APPLICATIONS

APPEAL APPLICATION
Instructions and Checklist

RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

PURPOSE

This application is for the appeal of Los Angeles Department of City Planning determinations, as authorized by the LAMC, as well as first-level Building and Safety Appeals and Housing Appeals.

APPELLATE BODY

Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.

☐ Area Planning Commission (APC) ☐ City Planning Commission (CPC) ☒ City Council

☐ Zoning Administrator (ZA) ☐ Director of Planning (DIR)

CASE INFORMATION

Case Number: CPC-2001-1940-DA-ZV (Related Case Number CPC 2022-5315-DA); CEQA Number: ENV-2024-2272-CE

APN: See Attachment B

Project Address: 6801 West Hollywood Boulevard (6801 – 6909 West Hollywood Boulevard; 1755 – 1767 North Highland Avenue; 1722 North Orange Drive)

Final Date to Appeal: June 10, 2024

APPELLANT

For main entitlement cases, <u>except</u> for Building and Safety Appeals and Housing Appeals: Check all that apply.

☐ Person, other than the Applicant, Owner or Operator claiming to be aggrieved

☒ Representative ☒ Property Owner ☐ Applicant ☐ Operator of the Use/Site

For Building and Safety Appeals only:

Check all that apply.

☐ Person claiming to be aggrieved by the determination made by **Building and Safety**[1]

☐ Representative ☐ Property Owner ☐ Applicant ☐ Operator of the Use/Site

For Housing Appeals only:

Check all that apply.

☐ Person claiming to be aggrieved by the determination made by **Housing**

☐ Representative ☐ Property Owner ☐ Applicant ☐ Interested Party ☐ Tenant

APPELLANT INFORMATION

Appellant Name: H&H Retail Owner, LLC

Company/Organization: H&H Retail Owner, LLC

Mailing Address: 6801 Hollywood Blvd., Suite 170

City: Los Angeles **State:** CA **Zip Code:** 90028

Telephone: 323-817-0209 (ext. 1209) **E-mail:** kgolder@djmcapital.com

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

☒ Self ☐ Other: _____

Is the appeal being filed to support the original applicant's position? ☒ **YES** ☐ **NO**

REPRESENTATIVE / AGENT INFORMATION

Representative/Agent Name (if applicable): Jeffrey B. Isaacs

Company: Isaacs - Friedberg - Zill LLP

Mailing Address: 555 S. Flower St., Ste. 4250

City: Los Angeles **State:** CA **Zip Code:** 90071

Telephone: (213) 929-5550 **E-mail:** jisaacs@ifzcounsel.com

[1] Pursuant to LAMC Section 13B.2.10.B.1. of Chapter 1A, Appellants of a Building and Safety Appeal are considered the Applicant and must provide the Noticing Requirements identified on page 4 of this form at the time of filing. Pursuant to LAMC Section 13B.10.3 of Chapter 1A, an appeal fee shall be required pursuant to LAMC Section 19.01 B.2 of Chapter 1.

JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part? ☒ **Entire** ☐ **Part**

Are specific Conditions of Approval being appealed? ☐ **YES** ☒ **NO**

If Yes, list the Condition Number(s) here: _____

On a separate sheet provide the following:

☒ Reason(s) for the appeal

☒ Specific points at issue

☒ How you are aggrieved by the decision

APPLICANT'S AFFIDAVIT

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

Appellant Signature: _____ **Date:** 6/7/2024

GENERAL NOTES

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

The appellate body must act on the appeal within a time period specified in the LAMC Section(s) pertaining to the type of appeal being filed. Los Angeles City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.

THIS SECTION FOR CITY PLANNING STAFF USE ONLY

Base Fee: $16,586

Reviewed & Accepted by (DSC Planner): Jason Chan

Receipt No.: 200101204536 **Date :** 6/10/24

☒ Determination authority notified ☐ Original receipt and BTC receipt (if original applicant)

GENERAL APPEAL FILING REQUIREMENTS

If dropping off an appeal at a Development Services Center (DSC), the following items are required. See also additional instructions for specific case types. To file online, visit our Online Application System (OAS).

APPEAL DOCUMENTS

1. Hard Copy

Provide three sets (one original, two duplicates) of the listed documents for each appeal filed.

- ☐ Appeal Application
- ☐ Justification/Reason for Appeal
- ☐ Copy of Letter of Determination (LOD) for the decision being appealed

2. Electronic Copy

- ☐ Provide an electronic copy of the appeal documents on a USB flash drive. The following items must be saved as individual PDFs and labeled accordingly (e.g., "Appeal Form", "Justification/ Reason Statement", or "Original Determination Letter"). No file should exceed 70 MB in size.

3. Appeal Fee

- ☐ *Original Applicant.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(a), or a fee equal to 85% of the original base application fee. Provide a copy of the original application receipt(s) to calculate the fee.
- ☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b).

4. Noticing Requirements (Applicant Appeals or Building and Safety Appeals Only)

- ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per the LAMC for all Applicant appeals. Appellants for BSAs are considered Original Applicants.
- ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

  See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.
- ☐ Not applicable for Housing Appeals.

SPECIFIC CASE TYPES
ADDITIONAL APPEAL FILING REQUIREMENTS AND / OR LIMITATIONS

DENSITY BONUS (DB) / TRANSIT ORIENTED COMMUNITES (TOC)

Appeal procedures for DB/TOC cases are pursuant to LAMC Section 12.22 A.25(g) of Chapter 1.

- Off-Menu Incentives or Waiver of Development Standards are not appealable.
- Appeals of On-Menu Density Bonus or Additional Incentives for TOC cases can only be filed by adjacent owners or tenants and is appealable to the City Planning Commission.
  - ☐ Provide documentation confirming adjacent owner or tenant status is required (e.g., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, driver's license, bill statement).

WAIVER OF DEDICATION AND / OR IMPROVEMENT

Procedures for appeals of Waiver of Dedication and/or Improvements (WDIs) are pursuant to LAMC Section 12.37 I of Chapter 1.

- WDIs for by-right projects can only be appealed by the Property Owner.
- If the WDI is part of a larger discretionary project, the applicant may appeal pursuant to the procedures which govern the main entitlement.

[VESTING] TENTATIVE TRACT MAP

Procedures for appeals of [Vesting] Tentative Tract Maps are pursuant LAMC Section 13B.7.3.G. of Chapter 1A.

