



April 29, 2013

City of Los Angeles  
Department of City Planning  
Figueroa Plaza  
201 North Figueroa Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90012

**RE: City of Los Angeles, Master Appeal Form, Vesting Tentative Tract No. 71943,  
Boyle Heights Mixed Use Community Project**

Attn: Michael J. LoGrande, Advisory Agency, and Jim Tokunaga, Deputy Advisory Agency:

On behalf of the Los Angeles Conservancy, we submit the following comments and reasons for appealing Vesting Tentative Tract No. 71943 and the Boyle Heights Mixed Use Community Project. As proposed this project will completely demolish the historically-significant Wyvernwood Garden Apartments. Throughout the EIR process and in our public and community outreach, the Conservancy has long maintained the position and strongly believes that the Wyvernwood community can and should be preserved and rehabilitated. We work hard to find win-win solutions, which we feel is possible and should be a strong priority for the City in this case.

The Conservancy believes the Partial Preservation Alternative C can be refined to better integrate new construction with preservation while creating a true mixed use, mixed income project. It can allow for the desired commercial and retail component as well as greater north-south circulation through the site. If embraced by the applicant this could meet most project objectives and result in nearly 2,000 new units, which is a substantial amount of density and entitlements for any new development project, and would be among the largest in Los Angeles, let alone in California and across the country.

As previously stated in EIR comments from the Conservancy, large-scale garden apartments in Los Angeles and across the nation have been successfully rehabilitated and preserved. Lincoln Place in Venice and Chase Knolls in Sherman Oaks are just two local examples currently undergoing extensive rehabilitation and modern updates that also include approved new construction.

On the basis of this appeal, as specified in Section 65474.61, the Conservancy disagrees with the findings in support of the proposed project on the following points: 1) consistency with applicable general, community and specific plans; 2) suitability of the site for this type of development; 3) suitability of the site and Boyle Heights for the proposed density of development; 4) likelihood for causing environmental damage; and 5) likelihood for causing serious public health problems.

In the following list and specified in further detail within this letter, the Conservancy references these findings as to why we believe the decision-maker -- the Advisory Agency and Deputy Advisory Agency -- erred in making their decision, and why the City Planning Commission should deny approval of Vesting Tentative Tract No. 71943:

- I. The EIR and the Vesting Tentative Tract recommendation for approval rely on misleading information, unsubstantiated analysis, and errors.
  - a. Underground water and storm drain utilities are inaccurately identified as a major impediment to preservation.
  - b. Claims of the Partial Preservation Alternative's infeasibility lack merit as details of the rehabilitation costs are not provided or substantiated.
  - c. Claims that rehabilitation of Wyvernwood cannot achieve modern living conditions, ADA compliance, or sustainability outcomes are inaccurate.
  - d. Claims that Partial Preservation Alternative C will result in a new "unavoidable impact" through housing displacement are unsubstantiated.
  - e. Statements purporting superior open space are incorrect and the proposed publicly available, privately maintained useable open space does not adhere to parkland dedication requirements.
  - f. Associated project impacts in regards to hydrology analysis are presented in error.
- II. The proposed map is inconsistent with applicable general and community plans.
- III. The proposed design and improvement of the subdivision is not consistent with the existing general and community plans.
  - a. The proposed project does not comply with the existing general plan and general plan framework (in Chapter 3 Land Use, Goal 3A; Land Use Objective(s) 3.2, 3.7, 3.2.4; Policy 3.7.1; Goal 3M, Objective 3.17; Chapter 4, Housing, Objective 4.3; Chapter 9, Infrastructure and Public Services, Goal 9G; Air Quality Element, Objective(s) 1.1, 1.3, 3.2, 4.2, 4.3; Policy(s) 1.3.1; 3.2.1)
    1. "Conservation of existing residential neighborhoods."
    2. "Conservation of natural resources."
    3. "Provision of adequate infrastructure and public services."
    4. "Reduction in traffic congestion."
    5. "Improvement of air quality."
    6. "Enhancement of recreation and open space opportunities."
  - b. The proposed project does not comply with the existing community plan, and is inconsistent and out-of-character with the surrounding community.
- IV. The site is not physically suitable for the proposed density of development.
- V. The design of the subdivision and the proposed improvements are likely to cause substantial environmental damage.
- VI. The design of the subdivision and the proposed improvements are likely to cause serious public health problems.
- VII. The design of the subdivision and the proposed improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.

The Conservancy has previously submitted written comments in regards to this project on July 25, 2008 on the Notice of Preparation; on January 18, 2012 on the Draft EIR; and on January 25, 2013 on the Final EIR. In addition we have provided testimony at the public hearing held on January 9, 2013 where we stated our opposition to the Vesting Tentative Tract for this project. We have met with Department of City Planning staff, most recently on March 4 and April 9, 2013. Throughout these various opportunities to discuss the proposed project, the Conservancy has repeatedly raised a series of substantive issues and concerns in regards to the EIR process, including errors and incomplete information and the need for a full evaluation and analysis of preservation alternatives to reduce associated impacts.

**I. The EIR and the Vesting Tentative Tract recommendation for approval rely on misleading information, unsubstantiated analysis, and errors.**

The Conservancy is dismayed to continue to see that our concerns are not being adequately addressed, in the Final EIR responses or now within the report and recommendation for approval of Vesting Tentative Tract No. 71943. Particularly concerning is the City's reliance on misleading and unsubstantiated analysis within the EIR. The applicant has framed a series of factually erroneous arguments which are repeatedly referenced by the City as the basis for their rationale and findings that reject the Partial Preservation Alternative C – the environmentally superior alternative in the EIR – as not being able to meet project objectives and financially feasibility.

