uses that are accessory to entertainment related businesses.

C. Prohibited Uses: The following uses shall not be permitted in a E--O-PD Overlay zone without the prior approval of the Planning Commission: medical offices; commercial exercise clubs and training centers, medical laboratories, hair salons; nail salons, real estate offices; non-office retail establishments, except on the ground floor and any mezzanine; and restaurants in excess of 5% of the total gross square footage of the building.

D. Ancillary Commercial Uses: Ancillary commercial uses may be permitted on any floor. However, the total floor area occupied by ancillary commercial uses shall not exceed 5% of the floor area of the building. Ground floor commercial shall not be limited by this restriction.

10-3-1864: APPLICABILITY OF UNDERLYING ZONE REGULATIONS:

Except as otherwise specifically provided in this article, development and uses in an E-O-PD Overlay Zone shall comply with the zoning regulations applicable to the underlying zone.

10-3-1865: HEIGHT LIMIT OF BUILDING PROJECTS FOR ENTERTAINMENT RELATED BUSINESSES:

Building projects for entertainment related businesses shall be constructed, altered, or enlarged in the E-O-PD Overlay Zone in accordance with the following height restrictions:

A. Stories: No building project for an entertainment related business shall exceed six (6) stories, measured as set forth in the definition of “story” in section 10-3-100 of this chapter.

B. Height: Building height shall not exceed eighty-eight feet (88’), except that up to a maximum of ninety two feet (92’) may be permitted at the discretion of the Director of Community Development due to technical difficulties that may be encountered during construction, when located within a commercial underlying zone.

C. Unoccupied Architectural Features: Notwithstanding subsection A7 of the definition of “height of building” in section 10-3-100 of this chapter, unoccupied architectural features may exceed the height limits of this section by not more than fifteen feet (15’) in height if such unoccupied architectural features are approved by the Planning Commission as part of a planned development pursuant to article 18.4 of this chapter.

D. Vertical Circulation Spaces: Vertical circulation spaces such as stair shafts or elevator shafts shall not be subject to the six story limitation set forth in subsection A of this section if such vertical circulation spaces are approved by the Planning Commission as part of a planned development pursuant to article 18.4 of this chapter.

E. Mechanical Penthouse: A mechanical penthouse may exceed the story limitation set forth in subsection A of this Section.

10-3-1866: DENSITY:

A building project for an entertainment related business located in the E-O-PD Overlay Zone shall have a floor area ratio no greater than three and six-tenths to one (3.6:1).

10-3-1867: PARKING, ACCESS, AND CIRCULATION:

Except as otherwise provided in this section, parking for a building project for an entertainment related business and ancillary facilities located in the E-O-PD Overlay Zone shall be provided in accordance with sections 10-3-2727 through 10-3-2736, inclusive, of this chapter.

A. As part of a planned development application pursuant to article 18.4 of this Chapter, the Planning Commission, after reviewing a parking program with a finding that the proposed parking plan will have no adverse impact to the site or the surrounding properties, may allow tandem spaces and/or compact spaces as follows:

(1) Tandem spaces may be used, measuring not less than 9' x 17'. The amount of tandem parking spaces shall be in conformance with an approved parking program pursuant to subsection B of this Section.

(2) Compact spaces may be used, measuring not less than 7.5' x 17' to satisfy up to 17% of the parking requirement.

(3) Parking spaces that are both compact and tandem may be used, measuring not less than 7.5' x 17' to satisfy up to 7% of the parking requirement.

B. All parking that is required by this article shall conform to a parking program approved by the Planning Commission as part of a planned development approval

pursuant to article 18.4 of this chapter. The parking program shall include monitoring programs and may include measures such as: 1) free parking for employees, and 2) free validated self-and valet-parking for patrons, as necessary to minimize the parking and circulation impacts of the project on the surrounding streets and to ensure that vehicle queuing will not occur in the public right-of-way or impede access to a parking facility. The monitoring program shall be implemented by the applicant, tenant or building owner at its expense. In addition, the monitoring program shall provide the city with continuing jurisdiction to require the implementation of additional measures by the applicant to ensure vehicles will not impede traffic in the public right-of-way.

C. Any building project for an entertainment related business developed pursuant to the provisions of this article shall provide a valet queuing area of sufficient size and configuration to ensure that vehicle queuing will not occur in the public right of way or impede access to a parking facility.

D. Parking spaces in a building in the E-O-PD Overlay Zone shall not be leased or rented to persons who are not tenants of the building except pursuant to a recorded covenant.

10-3-1868: LOADING AND ANCILLARY FACILITIES:

Loading facilities shall be governed by the following provisions:

A. Notwithstanding any other provision of this code, the number and size of required loading spaces for a building project that is located in the E-O-PD Overlay Zone may

be established by the Planning Commission as part of a planned development approval pursuant to article 18.4 of this chapter.”

Section 6. The official zoning map of the City is hereby amended to apply the E-O-PD overlay zone to the property known as 231-265 North Beverly Drive, Beverly Hills, as described in the legal description attached hereto as Exhibit A, and incorporated herein by reference.

Section 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect and shall control as to each property to which the E-O-PD overlay zone has been applied.

Section 8. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 9. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JIMMY DELSHAD

Mayor of the City of Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

[Signatures continue on next page.]

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

VINCENT P. BERTONI, AICP
Director of Community Development

EXHIBIT A

Legal description of the Project Site

RESOLUTION NO. 1490

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND BEVERLY WILSHIRE OWNER, LP FOR CONSTRUCTION OF AN OFFICE BUILDING WITH GROUND-FLOOR RETAIL AND SUBTERRANEAN PARKING AT 231-265 NORTH BEVERLY DRIVE

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

Section 1. Beverly Wilshire Owner LP ("Developer") proposes to enter into a development agreement (the "Development Agreement" herein), a draft version of which is attached to this Ordinance as Exhibit "A" in connection with the construction of an office building intended for use by an entertainment talent agency (the William Morris Agency), which building will contain street level commercial and retail uses with subterranean parking to be located at 231-265 North Beverly Drive (the "Project").

Section 2. 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. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to CEQA Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an EIR for the Project to analyze the Project's potential impacts on the environment. The Planning Commission, by separate Resolution No. 1487, (a) made certain CEQA findings and

determinations, (b) certified the EIR (c) adopted a Statement of Overriding Considerations and (d) adopted a Mitigation Monitoring and Reporting Program. The documents and other materials that constitute the record on which this decision was made are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 3. On October 11, 2007 and October 27, 2007, the Planning Commission conducted duly noticed public hearings to consider the Development Agreement and the Project. Notices of the time, place and purpose of public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091:

Section 4. The Planning Commission finds that the provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan and comply with its objectives and policies including the objective of developing standards to provide opportunities to locate quality entertainment talent agencies that may not otherwise be encouraged, to maintain and strengthen the economic base of the City, to provide for the enhancement of employment and commerce within the project area, to provide retail/commercial and entertainment talent agency office uses responsive to the City's needs and regional market forces, and to augment the City's economic base by providing tax-generating revenues from various sources, commercial and residential uses. The Development Agreement implements the terms of the General Plan and City ordinances, including a General Plan Amendment processed in connection with the Project to change the land use designation of the project site from Commercial to Medium Density General Commercial, and does not allow development except in conformance with the General Plan, as amended.

The foregoing notwithstanding, the Planning Commission recommends that the City Council require the following terms in the proposed Development Agreement:

4.1 Require an Early Termination Fee that would require the Developer or tenant of the building to pay the City a set amount per year in the event that the building is not occupied by a major entertainment talent agency for a minimum of fifteen years from the date of building occupancy. This Early Termination Fee could be calculated by establishing a set dollar amount per year based on the benefits the City expects to derive from the Project, and multiplying that annual rate by fifteen minus the number of years the project is occupied. The Early Termination Fee provisions should survive the termination of the Agreement for a period of fifteen years from the date the building is initially occupied. In order to make this remedy most effective, the Planning Commission recommends that the City consider making William Morris Agency, the intended tenant, a party to the development agreement, so that the City could seek to recover the Early Termination Fee from either the Developer or the intended tenant.

4.2 Require the Developer and any successors in interest to obtain a Planned Development permit for any change in occupancy that would result in less than 70% of the office space of the building being used by an entertainment talent agency.

4.3 Revise Section 10 (e) of attached Draft Development Agreement to read as follows:

“10. (e) Public Parking. Developer shall make the Project’s parking garage available for public parking after 6:00 p.m. in the evening and on weekends. Patrons entering the parking garage after 6:00 p.m. and on the weekends shall pay no more than the rate charged by the City at the City’s R Lot, or if the R Lot is no longer available for public parking, then patrons shall pay no more than the rate charged at the City’s next closest public parking facility. Developer shall keep the parking garage open to public parking until the later of

the R Lot and D Lot closing times; provided however, Developer shall not be required to keep the parking garage open to public parking later than midnight. Developer shall open the garage to public parking on weekends no later than the City opens the R Lot parking facility (or if the R Lot facility is not open for public parking on weekends, then no later than the nearest City owned parking facility that is open for public parking on weekends).

Section 5. The Planning Commission hereby recommends that the City Council adopt an ordinance approving a Development Agreement substantially similar to the draft Agreement attached hereto as Exhibit "A," with the revisions described in Section 4 above.

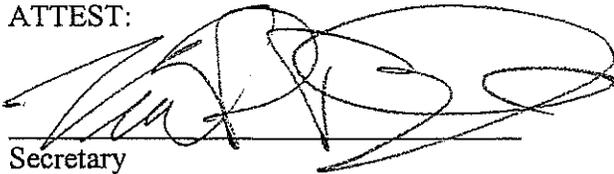
Section 6. The Secretary shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered into the Book of Resolutions of the Planning Commission.

Adopted: October 25, 2007

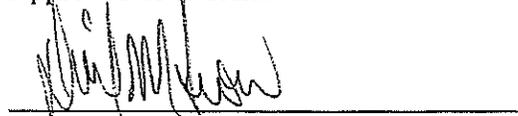


Noah D. Furie
Chair of the Planning Commission
of the City of Beverly Hills, California

ATTEST:


Secretary

Approved as to form:


David M. Snow
Assistant City Attorney

Approved as to content:


Vincent P. Bertoni, AICP
Director of Community Development



David D. Gustafson
Director of Public Works & Transportation

EXHIBIT A

DRAFT DEVELOPMENT AGREEMENT

DRAFT-FOR DISCUSSION PURPOSES. THIS DRAFT HAS NOT BEEN REVIEWED OR APPROVED BY THE CITY COUNCIL

RECORDING REQUESTED BY:
CITY OF BEVERLY HILLS

AND WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office 455 N. Rexford Dr.
Room 220
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made effective as of December _____, 2007, by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and Beverly Wilshire Owner, LP, a limited partnership (the "Developer"). The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

A. Developer is the fee owner of that certain real property located in the City of Beverly Hills, California and described in Exhibit A attached hereto and incorporated herein by reference; and

B. Developer desires to construct the Project (as hereafter defined); and

C. Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereinafter defined) and other applicable laws; and

D. In anticipation of the development of the Project, Developer has made application to the City (in its governmental capacity) for certain approval, entitlements, findings and permits required for the development and construction of the Project, including, without limitation (i) application for a general plan amendment and zone change; and (ii) application for a development agreement for the Project under the Development Agreement Act; and

E. The Developer has, as of the Agreement Effective Date, received approval of the Project Approvals (as hereinafter defined) allowing the development and construction of the Project; and

F. The City Council has specifically considered and approved the impact and benefits of this Project upon the welfare of the City; and

G. This Agreement eliminates uncertainty in planning and provides for the orderly development of the Project in a manner consistent with the City's Official Zoning Regulations, the Applicable Rules (as hereinafter defined) and the General Plan; and

H. To provide such certainty, the City desires, by this Agreement, to provide the Developer with assurance that the Developer can proceed with development of the Project with the uses, density and other land use characteristics specified in the Project Approvals. The Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described herein without the City's agreement that the Project can be developed, during the term of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals; and

I. The City has determined that, as a result of the development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including without limitation, the development of a Class "A" six story office building with retail/commercial on the ground floor and five stories of office space above in a prominent location in the Business Triangle of Beverly Hills; the retention of the William Morris Agency headquarters in the City of Beverly Hills; maintaining and strengthening the economic base of the City by retaining the William Morris Agency, which provides substantial economic benefit to the City and businesses within the City; providing high-class retail/commercial space and eating facilities; providing for the enhancement of employment and commerce within the project area; developing retail/commercial and entertainment office uses responsive to the City's needs and regional market forces; building a subterranean parking structure; building a project that provides pedestrian-friendly amenities at the street level; and augmenting the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

J. On _____, 2007, pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on the Developer's application for this Agreement; and

K. On _____, 2007, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Beverly Hills (the "City Council") conducted a hearing on the Developer's application for this Agreement; and

L. The City Council has found and determined that this Agreement is consistent with the City's General Plan and all other plans, policies, rules and regulations applicable to the Project; and

M. On _____, 2007, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on January ____, 2007; and

N. By Resolution No. _____ adopted by the Planning Commission on _____, 2007, the Planning Commission reviewed and certified, after making

appropriate findings, a Environmental Impact Report for the Project dated _____, 2007, that contemplates this Agreement.

AGREEMENT

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration and the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein, or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) "Applicable Rules" means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City's Official Zoning Regulations and building regulations, adopted as of the Effective Date of this Agreement. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

(b) "Business Triangle" means the area in the City of Beverly Hills generally bounded by Wilshire Boulevard on the south, Santa Monica Boulevard, South Roadway, on the north, and the alley between Crescent Drive and Canon Drive on the east.

(c) "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), as it now exists or may hereafter be amended.

(d) "Change of Control" shall refer to a transaction whereby a transferee who is not an Existing Owner acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of the Developer, whether through the ownership of voting securities, by contract or otherwise. The following shall not trigger the EMS Fee: (i) appointment or replacement of a non-owner manager or non-owner managing partner or (ii) the designation of an Existing Owner as a managing member of a successor developer unless fifty percent (50%) or more of the ownership interest of the successor developer is owned by persons or entities who are not partners of Developer on the Effective Date of this Agreement.

(e) "Conditions of Approval" shall mean those conditions of approval imposed by the City upon the Project Approvals.

(f) "Developer Fees" shall mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000 et seq., of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development by the City. Developer Fees do not mean or include Processing Fees.

(g) "Development Agreement" or "Agreement" means this Agreement.

(h) "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

(i) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.

(j) "Effective Date of this Agreement" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.

(k) "EIR" shall mean the final Environmental Impact Report (Sch #2006081074) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. "EIR Mitigation Measures" shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval.

(l) "Existing Owner" shall mean an entity that has an ownership interest in Developer on the Effective Date of this Agreement.

(m) "General Plan" means the General Plan of the City, as it exists as of the Effective Date of this Agreement.

(n) "Green Building Standards" means building development standards, in addition to those set forth in the California Building Code as adopted and amended by the City, that are designed to reduce energy consumption and green house gas emissions.

(o) "Ministerial Permit(s)," or "Ministerial Approval(s)" means a permit or approval, including, but not limited to, building permits, grading permits, zone clearances, and certificates of occupancy, which requires the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(p) "Processing Fees" means all processing fees and charges required by the City and applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, subdivision or parcel maps, lot line adjustments, street vacations, inspection fees,

certificates of occupancy and plan check fees. Processing Fees shall not mean or include Developer Fees.

(q) "Project" means the Project as defined in the EIR.

(r) "Project Approvals" shall include, collectively, a General Plan Amendment, Zoning Code Amendment, and Planned Development Permit approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereinafter defined).

(s) "Property" means the real property described on Exhibit "A."

(t) "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the exercise of City's police powers.