- Appeals must be filed within 10 days of the date of the written determination of the decision-maker.

BUILDING AND SAFETY APPEALS AND HOUSING APPEALS

First Level Appeal

Procedures for an appeal of a determination by the Los Angeles Department of Building and Safety (LADBS) (i.e., Building and Safety Appeal, or BSA) and Housing (LAHD) are pursuant LAMC Section 13B.10.2. of Chapter 1A.

- The Appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

1. Appeal Fee

   ☐ Appeal fee shall be in accordance with LAMC Section 19.01 B.2 of Chapter 1 (i.e., the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code, plus surcharges).

2. Noticing Requirement

   ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C. of Chapter 1A. Appellants for BSAs are considered Original Applicants. (Not applicable for Housing appeals).

   ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

   ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.

Second Level Appeal

Procedures for a appeal of the Director's Decision on a BSA Appeal and LAHD appeals are pursuant to LAMC Section 13B.10.2.G. of Chapter 1A. The original Appellant or any other aggrieved person may file an appeal to the APC or CPC, as noted in the LOD.

1. Appeal Fee

   ☐ *Original Applicant.* Fees shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

2. Noticing Requirement

   ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C of Chapter 1A. Appellants for BSAs are considered Original Original Applicants.

   ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

   ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.

NUISANCE ABATEMENT / REVOCATIONS

Appeal procedures for Nuisance Abatement/Revocations are pursuant to LAMC Section 13B.6.2.G. of Chapter 1A. Nuisance Abatement/Revocations cases are only appealable to the City Council.

1. Appeal Fee

   ☐ *Applicant (Owner/Operator)*. The fee charged shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

   For appeals filed by the property owner and/or business owner/operator, or any individuals/ agents/representatives/associates affiliated with the property and business, who files the appeal on behalf of the property owner and/or business owner/operator, appeal application fees listed under LAMC Section 19.01 B.1(a) of Chapter 1 shall be paid, at the time the appeal application is submitted, or the appeal application will not be accepted.

   ☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b) of Chapter 1.

ATTACHMENT A

Appeal Justification re: H&H Retail Owner, LLC's ("H&H") Appeal of the City Planning Commission's Termination of the Development Agreement, Dated November 5, 2002, Between the City of Los Angeles and H&H, as Successor-In-Interest to TrizecHahn Hollywood, LLC

Case Number: CPC-2001-1940-DA-ZV (Related Case Number CPC 2022-5315-DA)

CEQA Number: ENV-2024-2272-CE

*****THIS APPEAL IS BEING FILED UNDER PROTEST BECAUSE H&H MAINTAINS THAT THE CITY PLANNING COMMISSION LACKED JURISDICTION AND LEGAL AUTHORITY IN THE FIRST INSTANCE TO TERMINATE THE DEVELOPMENT AGREEMENT.*****

As set forth in detail below, the City Planning Commission's ("**CPC**") decision to terminate the Development Agreement between the City of Los Angeles (the "**City**") and H&H, as successor-in-interest to the original developer TrizecHahn Hollywood LLC ("**TrizecHahn**") (the "**DA**"), should be reversed for the following reasons:

1. The CPC lacked jurisdiction and legal authority to terminate the DA;
2. The City's Notice of Default was time barred under California law;
3. The CPC Hearing violated H&H's constitutional right to due process as the attorneys representing the City in the litigation between H&H and the City were acting as advisors to the CPC and engaged in *ex parte* communications with the CPC Commissioners immediately before the CPC Hearing;
4. There was no basis to terminate the DA because, for multiple reasons, there was no event of default by H&H under the DA; and
5. There is no evidence, much less substantial evidence, to support the CPC's findings in the Letter of Determination ("**LOD**") purporting to support its termination of the DA.

I. Introduction.

H&H is the owner of Ovation Hollywood, the iconic entertainment, retail and office complex formerly known as "Hollywood and Highland," located at 6801 Hollywood Boulevard, Los Angeles, California 90028 (the "**Project**"). H&H is currently in litigation with the City regarding enforcement of H&H's vested sign rights under the DA.[1]

[1] The case is entitled *H&H Retail Owner, LLC v. City of Los Angeles, et al.*, Los Angeles Superior Court, Case No. 22STCP03975 (the "**Litigation**").

On February 22, 2024, the City served H&H with a Notice of Default (the "**Notice of Default**"), alleging that H&H was in default of Section 5.3 of the DA for seeking damages against the City in the Litigation under 42 U.S.C. section 1983 ("**Section 1983**").[2]

The City subsequently brought the matter before the CPC. At a hearing on May 9, 2024 (the "**CPC Hearing**"), the CPC voted to terminate the DA. On May 16, 2024, the CPC issued a Letter of Determination (the "**LOD**") in support of its decision.

H&H now timely appeals the CPC's decision (albeit under protest as H&H maintains that the CPC never had the jurisdiction or legal authority to terminate the DA in the first instance).

Many of the appeal points were raised and discussed in H&H's April 12, 2024 letter responding to the Notice of Default, and again in H&H's May 7, 2024 Secondary Submission to the CPC. Notably, however, the City never responded to H&H's letter, and the LOD fails to address any of H&H's points.

II. Background.

In July 2019, Gaw Capital ("**Gaw**") and DJM Capital Partners, LLC ("**DJM**") purchased H&H for approximately $325 million, and thereafter invested approximately $54 million to revitalize and rebrand the Project to keep it attractive to shoppers and visitors, retain the Academy of Motion Pictures and Sciences annual Academy Awards presentation, and ensure its financial viability, so that it would continue as a bastion against blight in Hollywood.

Under Gaw and DJM's ownership and management, H&H has been a major source of revenue and prestige for the City, paying more than $24 million in property taxes, a portion of which was paid to the City, and $3 million in Community Improvement Fees to the City's Economic and Workforce Department.

The DA expressly granted H&H, as TrizecHahn's successor-in-interest, "vested rights . . . without limitation . . . to remodel, renovate, rehabilitate, rebuild or replace any signs [at the Project] . . . for any reason . . . ."

As part of the plan to renovate and update the Project, beginning in 2020, H&H sought to exercise its vested sign rights under the DA to "remodel," "renovate" and "replace" outdated and obsolete static signs at the Project – all of which were permitted – with digital signs of like or lesser dimensions. The digital signs are critical to the Project maintaining a modern, exciting look and to remaining financially viable.