**a. Underground water and storm water drain utilities are inaccurately identified as a major impediment to preservation.**

A prime example of this err in analysis is the applicant's ongoing assertion that pre-existing underground utilities at Wyvernwood – a Metropolitan Water District (MWD) water feeder line and a City of Los Angeles storm water drain line – 1) require the removal of approximately thirty apartment buildings; 2) make it difficult to obtain financing; and 3) limit the owner's ability to obtain permits for construction on the property. Throughout the EIR and in the Vesting Tentative Tract recommendation, arguments on this issue are repeated numerous times as justification for why preservation and Partial Preservation Alternative C is infeasible and unable to overcome this impediment (on pages 143, 144, 155, 156, 171, 176, 177, 180, 193, 204, 205, and 215). For instance, in regards to **General Plan Objective 3.17**, "Maintain significant historic and architectural districts while allowing for the development of economically viable uses," the Vesting Tentative Tract recommendation states these "cannot be achieved without the demolition of the existing improvements."<sup>1</sup> It further states, "The location of the existing facilities may impede or prevent the ability to easily access, maintain, and operate the infrastructure within the easement area."<sup>2</sup>

One of the EIR project objectives specifically aims to "remove existing on-site buildings and improvements," that the applicant claims encroach upon public water and storm drain easements.

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<sup>1</sup> Vesting Tentative Tract No. 71943, Page 193

<sup>2</sup> Vesting Tentative Tract No. 71943, Page 205

As the Conservancy has previously stated in our EIR comments, this is one of numerous narrowly defined project objectives that favor new construction over preservation. The California Supreme Court has explained that an EIR must avoid an artificially narrow statement of project objectives.<sup>3</sup> An objective is a goal, not the means to an end. This contrived objective as well as others does not comply with CEQA as it fails to reflect a legitimate project goal.

Based on the Conservancy's own research and consultation with experts, we whole heartedly disagree with statements regarding underground utilities being an insurmountable problem requiring the removal of historic buildings. We do not believe there is a factual basis or substantive evidence that supports these conclusions. Rather it is a self-imposed contrivance by the applicant to discourage the preservation of Wyvernwood.

On April 9, 2013, the Conservancy met with the Department of City Planning staff to address this particular issue and presented evidence that directly refutes the applicant's claim. Through independent research and consultation with experts and representatives at MWD and the City's Bureau of Engineering, we have determined the following:

- Rather than "dozens of buildings," as stated in the Vesting Tentative Tract recommendation, the utility easements actually affect only 20 buildings (of 151 apartment buildings and nearly 250 overall when including garage structures): 1 building over the MWD line and 19 buildings over the City's storm water drain.
- Despite depictions in various illustrations within the EIR and public presentations by the applicant, the MWD and the City's easement rights are limited to the easement itself, not the "undeveloped area" as defined by the applicant.
- Having buildings constructed over utility lines is not ideal but not particularly unusual, especially for the City's storm water line, as numerous examples exist throughout Los Angeles and at other garden apartments.
- MWD made provisions for access and maintenance of their line in 1939 through the construction of an underground access chamber, still in use today (Attachment A).
- Both the MWD and the City can presently access, maintain and operate their lines. Should a failure occur, various methods allow for the repair or replacement of lines without requiring the removal of a building.
- Neither the MWD nor the City has any plans to replace the lines, nor do these lines require replacement.
- Neither the MWD nor the City is requiring the removal of the buildings as part of the proposed project or any project.
- In terms of obtaining financing, the Fifteen Group has at least twice secured mortgages throughout its 15-year ownership, most recently in August, 2012.
- In regards to securing building permits, the Fifteen Group has routinely obtained these for work done in 1999, 2000, 2003, 2008 and 2011.

Unfortunately this perceived impediment is continuing to be relied upon by the City and used throughout the Vesting Tentative Tract analysis to justify its recommendation for why

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<sup>3</sup> *In re Bay Delta* (2008) 43 Cal.4<sup>th</sup> 1143.

preservation and the Partial Preservation Alternative C should not be selected. As part of the Vesting Tentative Tract recommendation and under the Consideration of Record: Independent Judgment,<sup>4</sup> the decision states that “materials reflect the independent judgment and analysis of the Lead Agency.” The Conservancy asks to see any evidence or independent analysis that verifies the claims made by the applicant in regards to the underground utilities being in direct conflict with the rehabilitation of existing buildings at Wyvernwood?

**b. Claims of the Partial Preservation Alternative’s infeasibility lack merit as details of the rehabilitation costs are not provided or substantiated.**

Despite repeated requests for additional information, the Conservancy has not received an answer to why rehabilitation of Wyvernwood would cost two to three times more than what it does elsewhere. We believe that Fifteen Group’s financial model for estimating rehabilitation costs lacks transparency and is unsubstantiated.

The EIR fails to provide compelling analysis that the Partial Preservation Alternative C is infeasible. CEQA guidelines define “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, and environmental, social, and technological factors.” Findings supporting an alternative’s feasibility or infeasibility must be supported by substantial evidence.<sup>5</sup>

The basis for the claimed infeasibility is the economics of rehabilitating Wyvernwood’s two-story wood-framed apartment buildings. However, no assumptions or line item accounting are provided to support the extraordinarily high rehabilitation cost—which at \$126,000 per unit is more than double that of current renovations underway on similar buildings at Lincoln Place in Venice. It is unreasonable to conclude that Partial Preservation Alternative C is financially infeasible or speculate about future rent levels without more information. While the April 12, 2012 memo from HR&A within the Final EIR provides some additional analysis, it still lacks any level of detail to understand how feasibility is being determined by the applicant.

Furthermore, the two-prong threshold for financial feasibility is self-imposed by the applicant, and sets the bar so that even an alternative that builds ninety-two percent of the proposed 4,400 units was determined to be financially infeasible.<sup>6</sup> Not only does this call into question the financial solvency of the proposed project, the analysis is not evaluated against CEQA thresholds to demonstrate that “the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.”<sup>7</sup>

Regardless of the economic feasibility, the Conservancy suggests an additional mitigation measure as part of the Vesting Tentative Tract recommendation at a minimum to prevent pre-emptive demolition. This can help address the outstanding issue regarding the financial

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<sup>4</sup> Vesting Tentative Tract No. 71943, Page 180

<sup>5</sup> PRC §§ 21061.1, 21081.5

<sup>6</sup> See Alternative D: West End Preservation in V. Alternatives of the “Boyle Heights Mixed-Use Community Project Draft Environmental Impact Report,” October 2011.