(u) "Sales Transaction" means any transaction evidenced by the recording of a conveyance document, except for leases of all or a part of the Property, that conveys the Property, or any subdivided portion of the Property, and which conveyance would be subject to, and not exempt from, the Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60) or the City of Los Angeles Real Estate Transfer Tax (Los Angeles City Municipal Code, Chapter 2, Article 1.9) as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or a portion of the Property is transferred, except for leases of all or a part of the Property, but the seller retains the title as security for the payment of the price shall be deemed a Sales Transaction. Notwithstanding the foregoing, a transfer of all or a portion of the Property as a result of a judicial or non-judicial foreclosure, or by deed in lieu of foreclosure, initiated by a Mortgagee (as defined in Section 24 below), shall not be deemed a Sales Transaction. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include: (i) any sale, assignment, or transfer of fifty percent (50%) or more of the beneficial ownership interest in Developer, whether in one transaction or a series of transactions, provided however, that any transfers of ownership interests among the Existing Owners (or the beneficial owners of such Existing Owners) shall not be deemed a Sales Transaction, (ii) any sale, assignment, or transfer of fifty percent (50%) or more of the beneficial ownership interest in a successor developer, whether in one transaction or a series of transactions, provided however that any transfers of ownership interests among the then current owners of the successor developer (or the beneficial owners of such owners) shall not be deemed a Sales Transaction so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by such successor developer and the transferee was an owner at the time of such acquisition, and (iii) any Change of Control.

(v) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

(w) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals required or requested with respect to the Project. Following adoption, a Subsequent Project Approval shall become a Project Approval.

(x) "Zoning Regulations" shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

2. Recitals of Premises, Purpose and Intent.

(a) State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows: "The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance 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, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

(b) The Project. It is the Developer's intent to develop the Property as described in the Project Approvals and the EIR subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, for the Term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval for the Project.

3. Property Subject to Agreement. This Agreement shall apply to all of the real property described in Exhibit A attached hereto (the "Property"), and all such real property shall be subject to this Agreement.

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals and this Agreement.

5. Term of Agreement. The term of this Agreement shall commence on the Agreement Effective Date, and shall continue for two years.

6. Timing of Development. The parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its sole and subjective business judgment during the Term of this Agreement.

7. Permitted Uses: Density: Building Heights and Sizes: Required Dedications. The City and the Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals. The Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals.

8. Developer's Rights. The Developer shall have and is hereby vested with the rights, during the term of this Agreement, to develop the Project as set forth in the Project Approvals, all of which are hereby incorporated in this Agreement by reference.

9. Changes in Applicable Rules.

(a) Nonapplication of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees as provided in this Agreement), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules or Developer's entitlements under the Project Approvals, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers. The City's Reserved

Powers is defined as the enactment of regulations and/or the taking of Discretionary Actions if the same is expressly found by the City to be necessary to protect the residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health and safety or if the same is required to comply with State or Federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) Changes Mandated by Federal or State Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date of this Agreement shall apply to the Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, by applicable State or Federal laws or regulations. Where City or Developer believes that such a change or addition exists that Party shall provide the other Party hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination shall be final and conclusive.

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that no such change shall be solely applicable to the Project.

10. Developer's Obligations.

(a) Conditions of Approval. The Developer shall comply with the Conditions of Approval.

(b) Approval Processing Fees. On the Effective Date of this Agreement, Developer shall pay all outstanding fees for the processing of the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Other Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

(d) Public Benefit Contribution. Prior to the issuance of a building permit for the project, Developer shall pay to City a public benefit and infrastructure contribution of \$370,000.

(i) The City shall apply \$_____ of the public benefit and infrastructure contribution to the applicant's fair share of offsite traffic mitigation identified in the EIR. Developer shall be

required to make no further contribution toward offsite traffic mitigation.

(e) Discounted Public Parking. Developer shall make the Project's parking garage available for public parking after 6:00 p.m. in the evening and on weekends. Patrons entering the parking garage after 6:00 p.m. and on the weekends shall pay no more than the rate charged by the City at the City's R Lot, or if the R Lot is no longer available for public parking, then patrons shall pay no more than the rate charged at the City's next closest public parking facility. Developer shall keep the parking garage open to public parking until the later of the R Lot and D Lot closing times; provided however, Developer shall not be required to keep the parking garage open to public parking later than midnight. Developer shall open the garage to public parking on weekends no later than the City opens the R Lot parking facility (or if the R Lot facility is not open for public parking on weekends, then no later than the nearest City owned parking facility that is open for public parking on weekends). The Director of Parking Operations or his successor may shorten the hours that the Project's parking garage must be available for public parking if the Director determines, in his sole discretion, that there is no need for public parking at the Project site during all or a portion of the hours set forth above.

(f) Environmental Mitigation and Sustainability Fee.

- (i) *Amount of fee.* Concurrent with the close of each Sales Transaction, the seller shall pay or cause to be paid to City an Environmental Mitigation and Sustainability Fee ("EMS Fee"). The amount of the EMS Fee shall be equal to \$4.50 for each \$1,000 of the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale), subject to adjustment as set forth in Section 10(f)(ii) below. The EMS Fee shall be paid from the escrow account set up for the Sales Transaction. The fee shall be paid upon any Sales Transaction by Developer, and upon each subsequent Sales Transaction by the then current owner.
- (ii) *Adjustment of EMS Fee.* If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current \$1.10 per \$1000 of City and County documentary transfer taxes, then the EMS Fee imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds \$1.10 per \$1000. For example, if City adopts a real estate transfer tax of \$2.20 per \$1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to \$3.30 per \$1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be \$2.30 per \$1000 of sales price ($\$4.50 - \$2.20 = \$2.30$). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes

exceed \$5.60 per \$1000 of sales price, then no further EMS Fee shall be due or payable.

- (iii) **Liens for EMS Fee Payable Upon Sale.** Developer hereby grants to the City, with power of sale, a lien on the Property to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction by Developer or any successor-in-interest to Developer, then City may enforce such lien by sale by City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose, and to acquire the lot or parcel. City is hereby granted, in trust, the applicable lot or parcel and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. Developer, or any subsequent owner of the Property or any portion thereof, shall provide notice to City, in a form satisfactory to the City, upon any opening of escrow that will result in a Sales Transaction or any other conveyance of the Property or portion thereof. The notice shall include a declaration stating the amount of the EMS Fee due upon closing of any Sales Transaction, or in the case of a conveyance that is not a Sales Transaction, the reason that such conveyance is not a Sales Transaction and therefore not subject to the EMS Fee. Upon receipt of the full amount of the EMS Fee payable with respect to a sale, City shall execute and deliver such documentation, in recordable form, as Developer, the buyer or the title company may reasonably request to evidence the payment of the EMS Fee and extinguishment of the City's lien rights with respect to such sale. Such documentation shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions.

(g) **Streetscape Improvements.** Developer shall install streetscape improvements, including granite sidewalks, flower pots and street furniture as approved by the City, along the Dayton Way and Beverly Drive frontages of the Project provided that the City adopts a program by December 31, 2008 to generally require developments in the business triangle similar to the Project to install similar streetscape improvements.

(h) **Closed Circuit Television.** Developer will participate in the City's closed circuit television monitoring program for the City's streets by allowing cameras to be placed on

the Project and on the adjacent Bank of America building at the intersection of Wilshire Boulevard and Beverly Drive. The cameras shall be placed in locations reasonably acceptable to Developer and City that allow the cameras to have an unobstructed view of the adjacent right of way for a range of at least ninety (90) degrees. Prior to issuance of a building permit, Developer shall also pay to City \$25,000 toward the placement of cameras in the right of way adjacent to the Project. Developer will participate in any other fee or assessment program applied generally to property owners in the Business Triangle for the purpose of funding the security camera program but will receive a credit toward any such assessment for the \$25,000 previously paid by Developer pursuant to this Agreement.

(i) Green Building Standards. If the City has not adopted Green Building Standards that apply to the Project before the Effective Date of this Agreement, then Developer shall construct the Project to a level equivalent to LEED Certified status as determined by the City's Director of Building and Safety prior to issuance of a building permit.

11. Issuance of Building Permit. The City shall be under no obligation to issue a building permit for the Project until all the fees set forth in Section 10 and due before issuance of a building permit have been fully paid to City.

12. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the Council within thirty calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the Council and a determination that a default exists, the party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

Upon any such termination, the respective rights, duties and obligations of the parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination).

In no event shall monetary damages be available against the City for any alleged default or breach by the City.

13. Expiration. Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect Developer's obligations under Section 10, subsections (d) through (j) nor the obligation to pay any claim of

any Party hereto, arising out of the provisions of this Agreement, prior to the effective date of such termination. The obligations under Section 10, subsections (d) through (j) and the obligation to pay any claim arising before the effective date of termination shall continue after termination in perpetuity or until completed.

14. Transfers of Interests in Property or Agreement.

(a) In the event of a proposed transfer of interest in the Property or in this Agreement by Developer, Developer agrees to provide City at least thirty (30) days written notice of such proposed assignment prior to the proposed transfer and shall provide satisfactory evidence that the assignee will assume in writing through an assignment and assumption agreement all obligations of Developer under this Agreement. Notwithstanding the foregoing: (i) the terms, covenants and conditions of this Agreement shall be binding upon any transferee whether or not such an assignment and assumption agreement is signed by the assignee upon acquiring the Property; and (ii) no such transfer shall relieve the Developer (transferor) of any obligations under this Agreement.

(b) Assignment and Assumption of Obligations. For all proposed transfers of interest in the Property or in this Agreement, Developer shall provide to City an assignment and assumption agreement in a form reasonably satisfactory to the City Attorney.

(c) Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other successors and assigns as herein provided.

15. Covenants. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

16. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section ____, regardless of whether or not City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, City agrees, at no cost to City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. City reserves

the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and certified for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse City for City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and the Developer 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. Developer shall cooperate with City in any such defense as City may reasonably request and may not resolve such challenge without the agreement of City. In the event Developer fails or refuses to reimburse City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section ____ above. In all events, City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, the Developer's consent shall be required if the resolution of the challenge shall require a payment by the Developer.

In order to ensure compliance with this section, 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 this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, the Developer shall deposit with the City cash or other security in the amount of \$50,000, 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 section. 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 fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security is necessary to secure the obligations of this section, the Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify the Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, the Developer's consent shall be required if the resolution of the challenge shall require a payment by the Developer.

17. Relationship of the Parties. The Parties acknowledge and agree that the Developer is not acting as an agent, joint venturer or partner of the City, but is, in fact, an independent contractual party and not in any way under the control or direction of the City except as is expressly provided to the contrary in this Agreement.

18. Recordation. As provided in Government Code Section 65868.5, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall reimburse the City for all costs of such recording, if any.

19. No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their respective successors-in-interest. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any

other person whatsoever.

20. Advice: Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

21. Certificate of Compliance. At any time during the term of this Agreement, any lender or other Party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) business days of receipt of the written request therefor. The failure of any Party to provide the requested certificate within such ten (10) business day period shall constitute a confirmation that this Agreement is in full force and effect without modification except as may be represented by the requesting Party and that to the best of such Party's knowledge, no defaults exist under this Agreement, except as may be represented by the requesting Party.

22. Consideration. The City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Developer pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

23. Periodic Reviews.

(a) Annual Reviews. City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1 The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(b) Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer shall reimburse City for all costs, direct and indirect, incurred in conjunction with such a special review.

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 23 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been

commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Planning Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

(d) Result of Review. If, following such a review, the Community Development Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Community Development Director, finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance in the manner provided in Section 29, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Developer to cure such non-compliance, which time shall be not less than thirty (30) days after Developer's receipt of such notice.

(e) Appeals to City Council. A determination of non-compliance by the Community Development Director pursuant to this Section 23 shall be appealable to the City Council within thirty (30) days after Developer's receipt of the Community Development Director's written notice of non-compliance given pursuant to Section (d) above. If Developer appeals such a determination to the City Council, then the City Council shall schedule a public hearing thereon not later than thirty (30) days after the date on which Developer gives its notice of appeal to City. At such hearing, Developer shall be entitled to address all of the issues considered by the Community Development Director in making such determination. Information presented by Developer at such hearing may be presented orally and/or in writing. If, after receiving any written response of Developer to the Community Development Director's determination, and after considering all of the information presented at such hearing, the City Council finds and determines that Developer has not in good faith complied with the terms and conditions of this Agreement, then the City Council shall specify in writing to Developer the respects in which Developer has failed to so comply, and shall also specify a reasonable time for Developer to cure such non-compliance, which time shall be not less than thirty (30) days after Developer's receipt of such notice. A determination by the City Council of non-compliance shall be in writing delivered in accordance with Section 29, and shall specify in detail the grounds therefor, so that Developer shall have the opportunity to implement any measures necessary to cure such non-compliance. If the noncompliance so specified by the City Council is not cured within the time so specified, then City may terminate this Agreement by providing written notice of termination.

(f) Effect on Default. Nothing in this Section 23 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time other

than during a periodic review under this Section 23, or from terminating this Agreement pursuant to the provisions hereof following any event of default by Developer.

24. Future Litigation Expenses.

(a) Payment of Prevailing Party. If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of defaults, breaches, tortious acts, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

25. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

26. Amendment; Waiver. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act. The failure of either party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

27. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 10 is held invalid or unenforceable, this entire Agreement shall be void and unenforceable and of no further force and effect.

28. Binding Effect. Except as may otherwise be expressly provided herein to the

contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

29. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by the party hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Developer: Beverly Wilshire Owner, LP
Attn: Peter Duncan
c/o George Comfort & Sons of California, Inc.
9465 Wilshire Blvd., Suite 200
Beverly Hills, CA 90212

with copy to: Mark Egerman, Esq.
Egerman & Brown, LLP
9401 Wilshire Blvd.
Suite 500
Beverly Hills, CA 90212

To the City: City Manager
City of Beverly Hills
455 N. Rexford Dr.
Beverly Hills, California 90210

with copy to: City Attorney
City of Beverly Hills
455 N. Rexford Drive
Room 220
Beverly Hills, California 90210

Any party hereto may from time to time, by notice given to the other parties hereto pursuant to the terms of this Section 29 change the address to which communications to such party are to be sent or designate one or more additional persons or entities to which communications are to be sent.

30. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

31. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

32. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements among the parties hereto respecting the within subject matter and contains the entire understanding among the parties with respect thereto.

33. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

[Add signature and acknowledgment blocks to execution copies]

[Add Exhibit A-Property Description]

- to attract and provide high-class retail/commercial space and eating facilities; and
- to provide for the enhancement of employment and commerce within the project area on an underdeveloped site.

(b) Objectives Partially Met by Alternative:

(1) Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

(c) Objectives Not Met by Alternative:

(1) None.

Therefore, all but one of the project objectives identified in Section 3.6, Project Objectives, would be fully met, and the remaining objective would be at least partially met, under the Office and Retail Alternative.

Although this alternative would reduce certain environmental impacts compared to the proposed Project, it would not eliminate the significant unavoidable impacts to traffic, air quality and solid waste, and as such would provide only nominal environmental benefit without the full benefits expected from the proposed Project, and is rejected on that ground.

D. Alternative Four: Office Alternative

1. Summary of Alternative

The Office Alternative would involve development of the Project site with office uses only. Similar to the Proposed project, 177,225 square feet of office uses would be provided. However, with this Alternative, the office building would be five stories, as no retail and restaurant uses would occur. Parking would continue to be provided within a multi-level subterranean parking structure.

2. Reasons for Rejecting Alternative

The Office Alternative would result in reduced impacts for aesthetics, light, and glare, traffic, air quality, noise, geology, hazards and hazardous materials, water supply, wastewater, solid waste, fire protection, and police protection, although these impacts are mitigated to less than significant with the proposed Project. This Alternative would result in comparable impacts for land use, population and employment, site access and circulation, parking supply and demand, parking management during construction, parking management during operation, and hydrology and water quality. The Office Alternative does require a General Plan Amendment or Zone Change for increased building height and land use restrictions. However, this Alternative reduces but does not eliminate the significant impacts for traffic, air quality, and noise.

The Office Alternative would implement several of the overall objectives of the proposed Project, which include achieving the development of a visually compatible, successful development with entertainment-related, retail, and restaurant uses to meet market demands and increase the City's economic base. Under this Alternative, the proposed zoning changes for the site would be implemented, commercial office uses would be developed, but without retail or restaurant uses, and the existing underutilized commercial uses would be removed from the site. However, this Alternative would not provide retail or restaurant uses on-site, which are intended to meet market demands of the surrounding community. Specifically, this Alternative's ability meet each of the proposed Project's objectives is summarized below:

(a) Objectives Fully Met by Alternative:

(1) Build a project that is harmonious in scale and architectural style with the surrounding area.

