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**NORWALK
SUPERIOR COURT**

6 Attorneys for Petitioners and Plaintiffs
Tract No. 7260 Association, Inc., California Country
7 Club Homes Association, Cheviot Hills Home Owners'
Association, Inc., and Home Owners of South Westwood, Inc.
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

13 TRACT NO. 7260 ASSOCIATION, INC., a
California nonprofit mutual benefit corporation;
14 CALIFORNIA COUNTRY CLUB HOMES
ASSOCIATION, a California nonprofit mutual
15 benefit corporation; CHEVIOT HILLS HOME
OWNERS' ASSOCIATION, INC., a California
16 nonprofit mutual benefit corporation; and
17 HOME OWNERS OF SOUTH WESTWOOD,
INC., dba Westwood Homeowners Association, a
18 California nonprofit mutual benefit corporation,

19 Petitioners and Plaintiffs,

20 v.
21

22 CITY OF LOS ANGELES, a municipal
corporation; CITY COUNCIL OF THE CITY OF
23 LOS ANGELES; LOS ANGELES DEPARTMENT
OF CITY PLANNING; and DOES 1-20,
24

25 Respondents and Defendants.

26 CENTURY CITY REALTY, LLC.; and DOES 21-
40.
27

28 Real Parties in Interest.

CASE NO. BS106724

FIRST AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

(California Environmental Quality
Act, Pub. Resources Code, § 21168;
California Environmental Quality Act,
Pub. Resources Code, § 21168.5;
Code Civ. Proc., § 1094.5; Code Civ.
Proc., § 1085; Code Civ. Proc., § 526,
subd. (a); Code Civ. Proc., § 1060)

1 COME NOW Petitioners and Plaintiffs TRACT NO. 7260 ASSOCIATION, INC.,
2 CALIFORNIA COUNTRY CLUB HOMES ASSOCIATION, CHEVIOT HILLS HOME
3 OWNERS' ASSOCIATION, INC., and HOME OWNERS OF SOUTH WESTWOOD, INC.,
4 and allege as follows:

5 **INTRODUCTION**

6 1. This action concerns Respondents and Defendants City of Los Angeles, City
7 Council of the City of Los Angeles, and the Los Angeles Department of City Planning
8 certification and adoption of an Environmental Impact Report ("EIR"), adoption of a
9 Statement of Overriding Considerations, and adoption of other approvals and findings that
10 violate the California Environmental Quality Act (see Pub. Resources Code, § 21000 et seq.,
11 hereinafter "CEQA") as well as other state and municipal laws that govern development in
12 the City of Los Angeles. The environmental review and related findings and approvals at
13 issue were for a residential development project of 483 residential units, spanning three
14 buildings, at 10131 Constellation Boulevard, in that part of the City of Los Angeles known
15 as Century City.

16 2. The EIR and project approvals at issue are crippled by one primary, faulty
17 conclusion — that three existing buildings on the project site, totaling 35,000 square feet of
18 floor area and approximately **60** parking spaces for mainly office and restaurant use will have
19 "a greater contribution to future cumulative base traffic conditions, mobile emissions, and
20 mobile noise" than three buildings totaling 1,293,000 square feet of floor area and **1,208**
21 parking spaces for residential use. This conclusion has rendered Respondents' entire
22 environmental analysis analytically unsound and irreparably inaccurate. As such, the entire
23 EIR and other approvals for the project are faulty and invalid, and must be voided.

24 3. Respondents' decision to certify and adopt the EIR, adopt the Statement of
25 Overriding Considerations, and to adopt the other related findings and approvals violates
26 CEQA and its implementing regulations (Cal. Code Regs., tit. 14, § 15000, et seq.) in several
27 ways. For example, the EIR is inconsistent with the policy and the substantive provisions of
28 the Century City North Specific Plan ("CCNSP") — the document that guides development

1 in that area of the City of Los Angeles where the project site is located. The CCNSP outlines
2 specific parameters for development and the project does not fall within those parameters.

3 4. Furthermore, the EIR utilizes a fictitious account of the baseline and no-project
4 alternative. Instead of comparing the project's impacts to the physical environmental
5 conditions existing at the time the notice of preparation was published, the EIR compared the
6 project impacts to those of a bustling commercial center handling thousands of vehicles each
7 day. In truth, the project site is more akin to a vacant lot and handles approximately less than
8 one-sixth of the activity described in the EIR. The baseline and the no-project alternative
9 must reflect reality, not a fictional account.