<sup>7</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal. App. 3d 1167, 1181.

feasibility of the proposed project. Prior to the issuance of demolition permits (through each of the proposed phases), the project applicant shall submit verification to the City of Los Angeles substantial evidence and documentation that demonstrates the financial wherewithal to fully implement and complete the proposed project. Further, buildings would not be demolished until there was a permit issued for a replacement project (per phased construction). Over the years, throughout the city, the Conservancy has seen buildings demolished in anticipation of projects that never happen. We do not feel that this requirement would have an impact on the applicant as the loss of historic buildings at Wyvernwood would occur only when a new project and phase of construction were really about to happen.

**c. Claims that rehabilitation of Wyvernwood cannot achieve modern living conditions, ADA compliance, or sustainability outcomes are inaccurate.**

The EIR and the Vesting Tentative Tract recommendation repeatedly state Wyvernwood's historic buildings and lack of modern standards "can be remedied only through a major rebuilding of the property." Further it states, "[T]he existing units to be rehabilitated would continue to be substandard in size and lack a number of modern amenities after the identified improvements."<sup>8</sup> The Conservancy strongly disagrees and substantial evidence supports our position, at Lincoln Place in Venice, Chase Knolls in Sherman Oaks, and elsewhere in Los Angeles, California. The same can be said for similar garden apartment developments across the country, such as Buckingham Village in Arlington County, Virginia where rehabilitation and sensitively-designed additions allow for additional bedrooms and baths.

In all of these examples rehabilitation involves upgrades that include improving building and site infrastructure to meet current-day demands, refurbishing interior spaces while keeping character-defining features like hardwood flooring intact, modernizing kitchens or baths where appropriate, and installing energy- and water-saving features. This can include adding additional bathrooms, bedrooms and installing modern features such as in-unit stackable washers and dryers. Such improvements extend the service life of these well-thought-out 60 and 70 year-old buildings for many more decades (Attachment B).

The Conservancy agrees that Wyvernwood has been allowed to deteriorate and there is deferred maintenance. However, these perceived deficiencies at Wyvernwood can be improved without calling for full demolition and replacement. Wyvernwood could attain better performance through green operations and maintenance. In addition to an overall rehabilitation of each unit, upgrades can be made to modernize the electrical and plumbing systems and sustainability features such as low-flow water fixtures, tankless water heaters, and energy-efficient appliances and lighting can be installed. Some ground-floor apartment units can also be adapted or added onto to offer ADA-accessible units. The California Historic Building Code is available to provide code flexibility for historic buildings to achieve performance standards equivalent to current building codes while still retaining their historic integrity.

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<sup>8</sup> Vesting Tentative Tract No. 71943, Page 153

Improvements to the site can also offer an opportunity to upgrade telephone and sewer capacity for modern conveniences, such as rerouting wastewater from the at-capacity Camulos trunk sewer line to the underutilized Eighth Street line. Existing sustainability features at the site should also be retained and upgraded. For instance, current technologies for bio-swales, coupled with appropriate maintenance, can improve rainwater infiltration, water-saving strategies, and storm water retention at the Mall and other open spaces, as is occurring with the rehabilitation of Lincoln Place. Other improvements, including native plantings, updated irrigation systems, and ongoing maintenance, can repair the dead grass, dirt, standing water, and erosion that have occurred in some of the landscaped areas throughout the years.

**d. Claims that Partial Preservation Alternative C will result in a new “unavoidable impact” through housing displacement are unsubstantiated.**

In the EIR and the Vesting Tentative Tract recommendation, statements are repeatedly made that the “Alternative would result in a new significant and unavoidable impact associated with housing displacement.”<sup>9</sup> Further, in regards to making value judgments, it questions “whether historic preservation is more important than tenant relocation.”<sup>10</sup> These types of conclusions present resident retention and preservation as an either-or fallacy. We strongly believe the displacement and relocation issue under Partial Preservation Alternative C is being represented as more problematic than it really is, as the applicant has not demonstrated compelling analysis that supports the need to completely vacate Wyvernwood under a rehabilitation scenario.

The applicant’s consulting construction contractor<sup>11</sup> that provided the preliminary rehabilitation estimates concludes that phasing the rehabilitation work would “increase two to three times” the estimated cost. While reasons such as the inability to negotiate volume discounts and cost escalation over time are given for the large increase, the timing, scope, and details of the potential phasing are not provided to determine whether cost savings could occur with different types of phasing schedules. Further, this does not take in account the ability to accept bids for overall or phased rehabilitation work, often taken at a single point in time which can address cost containment and savings through volume discounts.

As has been the case at Village Green in Baldwin Hills, Chase Knolls in Sherman Oaks, and countless multi-family projects throughout the country, rehabilitation can occur on a unit-by-unit or building-by-building basis as vacancies occur with the costs absorbed over several years. Alternatively, a grouping of 3-15 buildings can be rehabilitated at a time, which would allow a limited number of families to be relocated to available vacancies in existing or new units within Wyvernwood. Such scheduling could also be phased so that as each trade completes a grouping of buildings, they can move on to the next group, thereby benefiting from economies of scale and worker experience while still not requiring complete relocation of all tenants simultaneously.

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<sup>9</sup> Vesting Tentative Tract No. 71943, Page 155

<sup>10</sup> Vesting Tentative Tract No. 71943, Page 168

<sup>11</sup> Morley Builders/Benchmark

The applicant states all existing units would need to be vacated at the commencement of rehabilitation work. Phasing the rehabilitation of large-scale housing developments, in Los Angeles and across the country, is not uncommon. This practice ensures an ongoing income stream while making necessary upgrades and improvements. It is unclear how Wyvernwood is unique from other developments in this respect, requiring, as the applicant states, that all aspects of rehabilitation occur within a single point in time. The assertion that Wyvernwood would require complete vacancy is a faulty assumption with no credible analysis to demonstrate this necessity. We believe the need for relocation is unsubstantiated and estimating \$21,722,100<sup>12</sup> for total relocation is not entirely necessary if there is a phased rehabilitation, further calling into question the accuracy of the Alternatives Financial Feasibility Report. We believe an onsite and phased rehabilitation is feasible and would greatly reduce the estimated costs associated with any need for limited relocation, and should be evaluated with an updated analysis.