(2) Build a subterranean parking structure (a) to place parking below grade to allow for the most efficient use of above-grade property in the project area, (b) to provide sufficient and convenient parking for site uses, and (c) to allocate a specific number of parking spaces for use by the Bank of America building, in order to accommodate existing covenanted parking obligations for the Bank of America building.

(b) Objectives Partially Met by Alternative:

(1) Augment the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increase in assessed land and building values to generate additional property taxes.

(2) Develop retail/commercial and entertainment office uses responsive to the City's needs and regional market forces.

(3) Develop a Class "A," six-story entertainment office building with retail/commercial on the ground floor and five stories of office space above, in a prominent location in the Business Triangle of Beverly Hills

- to attract and provide additional opportunities for quality entertainment-related businesses that would not otherwise be encouraged by the underlying zone, in order to maintain and strengthen the economic base of the City;
- to provide for an additional building project for single and multi-tenant entertainment related business uses not currently available in the City;
- to attract and provide high-class retail/commercial space and eating facilities; and
- to provide for the enhancement of employment and commerce within the project area on an underdeveloped site.

(c) *Objectives Not Met by Alternative:*

(1) Build a project that provides pedestrian-friendly amenities at the street level.

Therefore, two of the Project objectives identified in Section 3.6, Project Objectives, would be fully met, three objectives would be partially met, and one objective would not be met, under the Office Alternative.

Although this alternative would reduce certain environmental impacts compared to the proposed Project, it would not eliminate the significant unavoidable impacts to traffic, air quality and solid waste, and as such would provide only nominal environmental benefit without the full benefits expected from the proposed Project, and is rejected on that ground.

The Planning Commission hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative Four as infeasible and by itself, independent of any other reason, would justify rejection of Alternative Four as infeasible.

E. ENVIRONMENTALLY SUPERIOR ALTERNATIVE

The Draft EIR identified, and the Planning Commission concurs the Code Conforming Alternative as the Environmentally Superior Alternative. However, because that Alternative does not substantially reduce unmitigable Project impacts and would not meet Project objectives, it is rejected.

F. THE PROJECT AS PROPOSED

1. Summary of Project

The Project is described in detail in the EIR.

2. Reasons for Selecting Project as Proposed

The Planning Commission has carefully reviewed the attributes and environmental impacts of all the alternatives analyzed in the EIR and has compared them with those of the proposed Project. The Planning Commission finds that each of the alternatives is infeasible for various environmental, economic, technical, social, or other reasons set forth above. The Planning Commission further finds, for various environmental, economic, technical, social, or other reasons set forth in Exhibit B that the Project as proposed with the inclusion of a secondary ingress location off Beverly Drive, is the best combination of features to serve the interests of the public.

EXHIBIT B

Statement of Overriding Considerations

The following Statement of Overriding Considerations is made in connection with the proposed approval of an office and retail building with subterranean parking (the "Project").

CEQA requires the decision-making agency to balance the economic, legal, social, technological or other benefits of a project against its unavoidable environmental risks when determining whether to approve a project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered acceptable. CEQA requires the agency to provide written findings supporting the specific reasons for considering a project acceptable when significant impacts are unavoidable. Such reasons must be based on substantial evidence in the EIR or elsewhere in the administrative record. Those reasons are provided in this Statement of Overriding Considerations.

The Planning Commission finds that the economic, social and other benefits of the Project outweigh the significant and unavoidable traffic, air quality and solid waste impacts identified in the EIR and in the record. In making this finding, the Planning Commission has balanced the benefits of the Project against its unavoidable impacts and has indicated its willingness to accept those adverse impacts. The Planning Commission finds that each one of the following benefits of the Project, independent of the other benefits, would warrant approval of the Project notwithstanding the unavoidable environmental impacts of the Project.

A. The Planning Commission finds that all feasible mitigation measures have been imposed to either lessen Project impacts to less than significant or to the extent feasible, and furthermore, that alternatives to the Project, which specifically includes an entertainment talent

agency use, are infeasible because while they have similar or less environmental impacts, they do not provide the benefits of the Project, or are otherwise socially or economically infeasible as fully described in the Statement of Facts and Findings. Further, only the No Project/No Development Alternative eliminates all of the significant and unmitigable environmental impacts.

B. The Project, which specifically includes an entertainment talent agency use, will positively influence the business climate in the City by enhancing economic vitality in the Business Triangle Area.

C. The Project, which specifically includes an entertainment talent agency use, will provide opportunities for a complimentary mix of office and retail uses, will provide enhanced employment opportunities and commerce in the City.

D. The Project, which specifically includes an entertainment talent agency use, will augment the City's economic base by providing both tax-generating revenues from the sales within each of the retail stores, and an increase in assessed land and building values that generate additional property taxes and business license fees.

F. The Project, which specifically includes an entertainment talent agency use, will allow the City to retain an important business citizen, William Morris Agency, within the City by providing a new office for occupancy by WMA.

EXHIBIT C

Mitigation Monitoring and Reporting Program



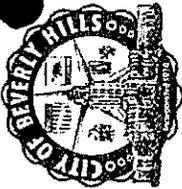
12.0 MITIGATION MONITORING AND REPORTING PROGRAM

Sections 1.0 and 5.0 of this EIR identify the mitigation measures that will be implemented to reduce the impacts associated with the 231 - 265 North Beverly Drive project. The California Environmental Quality Act (CEQA) was amended in 1989 to add Section 21081.6, which requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in Section 21081.6 of the Public Resources Code,

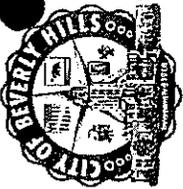
... the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment.

Section 21081.6 provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined prior to final certification of the EIR.

The mitigation monitoring table lists those mitigation measures that may be included as conditions of approval for the project. These measures correspond to those outlined in Section 1.0 and discussed in Section 5.0. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. The project applicant will have the responsibility for implementing the measures, and the various City of Beverly Hills departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.



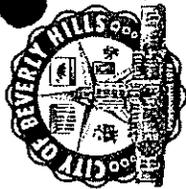
231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
Mitigation Measure					Check Box	Date
Aesthetics, Light, and Glare AES1	Construction equipment staging areas shall use appropriate screening (i.e., temporary fencing with opaque material) to buffer views of construction equipment and material, when feasible. Staging locations shall be indicated on Final Development Plans and Grading Plans.	Community Development Department	A Construction Management Plan shall be prepared by the applicant and reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
AES2	All construction-related lighting shall include shielding in order to direct lighting down and away from adjacent hotel and residential uses and consist of the minimal wattage necessary to provide safety at the construction site. A construction safety lighting plan shall be submitted to the City for review concurrent with Grading Permit application.	Community Development Department	As part of the construction Management Plan, the project applicant shall prepare a construction safety lighting plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		



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		the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.			
Traffic					
TR1	Department of Public Works/ Civil Engineering Division and Community Development Department	The Department of Public Works, Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.		
TR2	See above.	See above.	See above.		



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TR3	<p>eastbound North Santa Monica Boulevard approach at Beverly Drive from one dedicated left-turn lane, one through lane, and one shared through/right-turn lane to consist of one dedicated left-turn lane, two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires narrowing of the existing landscaped area located at the southwest corner of the intersection, adjacent to the existing City-operated parking facility and relocation of existing curb, utilities, and signal post.</p>						
	<p>Beverly Drive/South Santa Monica Boulevard - The project applicant shall make a fair share contribution to widen the southbound Beverly Drive approach at South Santa Monica Boulevard from one through lane and one shared through/right-turn lane to consist of two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires restriping of Beverly Drive between North Santa Monica Boulevard and South Santa Monica Boulevard and tapering of the southbound Beverly Drive curb at South Santa Monica Boulevard.</p>	See above.	See above.	See above.			
TR4	<p>Beverly Drive/Dayton Way - At the northeastern corner of the project site, the project applicant shall restripe (by removing the parking lane) the eastbound Dayton Way approach at Beverly Drive from one shared left-turn/through lane and one shared through/right-turn lane to consist of one shared left-turn/through</p>	See above.	See above.	See above.			



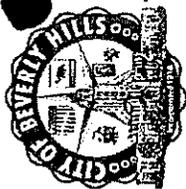
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TR5	<p>lane, one through lane, and one dedicated right-turn lane.</p> <p>North Santa Monica Boulevard/Wilshire Boulevard - The project applicant shall make a fair share contribution to re-stripe the southbound North Santa Monica Boulevard approach at Wilshire Boulevard from two through lanes, one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing.</p> <p>Additionally, the project applicant shall make a fair share contribution to widen the westbound Wilshire Boulevard approach at North Santa Monica Boulevard from one dedicated left-turn lane, two through lanes, and one shared through/right-turn lane to consist of one dedicated left-turn lane, three through lanes and one dedicated right-turn lane.</p> <p>The westbound Wilshire Boulevard approach requires relocation of the existing sidewalk and utilities adjacent to the existing Budget Car & Truck Rental surface lot along Wilshire Boulevard, thus impacting a portion of the existing Budget Car & Truck Rental surface lot.</p> <p>Widening of the westbound Wilshire Boulevard approach at North Santa Monica Boulevard would require acquisition of private property, and therefore, based on comments from City staff, is considered infeasible. Hence, according to City staff, only the portion of this mitigation measure that consists of restriping the</p>	See above.	See above.		



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	southbound North Santa Monica Boulevard approach at Wilshire Boulevard is considered to be feasible.					
Site Access and Circulation						
AC1	The construction contractor shall create a site access point that would not interfere with any construction vehicles turning left from the northbound lanes into the project site, subject to review and approval by the City of Beverly Hills.	Community Development Department	The site access point will be identified in the Final Construction Management Plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
AC2	In order to mitigate potential internal circulation and parking accessibility impacts in the proposed parking structure, full-time valet parking shall be required for all building visitors.	Community Development Department	The project applicant will prepare a Parking Operations Plan. This measure will be included in	The Parking Operation Plan is effective immediately upon issuance of building permits for the		



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		the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	project, and shall remain effective throughout the life of the project.		
Parking Supply and Demand					
PSD1	Community Development Department	The project applicant will comply with this mitigation by providing spaces on- or off-site. The revised plans filed with the Building & Safety division shall comply with this requirement. The plan check engineers will review the revised plans to ensure that they comply with this requirement.	This measure shall be met prior to issuance of building relevant building permits.		
Parking Management During Construction					
PMC1	Community Development	In order to address parking for construction workers during demolition, excavation, and shoring activities, the following steps		The primary contractor shall submit to the department a affidavit shall be	



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<p>shall be implemented:</p> <ul style="list-style-type: none"> Whenever possible, park the crews at the project site. When the crews cannot park at the project site, they shall be permitted to use available parking at 9465 Wilshire Boulevard during the off-peak hours. For peak hour parking needs that cannot be accommodated on-site, the project applicant shall procure 20 spaces on a monthly basis in nearby parking structures with excess capacity. 	Department	program and an affidavit attesting to the compliance with this measure as part of the Construction Management Plan which will be reviewed by the Community Development Department/Building & Safety Department.	submitted prior to the commencement of any work on the project site. This measure shall be in effect until the issuance of the certificate of occupancy.		
Parking Management During Operation					
PMO1	Community Development Department	This measure will be included in the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operations on the physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	The Parking Operation Plan is effective immediately upon issuance of building permits for the project, and shall remain effective throughout the life of the project.		
PMO2	Community Development	The valet company shall be responsible for maintaining the correct directional flow of vehicles through the central valet station at all	See above.		



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times, and especially during periods of high demands by visitors and pass-holders.	Department				
PMO3 For egress out of the structure, signage and/or striping shall be installed to direct visitors to use the Dayton Way exit in accordance with a signage and striping plan as approved by the Director of Community Development. A right-turn only sign and/or arrow shall direct visitors to Dayton Way.	Community Development Department	See above.	See above.		
PMO4 The project applicant shall submit a parking operations plan concurrent with the submittal of plans for building permit. The parking operations plan shall be approved by the Director of Community Development prior to the issuance of a building permit. At a minimum, the parking operations plans shall address the following: <ul style="list-style-type: none"> • Parking allocation in the garage; • Garage access and control systems; • Valet and/or attendant assistance; • Staffing levels. The parking operations plan shall demonstrate that traffic does not back up onto Dayton Way. Through adequate staffing and other measures, the parking operations plans shall ensure that parking aisles are kept clear, and vehicle flow for valet and/or attendant assistance is properly maintained. In doing so, the parking operations plans shall prevent queues from backing up onto Dayton Way and keep the garage operations from impacting traffic circulation around the project site. In addition, the parking	Community Development Department	See above. In addition, any measures applicable to the restaurant operations shall be imposed to a lease agreement with a prospect tenant. Such measure shall be disclosed to any prospect tenant prior to execution of a lease agreement.	See above. Prior to application of a tenant improvement permit, the prospective tenant shall provide the preferred methods selected to operate the restaurant parking per the Community Development Director review and approval.		



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Air Quality	<p>operations plans shall consider, but is not limited to, the following menu of methods to ensure adequate parking supply is maintained based on final floor plans submitted for building permit:</p> <ul style="list-style-type: none"> • Limit restaurant hours. Limitation of restaurant hours during peak hours from 11:00 AM to 2:00 PM. • Use of an on-street valet. If the restaurant is open from 11:00 AM to 2:00 PM, then all patrons must use an on-street valet that will park the cars in an adjacent off-site parking lot. The valet operations must be consistent with the City's Daytime Valet Guidelines. In addition, should this option be exercised, it would require a separate approval from the City. • The valet may stack vehicles in the drive aisles, as long as circulation is maintained. • Reduction in retail and/or restaurant square footage to reduce parking and/or valet demand. 					
AIR1	<p>During clearing, grading, earth moving, or excavation operations, excessive fugitive dust emissions shall be controlled by regular water or other dust preventive measures using the following procedures, as specified in the South Coast Air Quality Management District Rule 403. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations shall comply with the South Coast Air Quality Management District Rule 403.</p>	Community Development Department	The project applicant shall submit a construction management plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development	This measure shall be met during the during construction period. This measure shall be in effect until the issuance of certificate of occupancy.		

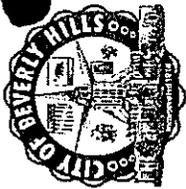


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<ul style="list-style-type: none"> On-site vehicle speed shall be limited to 15 miles per hour; All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice daily with complete coverage, preferable in the late morning and after work is done for the day; All material transported on-site or off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust; The area disturbed by clearing, grading, earth moving, or excavation operations shall be minimized so as to prevent excessive amounts of dust; A wheel washing system shall be installed and used to remove bulk material from tires and vehicle undercarriages before vehicles exit the project site. All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be posted in a prominent and visible location at the construction site, and shall be maintained throughout the construction process. All notices and the signs shall indicate the dates and duration of construction activities, as well as provided a telephone number where residents can inquire about the construction process and register complaints. 		<p>Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>			

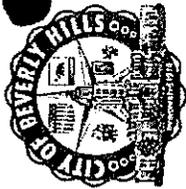


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AIR2	<ul style="list-style-type: none"> These control techniques shall be indicated in project specifications. Compliance with the measure shall be subject to periodic site inspections by the City; and Visible dust beyond the property line emanating from the project shall be prevented to the maximum extent feasible. 					
	<p>All trucks that are to haul excavated or graded material on-site shall comply with State Vehicle Code Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F), (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations subject to that specification during hauling activities shall comply with the provisions set forth in Sections 23114(b)(F), (e)(4).</p>	Community Development Department	See above.	See above.		
AIR3	<p>Prior to approval of the project plans and specifications, the Public Works Director, or his designee, shall confirm that the construction bid packages include a separate "Diesel Fuel Reduction Plan." This plan shall identify the actions to be taken to reduce diesel fuel emissions during construction activities (inclusive of grading and excavation activities). Reductions in diesel fuel emissions can be achieved by measures including, but not limited to, the following:</p> <ul style="list-style-type: none"> a) use of alternative energy sources, such as compressed natural gas or liquefied petroleum gas, in mobile equipment and vehicles; b) use of "retrofit technology," including diesel particulate traps, on existing diesel engines and vehicles; and c) other appropriate measures. Prior to the issuance of a grading permit, the Diesel Fuel Reduction Plan shall be filed with the City of Beverly Hills. 	See above.	See above.	See above.		



