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VIA EMAIL ONLY

Planning and Land Use Management Committee  
Los Angeles City Council  
City Hall, Room 395  
Los Angeles, CA 90012

**RE: Case Nos. CF 20-1302; CPC-2018-504-DB-DRB-SPP-CPD-MEL; ENV-2018-MND**

Honorable Councilmembers:

This firm represents California Food Managers, LLC (“Applicant”) in connection with the above referenced Los Angeles Department of City Planning (“LADCP”) cases for that certain real property commonly referred to as 17346 Sunset Boulevard (the “Property”). The Applicant is also the majority owner of the Property.<sup>1</sup> The Property contains approximately 14,962 square feet of lot area. The Property is zoned C2-1VL, and the Property is subject to the Pacific Palisades Commercial Village and Neighborhoods Specific Plan (the “Specific Plan”). The Specific Plan does not regulate the Property’s residential density, which is regulated by the underlying C2 zone. In the C2 zone, the Los Angeles Municipal Code (“LAMC”) allows a by-right residential density of 1 unit for every 400 square feet of lot area.<sup>2</sup> Accordingly, the Property supports a by-right density of 37 dwelling units.

**I. APPELLANTS HAVE FAILED TO ESTABLISH THAT THE CPC ERRED OR ABUSED THEIR DISCRETION; THE APPEAL MUST BE DENIED**

Edgewater Towers Condominium Homeowner’s Association and Pacific Palisades Residents Association, Inc., (collectively the “Appellants”) have appealed the City Planning Commission’s (“CPC”) unanimous approval of the Project after a thorough and detailed public

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<sup>1</sup> Heavenly Tiger, LLC is a 30 percent owner of the Property and has executed the Master Land Use Application authorizing above the application.

<sup>2</sup> LAMC Section 12.14.C.3 and 12.11.C.4

hearing. Appellants have failed to provide any new evidence to support the appeal, which is simply a recitation of the unsupported, speculative, and unsubstantiated argument raised below. Appellants have failed to establish that the CPC erred or abused its discretion in approving the Project, given Appellants' reliance on unsupported, speculative, and unsubstantiated arguments (as discussed below). Appellants, however, have been very clear about one thing: they despise the Project and will attempt to use the approval process to stop the Project. Dislike of the Project alone by some members of the community cannot constitute a legitimate factor for City decision makers. Rather, Appellants must demonstrate with evidence that CPC erred or abused their discretion.

**A. ANALYSIS OF “PRECEDENTIAL EFFECTS” IS SPECULATIVE AND NOT REQUIRED BY APPLICABLE LAW**

Appellants repeatedly state that the Project's “precedential effect” must be analyzed and addressed in connection with the Project's approvals. The Project has requested approval of two off-menu density incentives<sup>3</sup>, project permit compliance with the Specific Plan, design review for a project in the Specific Plan, approval of a Coastal Development Permit<sup>4</sup>, Mello Act Compliance and California Environmental Quality Act (“CEQA”) compliance.

Contrary to Appellants' repeated belief, analysis of precedential effect is not required by any applicable law or other pertinent authority. Appellants' argument that somehow Project approval will unleash a wave of development in the Project's immediate vicinity is completely speculative and not supported by any evidence whatsoever. To assume Project approval will lead current property owners to transact with developers, or even more simply to attempt the lengthy, costly, and time-consuming development process themselves, has no basis in reality or the record before you. Other than transforming the vacant Property from a fast food drive-thru into a modern mixed-use housing development (that includes 4 very low income dwelling units in housing crisis nonetheless), the Project will not unleash a wave of development as the Appellants fallaciously represent. Any arguments based on precedential effect must be disregarded because there is no basis in law to analyze completely speculative matters that have no evidentiary support in the record. While it is clear Appellants fear future change, CPC was under no obligation to entertain such unsubstantiated, unsupported, and utterly speculative assertions. Accordingly, CPC did not err or abuse their discretion.

**B. THE PROJECT IS CONSISTENT WITH BOTH THE GENERAL PLAN AND THE SPECIFIC PLAN AFTER APPLICATION OF THE DENSITY BONUS INCENTIVES**

The Project is consistent with both the Brentwood-Pacific Palisades Community Plan (“Community Plan”) and the Specific Plan. Appellants attempt to mislead this Council by asserting that the Project's now adopted Mitigated Negative Declaration (“MND”) suggested that the Project ignored the Community Plan or the Specific Plan. It is a fact that the Community Plan was 19 years old when the MND was circulated for public comment. The MND simply stated this fact and noted that such policies are outdated given the changes in land use trends and

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<sup>3</sup> Los Angeles Municipal Code Section 12.22.A.25, which implements Government Code Section 65915 (State Density Bonus Law).