10 5. Moreover, the EIR underestimates the impacts of the project. There are specific
11 traffic related generation factors that the project is required to use under municipal law,
12 specifically under the CCNSP, which governs development in the area of the project site. The
13 EIR acknowledges that these factors exist but chooses not to use them to assess the
14 environmental impacts of the project. Instead, the EIR uses an improper calculation for
15 forecasting traffic and other related impacts of the project.

16 6. The EIR, among numerous other flaws, overstates the amount of traffic
17 generated by the existing uses on the project site and underestimates the amount of traffic that
18 will be generated by the project. The pulling, stretching, and twisting of numbers has left
19 unaccounted adverse impacts that *will* result from the project. These impacts have not been
20 adequately considered. The EIR is therefore not adequate or complete, and does not exhibit
21 a good faith effort at full disclosure, as mandated by CEQA and its implementing regulations.

22 7. Petitioners have been deprived of their rights by Respondents' actions.
23 Respondents' presentation of a meaningless and misleading analysis in the EIR and their
24 reliance on legally deficient and factually erroneous arguments is in direct violation of CEQA.
25 Because Respondents have failed to comply with CEQA, the public, including Petitioners, has
26 been deprived of the opportunity to exercise its rights under CEQA, namely, to review and
27 comment on the project and to receive a response to those comments. Petitioners merely ask
28 that Respondents give the public the process that they are legally due.

1 and certification of the EIR and delivering written or oral testimony at public hearings before
2 various agencies, officers, commissions, and committees of the Los Angeles Department of
3 City Planning and the City Council of the City of Los Angeles.

4 11. Petitioner and Plaintiff CHEVIOT HILLS HOME OWNERS' ASSOCIATION,
5 INC. ("Cheviot Hills HOA"), is a California nonprofit mutual benefit corporation organized
6 to advance the interest of homeowners in that neighborhood of Los Angeles known as Cheviot
7 Hills. Cheviot Hills is just southwest of Century City and adjacent to one of the major
8 freeways located near the project site. Cheviot Hills HOA participated in the administrative
9 proceedings concerning the project. This participation included filing comment letters on the
10 preparation and certification of the EIR and delivering written or oral testimony at public
11 hearings before various agencies, officers, commissions, and committees of the Los Angeles
12 Department of City Planning and the City Council of the City of Los Angeles.

13 12. Petitioner and Plaintiff HOME OWNERS OF SOUTH WESTWOOD, INC.,
14 dba Westwood Homeowners Association ("WHA"), is a California nonprofit mutual benefit
15 corporation organized to protect the community and real property interests of a group of
16 property owners that are adjacent to Santa Monica and Wilshire Boulevards, and just
17 northwest of Century City and the project site; those property owners utilize the same major
18 arterials that will likely be utilized by the residents of the project. WHA participated in
19 administrative proceedings concerning the project. This participation included filing
20 comment letters on the preparation and certification of the EIR and delivering written or oral
21 testimony at public hearings before various agencies, officers, commissions, and committees
22 of the Los Angeles Department of City Planning and the City Council of the City of Los
23 Angeles.

24 13. Respondent and Defendant CITY OF LOS ANGELES ("City") is a municipal
25 corporation, duly organized and existing under the laws of the State of California as a charter
26 city located in the County of Los Angeles.

27 14. Respondent and Defendant CITY COUNCIL OF THE CITY OF LOS
28 ANGELES ("City Council") is the governing body of the City. Among the duties and

1 responsibilities of the City Council are the duties to responsibly and legally administer and
2 apply the zoning and land use laws in compliance with state statutes and Los Angeles
3 municipal law, including CEQA and the CCNSP.

4 15. Respondent and Defendant LOS ANGELES DEPARTMENT OF CITY
5 PLANNING (“Planning Department”) is a municipal agency responsible for, *inter alia*,
6 regulating the use of privately-owned property through specific plan ordinances and state law.
7 The Planning Department is also the lead agency for the project, under CEQA, and required
8 preparation of the EIR at issue in the instant action.

9 16. Petitioners are unaware of the true names and capacities of Respondents and
10 Defendants DOES 1-20, inclusive, and they are therefore sued by such fictitious names
11 pursuant to California Code of Civil Procedure section 474. Petitioners allege on information
12 and belief that each such fictitiously named Respondent and Defendant is responsible or liable
13 in some manner for the events and happenings referred to herein, and Petitioners will seek
14 leave to amend this Petition and Complaint to allege their true names and capacities after the
15 same have been ascertained.