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<p>The Diesel Fuel Reduction Plan shall include, at a minimum, the following provisions:</p> <ul style="list-style-type: none"> All diesel fueled off-road construction equipment shall be California Air Resources Board certified or use post-combustion controls that reduce pollutant emissions to the same level as California Air Resources Board certified equipment. California Air Resources Board certified off-road engines are engines that are three years old or less and comply with lower emission standards. Post-combustion controls are devices that are installed downstream of the engine on the tailpipe to treat the exhaust. These devices are now widely used on construction equipment and are capable of removing over 90 percent of the PM₁₀, carbon monoxide, and volatile organic compounds from engine exhaust, depending on the specific device, sulfur content of the fuel, and specific engine. The most common and widely used post-combustion control devices are particulate traps (i.e., soot filters), oxidation catalysts, and combinations thereof. All diesel fueled on-road construction vehicles shall meet the emission standards applicable to the most current year to the greatest extent possible. To achieve this standard, new vehicles shall be used or older vehicles shall use post-combustion controls that reduce pollutant emissions to the greatest extent feasible. The effectiveness of the latest diesel emission controls is highly dependant on the sulfur content of the fuel. 					



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AIR4	Therefore, diesel fuel used by on-road and off-road construction equipment shall be low sulfur (>15 ppm) or other alternative low polluting diesel fuel formulation.	See above.	See above.	See above.		
AIR5	The project shall comply with South Coast Air Quality Management District Rule 1113, which limits the ROG content of architectural coatings used in the Basin or to allow the averaging of such coatings, as specified, so actual emissions do not exceed the allowable emissions if all the averaged coatings had complied with the specified limits. The project shall comply with South Coast Air Quality Management District Rule 1403, Asbestos Emissions From Demolition/Renovation Activities, which specifies work practice requirements to limit asbestos emissions from building demolition and renovation activities, including the removal and associated disturbance of asbestos containing materials. The requirements for demolition and renovation activities include asbestos surveying, notification, asbestos containing materials removal procedures and time schedules, asbestos-containing materials handling and clean-up procedures, and storage, disposal, and landfilling requirements for asbestos-containing waste materials. All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.	See above.	See above.	See above.		
Noise						
NO1	Prior to grading permit issuance, the construction contractor shall demonstrate, to the satisfaction of the City of Beverly Hills Community Development Department, the following:	Community Development Department	The project applicant shall submit a construction management plan to the	This measure shall be met during the during construction period.		



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<ul style="list-style-type: none"> Construction contracts shall specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers that exceed state requirements for muffler attenuation devices. All residential units located within one-quarter mile of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be prominently posted at the construction site. All notices and signs shall indicate the dates and duration of construction activities, as well as provide a telephone number of a contact person with whom residents can discuss the construction process and register complaints. The contact person shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint. A "noise disturbance coordinator" shall be established. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within one-quarter mile of the construction site and all signs posted at the construction site shall list the telephone number for the disturbance coordinator. The noise disturbance coordinator shall be required to maintain a log of 		<p>Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>	<p>This measure shall be in effect until the issuance of certificate of occupancy.</p>

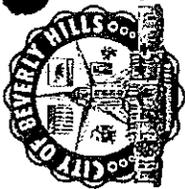


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NOI2	<p>complaints for the City's inspection. The log shall include the source of complaint, the complaint, time received, and the action taken in response. The noise disturbance coordinator shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint.</p> <ul style="list-style-type: none"> Staging of construction vehicles is prohibited on streets within the City of Beverly Hills. All construction vehicle staging shall occur on La Cienega Boulevard. During construction, stockpiling and vehicle staging areas shall be located as far as practical from noise sensitive receptors. Construction noise reduction methods such as shutting off idling equipment, installing temporary acoustic barriers around stationary construction noise sources, maximizing the distance between construction equipment staging areas and occupied residential areas, and use of electric air compressors and similar power tools, rather than diesel equipment, shall be employed where feasible. During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers. <p>Prior to grading permit issuance, the project applicant shall demonstrate to the satisfaction of the City of Beverly Hills, that a "Nighttime Construction Noise Mitigation Plan" has been developed to address nighttime construction noise impacts. The</p>	Community Development Department	A "Nighttime Construction Noise Plan" shall be submitted to the Director of Community prior to issuance	The measure shall be met during the construction period. This measure shall be in		



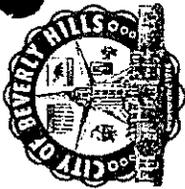
231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program				
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion Check Box Date
<p>plan shall incorporate provisions for noise attenuation barriers, truck routing, location of staging areas, worker parking and other appropriate measures for achieving an overall attenuation of construction noise of at least 8 dBA.</p>		<p>of any grading or construction permits. The Construction Management Plan shall be reviewed by the Planning Division and Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the Construction Management Plan.</p>	<p>effect until the issuance of the certificate of occupancy.</p>	
<p>The project applicant shall incorporate all applicable recommendations of the Geotechnical Report into the design of proposed structures to address seismic groundshaking and other earthquake-related seismic hazards.</p>	<p>Community Development Department/ Building & Safety Division</p>	<p>The construction plans filed with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this</p>	<p>This requirement shall be met prior to the issuance of relevant building permits</p>	
<p>Geology GEO1</p>				



231 - 265 North Beverly Drive: Project Environmental Impact Report Mitigation Monitoring and Reporting Program		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
Mitigation Measure	Check Box				Date	
GEO2	The project applicant shall implement all applicable recommendations related to corrosion control contained in Appendix A of the Geotechnical Report.	See above.	See above.			
Hydrology and Water Quality						
HWQ1	The project applicant shall complete, a wet year (high water table) analysis to 1) quantify the amount of discharge associated with groundwater dewatering, and 2) identify the capacity available in the system into which the water will be discharged. The analysis shall be completed prior to the commencement of construction. If the analysis concludes that there is not sufficient capacity in the system to accept the discharge, the project applicant shall be required to either: a) increase the capacity of the system, or b) design the building foundation such that ongoing dewatering is not required.	Community Development Department	The project applicant shall prepare a wet year analysis to file with the Department of Community Development/Building & Safety Division to comply with this requirement.	This requirement shall be met prior to the issuance of relevant building permits.		
HWQ2	Prior to issuance of grading or building permits, the project applicant shall prepare and receive approval of a Stormwater Pollution Prevention Plan, in order to comply with the NPDES General Permit for Construction Activities.	Community Development Department	The project applicant will prepare Storm water Pollution Prevention Plan.	Prior to issuance of grading and building permits.		
HWQ3	The project applicant shall comply with all applicable requirements of City Ordinance 06-O-2506 relating to construction dewatering and discharges of groundwater.	Community Development Department	Project applicant compliance with City Ordinance 06-O-2506.	During construction.		
HWQ4	The project applicant shall prepare and receive approval of a Water Quality Management Plan for project operation, in order to comply with the County Standard Urban Stormwater Mitigation	Community Development Department	The project applicant shall prepare a Water Quality Management Plan.	Prior to issuance of grading and building permits.		



231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program					
Mitigation Measure	Responsible Department	Monitoring Action	Verification of Completion		
			Check Box	Date	
Plan requirements of the NPDES MS4 permit.					
Hazards and Hazardous Materials					
HAZ1 The project applicant and individual tenants shall comply with all applicable City, County, State, and Federal regulations with respect to the storage, handling, transportation, and disposal of hazardous wastes.	Community Development Department/Bulldozer & Safety Division Department of Public Works	The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.	This measure shall be in effect until the issuance of the certificate of occupancy.		
HAZ2 If unknown wastes or suspect materials are discovered during demolition or construction by the contractor, which he/she believes may involve hazardous waste/materials, the contractor shall: <ul style="list-style-type: none"> Immediately stop work in the vicinity of the suspected contaminant, removing workers and the public from the area; Notify the project engineer of the implementing agency; Secure the areas directed by the project engineer; and Notify the implementing agency's Hazardous Waste/Materials Coordinator. Implement required corrective actions, including remediation if applicable. 	See above.	See above.	See above.		



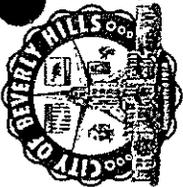
231 - 265 NORTH BEVERLY DRIVE PROJECT
ENVIRONMENTAL IMPACT REPORT

Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
HAZ3	HAZ4				Check Box	Date
HAZ3	Damaged or deteriorated (unsealed ends, nicks, loose pieces of insulation, abraded floor tiles, etc.) friable and non-friable asbestos-containing materials shall be repaired by properly trained personnel. Proper respiratory protection and containment shall be provided should these materials need to be disturbed for building maintenance or renovation. Prior to demolition, renovation, or any other such activity, suspect materials observed in the subject buildings shall be sampled and tested for asbestos. Additionally, if an Operations and Maintenance (O&M) Plan does not exist, one shall be developed and the identified materials shall be included.	See above.	See above.	See above.		
HAZ4	Based on the age of the property buildings (mid-1930s and early-1960s), it is possible that lead-based paint is present on-site. As such, prior to demolition and removal of on-site structures, paint shall be sampled and analyzed for the presence of lead-based paint. If lead-based paint is found to occur within the subject buildings, proper removal, handling, and disposal of such materials shall be performed pursuant to applicable rules and regulations, to the satisfaction of regulatory agencies with oversight authority.	See above.	See above.	See above.		
HAZ5	Based on the historical site uses, primarily on the northwestern end of the site, soils shall be closely monitored during excavation work for any future redevelopment activities. If unusual odors or discolored soils are encountered during the excavation phase of the project, soil samples from the area of potential concern shall	See above.	See above.	See above.		

Final

Mitigation Monitoring/Reporting Program

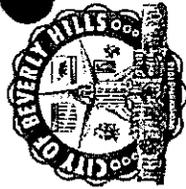
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231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program				
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion Check Box Date
<p>be collected and analyzed. Qualified environmental personnel shall be present on site to assist in characterizing and segregating impacted soils, if encountered. This work shall be conducted subsequent to building demolition work but before the commencement of mass excavation activities. If any such contaminated soils are encountered on-site, they shall be excavated and removed, or otherwise remediated, in accordance with applicable State law to the satisfaction of regulatory agencies with oversight authority.</p>				
<p>Solid Waste SW1</p> <p>Prior to the issuance of building permits, a source reduction program shall be prepared and submitted to the City's Solid Waste Superintendent to achieve a minimum 50 percent reduction in waste disposal rates, including green waste and construction debris.</p>	<p>Department of Community Development, Department of Public Works</p>	<p>A Source Reduction Program shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The responsible departments shall review the program to ensure that the plan is in compliance with this measure during construction and after completion of the project. The plan check engineers will also review the plan to ensure that the plan complies with this requirement in order to issue the building permits.</p>	<p>This measure shall apply to both construction and operational activities. It is effective upon the issuance of building permits and shall remain effective throughout the life of the project.</p>	



Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
SW2	SW3				Check Box	Date
<p>231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program</p>						
SW2	The location of recycling/separation areas shall be in close proximity to dumpsters for non-recyclables, elevators, loading docks, and primary internal and external access points.	See above.	See above.	See above.		
SW3	The location of recycling/separation areas shall not be in conflict with any applicable Federal, State, or local laws relating to fire, building, access, transportation, circulation, or safety.	See above.	See above.	See above.		
Fire Protection Services						
FS1	Adequate emergency vehicle access to all buildings on the project site shall be provided throughout the building construction process.	Community Development Department/ Building & Safety Division Fire Department	The Construction Management Plan shall be reviewed by the Community Development Department /Building & Safety Division and Fire Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		



Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program						
FS2	Adequate water availability shall be provided to meet construction activity needs, including potential fire suppression needs.	See above.	See above.	See above.		
FS3	The proposed project shall comply with all applicable Building Code and Fire Code requirements, subject to review and approval by the Beverly Hills Fire Department.	See above.	See above.	See above.		
Police Protection Services						
PP1	During construction, private security patrols shall be utilized to protect the project site.	Community Development Department/ Building & Safety Division Police Department	The Construction Management Plan shall be reviewed by the Community Development Department /Building & Safety Division and Police Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
PP2	As final building plans are submitted to the City for approval in the future, BHPD design requirements which reduce demands for service and ensure adequate public safety (such as those pertaining to site access and site security lighting) shall be	See above.	See above.	See above.		



Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
PP3	incorporated into the building design. Project design shall provide lighting, to the satisfaction of the BHPD, around and throughout the development to enhance crime prevention and enforcement efforts.	See above.	See above.	See above.		
PP4	Project design shall provide clearly visible (during the day and night) address signs and/or building numbers for easy identification during emergencies.	See above.	See above.	See above.		

RESOLUTION NO. 1489

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A PLANNED DEVELOPMENT AND LOT LINE ADJUSTMENT TO ALLOW CONSTRUCTION OF A RETAIL, COMMERCIAL AND ENTERTAINMENT TALENT AGENCY OFFICE PROJECT FOR PROPERTY LOCATED AT 231-265 NORTH BEVERLY DRIVE (WILLIAM MORRIS AGENCY PROJECT)

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

Section 1. Mark Egerman, on behalf of Beverly Wilshire Owner, LP (the "Applicant"), has applied for a General Plan Amendment, a Zoning Code Amendment to create the Entertainment Office Overlay Zone ("E-O-PD"), a Zoning Map Amendment to apply the E-O-PD Overlay Zone to the subject property, a Planned Development permit, a Lot Line Adjustment and a proposed Development Agreement for an entertainment talent agency office building with street level retail and commercial use (the "Project") at property known as 231-265 North Beverly Drive bounded by Beverly Drive on the east, Dayton Way on the north, an alley on the west and the existing Bank of America site (9461 Wilshire Boulevard) to the south (the "Project Site"). The intended office building occupant is William Morris Agency. The Project Site is subject to a covenant that requires provision of 262 parking spaces by the adjacent Bank of America Building at 9461 Wilshire Boulevard.

The Planning Commission's role as to the General Plan Amendment, Zoning Code Amendment, Zoning Map Amendment and Development Agreement is solely advisory to

the City Council, however the Commission has the role of approving or conditionally approving the Planned Development permit and Lot Line Adjustment components of the Project.

Section 2. The approvals requested by the Applicant include the following:

2.1 General Plan Amendment: a request to amend the text of the General Plan to create the Medium Density Commercial Land Use category, and amending the Land Use Plan Map to designate the Project Site as Medium Density Commercial, with maximum allowable height of 92 feet and floor area ratio (FAR) not to exceed 3.6:1;

2.2 Zoning Code Amendment: a request to create an overlay zone to allow for entertainment talent agency uses (the Entertainment Office Planned Development Overlay Zone (E-O-PD)) and set specific development standards for such uses including a maximum height of 88 feet, with allowance for up to 92 feet only in the event of technical difficulty encountered during construction, and a floor area ratio of no more than 3.6:1;

2.3 Zone Change: a request to apply the Entertainment Office Planned Development Overlay Zone (E-O-PD) to the Project Site;

2.4 Planned Development permit: a request to allow construction of a proposed talent agency office building with street level retail and commercial uses and subterranean parking;

2.5 Lot Line Adjustment: a request to relocate the northerly lot line of Lot 10 fifteen (15) feet to the south, in effect increasing the width of Lot 11 by fifteen (15) feet; and

2.6 Development Agreement: a request for an agreement between the Applicant and the City to address vested rights to proceed with the Project, the potential tax-generating revenues from sales from the retail/commercial stores, increased business license fees

from the office tenants, and increase in assessed land and building values which should generate additional property taxes, and other issues.