**e. Statements purporting superior open space are incorrect and the proposed publicly available, privately maintained useable open space does not adhere to parkland dedication requirements.**

The EIR and the Vesting Tentative Tract recommendation states the quality and usability of the open spaces would be substantially improved with the proposed project. As stated previously, we strongly believe the opposite, that the project will in fact diminish the amount, quality and usability of open space. As with the EIR, the Vesting Tentative Tract recommendation includes multiple and contradictory data in terms of accounting for the actual total acreage of open space. On pages 106 and 197, it states the project will provide 24 acres of public, semi-private, and private recreational open space. On page 185 it states the proposed project will provide a total of 37.25 acres in comparison to the 36.43 acres that currently exists. In contradiction, the Project Description within the EIR states there is currently 39.98 acres of existing open space at Wyvernwood.

The Vesting Tentative Tract recommendation characterizes the current open spaces as “small fragments” with “limited use.”<sup>13</sup> Excluding buildings, parking lots and other hardscape surfaces, the Conservancy estimates there is approximately 50 acres of existing open space at Wyvernwood. This includes the large Mall and courtyard greens which are characterized as anything but small. In comparison, applying the same type of analysis using information within the EIR, the Conservancy believes the proposed project actually provides about 24 acres of overall open space, significantly less than what exists today.

As proposed, the applicant would set aside 10.5 acres of publicly available, privately maintained (and privately owned), useable open space. This amount of open space is deficient, less than the minimum threshold, and does not comply with parkland dedication requirements.<sup>14</sup> While the applicant may pay in-lieu fees to address this shortfall, the bottom

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<sup>12</sup> Financial Feasibility of Project Alternatives Technical Report, 26

<sup>13</sup> Vesting Tentative Tract No. 71943, Page 179

<sup>14</sup> Vesting Tentative Tract No. 71943, Page 106



line is the proposed project will result in a diminished amount, quality and usability of open space. This should be reflected in the Vesting Tentative Tract recommendation and fully acknowledged.

**f. Associated project impacts in regards to hydrology analysis are presented in error.**

Further demonstrating that the Advisory Agency is in error is the hydrology analysis in the EIR which indicates the proposed project will have significant impacts by substantially increasing the amount of surface waters diverted to a downstream water body. The Vesting Tentative Tract recommendation however incorrectly states that the project will have no impact relative to hydrology.<sup>15</sup>

The impact is due to an increase in impervious surfaces proposed through the project, which again does not support statements that the proposed project would result in more open space. Analysis within the Hydrology and Water Quality Technical Reports incorrectly calculates the percentage increase in imperviousness of the project.<sup>16</sup> Instead of a 4.7 percent increase, as stated, it is actually a 40 percent increase. The analysis does not take into account the existing imperviousness (IMP) of the Wyvernwood site, which is presently 54 percent. The proposed project will increase to 90 percent imperviousness. The Conservancy has raised this issue previously as we first drew attention to this error in our Draft EIR comments on January 18, 2012.

**II. The proposed map is inconsistent with applicable general and community plans.**

The Vesting Tentative Tract recommendation fails to acknowledge that the proposed project does not comply with the existing Community Plan<sup>17</sup>. The referenced Specific Plan is not in effect or yet adopted as it is in essence the proposed project. Only upon approval of the proposed General Plan amendments, Zone Change and Specific Plan Amendment will the proposed project be consistent.

**III. The proposed design and improvement of the subdivision is not consistent with the existing general and community plans.**

As stated clearly in the Vesting Tentative Tract recommendation,<sup>18</sup> “the project would not be consistent with the existing General Plan designation for the project site.” The recommendation attempts to reconcile this problem by saying the proposed project 1) will limit the overall amount of development to a level below what is permitted in a proposed Community Plan (a draft of this plan is not yet developed) for Boyle Heights; 2) is consistent with land uses allowed in Medium Residential and Regional Center designations; and 3) is “substantially consistent” with the general intent of the Community Plan. In another section of the Vesting Tentative Tract recommendation, it states the Partial Preservation Alternative C will result in

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<sup>15</sup> Vesting Tentative Tract No. 71943, Page 85

<sup>16</sup> Hydrology and Water Quality Technical Reports, 9 of 13

<sup>17</sup> Vesting Tentative Tract No. 71943, Page 183

<sup>18</sup> Vesting Tentative Tract No. 71943, Page 83

“greater impacts with respect to land use consistency,”<sup>19</sup> referencing unsubstantiated claims regarding displacement. However, none of these assertions made in the EIR and now in the Vesting Tentative Tract recommendation assess accurately the impacts and consistency with the current General Plan, existing Community Plan (adopted in 1998), and the General Plan Framework. The proposed Specific Plan is in essence the proposed project and not applicable. The EIR and Vesting Tentative Tract recommendation fail to acknowledge and evaluate impacts in regards to current land-use designations and all applicable plans.