[2] H&H responded to the Notice of Default in an April 12, 2024 letter, which was part of the record before the CPC.

For more than two years, H&H sought to work with City Planning in good faith to obtain clearances for the digital signs, but was met with delay, stalling and stonewalling. As detailed in H&H's First Amended Complaint, City Planning refused to even acknowledge H&H's vested rights under the DA, refused to apply the procedures and standards set forth in the DA to H&H's digital sign applications, and refused to commit to a pathway for the processing and review of H&H's digital sign applications, acting as if the DA did not exist.

In an October 26, 2022 letter from the Deputy Director of City Planning, Lisa Webber, to H&H's land use counsel, City Planning denied H&H's digital sign applications without a hearing, without written findings and without a Letter of Determination, and by employing a standard taken from a document other than the DA (the Disposition and Development Agreement between the Community Redevelopment Agency of Los Angeles and TrizecHahn), which City Planning later conceded did not apply.

Accordingly, with no alternative, on November 3, 2022, H&H filed a Verified Petition for Writ of Mandate and Complaint (the "**Original Complaint**"). The Original Complaint included a claim for damages under Section 1983.

Prior to the Notice of Default, the City had never declared H&H to be in non-compliance with the DA.

III. The CPC Lacked Jurisdiction and Legal Authority to Terminate the DA.

The DA was entered into pursuant to the California Development Agreement Act, Government Code section 65864 *et seq.* (the "**DA Act**"). The DA Act makes clear that the DA "is a legislative act." Gov't Code § 65867.5*; see also Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal. App. 4th 435, 442 (2010) ("*Mammoth Lakes*") ("The development agreement must be approved by ordinance and is, therefore, a 'legislative act.'"). The City Council approved the City entering into the DA by City Ordinance No. 174843 (the "**DA Ordinance**").[3]

The LOD states that the CPC "[t]erminated the Development Agreement (DA) contract, pursuant to California Government Code Section 65867 and 65868 and Section 5.1.3. of the DA

[3] The DA Ordinance included findings that the DA:

(a) [I]s consistent with the City's General Plan and with the objectives, policies and programs specified in the Hollywood Community Plan, which is a portion of the City's General Plan. Specifically, the Development Agreement encourages the retention of a major entertainment center on the site and encourages the retention of the Academy of Motion Pictures and Sciences annual Academy Awards Presentation at the site.

(b) The Development Agreement will not be detrimental to the public health, safety and general welfare since it encourages the utilization of a project that is desirable and beneficial to the public. . . .

(Ordinance 174,843)." The Government Code sections cited, however, do not authorize the CPC to terminate the DA without H&H's consent, which it has never given.

Government Code section 65868, which is part of the DA Act, states that "[a] development agreement may be amended, or canceled in whole or in part, ***by mutual consent of the parties*** to the agreement or their successors in interest." Gov't Code § 65868 (emphasis added); *see also Mammoth Lakes*, 191 Cal. App. 4th at 458 ("[A] development agreement may be amended or cancelled only by mutual consent of the parties to the agreement."). H&H did not consent to the City's termination of the DA; accordingly, section 65868 has no application.

Likewise, Government Code section 65867, which is also part of the DA Act, provides no authority for the CPC to terminate the DA. It merely provides that "[a] public hearing on ***an application for a development agreement*** shall be held by the planning agency and by the legislative body . . . ." (emphasis added). It says nothing about termination of a development agreement. It too, therefore, is inapplicable.

Nor did the DA section cited in the LOD, Section 5.1.3, authorize the CPC to terminate the DA. Rather, according to DA Section 7.5, for the City to terminate the DA for H&H's alleged breach of DA Section 5.3, the City was required to seek that relief from a court of competent jurisdiction. Specifically, Section 5.3 states, in relevant part, that "the Parties ***covenant*** not to sue for or claim any monetary damages for the breach of any provision of this Agreement." (emphasis added). Section 7.5 then provides that "either Party may . . . institute legal action to . . . ***enforce any covenant*** [of the DA]." As Section 5.3 creates a covenant, for the CPC to enforce that covenant, it needed to follow the procedures set forth in DA Section 7.5, not in DA Section 5.

The CPC thus lacked authority under both the DA Act and the DA itself to terminate the DA in the manner it did.

IV. <u>The City's Notice of Default Was Time Barred Under California Law.</u>

H&H's Original Complaint, which was filed in November 2022, alleged a claim for damages under Section 1983. The City, however, delayed for more than 15 months before serving the Notice of Default, which alleged that H&H had violated DA Section 5.3 by bringing that claim.

Moreover, during those 15 months, the Litigation progressed rapidly, with both the City and H&H each spending tens-of-thousands of dollars responding to each other's discovery requests. H&H in particular was required to answer numerous interrogatories relating to its Section 1983 claims; produced more than 125,000 pages of documents pursuant to the City's document requests; and prepared and sought leave to file a First Amended Complaint that, among other things, further detailed the basis of its Section 1983 claims.

While the DA does not specify a deadline for service of a notice of default following an alleged event of default, California law states that, "[i]f no time is specified for the performance of an act required to be performed, a reasonable time is allowed." Civ. Code § 1657. "[W]hat constitutes a reasonable time is a question of fact, depending upon the situation of the parties, the nature of the transaction, and the facts of the particular case." *Sawday v. Vista Irr. Dist*., 64 Cal. 2d 833, 836 (1966).