Section 3. The Planning Commission held its first duly noticed Public Hearing on July 25, 2007. The primary purpose of that hearing was to discuss the Draft Environmental Impact Report ("DEIR") which was released for public review on July 10, 2007. The hearing was continued on August 9, September 5, September 6, September 27 and October 11, 2007 to allow the Applicant to present the Project, the public to comment on the Project, and the Applicant to revise the Project in accordance with direction and comments from the Planning Commission. The evidence, both written and oral, was presented at said hearings. In addition, the Commission conducted site visits on July 12, 2007 and September 27, 2007. The DEIR was released for a 45-day public review period on July 10, 2007. The 45-day comment period ended on August 23, 2007. Responses to the comments received were prepared, and are contained in the Final EIR prepared by RBF Consulting, the City's environmental consultant.

Section 4. In response to the Planning Commission comments and direction, the Applicant has revised or agreed to revise the Project in the following ways:

4.1. Parking. Additional parking has been provided on levels P2-P4, through the elimination of drive aisles and restriping resulting in 32 additional parking spaces, for a total of 697 spaces as compared to the 665 spaces initially proposed.

4.2. Loading. Loading spaces for the Project have been revised to a parallel configuration. Sufficient space has been provided for three loading spaces, assuming two trucks in a parallel configuration and one van in a head-in configuration. The prior configuration entailed two truck and one van loading spaces all at an angle from the alley.

4.3. Access. Additional access into the William Morris building has been provided by reversing the circulation of the proposed ramp connected to the Bank of America Building driveway on parking level P1 to allow for an additional ingress. The additional access point will allow for access from both Dayton Way and Beverly Drive whereas the prior layout allowed access only from Dayton Way. The ramp has been widened to accommodate larger vehicle turning movements. The Dayton Way driveway curb radius also has been increased to facilitate the turning movements of larger vehicles. The new access point proposed from Beverly Drive would eliminate a significant traffic impact previously identified at the Rodeo Drive and Dayton Way intersection.

4.4. Overlay Zone. The Overlay Zone has been revised to eliminate uses, reduce the floor area ratio to 3.6:1, eliminate exemptions to floor area, refine the maximum height limit, and eliminate the proposed Project's eligibility to participate in the in-lieu parking program with waiver of fees.

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. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to CEQA Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an EIR for the Project to analyze the Project's potential impacts on the environment. The Planning

Commission, by separate Resolution No. 1487, which is hereby incorporated by reference, (a) made certain CEQA findings and determinations, (b) certified the EIR, (c) adopted a Statement of Overriding Considerations, and (d) adopted a Mitigation Monitoring and Reporting Program. The documents and other materials that constitute the record on which this decision is based are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 6. The Project Site is presently developed with a one-story commercial structure and a separate six-story parking structure, all of which will be demolished to allow construction of the Project. The Project Site is subject to a covenant that requires provision of 262 parking spaces on the site for the benefit and use by tenants in the adjacent Bank of America site at 9461 Wilshire Boulevard.

Adjacent land uses generally include various commercial office and retail uses across Dayton Way and Beverly Drive to the north; and commercial office, restaurant, retail uses and the 82-foot, seven-story (plus mezzanine) high Montage Hotel project under construction to the east across Beverly Drive. The eight-story and 110-foot tall Bank of America Building with 205 subterranean parking spaces lies to the south of the site with commercial office and retail uses on the south side of Wilshire Boulevard, and medium-density multi-family uses farther to the south of Wilshire Boulevard. Commercial retail and office uses are located across the alley between Rodeo Drive and Beverly Drive to the west.

The Project entails demolition of all on-site structures, excavating, regarding and compacting the site for the proposed building. The major Project components are as follows:

6.1 The proposed building will be 208,100 gross square feet in size, including 177,225 gross square feet of office space on floors two through six and 30,875 gross square feet of retail space (up to 8,000 square feet of which could be restaurant space) on the ground floor;

6.2 The currently proposed parking layout shows a total of 697 spaces utilizing some tandem and compact parking spaces. A valet and attendant parking system is proposed to operate on the premises, thereby allowing non-valet vehicles to utilize single and handicap spaces, as appropriate. The use of tandem spaces by the valet and attendant parking service will minimize the potential for parking conflicts, which otherwise would occur with tandem space self-parking;

6.3 The building is proposed to be constructed of structural steel over a subterranean parking garage. The exterior of the building is proposed to be clad in a glass cross-curtain wall system;

6.4 Maximum building height remains at no higher than 88 feet, except that up to a maximum of 92 feet may be permitted at the discretion of the Director of Community Development due to technical difficulties that may be encountered during construction of the Project;

6.5 The maximum Floor Area Ratio is 3.6:1, based upon the proposed building; and

6.6 The proposed building will be constructed by using techniques and measures as used in the "green developments." According to the Project's architect, the building as proposed will follow guidelines for developments that are comparable to qualify as a LEED Certified Building.

Section 7. The Planning Commission, by separate Resolution No. 1488, has recommended that the City Council amend the General Plan, adopt the proposed E-O-PD Overlay Zone and apply the E-O-PD Overlay Zone to the Project Site.

Section 8. The proposed Entertainment Office Planned Development Overlay Zone requires approval of a Planned Development permit from the Planning Commission, pursuant to Article 18.4, Planned Development, of the City's Zoning Code. The grounds for approving a Planned Development are whether the Project meets the objectives of the Overlay Zone. The objectives of the proposed E-O-PD Overlay Zone include:

8.1 To provide additional opportunities to locate a major quality talent agency that would not otherwise be allowed by the underlying zone due to height and floor area ratio limitations, in order to maintain and strengthen the economic base of the City;

8.2 To encourage the development and redevelopment of the property at 231-265 North Beverly Drive to provide for single and multi-tenant entertainment talent agency businesses, not currently available in the city;

8.3 To provide for the enhancement of employment and commerce within the Project area by locating new entertainment talent agency offices in the area;

8.4 To provide retail/commercial and entertainment talent agency's business uses responsive to the city's needs and regional market forces;

8.5 To encourage the provision of pedestrian-friendly amenities at the street level;

8.6 To augment the city's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the

entertainment talent agency business, and increase in assessed land and building values which should generate additional property taxes;

8.7 To protect the health, safety, and welfare of residents, businesses and visitors of the E-O-PD Overlay Zone and surrounding areas;

8.8 To foster development in the E-O-PD Overlay Zone that is environmentally sensitive;

8.9 To ensure that development, which includes floor area in excess of the density or other zoning limitations of an underlying zone, shall not be a right of the property owner, but instead shall be permitted only upon a determination that such development would meet the objectives set forth in this section; and

8.10 To ensure that development in the E-O-PD Overlay Zone will not materially and adversely affect the businesses adjacent to the E-O-PD Overlay Zone.

Section 9. Staff finds that, with the proposed conditions imposed on the approval of the Project, the Project meets the criteria outlined in Section 8. Conditions of approval for the Planned Development application are included in Exhibits "A," "B," and "C" to this Resolution. These conditions include city standard conditions as well as Project specific conditions noted in the staff reports provided to the Commission during Project hearings, including those related to use of the screening room and terrace and proposed parking garage operations.

9.1 The proposed Project will provide additional opportunities to locate a large scale office building to meet the needs of a quality talent agency in the Business Triangle area of the city that would not otherwise be encouraged by the underlying C-3 zone in that the

programmatic building needs of the intended tenant, William Morris Associates, would not be met without the greater height and flexibility in parking area design standards that are allowed through the E-O-PD Overlay Zone. Further, the proposed Project will help retain an important corporate citizen in the city, which will maintain and strengthen the economic base of the city.

9.2 The proposed Project encourages the development and redevelopment of the property at the 231-265 North Beverly Drive project site, and will provide for and accommodate a single tenant entertainment related business use in ways not currently available in the city. The Project will reinvigorate a site that is currently underutilized as an above ground parking structure with architecture and design that is no longer in keeping with the newer projects in the area.

9.3 The proposed Project will provide for the enhancement of employment and commerce within the Project area in that the site will be revitalized as an office building with more employment opportunities than presently exist on the site, and will bring additional workers and business guests into the Business Triangle with the increased potential for patronage of existing and proposed retail and restaurant establishments.

9.4 The proposed Project will provide retail/commercial and entertainment talent agency business office uses responsive to the city's needs and regional market forces in that the Project consists of street level retail and commercial uses, including restaurant space, to revitalize the site's relationship to the street, and will provide needed Class A office space for use by a prominent talent agency. The Project responds to the needs of the city to retain important entertainment businesses and responds to the regional market by keeping Beverly Hills competitive in the marketplace for higher end office space.

9.5 The proposed Project encourages the provision of pedestrian-friendly amenities at the street level by integrating retail and restaurant space at the street level with the office space located on higher levels. Placement of retail and restaurant space at the street level maintains the pedestrian scale of the area and reinforces the relationship of the Project Site to other pedestrian-friendly streets and developments in the area, including Beverly Drive, Two Rodeo complex, and the proposed Beverly Hills Gardens.

9.6 The proposed Project will augment the city's economic base by providing tax-generating revenues from sales from the retail/commercial stores and restaurants, increased business license fees from the entertainment talent agency businesses, and an increase in assessed land and building values which should generate additional property taxes.

9.7 The proposed Project will protect the health, safety, and welfare of residents, businesses and visitors of the E-O-PD Overlay Zone and surrounding areas in that the Project has been designed to minimize its impacts through incorporation of green building technologies and revisions to the access with the effect of eliminating potentially significant circulation impacts. Further, the economic benefits of the Project serve to maintain the success and health of the Business Triangle for the good of the entire city.

9.8 The proposed Project fosters development in the E-O-PD Overlay Zone that is environmentally sensitive through incorporation of green building techniques sufficient to qualify for a LEED certified status.

9.9 The proposed Project ensures that development, which includes floor area in excess of the density or other zoning limitations of the C-3 zone, is not a right of the property owner, but instead is permitted only upon a determination that such development would meet the objectives set forth in the E-O-PD Overlay Zone. Specifically, the E-O-PD Overlay Zone is

applied only to the 231-265 North Beverly Drive site and is not applied to the adjacent Bank of America property, even though both properties are under the same ownership.

9.10 . The proposed Project ensures that development in the E-O-PD Overlay Zone will not materially and adversely affect the businesses adjacent to the E-O-PD Overlay Zone, in that it is required to take measures to minimize impacts and disruption during construction, is designed so as to minimize impacts to adjacent businesses, and is intended to revitalize the Project Site for the overall benefit of the businesses in the area and the community as a whole.

Section 10. Article 8 of Chapter 2 of Title 10 of the Beverly Hills Municipal Code (Section 10-2.801, *et seq.*) authorizes the granting of a lot line adjustment by the Planning Commission provided the proposed adjustment meets certain criteria set forth in Section 10-2.805 of said Article 8. The lot tie is an administrative process; which can be approved by either the Director or the Commission. Because the lot line adjustment accompanies other applications, it is being brought before the Commission for review and approval. In reviewing the proposed request for a lot line adjustment, the Planning Commission considered the following issues:

- 10.1 Whether the proposed lot line adjustment will deny access to any parcel;
- 10.2 Whether the proposed lot line adjustment will result in a conflict with any public or private easement; and
- 10.3 Whether the proposed lot configurations meet all standards of the zoning, subdivision and building ordinances.

Section 11. Based upon the evidence presented, including the staff report and oral testimony, the Planning Commission hereby finds:

11.1 The property consists of existing Lots 8 through 16. The Bank of America building is located on Lots 8 and 9 plus 35 feet of Lot 10, which is presently approximately 50 feet wide. The proposed new building will be built on the northerly 15 feet of Lot 10 and Lots 11, 12, 13, 14, 15 and 16. Lots 8 through 15 and the improvements thereon are owned by the same entity, Beverly Wilshire Owner, LP. The lot line adjustment will add the northerly 15 feet of Lot 10 to Lot 11 through a lot line adjustment, and Lots 11 through 16 will be tied together.

The boundary line adjustment would allow the remaining portion of Lot 10 to be tied to the site occupied by the William Morris Agency Project. With a new boundary, an easement becomes necessary for shared driveway access purposes at the Bank of America building because the Beverly Drive access to the William Morris Agency parking garage will be shared with the Bank of America driveway. The conditions of approval include a requirement for the easement, thus the lot line adjustment will not deny access to any parcel.

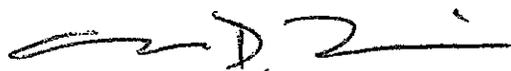
11.2 The proposed lot line adjustment will not result in a conflict with any public or private easement. However, in order to allow construction of the Project with subterranean linkage to the Bank of America parking, a small portion of floors two through eight of the Bank of America building will encroach over the new lot line. A condition of approval is a proposal to require an air space easement that will allow the encroachment and to require maintenance of appropriate building separations above the ground level to comply with applicable fire codes. Further, nothing in the lot line adjustment will affect the existing parking covenant recorded against the Project Site for the benefit of the Bank of America building.

11.3 The proposed lot configurations, as conditioned, meet all standards and comply with all provisions of the zoning, subdivision, and building ordinances and the proposed adjustment will not increase any existing non-conforming condition.

Section 12. As proposed and conditioned, the Project meets the objectives of the proposed Overlay Zone as set forth in Section 8 of this Resolution. For the reasons set forth above, the Planning Commission hereby approves the Planned Development permit and lot line adjustment subject to the Conditions of Approval set forth in Exhibit "A," the Standard Conditions of Approval set forth in Exhibit "B," and the Mitigation Monitoring and Reporting Program set forth in Exhibit "C," which are hereby incorporated by reference, provided that such approval shall only become valid upon the approval of the General Plan Amendment by the City Council and ordinance adopting the E-O-PD Zone Text Amendment and Zone Change having taken effect.

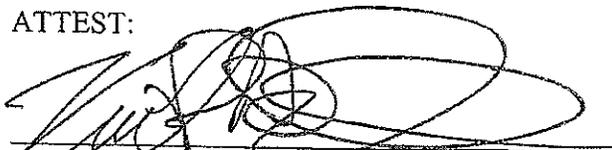
Section 13. The Secretary shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission.

Adopted: October 25, 2007



Noah D. Furie
Chair of the Planning Commission
of the City of Beverly Hills, California

ATTEST:


Secretary

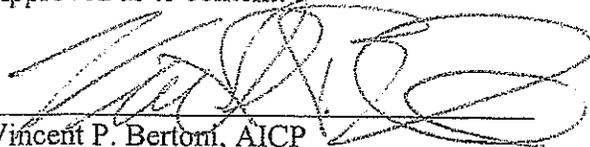
[Signatures continue on next page.]

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Vincent P. Bertoni, AICP
Director of Community Development



David D. Gustavson
Director of Public Works & Transportation

EXHIBIT A
CONDITIONS OF APPROVAL

Exhibit A

CONDITIONS OF APPROVAL

William Morris Project Planned Development and Lot Line Adjustment (October 25, 2007)

1. The Project shall be built in substantial compliance with the plans submitted and reviewed by the Planning Commission except as modified by these conditions of approval, including Exhibit B, "Standard Conditions List," and Exhibit C, "Mitigation Monitoring Program," which are incorporated herein by reference, and subject to additional conditions as may be imposed by the Architectural Commission. Any modifications to the plans shall be approved by the Department of Community Development/Planning prior to any work being done on the Project pursuant to those modifications. Review of modifications or corrections of may trigger the need to pay additional processing fees.
2. Second floor terrace level requires two legal exits.
3. An offsite improvement plan prepared by a registered civil engineer shall be submitted to the Engineering Division for review and approval prior to issuance of a building permit. This plan must show all improvements in the public right-of-way adjacent to the proposed site. All facilities to be constructed or relocated within the public right-of-way must be clearly shown.
4. In accordance with the requirements set forth in City Council Resolution 71-R-4269, the applicant shall file a formal written request with the Engineering Division for approval of any type of temporary construction encroachment (steel tieback rods, etc.) within the public right-of-way. Shoring plans and elevations prepared by a registered civil engineer must be submitted for review by the Engineering Division. An indemnity bond must be submitted and approved by the City Attorney prior to excavation. Such improvement shall be in accordance with the *Summary Of Requirements For The Installation/Removal Of Tie-Backs And Supporting Structures* document available from Public Works.
5. The applicant must obtain an NPDES permit State Regional Water Quality Control Board (RWQCB) for any temporary dewatering during construction. All discharge shall be made directly into a storm drain or catch basin as directed by the Engineering Division.
6. If permanent dewatering is required for this project, an NPDES permit shall be required from State Regional Water Quality Control Board (RWQCB).
7. If the subterranean parking is extended into the public right of way of Beverly Drive an 8 feet vertical separation shall be provided below the roadway and the applicant shall secure an Encroachment Permit from the City and comply with all conditions of approval imposed thereon.