16 17. Petitioners and Plaintiffs are informed and believe and thereon allege that, at
17 all relevant times, each of the Defendants and Respondents, including Does 1-20, inclusive,
18 was the agent or employee of each of the remaining Defendants and Respondents and, in
19 doing the things alleged, was acting within the scope of that agency or employment.

20 18. Real Party in Interest CENTURY CITY REALTY, LLC, is the owner of the
21 project site and the project applicant.

22 19. Petitioners are unaware of the true names and capacities of Real Parties in
23 Interest DOES 21-40, inclusive, and they are therefore sued by such fictitious names pursuant
24 to California Code of Civil Procedure section 474. Petitioners allege on information and
25 belief that each such fictitiously named Real Party in Interest is a person who acts on behalf
26 of, acts as an agent of, administers decisions by, or carries out responsibilities placed on them
27 by Real Party in Interest Century City Realty, LLC. Petitioners will seek leave to amend this
28

1 Petition and Complaint to allege their true names and capacities after the same have been
2 ascertained.

3 20. Petitioners and Plaintiffs are informed and believe and thereon allege that, at
4 all relevant times, each of the Real Parties in Interest, including Does 21-40, inclusive, was
5 the agent or employee of each of the remaining Real Parties in Interest and, in doing the things
6 alleged, was acting within the scope of that agency or employment.

7 **JURISDICTION AND VENUE**

8 21. Jurisdiction is proper pursuant to Code of Civil Procedure section 1094.5 — the
9 instant writ petition seeks review of the validity of final administrative decisions made as the
10 result of proceedings in which by law a hearing is required to be given, evidence is required
11 to be taken, and discretion in the determination of facts is vested in the inferior tribunal or
12 officer. (See also Pub. Resources Code, § 21168.) Jurisdiction also lies in this Court pursuant
13 to Code of Civil Procedure section 1085, in that Petitioners seek to compel the performance
14 of acts that the law specifically enjoins, namely, the denial of certification of an inadequate
15 EIR and full compliance with the provisions of CEQA. (See also Pub. Resources Code,
16 § 21168.5.)

17 22. Venue in this Court is proper pursuant to Code of Civil Procedure section 394,
18 in that Respondent City is within the County of Los Angeles. (See also Super. Ct. L.A.
19 County, Local Rules, rule 9.24 (a) [a mandamus action that challenges an agency’s decision
20 under CEQA must be filed in the Central District and assigned to Department No. 1 for
21 reassignment].)

22 **STATUTORY FRAMEWORK**

23 23. The California Environmental Quality Act, Public Resources Code section
24 21000 et seq., is based on the principle that the “maintenance of a quality environment for the
25 people of this state now and in the future is a matter of statewide concern” (Pub. Resources
26 Code, § 21000, subd. (a)), and that it is the policy of this state to “take all action necessary to
27 protect, rehabilitate, and enhance the environmental quality of the state” (*id.*, § 21001, subd.
28 (a)). CEQA requires the assessment and public disclosure of potentially adverse impacts that

1 a discretionary project, requiring public agency approval, might have on the environment.
2 (*Id.*, §§ 21002, 21002.1.) CEQA states that public agencies may not approve projects “if there
3 are feasible alternatives or feasible mitigation measures available which would substantially
4 lessen the significant environmental effects of such projects.” (*Id.*, § 21002.) The Legislature
5 has established a variety of methods to accomplish its goals concerning California’s
6 environment, the principal method is the drafting and completion of an EIR.

7 24. An EIR is a descriptive statement that provides governmental agencies and the
8 public with detailed information about the harm that a proposed project may have on the
9 environment, lists ways in which those significant impacts may be minimized, and indicates
10 alternatives to the proposed project. (Pub. Resources Code, § 21061.)

11 25. An EIR does not need to be prepared before every discretionary project is
12 approved, but it must be prepared if “there is substantial evidence, in light of the whole record
13 before the lead agency, that the project may have a significant effect on the environment.”
14 (*Id.*, § 21080, subd. (d).)

15 26. Because informing the public about the environmental effects of a proposed
16 project is a crucial function of CEQA, the EIR must be made available for public review and
17 comment. (See *id.*, § 21091, subd. (a) [“public review period for a draft environmental impact
18 report may not be less than 30 days”]; see also *id.*, § 21091, subd. (d) [public agency shall
19 consider those comments that it receives on a draft EIR].)