Generally, however, California cases have held that any delay of more than 12 months in the exercise of a procedural right akin to that here will constitute a waiver of that right, especially where, as here, that delay prejudiced the other party (i.e., H&H). *See, e.g., Sawday*, 64 Cal. 2d at 836 (Plaintiff "should have made her claim . . . within one year after the year in which the alleged damages were incurred, that by not doing so she was guilty of laches to the prejudice of the [defendant], and that she therefore waived her right to compel arbitration."); *Semprini v. Wedbush Sec. Inc.*, 101 Cal. App. 5th 518 (2024) ("It is well established that a four to six month delay . . . may result in a finding of waiver"); *Desert Regional Medical Center, Inc. v. Miller* 87 Cal. App. 5th 295 (2022) (one year delay supported finding of waiver); *Lewis v. Fletcher Jones Motor Cars, Inc.* 205 Cal. App. 4th 436 (2012) (finding waiver where defendant waited four months to give notice and then another month to file a motion); *Augusta v. Keehn & Associates* 193 Cal.App.4th 331 (2011) (waiver found based on five and a half month delay); *Adolph v. Coastal Auto Sales, Inc.* 184 Cal. App. 4th 1443 (2010) (finding waiver based on six month delay); *Guess?, Inc. v. Super. Ct.* 79 Cal. App. 4th 553, 555 (2000) (finding waiver based on three-month delay); *Kaneko Ford Design v. Citipark, Inc.* 202 Cal. App. 3d 1220, 1228-29 (1988) (finding waiver based on five-and-a-half-month delay).[4]

In this case, H&H's damages claim under Section 1983 had been pending for more than 15 months before the City served the Notice of Default, asserting that such claims were barred by DA Section 5.3. Moreover, although this issue was explicitly raised by H&H in response to the Notice of Default and at the CPC Hearing, the City has never sought to justify or even explain the reason for this delay. Because the delay substantially exceeded the 12-month limit for delay recognized by California law and was prejudicial to H&H, the City has waived any right it had to terminate the DA based on this alleged default by H&H.

V. The CPC Hearing Violated H&H's Due Process Rights.

At the CPC Hearing, the Commissioners were advised by Deputy City Attorney ("**DCA**") Amy Brothers, even though Ms. Brothers had represented the City in the Litigation. In addition, before the CPC Hearing, the Commissioners could be seen speaking with DCA Kenneth Fong, who has represented the City in the Litigation from the outset, and Henry Oh, who is outside

[4] All of these cases involved waiver of a contractual right to compel arbitration, which is a right not easily waived, much more so than a right to send a notice of default.

counsel for the City in the Litigation. In fact, just prior to the CPC Hearing, during a break that lasted 10 minutes longer than planned, Mr. Oh and DCA Fong were seen entering into a closed-door session with the Commissioners, notwithstanding that no such session was on the agenda.

"When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal." *Morongo Band of Mission Indians v. State Water Res. Control Bd*., 45 Cal. 4th 731, 737, (2009). In particular, due process requires a separation between advocates and decision makers to preserve the adjudicative body's neutrality. *See id.*; *see also Nightlife Partners v. City of Beverly Hills*, 108 Cal. App. 4th 81, 93 (2003) ("California courts, too, recognize that the combination of prosecutorial and adjudicative functions is the most problematic combination for procedural due process purposes. . . . Accordingly, to permit an advocate for one party to act as the legal advisor for the decision-maker creates a substantial risk that the advice given to the decision-maker will be skewed . . . particularly when the prosecutor serves as the decision-maker's advisor in the same or a related proceeding."); *Howitt v. Super. Ct*., 3 Cal. App. 4th 1575, 1585 (1992) ("To allow an advocate for one party to also act as counsel to the decision-maker creates the substantial risk that the advice given to the decision-maker . . . will be skewed.").

The CPC Hearing clearly violated due process. The CPC was acting as an adjudicative (as opposed to legislative) body. The hearing pitted City Planning against H&H and involved the same subject matter as the Litigation. Nonetheless, DCA Brothers, who had represented the City against H&H in the Litigation, served as the legal advisor to the CPC in the hearing, and Mr. Oh and DCA Fong, who presently represent the City against H&H in the Litigation, were seen speaking with and then going into a closed-door meeting with the Commissioners immediately prior to the start of the hearing.

Under the circumstances, the CPC Hearing is invalid as having deprived H&H of its due process rights to even-handed treatment by a fair and unbiased tribunal and to a hearing untainted by improper *ex parte* communications between the Commissioners and attorneys for a party adverse to H&H.[5] *See* Gov't Code § 11430.10, subd. (a) ("While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an

[5] The CPC Hearing also violated the Brown Act because a closed session occurred with counsel for the City, which was neither on the agenda nor publicly announced. *See* Gov't Code § 54956.9, subd. (g) ("Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session.").

interested person outside the agency, without notice and opportunity for all parties to participate in the communication.").[6]

VI. There Was No Basis to Terminate the DA Because There Was No Event of Default Under the DA.

The CPC terminated the DA based on its determination that H&H was in default of DA Section 5.3. That section provides that:

> **5.3. No Monetary Damages.** It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify such exposure. Therefore, the parties agree that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the City shall not be liable in monetary damages and, except as set forth in Section 5.1.1 above, the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

The CPC's determination is not supported by substantial evidence, or any evidence for that matter.

First, H&H is not in default of the DA because it has not failed to timely perform any of its obligations under the DA. Under DA Section 5.1.1, "Default by Developer" occurs only "in the event Developer does not perform its obligations under this Agreement in a timely manner." H&H never failed to timely perform its obligations under the DA. Rather, the City contended that H&H breached Section 5.3 by bringing damages claims under Section 1983. But that does not constitute a failure by H&H to "perform its obligations under this Agreement" under the plain meaning of Section 5.1.1.

This conclusion, moreover, is reinforced by DA Section 5.1.2, "Notice of Default," which requires that any notice of default "identify[] with specificity those obligations of Developer which have not been performed." Significantly, the Notice of Default did not identify "with specificity the

[6] "[A]lthough California's Administrative Procedure Act (APA) (Gov. Code, §§ 11340–11529) does not apply to hearings before local, as opposed to state, administrative agencies . . . to the extent citizens generally are entitled to due process in the form of a fair trial before a fair tribunal, the provisions of the APA are helpful as indicating what the Legislature believes are the elements of a fair and carefully thought out system of procedure for use in administrative hearings." *Nightlife Partners*, 108 Cal. App. 4th at 91.

obligations that [H&H] has not performed." It did not because there were none. Likewise, the LOD fails to identify any obligation under the DA that H&H did not timely perform.

In short, H&H is not in default under the DA because it has not failed to timely perform its obligations under the DA within the plain meaning of DA Section 5.1.1.