8. A Standard Urban Storm water Mitigation Plan (SUSMP) prepared by a registered civil engineer shall be submitted for the project. The Best Management Practices for storm water runoff is required for project over one acre in area.
9. The project developer shall re-pave Beverly Drive, Dayton Way and the alley contiguous to the project at the conclusion of project construction.
10. No loss of parking meter revenue on Beverly Drive shall occur during construction. The applicant shall pay meter revenue for each meter based on full usage (10 hours a day and 6 days a week) multiplied by days of construction. The payment of meter revenue shall be made at the time the applicant applies for street use permit at the beginning of the construction.
11. The project developer shall investigate different methods of construction to avoid dewatering, consider using this water on site, or consider options of replenishing the Hollywood Basin. Further, the project developer shall comply with the City's ordinances regarding dewatering.
12. No solid waste bins shall be allowed in the alley (public right of way), unless they are offset inside the building wall as not to impede traffic.
13. The Floor Area Ratio (FAR) for the proposed structure at 231-265 North Beverly Drive shall not exceed 3.6:1.
14. Three loading spaces consisting of two parallel truck loading spaces and one perpendicular van loading space shall be provided for the project site as shown on the revised plans approved by the Planning Commission.
15. Prior to issuance of any building permits, reciprocal access and egress easement, or other legally binding and recordable document shall be recorded against the project site and the site of the adjacent Bank of America building at 9461 Wilshire Boulevard, to ensure access to the project site in accordance with proposed driveway access entrance/ exit through the 9461 Wilshire Boulevard building driveway access and parking structure.
16. A parking sign program shall be prepared for the Project to provide guidance for the motorists entering/exiting the building garage. The parking sign program shall be approved by the Director of the Community Development Department prior to issuance of a building occupancy permit.
17. All lots designated as 231-265 North Beverly Drive, Lots 11-16 and the northerly portion of Lot 10, as defined by the lot line adjustment concurrently approved by this resolution, shall be tied together. The final plot plan for the lot line adjustment shall be recorded prior to issuance of a building permit.
18. An updated Construction Management Plan for the project shall be submitted to the Community Development Department for review and approval prior to issuance of a demolition permit for the project. The Construction Management Plan shall include the following additional information at a minimum: pedestrian connections during construction, phased to include coordination with Montage construction team to

minimize any disruption of accessibility of sidewalk within this block; location and operations information for the temporary valet station as well as details of validation or other mechanisms of payment, lane configurations/barricade plans for provision of four lanes on Beverly Drive during construction.

19. The project, as conditioned by the Planning Commission to allow a maximum of 100 screening room seats, shall be required to provide 730 parking spaces based on the City's parking code, all of which shall be provided on-site. However, the Applicant shall have the option of reducing the building area to reduce the parking need based on the City's Code. Evidence of provision of adequate parking shall be provided prior to the issuance of a building permit. See condition 26 below regarding the process and parking requirements for any increased screening room seating capacity.
20. The rates for parking at the Project shall include the following:
 - a. Parking shall be provided free of charge for all employees of building tenants.
 - b. Parking shall be provided free of charge for all visitors to the office tenants.
 - c. Parking shall be provided free of charge for one hour for retail/restaurant visitors. After the first hour, rates shall be no more than the rates charged at nearest public parking lot, located at the Beverly Gardens/Montage development.
 - d. The parking garage shall be available for public parking in the evenings (after 6:00 p.m.) on weekdays and all day on weekends.
21. In accordance with the parking covenant executed in 1958, the project site shall provide 262 covenanted parking spaces for use by the Bank of America building at 9461 Wilshire Boulevard.
22. Parking plans submitted for a building permit shall include typical parking space dimensions (width and length). All parking spaces shall be in compliance with the parking plan approved by the Planning Commission.
23. Loading operations shall be conducted in accordance with a Loading Management Plan whose central objective is to maintain traffic circulation in the alley. The plan shall be submitted to the satisfaction of the Community Development Department Planning Division and shall require coordinated scheduling of deliveries, procedures to minimize delivery times, and the presence of a loading manager at all times to ensure that a clear travel path is maintained.
24. Prior to issuance of a building permit, the applicant shall secure approval from the Architectural Commission. The plans shall be revised in compliance with conditions of approval required by the Architectural Commission. A preliminary architectural plan including landscape plan for the terrace area shall be submitted at the time of Architectural Commission review of the project. The landscape plan shall include plant names and sizes and shall include terrace landscaping.
25. The applicant shall provide a certification by a certified engineer that the proposed glass type and its reflectivity will not create any glare impacts on the adjacent

properties and adjacent streets. The project developer shall utilize glass with reflectivity factors of 34% for the Pewter color glass, and 14% for the Blue colored glass. When combined glass types that are playing a supporting role, the overall reflectivity of the building shall not exceed 24%. The Director of Community Development shall have the authority to require revisions in the glass reflectivity levels in the event that the Director determines that the glare of from the building is excessive.

26. The use of the screening room shall be subject to the following limitations:

- a) The screening room shall only be used by tenants of the building and their invited guests and shall not be open to the general public, unless authorized by a conditional use permit pursuant to Article 38 of Title 10 of the Municipal Code.
- b) No exterior signage or other type of advertising regarding the screening room shall be permitted.
- c) Maximum seating capacity of the screening room shall not exceed 100 seats unless a conditional use permit pursuant to Article 38 of Title 10 of the Municipal Code is first obtained and the project provides parking at a rate of one parking stall for each four seats in excess of 100 seats. Under no circumstances shall the total number of seats in the screening room exceed 180.
- d) "Special Event" for the purposes of this Project is defined as an event that is not part of the normal business activity of the William Morris Agency and that is attended by non-client invitees. The term "Special Event" shall not include a use that is part of the functioning of the business or an event primarily for the employees of William Morris Agency. Special Events planned for the screening room or terrace areas of the building shall require approval by the Community Development Director, which decisions may be appealed to the Planning Commission.
- e) During any event except for an approved Special Event, refreshments shall be provided at no charge to the patrons of the event.

27. The use of the terrace shall be subject to the following limitations:

- a) The Terrace shall be an ancillary use of the building for use by tenants and their invited guests.
- b) No exterior signage or other type of advertising regarding the events conducted on the terrace shall be permitted.
- c) During any event on the terrace, refreshments shall be provided at no charge to the patrons of the event.

28. Parking spaces in the proposed William Morris building and the existing Bank of America Building shall not be leased or rented to persons who are not tenants of the buildings except pursuant the recorded covenant allowing Bank of America building parking at the William Morris building site.

29. Compact spaces may be used, measuring not less than 7.5' x 17' to satisfy up to 17% of the parking requirement. Parking spaces that are both compact and tandem may be used, measuring not less than 7.5' x 17' to satisfy up to 7% of the parking requirement.
30. The property owner(s) of the project site and the adjacent Bank of America site shall enter into a reciprocal access and egress easement or other binding agreement recorded against both properties memorializing the shared access and egress. The easement or agreement shall include a provision requiring approval from the City before the easement of agreement can be revoked, withdrawn or modified and shall enable to the City to impose conditions on any closure of the access and egress for a period of longer than one (1) week.
31. Documentation of the lot line adjustment, open space easement, easement for reciprocal access and egress, and easement for maintenance of air space between the Bank of America building and the proposed project, all of which shall be in a form acceptable to the City Attorney, shall be recorded prior to the issuance of a building permit.
32. The applicant shall comply with and implement the Mitigation Monitoring and Reporting Program adopted by the Planning Commission in conjunction with the approval of this Project.
33. The Project shall not be eligible to participate in the City's in-lieu parking program.
34. The following uses shall be prohibited on the Project site: medical uses; vehicle dealership-related automotive uses; adult entertainment businesses; massage parlors; bars or taverns; liquor stores; markets; exercise facilities; hair or nail salons; and pharmacies.
35. Prior to the issuance of a building permit, the property owner shall execute and record a covenant acceptable to the City Attorney agreeing to hold the parcels contained within the project site as a single site for the life of the building.
36. As soon as feasible, and prior to occupancy of the building, the Applicant shall be responsible to reinstall the parking meters along Beverly Drive that will be displaced by construction prior to occupancy of the building, or shall reimburse the City for any costs it incurs in replacing the displaced parking meters.
37. These conditions of approval shall run with the land and shall remain in force for the duration of the life of this Permit. This resolution 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 this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development within 60 days of the final decision on the project. 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 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 City's ability to approve the project.

EXHIBIT B

STANDARD CONDITIONS OF APPROVAL

EXHIBIT B

CITY OF BEVERLY HILLS STANDARD CONDITIONS LIST FOR THE PLANNING COMMISSION

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalk surrounding the existing and proposed buildings.
2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings.
3. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the adjacent property owner. This landscape material cannot exceed six to eight inches in height and cannot be planted against the street trees. Care shall be taken to not damage or remove the tree existing tree roots within the parkway area. Remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings.
4. The applicant shall protect all existing street trees adjacent to the subject site during construction of the proposed 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. (See attached Trees and Construction document.)

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.

5. 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.
6. 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.

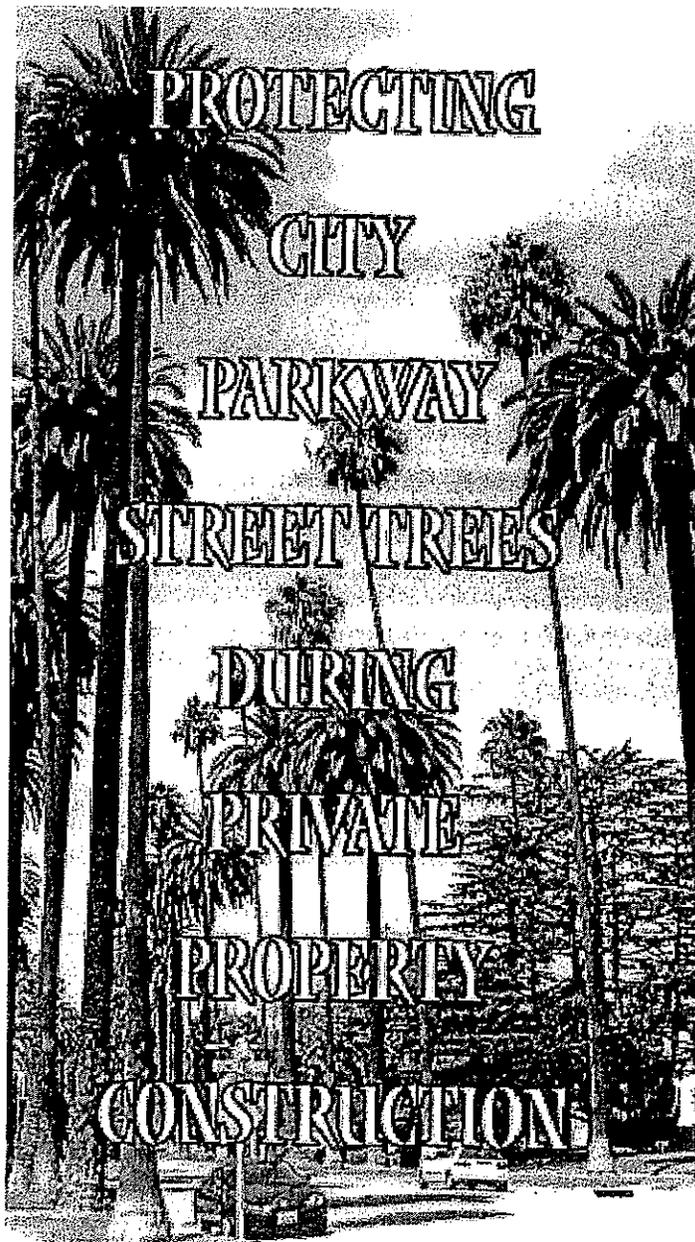
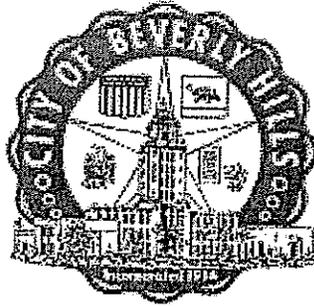
Standard Conditions List
for the Planning Commission

7. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.
14. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.
15. Water discharged from a loading dock area must go through an interceptor/clarifier prior to discharging to the storm drain system. A loading dock is not to be confused with a loading zone or designated parking space for loading and unloading.
16. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples are grocery stores, mini markets and food services.
17. 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.
18. Storm water runoff from automobiles going into a parking garage shall be discharged through a clarifier before discharging into the storm drain system. In-lieu of discharging runoff through a clarifier, parking lots can be cleaned every two weeks with emphasis on removing grease and oil residuals which drip from vehicles. Maintain records of cleaning activities for verification by a City inspector.

Standard Conditions List
for the Planning Commission

19. After completion of architectural review of a new or modified commercial structure, and prior to issuance of the certificate of occupancy, the applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the applicant may choose to pay an in-lieu art fee.

Standard Conditions List
for the Planning Commission





PROTECTING CITY PARKWAY STREET TREES DURING PRIVATE PROPERTY CONSTRUCTION

In addition to their numerous environmental benefits, trees in the parkway areas along the streets of Beverly Hills are a tremendous asset to residential and commercial communities. Street trees are protected by Beverly Hills Municipal Code (Sec. 5-6.1001) as follows: "It is illegal for parties who are not official representatives or authorized agents of the City of Beverly Hills to prune, remove, make attachment to, or otherwise damage a City street, park or protected tree." It is a violation of this City

code to affix a sign, residence number plaque, mirror, light fixture, etc. to a City tree.

The maintenance and protection of street trees is a shared responsibility between property owners and the City of Beverly Hills. If you feel that a street tree is unhealthy, damaged or in need of pruning, please contact the Department of



Recreation and Parks
Urban Forestry Division at
310.550.4638.

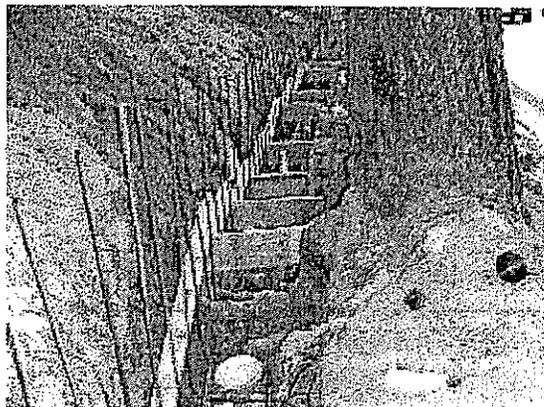
Construction activities can have severe and long lasting effects on the health of trees. Consideration must be given to street trees during a project's planning stages. Tree loss or damage can have a significant effect on the uniformity and value of a tree canopy along a street. The planning and implementation of any construction project must include the preservation of this important City asset.

Planning and protecting the health of trees during construction is part of doing business in the City of Beverly Hills.

This brochure is provided to assist you to avoid endangering City trees during your construction project.