20 27. A public agency’s failure to comply with either the substantive requirements
21 of CEQA or its procedures, so that complete information as to the project’s impacts is neither
22 developed nor publicly disclosed, is a prejudicial abuse of the agency’s discretion requiring
23 invalidation of the agency’s action regardless of whether full compliance would have
24 produced a different result. (*Id.*, § 21005, subd. (a).)

25 28. In addition to those provisions found in the Public Resources Code, the
26 Legislature has authorized and directed the Office of Planning and Research to adopt
27 guidelines for the implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.;
28 hereinafter referred to and cited as “Guidelines”). (See Pub. Resources Code, § 21083). The

1 Guidelines are binding on all state and local agencies, including Respondents. (Guidelines,
2 §§ 15000, 15020.)

3 29. According to the Guidelines, an EIR must be adequate, complete, and exhibit
4 a good-faith effort at full disclosure. (*Id.*, § 15151.) Again, as expressed in CEQA, the EIR
5 must identify the significant environmental impacts of the project, including those impacts
6 that cannot be avoided if the project is implemented, as well as significant irreversible
7 environmental changes related to implementation of the project, alternatives to the project,
8 and measures to mitigate the impacts of the project. (*Id.*, § 15126; see *id.*, §§ 15126.4,
9 15126.6.)

10 30. The Guidelines establish procedures for calculating the baseline environmental
11 conditions at a proposed project site, stating that an “EIR must include a description of the
12 physical environmental conditions in the vicinity of the project, as they exist at the time the
13 notice of preparation is published.” (Guidelines, § 15125, subd. (a).) The EIR’s “discussion
14 of the alternatives shall focus on alternatives to the project or its location which are capable
15 of avoiding or substantially lessening any significant effects of the project, even if these
16 alternatives would impede to some degree the attainment of the project objectives, or would
17 be more costly” (*id.*, § 15126.6, subd. (b)), and the “EIR shall include sufficient information
18 about each alternative to allow meaningful evaluation, analysis, and comparison with the
19 proposed project” (*id.*, § 15126.6, subd. (d)).

20 31. One alternative that must be evaluated in the EIR is the “no project alternative.”
21 (*Id.*, § 15126.6, subd. (e)(1).) In some instances this alternative is equivalent to the existing
22 use, i.e., the baseline conditions at the site. (*Ibid.*)

23 32. “Public participation is an essential part of the CEQA process.” (*Id.*, § 15201.)
24 The public is entitled to file written comments regarding the environmental review of the
25 project (see *id.*, §§ 15087, 15202, 15203) and to testify at any public hearing concerning the
26 EIR (see *id.*, § 15202, subd. (d) [the “draft EIR should be used as a basis for discussion at a
27 public hearing”]; see also *id.*, § 15202, subd. (b) [“If an agency provides a public hearing on
28

1 its decision to carry out or approve a project, the agency should include environmental review
2 as one of the subjects for the hearing.”]).

3 33. An agency’s written responses to comments must provide a description of the
4 significant issues raised by the comments and, particularly when the opinion in the comments
5 varies from that of the agency, the agency must address the comments in detail and provide
6 a good-faith reason why specific comments and suggestions were not accepted. (*Id.*, § 15088;
7 see *id.*, § 15202.)

8 34. CEQA review does not occur in a vacuum — the Government Code states that
9 every city in California must adopt a “general plan” to serve as a “comprehensive, long-term
10 general plan for the physical development” of the city. (Gov. Code, § 65300.) All zoning
11 ordinances and land uses within the city must be consistent with the general plan. (See *id.*,
12 §§ 65860, 66473.5.) Consistent with the objective of completeness, the Guidelines provide
13 that “[t]he EIR shall discuss any inconsistencies between the proposed project and applicable
14 general plans and regional plans.” (Guidelines, § 15125, subd. (d).) And “[t]he EIR shall also
15 analyze any significant environmental effects the project might cause by bringing
16 development and people into the area affected.” (*Id.*, § 15126.2, subd. (a).)

17 35. Every city in California must adopt a “general plan” to serve as a
18 “comprehensive, long-term general plan for the physical development” of the city. (Gov.
19 Code, § 65300.) After adoption of the general plan, local planning agencies may enact
20 specific plans to regulate development for portions of the area covered by the general plan.
21 (*Id.*, § 65450.) Specific plans are required to include, *inter alia*, the “standards and criteria
22 by which development will proceed,” as well as regulations necessary to ensure compliance
23 with those development standards. (*Id.*, § 65451.)