Second, H&H's Section 1983 claims are not covered by DA Section 5.3.[7] Section 5.3 does not bar H&H from recovering damages for the City's violation of H&H's constitutional rights. What it bars is H&H from suing to recover "monetary damages for the breach of any provision of this Agreement." However, H&H is not seeking damages for the City's breach of the DA; it is seeking damages for the City's violations of H&H's constitutional rights under Section 1983, which are claims that sound in tort and not in contract. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999) ("[T]here can be no doubt that claims brought pursuant to § 1983 sound in tort."); *Continental Casualty Co. v. County of Chester*, 244 F. Supp. 2d 403, 410-11 (E.D. Pa. 2003) ("The due process rights raised by [the developer] are socially imposed. Public officials have a duty not to abuse their positions to deprive citizens of constitutional or statutory rights. It is the breach of this official duty and not of the contract which constitutes the gist of [the developer's] § 1983 claim.") (internal citation omitted).

Nor can it be said that H&H's Section 1983 claims are brought "under or with respect to" the DA or involve "the application thereof," as those terms are used in Section 5.3. To the contrary, as discussed earlier, H&H's Section 1983 claims are based on the City's refusal to afford H&H due process by acting as if the DA did not exist, including refusing to even acknowledge its vested sign rights.

Third, to the extent that DA Section 5.3 purports to limit H&H's ability to recover monetary damages pursuant to Section 1983, Section 5.3 would be invalid and unenforceable under Civil Code Section 1668 ("**Section 1668**").

That statute states that "[a]ll contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or ***violation of law***, whether willful or negligent, ***are against the policy of the law***." (emphasis added). Section 1668 "applies to invalidate provisions that merely limit liability," *Epochal Enterprises, Inc.,* 99 Cal. App. 5th at 60, which Section 5.3 purports to do. *See also Health Net of Calif., Inc. v. Dept. of Health Servs.,* 113 Cal.App.4th 224, 239, (2003) ("It . . . makes

[7] California law is clear that "contractual clauses seeking to limit liability will be strictly construed and any ambiguities resolved against the party seeking to limit its liability." *Epochal Enterprises, Inc. v. LF Encinitas Properties*, LLC, 99 Cal. App. 5th 44, 60 (2024) (quoting *Nunes Turfgrass, Inc. v. Vaughan – Jacklin Seed Co*., 200 Cal. App. 3d 1518, 1538 (1988)). Thus, DA Section 5.3 must be strictly construed, and any ambiguity in Section 5.3 must be resolved against the City as the party seeking to be released from liability for damages.

no difference that the contractual clause here bars only the recovery of damages, and not equitable relief, because section 1668 can apply to a limitation on liability."); *Peregrine Pharms., Inc. v. Clinical Supplies Mgmt., Inc.,* 2014 WL 3791567, *7 (C.D.Cal. Jul. 31, 2014) ("[C]ourts applying California law have analyzed damage limitation clauses in light of the restrictions of Section 1668.").

Here, H&H's Section 1983 claims are based upon the City's violations of H&H's constitutional rights to substantive due process, procedural due process and equal protection, and thus are based upon "violation[s] of law" within the meaning of Section 1668. Accordingly, to the extent that the CPC applied Section 5.3 to bar H&H's claims under Section 1983, Section 5.3 is invalid and unenforceable under Section 1668 because the City cannot exempt itself from damages resulting from such "violation of law." S*ee Epochal Enterprises, Inc.,* 99 Cal. App. 5th at 62 ("[T]o the extent the limitation of liability clause exculpates defendants for their violations of the Health and Safety Code, it is invalid under Civil Code section 1668.").

For each of these reasons, there is no substantial evidence – or any evidence – supporting the CPC's determination that H&H was in default of the DA, and thus no basis to terminate the DA.

VII. <u>There is No Evidence, Much Less Substantial Evidence, to Support the CPC's Findings in the LOD.</u>

As shown below, the LOD's findings critical to the CPC's determination to terminate the DA are without any evidentiary support in the record.

> "*2. State Government Code Section 65865.1 authorizes the amendment and termination of previously approved development agreements.*"

The finding is contrary to the relevant facts. Government Code section 65865.1 ("**Section 65865.1**"), which is part of the DA Act, provides the procedure for the termination of a development agreement after a "periodic review." [8] However, there has never been a "periodic review" of H&H, and thus there cannot be a "find[ing] and determin[ation], on the basis of substantial evidence," that H&H "has not complied in good faith with the terms or conditions of the agreement." In fact, H&H is in full compliance with its obligations under the DA; it is the City that is in breach of the DA, as detailed in H&H's First Amended Complaint.

[8] Section 65865.1, entitled "Periodic review; termination or modification of agreement," states as follows:

> Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

"*4. That pursuant to Government Code Section 65865.1, the City Planning Commission hereby recommends termination of the Development Agreement contract and makes the following findings of fact regarding the Development Agreement . . . .*"

The finding is patently untrue. Section 65865.1 relates to termination after a "periodic review." As just noted, there has never been such a review of H&H; therefore, Section 65865.1 has no applicability here.

"*4.e. Per Sections 3.2 and 3.2.1 of the Development Agreement, the Developer agreed to ensure that all signs erected on the Project comply with the requirements set forth in the Applicable Rules, and that changes to the design, configuration, elements, and contents of the signage plan that was approved by the CRA and the City in conjunction with the adoption of the Signage Ordinance, are only permitted with the written consent of the City.*"

The finding misconstrues the facts. H&H is not seeking to make "changes to the design, configuration, elements, and contents of the signage plan that was approved by the CRA and the City in conjunction with the adoption of the Signage Ordinance . . . ." Instead, it seeks to "remodel, renovate, rehabilitate, rebuild or replace" existing, permitted signs at the Project for which DA Section 3.1.1.2 expressly grants H&H the "vested right" to do "for any reason." Moreover, all existing and proposed signs at the Project comply with all "Applicable Rules" as they are defined in the DA, and the City has never found otherwise.

"*4.f. The purported successor Developer requested alterations to the Project signage that were not consistent with the Applicable Rules or the Environmental Analysis conducted as part of EIR State Clearinghouse Number 1997091061 or with the exercise of the City's Reserved Powers. As such, the City did not consent to the changes to the Sign Plan.*"

The finding is demonstrably not true. Deputy Director Lisa Webber's October 26, 2022 letter denying H&H's digital sign applications was in response to H&H's October 5, 2022 Notice of Default. It makes no mention of the Applicable Rules, Environmental Analysis, or the City's Reserve Powers. In any event, all of the proposed signs fully comply with the Applicable Rules and the City's Reserve Powers, and the City has never found otherwise. Further, the City, which as lead agency is responsible for environmental review under the California Environmental Quality Act ("**CEQA**"), did not prepare any environmental analysis related to the proposed signs, and, in fact, issued what it considers a discretionary approval without any CEQA review, contrary to CEQA.