<sup>4</sup> LAMC Section 12.20.2 and California Public Resources Code Section 30000 et seq.

patterns over the intervening years.<sup>5</sup> Nowhere does the MND advocate ignoring the Community Plan. Appellants' misunderstanding and mischaracterization of the record bends the truth to the point of breaking.

Appellants' view of the Project's vicinity is narrow. Appellants want this Council to assess community character and scale considering the Project immediately adjacent neighbors only. Appellants want this Council to ignore the numerous 3, 4, and 5 story buildings (not to mention the 8 story Edgewater Towers) in the Project's vicinity. Appellants' argument purposely misconstrues facts in their favor. The record before you, however, clearly establishes that the Project's community includes numerous 3, 4 and 5 story buildings (again excluding the 8 story Edgewater Towers). Thus, the Project's height is consistent with this community character and scale.

Further, the MND does not ignore the Specific Plan as Appellants allege. The MND reflects that the Project is consistent with various Specific Plan goals like mixed-use development and encouraging development along this stretch of Sunset Boulevard. The MND also correctly reflects the Project's compliance with applicable provisions of the Specific Plan, while seeking off-menu density bonus incentives and parking reductions that are mandated by the State's Density Bonus law. The State's Density Bonus law supersedes local development regulations when those regulations prevent the development of affordable housing, provided a project includes the required percentage of affordable units (which the Project has done).

## **II. THE PROJECT IS CONSISTENT WITH AND IN HARMONY WITH THE COASTAL ACT**

Appellants repeat the same groundless claims, as they did below, that the Project does not comply with the California Coastal Act ("Coastal Act"). Like their efforts below, Appellants offer nothing more than allegations and opinions to support their positions. Appellants do not offer any evidence that the Project violates the Coastal Act. In fact, the record before you clearly demonstrates that the Project uses the Density Bonus in harmony with the Coastal Act. Attached hereto as Exhibit "A" is a detailed analysis of the Project's compliance with the Coastal Act.

Appellants again argue that the Project would have significant adverse effects and not be visually compatible with the surrounding area. This argument is premised mostly on the Project's height and a narrow view of the Project's surrounding area. Appellants point to the fact that the immediately adjacent properties are 1-2 stories, but purposely fail to mention the many 3, 4 and 5 story buildings across Sunset Boulevard from the Property (not to mention the 8 story Edgewater Towers immediately behind the Property). This purposely narrow view misconstrues reality. The record before you clearly demonstrates the Project is compatible with the surrounding area. The Coastal Act encourages development within, contiguous with, or in close proximity to, existing developed areas able to accommodate such development. As shown in Exhibit "A", the intersection of Sunset Boulevard and Pacific Coast Highway is intensely developed with both commercial and residential uses. Compared with the intersections of Temescal Canyon/Pacific Coast Highway and Topanga Canyon/Pacific Coast Highway (both of

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<sup>5</sup> MND page B-120.

which retain natural landforms and are largely undeveloped), the Sunset Boulevard/Pacific Coast Highway intersection is precisely where the Coastal Act encourages development.

**A. THE PROJECT COMPLIES WITH THE COASTAL ACT REGIONAL INTERPRATIVE GUIDELINES**

Appellants argue that the Coastal Act, through the Regional Interpretive Guidelines (the “RIG”), prohibits residential development on commercially zoned property. Appellants also argue that the Coastal Act (through the RIG) restricts residential density to 24 units per acre. The Appellants arguments are inaccurate and misleading. First, the RIG was adopted in 1980, approximately 40 years ago. The City’s population was approximately 2.9 million at that time. Currently, the City’s population is 3.9 million. Additionally, the RIG expresses an intent they be used in a flexible manner with consideration for local and regional conditions. Clearly local and regional conditions have changed over the last 40 years in a manner the RIG could not contemplate in 1980.