PROJECT PLANNING

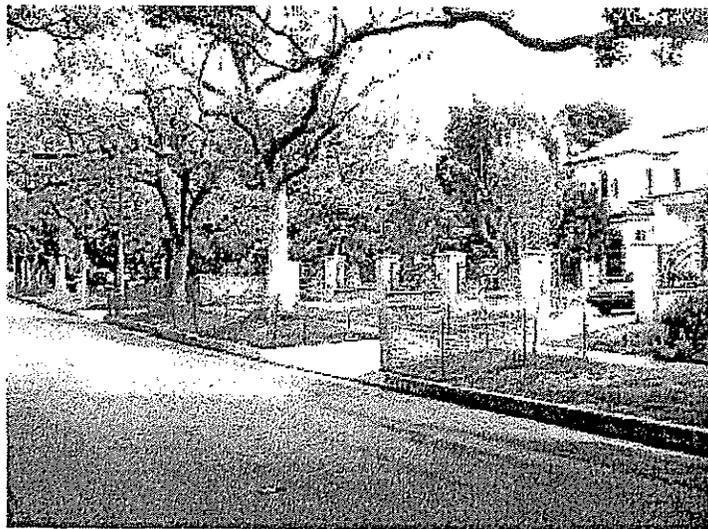
- During the design process, please consider the long term effects that construction may have on City trees. Plan activities carefully, as the City of Beverly Hills will seek compensation for any damage to the trees caused by your construction activities.
- For any projects that include construction work in the public right-of-way, plans that accurately depict the public right-of-way will need the approval of the Departments of Recreation and Parks and Civil Engineering prior to any permits being issued by the Department of Building and Safety.
- All preliminary plans, sketches and drawings should identify all City parkway trees adjacent to the project site. The actual location and canopy diameter of City trees must be shown clearly on the plans.
- A City tree protection plan must be included in the initial plan submittal package. The tree protection plan may include a fenced tree protection zone, and must demonstrate how the parkway will be watered and maintained for the duration of the project. If it is determined that the proposed construction work will jeopardize the health of a street tree, or if the tree protection plan is deemed inadequate, you may be asked to provide a detailed report by a certified arborist showing the adequate protection of the tree and its value based on the International Society of Arboriculture (ISA) recognized standards.
- The negative effects of construction may take years to become apparent in the decline of trees. A claim may be filed with you and your general liability carrier should damage become apparent at a later date.
- You may wish to retain an International Society of Arboriculture (ISA) Certified Arborist to assist you with your project. Contact information is provided in this brochure.



*Do not design projects at
the expense of trees.*

PROJECT APPROVAL

- All construction related permits will be processed by the Department of Building and Safety. Public Works permits are required for trucking, hauling and work conducted in the public right-of way.
- The tree protection plan must be approved by the Recreation and Parks Urban Forest Division. If a tree protection zone fence is required, it must be installed and inspected prior to the commencement of any demolition or construction work. These inspections can be arranged by calling (310) 550-4638.



Maintain the tree protection zone fencing and parkway condition at all times.

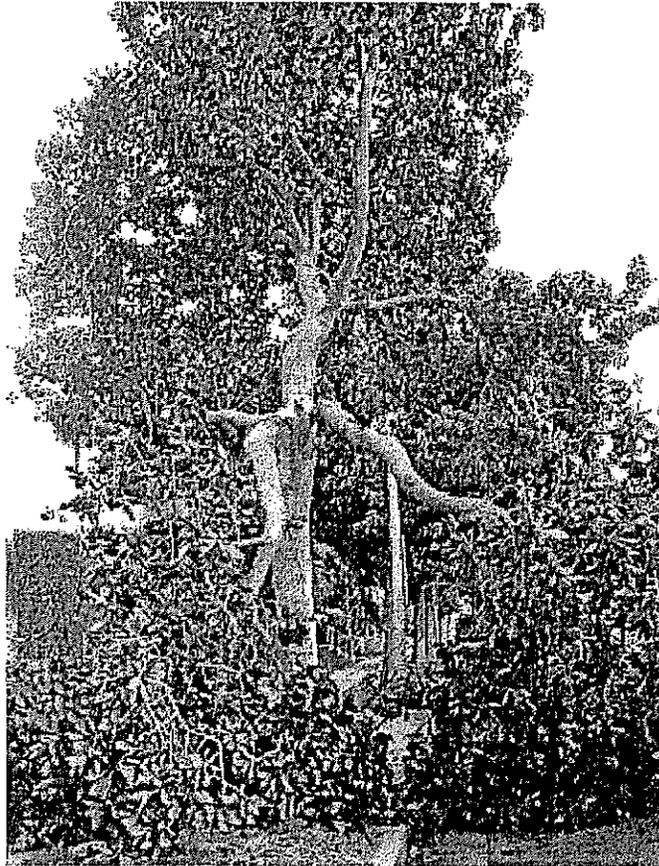
SPECIFICATIONS

- A tree protection zone may require that the entire parkway be fenced. Fencing may be of a chain link or flexible configuration, but may not exceed 4 feet in height. Fence installation should be such that lines of sight are maintained so as to avoid any vehicle or pedestrian hazards. A warning sign must be displayed on the street side of the fence. The size of the sign must be no less than 8.5 x 11 inches. The sign must clearly state: "Warning: Tree Protection Zone". The sign shall clearly list the name and current contact information of the project owner or authorized representative.

Standard Conditions List
for the Planning Commission

DURING THE PROJECT

- ♦ Maintain the integrity of the tree protection zone fencing and keep the parkway site clean and maintained at all times.
- ♦ The site will be inspected by Building and Safety Department and the Urban Forest Division of the Recreation and Parks Department. If the tree protection plan is not complied with, or proves inadequate, additional measures may be required.
- ♦ It is recommended that trees be deep watered on a weekly basis for the duration of the project.



Do not allow cranes or other equipment to damage City trees.

Standard Conditions List
for the Planning Commission

CONTACT/RESOURCE
INFORMATION

City of Beverly Hills contact information

- ◆ Recreation and Parks Department-
Urban Forest Division Office: (310) 550-4638
recreationandparks@beverlyhills.org
- ◆ Civil Engineering Department-
Administration Office: (310) 285-2506
civilengineering@beverlyhills.org
- ◆ Building and Safety Department-
Permit Desk: (310) 285-1141
buildingandsafety@beverlyhills.org

Determining the value of trees

- ◆ Council of Tree and Landscape Appraisers
(CTLA), 2000. *Guide for Plant Appraisal*, 9th
Ed. Savoy, IL: ISA, 143 pp.
Order this reference guide online at:
<http://www.wcisa.net/pbItem.asp?PubID=30>

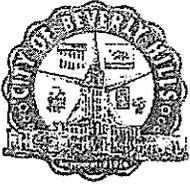
A library use only copy of this publication is
available in the reference section of:
The Beverly Hills Public Library
444 North Rexford Drive
Beverly Hills, CA 90210
(310) 288-2244

**Find an International Society of Arboriculture (ISA)
Certified Arborist**

- ◆ Western Chapter ISA: (530) 892-1006
- ◆ ISA, find an Arborist by phone: (217) 355-9411
- ◆ ISA, find an Arborist online: <http://www.isa-arbor.com/arborists/arbsearch.html>

EXHIBIT C

MITIGATION MONITORING AND REPORTING PROGRAM



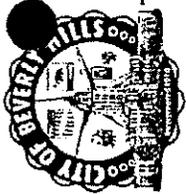
12.0 MITIGATION MONITORING AND REPORTING PROGRAM

Sections 1.0 and 5.0 of this EIR identify the mitigation measures that will be implemented to reduce the impacts associated with the 231 - 265 North Beverly Drive project. The California Environmental Quality Act (CEQA) was amended in 1989 to add Section 21081.6, which requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in Section 21081.6 of the Public Resources Code,

... the public agency shall adopt a reporting or monitoring program for the changes to the project which it has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment.

Section 21081.6 provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined prior to final certification of the EIR.

The mitigation monitoring table lists those mitigation measures that may be included as conditions of approval for the project. These measures correspond to those outlined in Section 1.0 and discussed in Section 5.0. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. The project applicant will have the responsibility for implementing the measures, and the various City of Beverly Hills departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.



**231 - 265 NORTH BEVERLY DRIVE PROJECT
ENVIRONMENTAL IMPACT REPORT**

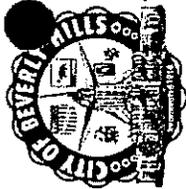
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check-Box	Date
Aesthetics, Light, and Glare AES1	Construction equipment staging areas shall use appropriate screening (i.e., temporary fencing with opaque material) to buffer views of construction equipment and material, when feasible. Staging locations shall be indicated on Final Development Plans and Grading Plans.	Community Development Department	A Construction Management Plan shall be prepared by the applicant and reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
	All construction-related lighting shall include shielding in order to direct lighting down and away from adjacent hotel and residential uses and consist of the minimal wattage necessary to provide safety at the construction site. A construction safety lighting plan shall be submitted to the City for review concurrent with Grading Permit application.	Community Development Department	As part of the construction Management Plan, the project applicant shall prepare a construction safety lighting plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
AES2						



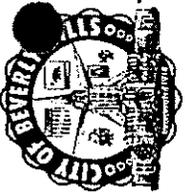
231 - 265 NORTH BEVERLY DRIVE PROJECT
ENVIRONMENTAL IMPACT REPORT

231 - 265 North Beverly Drive Project Environmental Impact Report
Mitigation Monitoring and Reporting Program

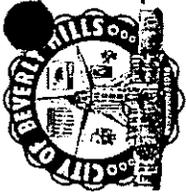
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
		the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.			
<p>Traffic</p> <p>TR1</p> <p>South Santa Monica Boulevard/Wilshire Boulevard - The project applicant shall make a fair share contribution to widen the eastbound Wilshire Boulevard approach at South Santa Monica Boulevard from two through lanes and one shared through/right-turn lane to consist of three through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires narrowing and relocation of the existing sidewalk and relocation of utilities adjacent to the existing Starbucks along eastbound Wilshire Boulevard.</p>	Department of Public Works/ Civil Engineering Division and Community Development Department	The Department of Public Works, Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.		
TR2	See above.	See above.	See above.		



231 - 265 North Beverly Drive Project Environmental Impact Report Mitigation Monitoring and Reporting Program					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<p>eastbound North Santa Monica Boulevard approach at Beverly Drive from one dedicated left-turn lane, one through lane, and one shared through/right-turn lane to consist of one dedicated left-turn lane, two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires narrowing of the existing landscaped area located at the southwest corner of the intersection, adjacent to the existing City-operated parking facility and relocation of existing curb, utilities, and signal post.</p>					
<p>TR3</p> <p>Beverly Drive/South Santa Monica Boulevard - The project applicant shall make a fair share contribution to widen the southbound Beverly Drive approach at South Santa Monica Boulevard from one through lane and one shared through/right-turn lane to consist of two through lanes and one dedicated right-turn lane.</p> <p>Implementation of this mitigation measure requires restriping of Beverly Drive between North Santa Monica Boulevard and South Santa Monica Boulevard and tapering of the southbound Beverly Drive curb at South Santa Monica Boulevard.</p>	See above.	See above.	See above.		
<p>TR4</p> <p>Beverly Drive/Dayton Way - At the northeastern corner of the project site, the project applicant shall restripe (by removing the parking lane) the eastbound Dayton Way approach at Beverly Drive from one shared left-turn/through lane and one shared through/right-turn lane to consist of one shared left-turn/through</p>	See above.	See above.	See above.		



231 - 265 North Beverly Drive Project: Environmental Impact Report Mitigation Monitoring and Reporting Program					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<p>lane, one through lane, and one dedicated right-turn lane.</p> <p>North Santa Monica Boulevard/Wilshire Boulevard - The project applicant shall make a fair share contribution to re-stripe the southbound North Santa Monica Boulevard approach at Wilshire Boulevard from two through lanes, one shared through/right-turn lane, and one dedicated right-turn lane with overlap phasing to consist of three through lanes and one dedicated right-turn lane with overlap phasing.</p> <p>Additionally, the project applicant shall make a fair share contribution to widen the westbound Wilshire Boulevard approach at North Santa Monica Boulevard from one dedicated left-turn lane, two through lanes, and one shared through/right-turn lane to consist of one dedicated left-turn lane, three through lanes and one dedicated right-turn lane.</p> <p>The westbound Wilshire Boulevard approach requires relocation of the existing sidewalk and utilities adjacent to the existing Budget Car & Truck Rental surface lot along Wilshire Boulevard, thus impacting a portion of the existing Budget Car & Truck Rental surface lot.</p> <p>Widening of the westbound Wilshire Boulevard approach at North Santa Monica Boulevard would require acquisition of private property, and therefore, based on comments from City staff, is considered infeasible. Hence, according to City staff, only the portion of this mitigation measure that consists of restriping the</p>	See above.	See above.	See above.		
TR5					



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<p>southbound North Santa Monica Boulevard approach at Wilshire Boulevard is considered to be feasible.</p>					
Site Access and Circulation					
<p>AC1 The construction contractor shall create a site access point that would not interfere with any construction vehicles turning left from the northbound lanes into the project site, subject to review and approval by the City of Beverly Hills.</p>	<p>Community Development Department</p>	<p>The site access point will be identified in the Final Construction Management Plan. The Construction Management Plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.</p>	<p>This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.</p>		
<p>AC2 In order to mitigate potential internal circulation and parking accessibility impacts in the proposed parking structure, full-time valet parking shall be required for all building visitors.</p>	<p>Community Development Department</p>	<p>The project applicant will prepare a Parking Operations Plan. This measure will be included in</p>	<p>The Parking Operation Plan is effective immediately upon issuance of building permits for the</p>		



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		the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	project, and shall remain effective throughout the life of the project.		
Parking Supply and Demand PSD1	Community Development Department	The project applicant will comply with this mitigation by providing spaces on- or off-site. The revised plans filed with the Building & Safety division shall comply with this requirement. The plan check engineers will review the revised plans to ensure that they comply with this requirement.	This measure shall be met prior to issuance of building relevant building permits.		
		The project, as conditioned by the Planning Commission to allow a maximum of 100 screening room seats, shall be required to provide 730 parking spaces based on the City's parking code, all of which shall be provided on-site. However, the Applicant shall have the option of reducing the building area to reduce the parking need based on the City's Code. Evidence of provision of adequate parking shall be provided prior to the issuance of a building permit.			
Parking Management During Construction PMC1	Community Development	The primary contractor shall submit to the department a	The program and affidavit shall be		
		In order to address parking for construction workers during demolition, excavation, and shoring activities, the following steps			



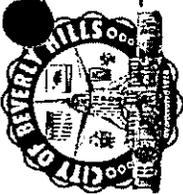
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<p>shall be implemented:</p> <ul style="list-style-type: none"> • Whenever possible, park the crews at the project site. • When the crews cannot park at the project site, they shall be permitted to use available parking at 9465 Wilshire Boulevard during the off-peak hours. • For peak hour parking needs that cannot be accommodated on-site, the project applicant shall procure 20 spaces on a monthly basis in nearby parking structures with excess capacity. 	Department	program and an affidavit attesting to the compliance with this measure as part of the Construction Management Plan which will be reviewed by the Community Development Department /Building & Safety Department.	submitted prior to the commencement of any work on the project site. This measure shall be in effect until the issuance of the certificate of occupancy.		
Parking Management During Operation					
<p>PMO1</p> <p>Signage and/or striping shall be installed to direct visitors to the central valet station upon entering the garage, in accordance with a signage and striping plan as approved by the Director of Community Development.</p>	Community Development Department	This measure will be included in the Parking Operation Plan, which will be maintained on file in the Building and Safety Division. In the event that substantial problems arise, the Director of Community Development may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems.	The Parking Operation Plan is effective immediately upon issuance of building permits for the project, and shall remain effective throughout the life of the project.		
<p>PMO2</p> <p>The valet company shall be responsible for maintaining the correct directional flow of vehicles through the central valet station at all</p>	Community Development	See above	See above.		



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times, and especially during periods of high demands by visitors and pass-holders.	Department				
PMO3 For egress out of the structure, signage and/or striping shall be installed to direct visitors to use the Dayton Way exit in accordance with a signage and striping plan as approved by the Director of Community Development. A right-turn only sign and/or arrow shall direct visitors to Dayton Way.	Community Development Department	See above.	See above.		
PMO4 The project applicant shall submit a parking operations plan concurrent with the submittal of plans for building permit. The parking operations plan shall be approved by the Director of Community Development prior to the issuance of a building permit. At a minimum, the parking operations plans shall address the following: <ul style="list-style-type: none"> • Parking allocation in the garage; • Garage access and control systems; • Valet and/or attendant assistance; • Staffing levels. The parking operations plan shall demonstrate that traffic does not back up onto Dayton Way. Through adequate staffing and other measures, the parking operations plans shall ensure that parking aisles are kept clear, and vehicle flow for valet and/or attendant assistance is properly maintained. In doing so, the parking operations plans shall prevent queues from backing up onto Dayton Way and keep the garage operations from impacting traffic circulation around the project site. In addition, the parking	Community Development Department	See above. In addition, any measures applicable to the restaurant operations shall be imposed to a lease agreement with a prospect tenant. Such measure shall be disclosed to any prospect tenant prior to execution of a lease agreement.	See above. Prior to application of a tenant improvement permit, the prospective tenant shall provide the preferred methods selected to operate the restaurant parking per the Community Development Director review and approval.		