"*4.g. Per Section 5.1.1 of the DA, in the event the Developer does not perform its obligations under the Agreement in a timely manner, the City shall have all rights and remedies provided for in the Agreement, including compelling the specific*

performance of the obligations of the Developer under this Agreement, or terminating the Agreement, provided the City has first complied with the procedure in Section 5.1.2."

The finding is contrary to the express terms of the DA. As discussed above, the purported breach of the "covenant" set forth in DA Section 5.3 does not trigger section 5.1.1. Rather, the City is limited to the remedies provided for in section 7.5, which requires it to "institute legal action to . . . enforce any covenant [of the DA]."

"*4.h. Per Section 5.3. of the DA, it was acknowledged by both the parties that the City would not have entered the DA if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agreed and recognized that, as a practical matter, it would not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would have required to enter into the Agreement to justify such exposure. Therefore, the parties agreed that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the City shall not be liable in monetary damages and, except as set forth in Section 5.1.1 above, the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of the Development Agreement.*"

The finding materially misconstrues the nature of H&H's Section 1983 damage claims. As discussed above, Section 5.3 has no applicability to those claims because they are not "for the breach of any provision of" the DA, nor are they "under or with respect to" the DA or involve "the application thereof." To the contrary, H&H's Section 1983 claims seek damages from the City for its outright refusal to apply or follow the DA or to even acknowledge H&H's vested sign rights under the DA.

"*4.i. On or about January 30, 2024, the purported successor Developer filed its First Amended Compliant ("FAC") seeking monetary damages against the City for deprivation of alleged rights that arise under the Development Agreement. As such, the purported successor Developer defaulted on its obligations of the Agreement and its terms. The parties to the Agreement agreed that the City "shall not be liable for monetary damages" for alleged breaches of the Development Agreement.*"

The finding materially misstates the facts. H&H first sought monetary damages against the City in its Original Complaint, filed on November 3, 2022, which included a Section 1983 claim for damages. In fact, the City filed an Answer to the Original Complaint on December 16, 2022, and therefore cannot credibly maintain that it was unaware of this claim at the time. Furthermore, H&H is not seeking monetary damages from the City for "alleged breaches of the Development

Agreement." As discussed above, H&H's Section 1983 claims sound in tort, and H&H is seeking damages from the City for acting as if the DA did not exist and did not grant H&H vested sign rights.

> "*5. The termination of the Development Agreement contract will not be detrimental to the public health, safety, and general welfare.*"

The finding is contrary to the facts. The City Council previously found that "[t]he Development Agreement will not be detrimental to the public health, safety and general welfare since it encourages the utilization of a project that is desirable and beneficial to the public." City Ordinance 174863. In fact, termination of the DA will be detrimental to the Project, which has benefitted the City tremendously as a source of revenue, jobs and prestige and as the cornerstone of the rebirth of Hollywood, by preventing H&H from completing its modernization and revitalization of the Project and undermining the Project's continued financial viability.

VIII. Conclusion.

In summary, the Council should reverse the decision of the CPC terminating the DA: the CPC lacked jurisdiction and legal authority to terminate the DA; the City's Notice of Default was time barred under California law; the CPC Hearing violated H&H's constitutional right to due process; H&H did not fail to timely perform its obligations or otherwise default under the DA; and the LOD's findings are not supported by substantial or any evidence of record.

For these reasons, as detailed above and in the record, H&H respectfully requests that the City Council reverse the decision of the CPC terminating the DA.

LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: MAY 16, 2024

Case No. CPC-2001-1940-DA-ZV Council District: 13 – Soto-Martinez
CEQA: ENV-2024-2272-CE
Plan Area: Hollywood

Project Site: 6801 West Hollywood Boulevard (6801 – 6909 West Hollywood Boulevard; 1755 – 1767 North Highland Avenue; 1722 North Orange Drive)

Applicant: City of Los Angeles

At its meeting of **May 9, 2024**, the Los Angeles City Planning Commission took the actions below in conjunction with the **termination** of the Development Agreement Contract for the Project Site:

Termination of the Development Agreement (DA) contract, by and between the City of Los Angeles and TrizecHahn Hollywood, LLC, executed November 5, 2002. A Notice of Default was issued on February 22, 2024, and the purported successor Developer was required to cure the default by April 22, 2024. As the purported successor Developer has not cured the default, the Director of Planning is utilizing the Failure to Cure Default Procedures of Section 5.1.3 of the DA for the City Planning Commission to terminate the DA contract. Termination of the DA contract shall not affect the previously approved Zone Variance entitlement pertaining to location of employee parking spaces.

1. **Determined**, that based on the whole of the administrative record, the termination of the DA contract in accordance with the terms of the DA is exempt from CEQA pursuant to CEQA Guidelines, Section 15321 (Class 21), and there is no substantial evidence demonstrating that any exceptions contained in Section 15300.2 of the State CEQA Guidelines regarding location, cumulative impacts, significant effects or unusual circumstances, scenic highways, or hazardous waste sites, or historical resources applies;
2. **Found** and **determined**, on the basis of substantial evidence, that the purported successor Developer has not cured a default pursuant to Section 5.1 of the Development Agreement (DA) contract;
3. **Terminated** the Development Agreement (DA) contract, pursuant to California Government Code Section 65867 and 65868 and Section 5.1.3. of the DA (Ordinance 174,843); and
4. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved:	Newhouse
Second:	Lawshe
Ayes:	Cabildo, Choe, Diaz, Zamora
Absent:	Gold, Mack, Noonan

Vote: **6 – 0**

Cecilia Lamas, Commission Executive Assistant II
Los Angeles City Planning Commission

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

Effective Date/Appeals: The decision of the Los Angeles City Planning Commission related to the termination of the Development Agreement contract is appealable by the Developer and its successors, transferees and/or assignees, and not appealable by interested parties. Per Section 7.3 of the Development Agreement Contract, the termination of the Development Agreement is appealable to City Council within **20 days** after the delivery of notice of this determination letter. Any appeal not filed within the 20-day period shall not be considered by the Council. All appeals shall be filed on forms provided at the Planning Department's Development Service Centers located at: 201 North Figueroa Street, Fourth Floor, Los Angeles, CA 90012; or 6262 Van Nuys Boulevard, Suite 251, Van Nuys, CA 91401.