**a. The proposed project does not comply with the existing general plan and general plan framework.**

In numerous and multiple ways, the proposed project does not comply with and is inconsistent with stated goals, objectives and policies of the City of Los Angeles General Plan. Under Chapter 3, Land Use, it states the following:

“It is the intent of the Land Use policy to encourage a re-direction of the City’s growth in a manner such that the significant impacts that would result from the continued implementation of adopted community plans and zoning can be reduced or avoided.”<sup>20</sup>

The Conservancy demonstrates how the Vesting Tentative Tract recommendation disregards this stated intent as the proposed project fails to address, reduce and avoid significant impacts. Under Summary of Land Use Conditions and Characteristics, the City has identified issues that are to be addressed by the goals, objectives, policies, and programs defined by the Land Use Chapter. This includes under Existing Pattern and Character of Development, “Residents from many neighborhoods have expressed their concern about further neighborhood intensification and their desire to retain existing units at present densities.”<sup>21</sup>

Under the **General Plan Land Use Chapter, Goal 3A** includes the following:

“A physically balanced distribution of land uses that contributes towards and facilitates the City’s long-term fiscal and economic viability, revitalization of economically depressed areas, conservation of existing residential neighborhoods, equitable distribution of public resources, conservation of natural resources, provision of adequate infrastructure and public services, reduction of traffic congestion and improvement of air quality, enhancement of recreation and open space opportunities, assurance of environmental justice and a healthful living environment, and achievement of the vision for a more livable city.”

The proposed project does not support nor is it consistent with this goal in at least seven of the ten identified areas, with a number of these outlined in detail below:

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<sup>19</sup> Vesting Tentative Tract No. 71943, Page 155

<sup>20</sup> Los Angeles General Plan, Chapter 3, Land Use, Introduction and Summary of Issues

<sup>21</sup> Los Angeles General Plan, Chapter 3, Land Use, Introduction and Summary of Issues

1. **“Conservation of existing residential neighborhoods:”** The proposed project calls for the complete demolition of an existing residential neighborhood of over 6,000 residents. While Partial Preservation Alternative C calls for conservation and some new development, this has been rejected by the applicant and City based on factually incorrect information. For more than 70 years Wyvernwood has been a stable community providing homes for some residents that have resided there for more than a decade or more.

The proposed project calls for High-Medium Density Residential, much greater than most surrounding uses today. As it exists, the character of the project site and the surrounding area are not compatible with the proposed project. Only through the proposed land use changes would the proposed project be not in conflict and only to the project site itself, not the surroundings. The EIR’s Compatibility of Design section fully acknowledges and reaches this same conclusion, stating the proposed project it is not consistent.

In this regard the proposed project also fails to meet **General Plan Land Use Objective 3.2, Policy 3.2.4**, “Provide for the siting and design of new development that maintains the prevailing scale and character of the City’s stable residential neighborhoods and enhance the character of commercial and industrial districts.” Under **Chapter 4, Housing**, the proposed project also fails to meet **Objective 4.3**, “Conserve scale and character of residential neighborhoods.”

The proposed project also fails to comply with **Goal 3M**, “A City where significant historic and architectural districts are valued,” and **Objective 3.17**, “Maintain significant historic and architectural districts while allowing for the development of economically viable uses.”<sup>22</sup> Despite stating the intent of the General Plan Framework Element is to “preserve the historic and architectural heritage of Los Angeles,” the Vesting Tentative Tract recommendation is to certify an EIR that dismisses in err and disregards the Partial Preservation Alternative C, the environmentally superior alternative.

Demolition will result in the loss of a California Register-listed and National Register-eligible historic site. The Conservancy is concerned about setting a precedent in this case, as this rarely happens and certainly not at the scale of Wyvernwood and a historic district encompassing approximately 250 buildings as well as a designed landscape.

As stated previously in this appeal, the rationale for this finding and recommendation is incorrectly based on information by the applicant stating that 1) underground utility easements are an impediment; and 2) displacement of current residents will occur through the partial preservation of the Wyvernwood site. The recommendation states, “[T]he accomplishment of the other project goals, which are fully consistent with the vast majority of the general plan policies and objectives cannot be achieved without the

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<sup>22</sup> Chapter 3, Land Use, Historic Districts

demolition of the existing improvements.”<sup>23</sup> The Conservancy strongly and completely disagrees with this statement as it is based on incorrect information and flawed analysis.

2. **“Conservation of natural resources:”** The proposed project will demolish more than 250 buildings, generate 1,009,365 tons of soil export, generate 11 tons of demolition and construction debris – per day – over a 15-year construction period, and result in 78 percent more solid waste per year than the existing project when the proposed project is completed.

Further, the proposed project does not comply with **Chapter 9, Infrastructure and Public Services of the General Plan, Goal 9G** for “An environmentally sound solid waste management system that protects public health, safety, and natural resources and minimizes adverse environmental impacts.”

The amount of natural resources to be consumed in the construction and operation of the proposed project cannot be justified. Recycling bins and reusing 50 percent of the demolition and construction debris cannot offset this impact on natural resources and the environment.

3. **“Provision of adequate infrastructure and public services:”** The EIR and Vesting Tentative Tract recommendation clearly state there will be no impacts to the existing transit systems. This is due in part to the proposed project not being transit-friendly or considered Transit-Oriented Development (TOD) as it is located 1.25 miles from two MetroRail Gold Lines stations. This distance is far greater than the required .25 mile radius set forth in the City’s policy and Community Plan for the location of High-Medium density housing.

However, if there are no impacts or need, where is the nexus and why do mitigation measures K-6 through K-8<sup>24</sup> call for the applicant to provide funding for up to three new buses to be operated by Metro (Lines 62, 66/366 and 251)? The Vesting Tentative Tract recommendation states the “proposed project would upgrade the transportation infrastructure of the Boyle Heights community,” in part through the additional buses and a variety of traffic calming measures. What it fails to state is the three additional buses are a short-term solution as they are to be funded by the applicant for a period of only three years (it is unclear when the three year period begins). Will Metro continue to fund the additional buses after the three years?