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<p>operations plans shall consider, but is not limited to, the following menu of methods to ensure adequate parking supply is maintained based on final floor plans submitted for building permit:</p> <ul style="list-style-type: none"> • Limit restaurant hours. Limitation of restaurant hours during peak hours from 11:00 AM to 2:00 PM. • Use of an on-street valet. If the restaurant is open from 11:00 AM to 2:00 PM, then all patrons must use an on-street valet that will park the cars in an adjacent off-site parking lot. The valet operations must be consistent with the City's Daytime Valet Guidelines. In addition, should this option be exercised, it would require a separate approval from the City. • The valet may stack vehicles in the drive aisles, as long as circulation is maintained. • Reduction in retail and/or restaurant square footage to reduce parking and/or valet demand. 				
<p>Air Quality</p> <p>AIR1</p> <p>During clearing, grading, earth moving, or excavation operations, excessive fugitive dust emissions shall be controlled by regular water or other dust preventive measures using the following procedures, as specified in the South Coast Air Quality Management District Rule 403. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations shall comply with the South Coast Air Quality Management District Rule 403.</p>	Community Development Department	The project applicant shall submit a construction management plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development	This measure shall be met during the during construction period. This measure shall be in effect until the issuance of certificate of occupancy.	



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<ul style="list-style-type: none"> On-site vehicle speed shall be limited to 15 miles per hour; All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice daily with complete coverage, preferable in the late morning and after work is done for the day; All material transported on-site or off-site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust; The area disturbed by clearing, grading, earth moving, or excavation operations shall be minimized so as to prevent excessive amounts of dust; A wheel washing system shall be installed and used to remove bulk material from tires and vehicle undercarriages before vehicles exit the project site. All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be posted in a prominent and visible location at the construction site, and shall be maintained throughout the construction process. All notices and the signs shall indicate the dates and duration of construction activities, as well as provided a telephone number where residents can inquire about the construction process and register complaints. 		<p>Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>	



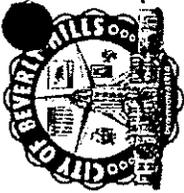
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<ul style="list-style-type: none"> These control techniques shall be indicated in project specifications. Compliance with the measure shall be subject to periodic site inspections by the City; and Visible dust beyond the property line emanating from the project shall be prevented to the maximum extent feasible. 					
<p>AIR2</p> <p>All trucks that are to haul excavated or graded material on-site shall comply with <i>State Vehicle Code</i> Section 23114 (Spilling Loads on Highways), with special attention to Sections 23114(b)(F), (e)(4) as amended, regarding the prevention of such material spilling onto public streets and roads. Prior to the issuance of grading permits, the project applicant shall demonstrate to the City of Beverly Hills how the project operations subject to that specification during hauling activities shall comply with the provisions set forth in Sections 23114(b)(F), (e)(4).</p>	Community Development Department	See above.	See above.		
<p>AIR3</p> <p>Prior to approval of the project plans and specifications, the Public Works Director, or his designee, shall confirm that the construction bid packages include a separate "Diesel Fuel Reduction Plan." This plan shall identify the actions to be taken to reduce diesel fuel emissions during construction activities (inclusive of grading and excavation activities). Reductions in diesel fuel emissions can be achieved by measures including, but not limited to, the following:</p> <ul style="list-style-type: none"> a) use of alternative energy sources, such as compressed natural gas or liquefied petroleum gas, in mobile equipment and vehicles; b) use of "retrofit technology," including diesel particulate traps, on existing diesel engines and vehicles; and c) other appropriate measures. Prior to the issuance of a grading permit, the Diesel Fuel Reduction Plan shall be filed with the City of Beverly Hills. 	See above.	See above.	See above.		

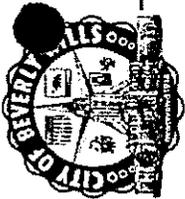


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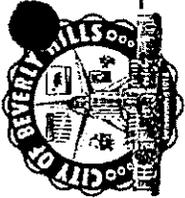
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<p>The Diesel Fuel Reduction Plan shall include, at a minimum, the following provisions:</p> <ul style="list-style-type: none"> All diesel fueled off-road construction equipment shall be California Air Resources Board certified or use post-combustion controls that reduce pollutant emissions to the same level as California Air Resources Board certified equipment. California Air Resources Board certified off-road engines are engines that are three years old or less and comply with lower emission standards. Post-combustion controls are devices that are installed downstream of the engine on the tailpipe to treat the exhaust. These devices are now widely used on construction equipment and are capable of removing over 90 percent of the PM₁₀, carbon monoxide, and volatile organic compounds from engine exhaust, depending on the specific device, sulfur content of the fuel, and specific engine. The most common and widely used post-combustion control devices are particulate traps (i.e., soot filters), oxidation catalysts, and combinations thereof. All diesel fueled on-road construction vehicles shall meet the emission standards applicable to the most current year to the greatest extent possible. To achieve this standard, new vehicles shall be used or older vehicles shall use post-combustion controls that reduce pollutant emissions to the greatest extent feasible. The effectiveness of the latest diesel emission controls is highly dependant on the sulfur content of the fuel. 					



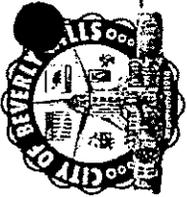
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Therefore, diesel fuel used by on-road and off-road construction equipment shall be low sulfur (>15 ppm) or other alternative low polluting diesel fuel formulation.					
AIR4 The project shall comply with South Coast Air Quality Management District Rule 1113, which limits the ROG content of architectural coatings used in the Basin or to allow the averaging of such coatings, as specified, so actual emissions do not exceed the allowable emissions if all the averaged coatings had complied with the specified limits.	See above.	See above.	See above.		
AIR5 The project shall comply with South Coast Air Quality Management District Rule 1403, Asbestos Emissions From Demolition/Renovation Activities, which specifies work practice requirements to limit asbestos emissions from building demolition and renovation activities, including the removal and associated disturbance of asbestos containing materials. The requirements for demolition and renovation activities include asbestos surveying, notification, asbestos containing materials removal procedures and time schedules, asbestos-containing materials handling and clean-up procedures, and storage, disposal, and landfilling requirements for asbestos-containing waste materials. All operators are required to maintain records, including waste shipment records, and are required to use appropriate warning labels, signs, and markings.	See above.	See above.	See above.		
Noise NO11 Prior to grading permit issuance, the construction contractor shall demonstrate, to the satisfaction of the City of Beverly Hills Community Development Department, the following:	Community Development Department	The project applicant shall submit a construction management plan to the	This measure shall be met during the during construction period.		



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<ul style="list-style-type: none"> Construction contracts shall specify that all construction equipment, fixed or mobile, shall be equipped with properly operating and maintained mufflers that exceed state requirements for muffler attenuation devices. All residential units located within one-quarter mile of the construction site shall be sent a notice regarding the construction schedule of the proposed project. A sign, legible at a distance of 50 feet shall also be prominently posted at the construction site. All notices and signs shall indicate the dates and duration of construction activities, as well as provide a telephone number of a contact person with whom residents can discuss the construction process and register complaints. The contact person shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint. A "noise disturbance coordinator" shall be established. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within one-quarter mile of the construction site and all signs posted at the construction site shall list the telephone number for the disturbance coordinator. The noise disturbance coordinator shall be required to maintain a log of 		<p>Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building & Safety Division prior to the issuance of grading permits. The plan check engineer will review the plan to ensure that it complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the construction management plan.</p>	<p>This measure shall be in effect until the issuance of certificate of occupancy.</p>						



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<p>complaints for the City's inspection. The log shall include the source of complaint, the complaint, time received, and the action taken in response. The noise disturbance coordinator shall make good faith efforts to respond to inquiries and complaints within twenty-four (24) hours of receipt of the inquiry or complaint.</p> <ul style="list-style-type: none"> Staging of construction vehicles is prohibited on streets within the City of Beverly Hills. All construction vehicle staging shall occur on La Cienega Boulevard. During construction, stockpiling and vehicle staging areas shall be located as far as practical from noise sensitive receptors. Construction noise reduction methods such as shutting off idling equipment, installing temporary acoustic barriers around stationary construction noise sources, maximizing the distance between construction equipment staging areas and occupied residential areas, and use of electric air compressors and similar power tools, rather than diesel equipment, shall be employed where feasible. During construction, stationary construction equipment shall be placed such that emitted noise is directed away from sensitive noise receivers. Prior to grading permit issuance, the project applicant shall demonstrate to the satisfaction of the City of Beverly Hills, that a "Nighttime Construction Noise Mitigation Plan" has been developed to address nighttime construction noise impacts. The 					
NO12	Community Development Department	A "Nighttime Construction Noise Plan" shall be submitted to the Director of Community prior to issuance	The measure shall be met during the construction period. This measure shall be in		



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<p>plan shall incorporate provisions for noise attenuation barriers, truck routing, location of staging areas, worker parking and other appropriate measures for achieving an overall attenuation of construction noise of at least 8 dBA.</p>		<p>of any grading or construction permits. The Construction Management Plan shall be reviewed by the Planning Division and filed with the Building & Safety Division prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the Construction Management Plan.</p>	<p>effect until the issuance of the certificate of occupancy.</p>		
<p>The project applicant shall incorporate all applicable recommendations of the <i>Geotechnical Report</i> into the design of proposed structures to address seismic groundshaking and other earthquake-related seismic hazards.</p>	<p>Community Development/ Building & Safety Division</p>	<p>The construction plans filed with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this</p>	<p>This requirement shall be met prior to the issuance of relevant building permits</p>		
<p>Geology GEO1</p>					

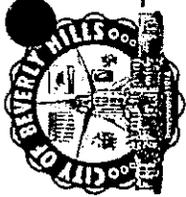


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GEO2	See above.	requirement. See above.	See above.		
Hydrology and Water Quality					
HWQ1	Community Development Department	The project applicant shall prepare a wet year analysis to file with the Department of Community Development/Building & Safety Division to comply with this requirement.	This requirement shall be met prior to the issuance of relevant building permits.		
HWQ2	Community Development Department	The project applicant will prepare Storm water Pollution Prevention Plan.	Prior to issuance of grading and building permits.		
HWQ3	Community Development Department	Project applicant compliance with City Ordinance 06-O-2506.	During construction.		
HWQ4	Community Development Department	The project applicant shall prepare a Water Quality Management Plan.	Prior to issuance of grading and building permits.		



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Plan requirements of the NPDES MS4 permit.					
Hazards and Hazardous Materials					
HAZ1 The project applicant and individual tenants shall comply with all applicable City, County, State, and Federal regulations with respect to the storage, handling, transportation, and disposal of hazardous wastes.	Community Development Department/Built-in g & Safety Division Department of Public Works	The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.	This measure shall be in effect until the issuance of the certificate of occupancy.		
HAZ2 If unknown wastes or suspect materials are discovered during demolition or construction by the contractor, which he/she believes may involve hazardous waste/materials, the contractor shall: <ul style="list-style-type: none"> Immediately stop work in the vicinity of the suspected contaminant, removing workers and the public from the area; Notify the project engineer of the implementing agency; Secure the areas directed by the project engineer; and Notify the implementing agency's Hazardous Waste/Materials Coordinator. Implement required corrective actions, including remediation if applicable. 	See above.	See above.	See above.		



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<p>HAZ3 Damaged or deteriorated (unsealed ends, nicks, loose pieces of insulation, abraded floor tiles, etc.) friable and non-friable asbestos-containing materials shall be repaired by properly trained personnel. Proper respiratory protection and containment shall be provided should these materials need to be disturbed for building maintenance or renovation. Prior to demolition, renovation, or any other such activity, suspect materials observed in the subject buildings shall be sampled and tested for asbestos. Additionally, if an Operations and Maintenance (O&M) Plan does not exist, one shall be developed, and the identified materials shall be included.</p>	See above.	See above.	See above.		
<p>HAZ4 Based on the age of the property buildings (mid-1930s and early-1960s), it is possible that lead-based paint is present on-site. As such, prior to demolition and removal of on-site structures, paint shall be sampled and analyzed for the presence of lead-based paint. If lead-based paint is found to occur within the subject buildings, proper removal, handling, and disposal of such materials shall be performed pursuant to applicable rules and regulations, to the satisfaction of regulatory agencies with oversight authority.</p>	See above.	See above.	See above.		
<p>HAZ5 Based on the historical site uses, primarily on the northwestern end of the site, soils shall be closely monitored during excavation work for any future redevelopment activities. If unusual odors or discolored soils are encountered during the excavation phase of the project, soil samples from the area of potential concern shall</p>	See above.	See above.	See above.		



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<p>be collected and analyzed. Qualified environmental personnel shall be present on site to assist in characterizing and segregating impacted soils, if encountered. This work shall be conducted subsequent to building demolition activities. If any such commencement of mass excavation activities. If any such contaminated soils are encountered on-site, they shall be excavated and removed, or otherwise remediated, in accordance with applicable State law to the satisfaction of regulatory agencies with oversight authority.</p>				
<p>Solid Waste SW1 Prior to the issuance of building permits, a source reduction program shall be prepared and submitted to the City's Solid Waste Superintendent to achieve a minimum 50 percent reduction in waste disposal rates, including green waste and construction debris.</p>	<p>Department of Community Development, Department of Public Works</p>	<p>A Source Reduction Program shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The responsible departments shall review the program to ensure that the plan is in compliance with this measure during construction and after completion of the project. The plan check engineers will also review the plan to ensure that the plan complies with this requirement in order to issue the building permits.</p>	<p>This measure shall apply to both construction and operational activities. It is effective upon the issuance of building permits and shall remain effective throughout the life of the project.</p>	

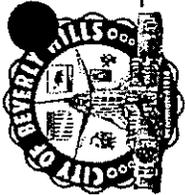


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SW2 The location of recycling/separation areas shall be in close proximity to dumpsters for non-recyclables, elevators, loading docks, and primary internal and external access points.	See above.	See above.	See above.		
SW3 The location of recycling/separation areas shall not be in conflict with any applicable Federal, State, or local laws relating to fire, building, access, transportation, circulation, or safety.	See above.	See above.	See above.		
Fire Protection Services					
FS1 Adequate emergency vehicle access to all buildings on the project site shall be provided throughout the building construction process.	Community Development/ Building & Safety Division Fire Department	The Construction Management Plan shall be reviewed by the Community Development/ Building & Safety Division and Fire Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		



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FS2 Adequate water availability shall be provided to meet construction activity needs, including potential fire suppression needs.	See above.	See above.	See above.		
FS3 The proposed project shall comply with all applicable Building Code and Fire Code requirements, subject to review and approval by the Beverly Hills Fire Department.	See above.	See above.	See above.		
Police Protection Services					
PP1 During construction, private security patrols shall be utilized to protect the project site.	Community Development Department/ Building & Safety Division Police Department	The Construction Management Plan shall be reviewed by the Community Development Department Building & Safety Division and Police Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that the plan complies with the requirements noted in the Construction Management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.		
PP2 As final building plans are submitted to the City for approval in the future, BHPD design requirements which reduce demands for service and ensure adequate public safety (such as those pertaining to site access and site security lighting) shall be	See above.	See above.	See above.		



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incorporated into the building design. PP3 Project design shall provide lighting, to the satisfaction of the BHPD, around and throughout the development to enhance crime prevention and enforcement efforts.	See above.	See above.	See above.		
PP4 Project design shall provide clearly visible (during the day and night) address signs and/or building numbers for easy identification during emergencies.	See above.	See above.	See above.		