24 36. In November 1981, the Los Angeles City Council adopted the CCNSP to
25 establish the zoning and land use law governing development in the northern half of the area
26 of Los Angeles known as Century City. All development within that area must proceed in
27 accordance with both the CCNSP and the relevant land use and zoning provisions of the Los
28 Angeles Municipal Code. (Los Angeles Ordinance Number 156,122; hereinafter cited as

1 “CCNSP”.) The CCNSP requires that development projects in the area conform to its
2 requirements.

3 37. The CCNSP is heavily focused on the traffic generation caused by development.
4 To “assure orderly development and to provide street capacity and other public facilities
5 adequate for the intensity and design of development” the CCNSP requires phasing of
6 development (CCNSP, § 3), and it also caps the total number of real property development
7 rights that may be used within the specific plan area (*id.*, § 2). These real property
8 development rights, referred to under the CCNSP as “Trips,” are a “calculation of daily
9 arrivals and daily departures from a building or structure by motor vehicles of four or more
10 wheels.” (*Id.*, § 2.) The total cap on Trips is referred to as the Cumulative Automobile Trip
11 Generation Potential (“CATGP”). (*Ibid.*) CATGP is a calculation of the “cumulative total
12 daily Trips generated by all Projects on commercially zoned lots within the Specific Plan
13 Area,” and once CATGP reaches a certain level there may be no more development within
14 the specific plan area. (*Id.*, § 3, subd. C.) Because the CCNSP limits development within the
15 northern half of Century City based on Trips, an accurate calculation of Trips is essential to
16 enforcing the CCNSP and to any environmental review. (See generally *id.*, Whereas Clauses
17 [the full commercial density of Century City North is “predicated on [the] provision of
18 adequate public service and transportation facilities to service the Specific Plan Area”].)

19 38. There are at least three ways that a particular parcel can accumulate Trips: (1)
20 if Trips were assigned to the parcel when the CCNSP was originally enacted in 1981 (see *id.*);
21 (2) if Trips are transferred to the parcel from another parcel (*id.*, § 5); or (3) if Trips are
22 assigned to “replace” the whole or partial change of use or demolition of a building on a
23 parcel, in the area governed by the CCNSP, that resulted in a net increase of Trips on that
24 parcel (*id.*, § 3, subd. C, 3 & C, 4).

25 39. Generally Trips may be freely transferred from parcel to parcel within the area
26 governed by the CCNSP, but there are certain limitations. Specifically, “[n]o Trip may be
27 transferred if it has previously been utilized on or transferred from the transferor site.” (*Id.*,
28 § 5, subd. A; see also Century City Specific Plans Trip Allocation Summary, City of Los

1 Angeles, Department of City Planning, June 20, 1996) [“In transfer of development rights,
2 all or part of the unused development potential is transferred to another site. The ‘donor’ site
3 is then permanently restricted from using those rights and the ‘receiver’ site is entitled to the
4 use of those rights.”].)

5 40. The number of Trips generated by each square foot of development differs
6 based on whether the development falls within one of four categories: (1) Office Commercial,
7 (2) Retail Commercial, (3) Hotel, or (4) Residential. (CCNSP, § 2.) These Trip generation
8 factors are used to calculate the number of Trips associated with a given parcel within the
9 CCNSP area. Within each category there are also sub-categories. For example, within Office
10 Commercial there is: (a) medical, (b) drive-through bank facility, and (c) other office
11 commercial. (*Ibid.*)

12 41. If, with respect to a particular project, there is a dispute over the application of
13 the Trip generation factors outlined in the CCNSP, any interested person may “submit a
14 proposed alternative Trip generation factor for the Project.” (*Id.*, § 6.) The CCNSP thereby
15 allows the use of actual traffic counts to arrive at a more accurate calculation of Trips.

16 42. The project at issue in the instant action is located in an area of Century City
17 governed by the CCNSP. Therefore, the EIR for the project must address consistency with
18 the CCNSP. Furthermore, in accordance with CEQA, the EIR must also describe a baseline
19 condition, present a no-project alternative, and propose resulting mitigation measures that are
20 consistent with the CCNSP. As set forth below, the EIR failed to meet any of these
21 requirements.

22 43. The project’s approvals also violate both the municipal code and the CCNSP.
23 The Los Angeles Municipal Code requires that development projects be consistent with any
24 applicable specific plans. Los Angeles Municipal Code section 11.5.7 governs the adoption
25 of specific plans in the City, and establishes procedures that ensure that projects within
26 specific plan areas conform to the requirements of specific plans. The Director of Planning
27 may grant a Project Permit Compliance only after findings that “the project substantially
28 complies with the applicable regulations, findings, standards, and provisions of the specific

1 plan; and . . . [t]hat the project incorporates mitigation measures, monitoring measures when
2 necessary, or alternatives identified in the environmental review which would mitigate the
3 negative environmental effects of the project, to the extent physically feasible.” (*Id.* at subd.
4 (C)(2).) The project’s Project Permit Compliance violates section 11.5.7 because it
5 erroneously states that the project complies with the CCNSP.