Under **General Plan Land Use Goal 3C**, “Multi-family neighborhoods that enhance the quality of life for the City’s existing and future residents,” the proposed project fails to fully address **Objective 3.7**, “Provide for the stability and enhancement of multi-family residential neighborhoods and allow for growth in areas where there is sufficient

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<sup>23</sup> Vesting Tentative Tract No. 71943, Page 193

<sup>24</sup> Vesting Tentative Tract No. 71943, Page 36

public infrastructure and services and the residents' quality of life can be maintained or improved."<sup>25</sup>

4. **“Reduction in traffic congestion:”** The proposed project is projected to generate approximately 19,460 new daily vehicle trips, including 1,933 peak-hour vehicle trips. Once completed, the project will require between 10,903 to 11,003 spaces, an increase of approximately 84 percent in parking at the site today. Further, the proposed project impacts 22 intersections. Even with all recommended mitigation measures in place, 6 intersections remain with significant and unavoidable impacts. Further, according to a December 21, 2011 letter from SCAQMD, these impacts occur at the “most highly congested intersections surrounding the project site.”<sup>26</sup> Thus there will be an increase in traffic congestion.

In regards to construction and traffic congestion, the EIR and Vesting Tentative Tract recommendation clearly state, “cumulative construction traffic impacts would remain significant and unavoidable.”<sup>27</sup> Despite the Vesting Tentative Tract recommendation which characterizes construction impacts as “temporary in nature” and “short-term adverse impacts,” it fails to acknowledge these will occur over a 15-year period.<sup>28</sup>

Lastly, a proposed Transportation Demand Management (TDM) program for the project will only commence with planning after the project is approved. Despite a detailed process that has been outlined, there are no guarantees that the community will agree to identified measures as part of a proposed TDM. For a project this large and with so many impacts relative to traffic congestion, there needs to be more planning and analysis done before rather than after the project is approved.

A core aspect of TDM thinking is the need to expand the supply and availability of more sustainable alternatives. One way to address this is by reducing the scope of the proposed project and associated traffic congestion impacts, by embracing the environmentally superior alternative, Partial Preservation Alternative C.

In this regard the proposed project also fails to meet **General Plan Land Use Objective 3.2**, “Provide for the spatial distribution of development that promotes an improved quality of life by facilitating a reduction of vehicular trips, vehicle miles traveled, and air pollution.” Further, under the **Air Quality Element of the General Plan**, the proposed project fails to meet **Objective 3.2**, “It is the objective of the City of Los Angeles to reduce vehicular traffic during peak periods;” **Policy 3.2.1**, “Manage traffic congestion during peak hours;” and **Objective 4.2**, “It is the objective of the City of Los Angeles to reduce vehicle trips and vehicle miles traveled associated with land use patterns.”<sup>29</sup>

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<sup>25</sup> General Plan, Chapter 3, Land Use, Goals, Objectives and Policies.

<sup>26</sup> SCAQMD letter to City of Los Angeles, December 21, 2011

<sup>27</sup> Vesting Tentative Tract No. 71943, Page 124

<sup>28</sup> Vesting Tentative Tract No. 71943, Page 110

<sup>29</sup> Air Quality Element, Page IV-3

5. **“Improvement of air quality:”** As stated in the EIR and the Vesting Tentative Tract recommendation, the proposed project’s “localized air quality impacts during construction would be significant and unavoidable even with incorporation of all feasible mitigation measures.”<sup>30</sup>

The project exceeds the “SCAQMD LST thresholds for PM<sub>10</sub> and NO<sub>2</sub> at analyzed sensitive receptor locations including off-site residences, on-site residences, Dena Elementary School/Dacotah Children’s Center, Garza Primary Center, and Plaza del la Raza Head Start.” Further, project and cumulative impacts through maximum regional emissions would exceed SCAQMD daily significance thresholds for VOC and NO<sub>x</sub> during periods of heavy use of heavy-duty construction equipment. In addition, emissions of non-attainment pollutants and precursors generated by the project operation are in excess of the SCAQMD project-level thresholds and would be cumulatively considerable.<sup>31</sup>

Despite the Vesting Tentative Tract recommendation which characterizes these as “significant short-term” impacts,<sup>32</sup> it fails to acknowledge these will be in effect for 15 years and 5,475 consecutive days. The proposed project actually worsens air quality in not just Boyle Heights but throughout Los Angeles.

In this regard the proposed project again fails to meet **General Plan Objective 3.2**, “Provide for the spatial distribution of development that promotes an improved quality of life by facilitating a reduction of vehicular trips, vehicle miles traveled, and air pollution.”

Under the **Air Quality Element of the General Plan**, the proposed project fails to meet **Objective 1.1**, “It is the objective of the City of Los Angeles to reduce air pollutants consistent with the Regional Air Quality Management Plan (AQMP), increase traffic mobility, and sustain economic growth citywide;” **Objective 1.3**, “It is the objective of the City of Los Angeles to reduce particulate air pollutant’s emanating from unpaved areas, parking lots, and construction sites;” **Policy 1.3.1**, “Minimize particulate emissions from construction sites;” **Objective 4.1**, “It is the objective of the City of Los Angeles to include the regional attainment of ambient air quality standards as a primary consideration in land use planning;” and **Objective 4.3**, “It is the objective of the City of Los Angeles to ensure that land use plans separate major sources of air pollution from sensitive receptors such as schools, hospitals and parks.”<sup>33</sup>

Correspondence from the SCAQMD to the City of Los Angeles states it “is concerned about the project’s significant localized and regional air quality impacts” in an area “that already exceeds state and federal ambient air quality standards.” It goes on to state

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<sup>30</sup> Vesting Tentative Tract No. 71943, Page 113

<sup>31</sup> Vesting Tentative Tract No. 71943, Page 116

<sup>32</sup> Vesting Tentative Tract No. 71943, Page 113

<sup>33</sup> Air Quality Element, Pages IV-1, IV-2, IV-3, and IV-4

it does not believe cumulative local air quality impacts have been addressed in the EIR.<sup>34</sup>