FINAL APPEAL DATE: JUNE 10, 2024

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

Attachments: Findings, Appeal Filing Procedures

cc: Jane Choi, Principal City Planner
Valentina Knox-Jones, City Planner

Via E-mail:

Kristofer Golder, DJM Capital
Jeffrey B. Isaacs, Isaacs Friedberg Zill

Via Certified Mail, Return Receipt Requested and U.S. First Class Mail to:

H&H Retail Owner LLC
Agent for Service of Process
The Corporate Trust Company
Corporation Trust Center
209 Orange Street
Wilmington, DE 19801

FINDINGS

DEVELOPMENT AGREEMENT FINDINGS

1. Pursuant to California Government Code Sections 65864-65869.5, a Development Agreement be entered into by mutual consent of the parties. An application for a Development Agreement was filed on April 23, 2001, establishing the applicant's consent to enter into a Development Agreement.

2. State Government Code Section 65865.1 authorizes the amendment and termination of previously approved development agreements.

3. The City of Los Angeles ("City") has adopted rules and regulations establishing procedures and requirements for consideration of development agreements under Citywide Development Agreement Procedures (CF 85-2313-S3). In addition, on November 19, 1992, the City Planning Commission adopted new guidelines for the processing of development agreement applications (CPC No. 86-404 MSC).

4. That pursuant to Government Code Section 65865.1, the City Planning Commission hereby recommends termination of the Development Agreement contract and makes the following findings of fact regarding the Development Agreement:

    a. The Development Agreement by and between the City of Los Angeles and Trizechahn Hollywood, LLC, was entered into on November 5, 2002. The current owner of the site purports to be the successor Developer of the Development Agreement, although no documentation exists in the record acknowledging them as such.

    b. The purpose of the Development Agreement was to provide reasonable assurances to the Developer, Trizechahn Hollywood, LLC, that it could implement the Project in accordance with the Applicable Rules, subject to the terms of the Development Agreement and the City's Reserved Powers (as these terms are defined in the Development Agreement). The Development Agreement was necessary to assure the Developer that it would not be subjected to different rules, regulations, ordinances, or official policies or delays not permitted by the Development Agreement, the Applicable Rules, or the Reserved Powers during the term of the Development Agreement.

    c. The Development Agreement did not grant density, intensity or uses in excess of what was otherwise established in the Applicable Rules, eliminate future Discretionary Actions otherwise required, or amend the City's General Plan or nullify the City's Reserved Powers.

    d. That the Developer had the vested right to develop the Project in accordance with the Existing Development Approvals, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

    e. Per Sections 3.2 and 3.2.1 of the Development Agreement, the Developer agreed to ensure that all signs erected on the Project comply with the requirements set forth in the Applicable Rules, and that changes to the design, configuration,

elements, and contents of the signage plan that was approved by the CRA and the City in conjunction with the adoption of the Signage Ordinance, are only permitted with the written consent of the City.

f. The purported successor Developer requested alterations to the Project signage that were not consistent with the Applicable Rules or the Environmental Analysis conducted as part of EIR State Clearinghouse Number 1997091061 or with the exercise of the City's Reserved Powers. As such, the City did not consent to the changes to the Sign Plan.

g. Per Section 5.1.1 of the DA, in the event the Developer does not perform its obligations under the Agreement in a timely manner, the City shall have all rights and remedies provided for in the Agreement, including compelling the specific performance of the obligations of the Developer under this Agreement, or terminating the Agreement, provided the City has first complied with the procedure in Section 5.1.2.

h. Per Section 5.3. of the DA, it was acknowledged by both the parties that the City would not have entered the DA if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agreed and recognized that, as a practical matter, it would not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would have required to enter into the Agreement to justify such exposure. Therefore, the parties agreed that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the City shall not be liable in monetary damages and, except as set forth in Section 5.1.1 above, the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of the Development Agreement.

i. On or about January 30, 2024, the purported successor Developer filed its First Amended Compliant ("FAC") seeking monetary damages against the City for deprivation of alleged rights that arise under the Development Agreement. As such, the purported successor Developer defaulted on its obligations of the Agreement and its terms. The parties to the Agreement agreed that the City "shall not be liable for monetary damages" for alleged breaches of the Development Agreement.

j. In accordance with Section 5.1.2. of the DA, via certified mail with return receipt requested, on February 22, 2024, the City issued the purported successor Developer by mail a written notice of the default, consistent with the manner prescribed in Section 7.15 of the Agreement. In addition, the City's outside counsel emailed a courtesy copy of the Notice of Default to counsel for the purported successor Developer.

k. Upon receipt of the of the notice of default, the purported successor Developer was required to promptly commence to cure the identified default at the earliest reasonable time after the receipt of the notice of default and complete the cure of such default not later than sixty (60) days after receipt of the notice of default.

l. As of April 22, 2024, sixty days after receipt of the notice of default, the purported successor Developer had not dismissed the above-referenced claims seeking monetary damages during the cure period. As such, the Planning Director has found that the purported successor Developer remains in default and seeks to utilize the Failure to Cure Default procedures in Section 5.1.3. of the DA.

m. Staff delegated on behalf of the Director of Planning have made a report of the Planning Commission regarding the Failure to Cure Default, and the City Planning Commission held a public hearing in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868, and in accordance with the CPC Guidelines for Processing Development Agreements and California Government Code Section 65867, notification of the subject public hearing was mailed via United States Postal Service on April 10, 2024 to all property owners within a 300-foot radius of the project site, the owner of the subject site, the Council Office, and the Neighborhood Council. Further, notice of the public hearing was also published in the Daily Journal on April 11, 2024; verification of which is provided in the administrative record.

n. After the required public hearing, the City Planning Commission found and determined, on the basis of substantial evidence, that the purported successor Developer has not cured the default.

o. Although the Development Agreement had already expired and terminated as of November 5, 2022, City shall terminate any purported rights of the current owner under the Development Agreement, pursuant to Section 5.1.3. of the Development Agreement.

p. The purported successor Developer is entitled to appeal the finding of the City Planning Commission to the City Council in accordance with Sections 5.1.3 and 7.3. of the Development Agreement. If after twenty (20) days after the issuance of the City Planning Commission's determination, the purported successor Developer does not appeal the action of the City Planning Commission, the action shall be considered final and the Development Agreement contract terminated.