The RIG does states that residential development on existing commercially zoned parcels will not be allowed. Appellants attempt to utilize this language at face value only and ignore its clear intent. The RIG was adopted when Euclidean zoning dominated urban planning and mixed-use projects were disfavored. This section of the RIG cites to Coastal Act Section 30222, which provides that “the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.” Accordingly, the intent behind this section of the RIG was to ensure continued commercial use of commercial land. The Property is currently improved with an 1,800 square foot drive-thru restaurant. The Project will increase the Property’s commercial square footage by approximately 1,100 square feet. Development of residential uses on top of the expanded commercial square footage does not preclude the Property’s commercial use. Accordingly, the Project is consistent with the section of the RIG.

Appellants also assert that the RIG somehow controls the Property’s permissible density. The Property’s permissible density is regulated by the LAMC, which allows one dwelling unit for every 400 square feet of lot area. Neither the Coastal Act nor the RIG supersede the LAMC’s density provisions. The 4 decade old RIG does, however, state that the “density of new residential development should be limited to 24 dwelling units per acre...” (emphasis added). The key word in this language is should, which is a permissive word. As noted above, the RIG expresses an intent that it be flexibly applied, and in this specific instance goes a step further by using a permissive word. Given that over 40 years have passed with a commensurate increase of approximately 1 million people living within the City, the RIG must be interpreted flexibly and expansively, and its residential density language cannot be read as mandatory. Appellants’ assertions, therefore, are incorrect and the Project complies with the RIG.

**B. THE PROJECT’S APPROVED GEOLOGICAL REPORTS ARE ADEQUATE AND NO ADVERSE GEOLOGICAL EFFECTS WILL OCCUR**

Appellants continue to argue there is insufficient evidence to support a conclusion that the Project will not have an adverse geological effect. The Project’s geological report was

approved by the Los Angeles Department of Building and Safety Grading Division (“Grading Division”) on April 19, 2018. Moreover, Appellants’ position is based on the mistaken understanding that the Project’s geological report does not assess the soil behind the Property’s proposed retaining wall (and presumably on the Edgewater Tower property). Attached as Exhibit “B” is a letter from the Project’s geologist stating that geological data from the Edgewater Tower property was considered during their evaluation. According to this data, bedrock was encountered at a depth of 2 to 10 feet near the current Edgewater buildings. The fact that the data is old is irrelevant. Geological conditions in general, and the location of bedrock specifically change over eons, not decades. Moreover, other than inaccurate criticism and opinion, Appellants offer no evidence to support their assertions. Therefore, the Project’s geological report is adequate.

**III. THE PROJECT’S MND COMPLIES WITH CEQA AND ALL POTENTIALLY SIGNIFICANT IMPACTS HAVE BEEN IDENTIFIED AND MITIGATED TO LESS THAN SIGNIFICANT; APPELLANTS FAIL TO PROVIDE SUBSTANTIAL EVIDENCE TO THE CONTRARY**

**A. APPELLANTS’ GEOLOGICAL LETTER IS BASED ON INACCURATE INFORMATION AND DOES NOT CONSTITUTE SUBSTANTIAL EVIDENCE UNDER CEQA**

Appellants continue to repeat unsubstantiated claims that the Project’s MND does not comply with CEQA. Appellants offer speculation, unsubstantiated opinion, and argument as evidence, which does not constitute substantial evidence. CEQA defines substantial evidence as facts, reasonable assumptions predicated upon fact, and expert opinion supported by facts. Appellants specifically allege the geological reports are inadequate. As noted above, and as supported by Exhibit “B”, the Project’s geological report sufficiently considers geologic data from the Edgewater Tower property. While Appellants rely on an expert (ENGEO), that expert incorrectly stated that the Project’s geological report does not rely on data from behind the proposed retaining wall (and presumably within the Edgewater Tower property). The geological report clearly relied on geologic data obtained from Edgewater. Evidence that is erroneous or inaccurate does not constitute substantial evidence under CEQA.

**B. APPELLANTS ERRONEOUSLY CLAIM THE MND FAILED TO ANALYZE CUMULATIVE IMPACTS**

Appellants also allege that the Project’s traffic analysis is insufficient, which it is not. The Project’s traffic impact assessment assesses both potential project impacts on existing conditions (i.e., at the time the report is prepared) and impacts based on anticipated future conditions when the Project is implemented. Appellants incorrectly assert that the traffic impact assessment fails to analyze cumulative impacts from new or future projects. Their assertion is patently false. MND pages B-182 to B-184 (which is supported by the traffic assessment attached to the MND as Appendix I-1) considers potential future projects along with the Project’s potential impacts at the 8 studied intersections. This information is precisely the cumulative analysis Appellants assert is missing. Appellants either failed to read the MND or are purposely making false statements.