6. **“Enhancement of recreation and open space opportunities:”** As stated previously the Conservancy strongly believes the proposed project will in fact diminish the amount, quality and availability of open space. Excluding buildings, parking lots and other hardscape surfaces, the Conservancy estimates there is approximately 50 acres of existing open space at Wyvernwood. This includes the large Mall and courtyard greens which are characterized as anything but small. Applying the same type of analysis and using what was provided within the EIR, in comparison, the Conservancy believes the proposed project actually provides about 24 acres of overall open space, significantly less than what exists today. As proposed, 10.5 acres is proposed which would consist of publicly available, privately maintained, useable open space, less than the minimum threshold and does not comply with parkland dedication requirements.
- b. The proposed project does not comply with the existing community plan, and is inconsistent and out-of-character with the surrounding community.**

In regards to the Community Plan, the Vesting Tentative Tract recommendation is referencing and relies on the proposed Community Plan which is currently in progress (target date for a draft to be available and completion is unknown), yet to be adopted, and not applicable to this EIR or Vesting Tentative Tract review processes. What the proposed Community Plan does say about Wyvernwood -- in terms of the ongoing public process currently underway -- it is identified on a conceptual map as a “Special Study Area.” This designation is preliminary only and has no expressed authority. All references to the proposed Community Plan within the Vesting Tentative Tract recommendation are immaterial as the proposed project does not comply with the existing land use, compatibility of use, or compatibility of design as referenced in the current Community Plan.

Specifically, the Community Plan states “the physical character of Boyle Heights is low-scale in nature both along the commercial corridors and in the residential community as well,” and identifies the following issues to address neighborhood character:

- “Preserve the existing low scale character of the community.”
- “Preserve the continuity of the streetscape and enhance community identity.”
- “Mitigate the adverse impacts of new high density residential development such as bulk, open space and parking.”

The plan further states “permitted densities range from Low Medium Residential to Medium Density Residential” and identifies the “need to rehabilitate the existing low-density housing stock.” The proposed project, however, calls for a change in zoning to High-Medium Density Residential, greater than what exists today and most surrounding uses. Nevertheless the Vesting

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<sup>34</sup> SCAQMD letter to City of Los Angeles, December 21, 2011

Tentative Tract recommendation inaccurately states, “Medium Residential and Regional Center designations are consistent with the character of the project site and the surrounding area.”<sup>35</sup>

To clarify, the Regional Center site designation (adjacent to Wyvernwood) follows the General Plan Framework and, as stated in this policy, “neither overrides nor mandates changes to the Community Plan.” What has been identified as a Regional Center is the former Sears Tower site on the Southwest corner of Soto and Olympic (Attachment C). As it exists today, the character of the project site and the surrounding area are not compatible with the proposed project. To our knowledge there is no project proposed or approved for the former Sears Tower site that might be consistent with the proposed project.

Only through the proposed land use changes would the proposed project be compatible and only to the project site, not the surroundings. The EIR’s Compatibility of Design section fully acknowledges and reaches this same conclusion, again stating the proposed project is not consistent. When substantial evidence demonstrates otherwise, why is this continually being disregarded in the EIR and Vesting Tentative Tract recommendation?<sup>36</sup>

Further, the Vesting Tentative Tract recommendation disregards key policy statements from the Community Plan in its analysis and assessment of whether or not the Partial Preservation Alternative C supports the needs of the local community.<sup>37</sup> It fails to substantiate how the proposed project meets the following adopted policies by the City within the Community Plan<sup>38</sup>:

- That the existing Low density housing (one-family dwellings) be preserved.
- That the existing Low-Medium I density housing family dwellings be preserved where such housing is in relatively good condition or can be made so with moderate improvements.
- That the existing Low-Medium II density housing be preserved where such housing is in relatively good condition or can be made so with moderate improvements.
- That Medium density housing be located near commercial corridors where access to public transportation and shopping services is convenient and where a buffer from, or a transition between, low-density housing can be achieved to the extent feasible.
- That High-Medium density housing be provided only within a 1/4 mile radius from proposed MetroRail Station stops.

Under the **General Plan Land Use Goal 3C, Objective 3.7, Policy 3.7.1**, “Accommodate the development of multi-family residential units in areas designated in the community plans in accordance with Table 3-1 and Zoning Ordinance densities indicated in Table 3-3, with the density permitted for each parcel to be identified in the community plans.”<sup>39</sup> The proposed

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<sup>35</sup> Vesting Tentative Tract No. 71943, Page 87

<sup>36</sup> Page IV. G-75

<sup>37</sup> Vesting Tentative Tract No. 71943, Page 153

<sup>38</sup> Boyle Height Community Plan, Page 111-2

<sup>39</sup> General Plan, Chapter 3, Land Use, Goals, Objectives and Policies.



project and its desired level of density are not consistent with the General Plan and the Community Plan in this respect. On average, at 64 dwelling units per acre, the proposed project does not fall within the existing Medium land use designation allowing for between 30-55 dwelling units per acre.

The Vesting Tentative Tract recommendation states the project is “largely consistent” with the General Plan Framework, stating this is due in part it being well served by public transit and its proximity within 1.25 miles of two MetroRail Gold Line stations.<sup>40</sup> In regards to the proposed High-Medium density housing, the Community Plan clearly states this is to be located within “only within a 1/4 mile radius from proposed Metrorail Station stops.” Despite claims that the proposed project is “easily accessible by public transit,”<sup>41</sup> it is in fact 1.25 miles from two MetroRail Gold Lines stations. This distance is far greater than the required .25 mile radius set forth in the City’s policy and Community Plan for the location of the project’s proposed High-Medium density housing. As stated previously by the Conservancy, this does not meet TOD standards nor does proximity to transit override stated goals and current land use designations within both the General Plan and Community Plan.