5. The termination of the Development Agreement contract will not be detrimental to the public health, safety, and general welfare.

6. The termination of the Development Agreement contract will promote the orderly development of the subject property in accordance with good land use practice.

7. The termination of the Development Agreement contract is consistent with conditions of previous discretionary approvals for the subject development.

8. The termination of the Development Agreement contract is administrative and technical in nature and will have no impact on the environment, as described in Environmental Case Number ENV-2024-2272-CE (Class 21).

9. The termination of the Development Agreement contract complies with all applicable City and State regulations governing development agreements.

10. That based upon the above findings, the termination of the Development Agreement contract is deemed consistent with the public necessity, convenience, general welfare and good zoning practice.

ADDITIONAL MANDATORY FINDINGS

11. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located outside of a flood zone.

12. It has been determined based on the whole of the administrative record that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15321 (Class 21), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2, applies.

The proposed action qualifies for a Class 21 Categorical Exemption because it conforms to the definition of an enforcement action by a regulatory agency. Actions which are taken by regulatory agencies to 'enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency' are considered exempt from CEQA, as long as the action is not barred by one of the exceptions set forth in Section 15300.2.

Types of actions which may be consistent with Class 21 include, but are not limited to the following:

- Judicial enforcements referred by an Attorney General, District Attorney, or City Attorney as a result of a violation of lease, permit, license, certificate, entitlement of use;
- Administrative decisions or orders enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective; and
- Law enforcement activities by peace officers acting under any law that provides a criminal sanction.

As the project is the termination of a Development Agreement contract because the purported successor Developer has not fulfilled its obligations under the DA contract in a timely manner, the action qualifies for Class 21 as it is an administrative decision enforcing the requirements of the DA contract.

Moreover, the City has further considered whether the proposed project is subject to any of the six exceptions set forth in State CEQA Guidelines Section 15300.2 that would prohibit the use of any categorical exemption. None of the exceptions are triggered for the following reasons:

A. **Location.** *Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located. A project that is ordinarily insignificant in its effect on the environment may in a particularly sensitive environment be significant. Therefore, these classes*

may not be utilized where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

The proposed Categorical Exemption is Class 21; therefore this exception does not apply.

B. **Cumulative Impact.** *The exception applies when, although* a *particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant.*

The proposed action is the termination of a Development Agreement contract. No construction is proposed as a result of this action, and therefore, there are no cumulative impacts to the environment, as there are no physical or operational changes proposed.

C. **Significant Effect Due To Unusual Circumstances.** *This exception applies when, although the project may otherwise be exempt, there is* a *reasonable possibility that the project will have* a *significant effect due to unusual circumstances.*

As previously stated, there are no physical or operational changes proposed. Since the operation will not change, there are no anticipated impacts.

D. **Scenic Highways.** *This exception applies when, although the project may otherwise be exempt, there may be damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within* a *highway officially designated as* a *state scenic highway.*

Based on a review of the California Scenic Highway Mapping System, the subject site is not located along a State Scenic Highway, nor are there any designated State Scenic Highways located near the project site.

The proposed action is the termination of a Development Agreement contract. There are no physical or operational changes proposed, and as such, there will be no impacts to scenic resources such as trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.

E. **Hazardous Waste Sites.** *Projects located on* a *site or facility listed pursuant to California Government Code 65962.5.*

Based on a review of the California Department of Toxic Substances Control "Envirostor Database" (http://www.envirostor.dtsc.ca.gov/public/), no known hazardous waste sites are located on or proximate to the project site. In addition, there is no evidence of historic or current use, or disposal of hazardous or toxic materials at this location. Based on this, the project will not result in a significant effect due hazardous waste and this exception does not apply.

F. **Historical Resources.** *Projects that may cause* a *substantial adverse change in the significance of an historical resource.*

The project site has not been identified as a historic resource by local or state agencies, and the project site has not been determined to be eligible for listing in the National Register of Historic Places, California Register of Historical Resources, or the Los Angeles Historic-Cultural Monuments Register. Based on this, the project will not result in a substantial adverse change to the significance of a historic resource and this exception does not apply.

In conclusion, since the proposed action meets all of the requirements of the categorical exemption set forth at CEQA Guidelines, Section 15321 and none of the applicable exceptions to the use of the exemption apply, it is appropriate to determine this action is categorically exempt from the requirements of CEQA.

LOS ANGELES CITY PLANNING APPEAL FILING PROCEDURES

Entitlement and CEQA appeals may be filed using either the Online Application System (OAS) or in person Drop Off at DSC (Development Services Center).

Online Application System: The OAS (https://planning.lacity.org/oas) allows appeals to be submitted entirely electronically online; fee payment is by credit card or e-check.

Drop off at DSC: Appeals of this determination can be submitted in person at the Metro or Van Nuys DSC locations, and payment can be made by credit card or check. City Planning has established drop-off areas at the DSCs with physical boxes where appellants can drop off appeal applications; alternatively, appeal applications can be filed with staff at DSC public counters. Appeal applications must be on the prescribed forms, and accompanied by the required fee and a copy of the determination letter. Appeal applications shall be received by the DSC public counter and paid for on or before the above date or the appeal will not be accepted.

Forms are available online at http://planning.lacity.org/development-services/forms. Public offices are located at:

Metro DSC
(213) 482-7077
201 N. Figueroa Street
Los Angeles, CA 90012

Van Nuys DSC
(818) 374-5050
6262 Van Nuys Boulevard
Van Nuys, CA 91401

West Los Angeles DSC
(CURRENTLY CLOSED)
(310) 231-2901
1828 Sawtelle Boulevard
West Los Angeles, CA 90025

City Planning staff may follow up with the appellant via email and/or phone if there are any questions or missing materials in the appeal submission, to ensure that the appeal package is complete and meets the applicable Los Angeles Municipal Code provisions.

An appeal application must be submitted and paid for before 4:30 PM (PST) on the final day to appeal the determination. Should the final day fall on a weekend or legal City holiday, the time for filing an appeal shall be extended to 4:30 PM (PST) on the next succeeding working day. Appeals should be filed early to ensure that DSC staff members have adequate time to review and accept the documents, and to allow appellants time to submit payment.

QR Code to Online Appeal Filing

QR Code to Forms for In-Person Filing

Revised July 2023