Similarly, Appellants incorrectly allege that the MND is deficient because it does not consider the Project's effect on nearby street parking. The Project's parking supply is consistent with and complies with applicable LAMC regulations. Other than legally permissible reductions, the Project does not seek any deviations from applicable parking requirements. CEQA does not specifically require an analysis of a project's parking supply. CEQA does ask whether a project conflicts with a program, plan, ordinance or policy addressing the circulation system.<sup>6</sup> In this case the Project's proposed parking supply conforms with applicable LAMC requirements and, therefore, cannot conflict with any program, plan, ordinance or policy. Moreover, other than conclusory statements, Appellants do not offer any evidence to support their claims.

### **C. APPELLANTS' CHARACTERIZATION OF ROOFTOP USES IS SPECULATIVE AND WITHOUT EVIDENCE**

Appellants assume the Project's rooftop open space "will be utilized for parties and late-night noise activities."<sup>7</sup> There is absolutely no evidence in the record to support Appellants' speculative assumption. As permitted by the LAMC, the Project's rooftop satisfies applicable open space requirements. Moreover, the LAMC currently regulates noise and prohibits noise generating activities that disturb the peace.<sup>8</sup> Specifically, the use of amplified equipment that increases noise by 5 decibels over ambient is considered a violation.<sup>9</sup> Accordingly, regulatory compliance would reduce Appellants' speculative impacts to less than significant. Moreover, like all good neighbors, the Applicant is willing to impose operational restrictions on the rooftop to limit late night use.

### **IV. THE CPC DECISION LETTER MADE THE NECESSARY FINDING TO SUPPORT THE DENSITY BONUS CONCESSIONS AND INCENTIVES**

CPC's decision letter contains the necessary findings to support the issuance of density bonus incentives. Applicable law provides that the City shall grant concessions and incentives unless the City makes a finding supported by substantial evidence that: (i) the concession or incentive does not result in identifiable and actual cost reductions, or (ii) the concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

The CPC decision letter found that there was no evidence in the record that the requested concessions and incentives do not result in affordable housing cost reductions. CPC found that the increased height and increased floor area would allow the Applicant to construct additional market rate dwelling units to offset the cost of the Project's affordable dwelling units. The cost to construct affordable dwelling units is the same as the cost to construct market rate units. The return on the cost for affordable dwelling units, however, is not the same. Accordingly,

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<sup>6</sup> CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3), Appendix G Section XVII.a).

<sup>7</sup> Appeal, page 7.

<sup>8</sup> LAMC Section 111.00, et seq.

<sup>9</sup> LAMC Section 112.04.

additional floor area and height are needed to offset the cost of the affordable units. Appellants have not submitted any evidence to the contrary.

The CPC decision letter also found there was no evidence in the record that the Project would have a specific, adverse impact, on public health and safety or the physical environment or any real property list in the California Register of Historic Resources. Construction of a mixed use project to replace a fast food drive-thru restaurant will not impact public health. The Project's MND supports a finding that the Project will have not have a specific adverse impact on the physical environment because all potential impacts are mitigated to less than significant. Finally, the Property is not listed in the California Register of Historical Resources. Furthermore, Appellants have not submitted any contrary evidence to rebut these findings.

**V. CONCLUSION**

Appellants have failed to provide any evidence that the CPC erred or abused their discretion by their unanimous approval of the Project. Contrary to Appellants' unsubstantiated assertions, the Project is consistent with the Community Plan and the Specific Plan. The Project also uses the State Density Bonus in harmony with the Coastal Act because the Project complies with both the Coastal Act and the RIG. Appellants have only provided speculation and incorrect assertions that the MND is inadequate. Further, Appellants have failed to provide any substantial evidence that the MND does not comply with CEQA. Moreover, the CPC decision letter made the necessary findings to support the Density Bonus concessions and incentives. Accordingly, we respectfully urge the Planning Land Use Management Committee to deny the appeal and uphold the CPC decision.

Very truly yours,



Michael Gonzales  
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Attachments

Cc: Jason P. Douglas, Senior Planning Deputy, Council District 11.