#### **IV. The site is not physically suitable for the proposed density of development.**

The Vesting Tentative Tract recommendation acknowledges that the implementation of the proposed project would require General Plan amendments as it does not comply with current land use designations for the site. Going from a density of 29 to 67 dwelling units per acre is a significant increase. It would dramatically change the existing pattern and character of development in Boyle Heights. The recommendation justifies the additional density in large part due to the “extraordinary existing transit usage rate of 28 percent” of current residents.<sup>42</sup>

This rationale however ignores a couple of important factors. The increase in bus service and demand from the project site does not correlate with permanent increased bus services, therefore likely leading to an over-subscribed and crowded transit option. These conditions will also likely lead to a reliance on more vehicle trips. It fails to acknowledge an increase in bus service will only occur through mitigation measures outlined in the Vesting Tentative Tract recommendation. This calls for the applicant to provide funding for the operation of three additional buses. Yet this is a temporary fix as the applicant is only required to do this for a period of up to three years. After that it will be up to Metro to fund and address the increased demand. It also does not factor in the increase in parking at the site or the reality that 3,200 of the new dwelling units at the site will be condominiums with persons of higher income, many of which will be commuters that will choose instead to drive alone instead of commuting by bus.

As stated previously in this appeal, the proposed project at this site with 4,400 dwelling units – an increase by 73 percent -- will result in significant and unavoidable impacts in regards to

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<sup>40</sup> Vesting Tentative Tract No. 71943, Page 193

<sup>41</sup> Vesting Tentative Tract No. 71943, Page 187

<sup>42</sup> Vesting Tentative Tract No. 71943, Page 214

traffic congestion. Even with all recommended mitigation measures in place, 6 intersections remain with significant and unavoidable impacts. For all of these factors and more, this site is not appropriate for the proposed density of development.

**V. The design of the subdivision and the proposed improvements are likely to cause substantial environmental damage.**

The Vesting Tentative Tract recommendation fails to acknowledge the environmental damage that will occur through the proposed project. As stated previously in this appeal, this includes the debris and solid waste generated by this project (11 tone of demolition and construction debris per day for 15 years; 78 percent more solid waste per year once the project is completed). The EIR recommendation fundamentally ignores that the Partial Preservation Alternative C which calls for reduction in the overall project is the environmentally superior alternative and recognized internationally as the more ecologically sustainable approach than demolition. In terms of assessing damage, another impact of demolition will be the loss of a California Register-listed and National Register-eligible historic site. Rarely does this occur in the City of Los Angeles and the Conservancy is very concerned about setting precedent in this case, certainly not at the scale of Wyvernwood and a historic district encompassing approximately 250 buildings as well as a designed landscape.

**VI. The design of the subdivision and the proposed improvements are likely to cause serious public health problems.**

Remarkably the Vesting Tentative Tract recommendation states, “There appears to be no potential public health problems caused by the design or improvement of the proposed subdivision.”<sup>43</sup> It ignores and omits any reference to the proposed project’s localized and regional air quality impacts during construction which will be significant and unavoidable even with mitigation measures in place.

As stated previously in this appeal, this is in direct conflict with General Plan and Air Quality Element goals. It will directly impact nearby schools and be in effect for at least 15 years. A recent article in the *Boyle Heights Beat* entitled, “Air Pollution’s Toll: Boyle Heights as a ‘Toxic Hotspot.’”<sup>44</sup> The article states:

“Although Los Angeles has some of the worst air pollution in the nation, environmental advocates say Boyle Heights and other similar communities are “toxic hot spots” because they have more sources of pollution, such as refineries, auto body shops and rail yards, and are closer to freeways. Four freeways run through Boyle Heights – Interstates 5 and 10, US Highway 101, and State Route 60.”

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<sup>43</sup> Vesting Tentative Tract No. 71943, Page 215

<sup>44</sup> *Boyle Heights Beat*, August 22, 2012

Asthma is an already existing public health concern in Boyle Heights, with a “hospitalization rate of 137.7 per 100,000 people in 2009, compared with a statewide rate of 86.2.”<sup>45</sup> This is especially a concern for children, with the article further stating:

“Research over the last decade has shown the link between exposures to outdoor air pollution and asthma. The Children’s Health Study investigated the effect of air pollution on children’s health between 1993 and 2001 in 12 Southern California communities and found that children exposed to high pollution levels had permanently lower lung function. The study tracked the health of 1,800 children from 4th to 12th grades.”

The proposed project, as envisioned currently, will only increase the severity of this public health problem.

**VII. The design of the subdivision and the proposed improvements will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision.**

The Vesting Tentative Tract recommendation once again relies on incorrect information by the applicant regarding underground utilities to justify its decision by stating, “The proposed subdivision will not conflict with any of these easements, and in fact will resolve current conflicts and encroachments, thus improving upon current conditions.”<sup>46</sup> As stated previously in detail within appeal (pages 3-5), there is no conflict and this rationale and finding is based on err.

**VIII. Conclusion**

Through this appeal the Conservancy believes it has demonstrated in various ways and reasons why the proposed project and Vesting Tentative Tract No. 71943 should not be approved. We strongly believe the rationale and findings of the recommendation rely on inaccurate information and unsubstantiated analysis. It is uncommon for the Conservancy to weigh in on related but non-preservation issues, such as transportation, air quality and housing. However, we felt it was more than warranted in this case, required as part of this appeal, and to address adequately given the reliance on so many factually incorrect statements as part of the Vesting Tentative Tract recommendation.

The Partial Preservation Alternative C is the environmentally superior alternative that would have the fewest significant and unavoidable impacts.<sup>47</sup> Further we believe our independent analysis and research satisfies at least one (utility easements) of the two identified “ongoing problems” associated with the Partial Preservation Alternative C. The outstanding item is in regard to economic feasibility which we have repeatedly requested substantive information from the applicant in order to assess and perform independent analysis.

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<sup>45</sup> *Boyle Heights Beat*, August 22, 2012, state hospitalization data.

<sup>46</sup> Vesting Tentative Tract No. 71943, Page 215

<sup>47</sup> V Alternatives, V-174

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The Conservancy looks forward to discussing this project further and looking for potential win-win opportunities.. Should you have any questions, please feel free to contact me at [afine@laconservancy.org](mailto:afine@laconservancy.org) or by phone at 213-430-4203.

Sincerely,

A handwritten signature in black ink that reads "Adrian Scott Fine". The signature is written in a cursive, slightly slanted style.

Adrian Scott Fine  
Director of Advocacy

Attachment(s)