6 44. The CCNSP contains additional requirements for Project Permit Compliance.
7 The CCNSP requires that the City Planning Department grant Project Permit Compliance
8 based only on findings that include, *inter alia*, that the project “conforms to all of the
9 provisions of this Specific Plan, the West Los Angeles Community Plan and all other
10 applicable provisions of the General Plan.” (CCNSP § 2.) The findings must also show that
11 “[c]onsideration has been given by the City Planning Commission to impacts generated by the
12 Project on the vehicular circulation system within the Specific Plan Area” and on major streets
13 within one mile of the area, and that “mitigation measures, if any, were given due
14 consideration.” (*Ibid.*) The Findings in support of the Project Permit Compliance are invalid
15 because they are based on an incorrect application of the CCNSP’s Trip Generation
16 provisions, which has resulted in the erroneous conclusion that the project has sufficient
17 development rights under the CCNSP.

18 45. The project’s approvals also included a Vesting Tentative Tract Map.
19 Government Code sections 66410 - 66499.58 govern the issuance and approval of tentative
20 tract maps for subdivisions. Government Code section 66474.61 requires that the legislative
21 body of a city deny approval of a tentative subdivision map if it finds, *inter alia*, that “the
22 proposed map is not consistent with applicable general and specific plans.” Los Angeles
23 Municipal Code section 17.03 authorizes the Deputy Advisory Agency to make
24 recommendations on the approval of subdivision maps. The approval of the Vesting Tentative
25 Tract Map for the project is invalid because, as discussed below, the project does not comply
26 with the provisions of the CCNSP.

27 46. Respondents also approved a Site Plan Review for the project. Los Angeles
28 Municipal Code section 16.05 sets forth the processes and procedures for Site Plan Review.

1 In order to approve Site Plan Review, the City must determine that “the project complies with
2 all applicable provisions of . . . any applicable Specific Plan.” (*Id.* at subd. (F).) The findings
3 for the Site Plan Review for the project are invalid because the project does not comply with
4 the CCNSP.

5 **GENERAL ALLEGATIONS**

6 47. On May 24, 2005, the Planning Department posted a notice of preparation
7 stating that it would require the preparation of an EIR for the construction of a project of 483
8 residential condominium units located at 10131 Constellation Boulevard, in that area of the
9 City of Los Angeles known as Century City. The project would have 1,293,000 square feet
10 of floor area and 1,208 parking spaces, replacing existing uses of 35,000 square feet of floor
11 area. The notice of preparation anticipated a number of adverse environmental impacts,
12 including impacts on air quality, land use and planning, noise, and traffic and transportation.

13 48. On or around June 20, 2005, Petitioners, as a coalition that included a number
14 of other homeowners’ associations located near Century City and the project site, submitted
15 comments to the Planning Department requesting that the scope and content of the EIR
16 address, *inter alia*, short- and long-term air quality impacts, the traffic saturation in West Los
17 Angeles (specifically in those areas adjacent to Century City), the true traffic potential for the
18 project (including that traffic generated by staff, household employees, and others that would
19 service the project), and the accurate calculation of Trips. Along with their comments
20 Petitioners submitted additional concerns drafted by their registered traffic engineer, Tom
21 Brohard and Associates, dated June 15, 2005. Brohard and Associates further requested that
22 the EIR, *inter alia*, address the number of vehicle trips that the proposed project would
23 generate, the method that would be used to document the existing traffic volumes and
24 operating conditions, the assumptions that would be made regarding the occupancy of the
25 existing buildings on the project site, the annual growth factor used to address traffic impacts,
26 the methodology used to forecast vehicle trips to and from the project, documentation of the
27 existing vehicle trips for the existing uses on the project site, the criteria used to identify
28

1 significant traffic impacts, and the relation of the number of forecast vehicle trips to the
2 amount of parking that would be provided on the project site.

3 49. The draft EIR was completed on or around November 3, 2005. In the draft EIR,
4 the no-project alternative was found to be equivalent to the existing conditions on the site, or
5 the baseline. This baseline was used throughout the EIR to discuss each category of
6 potentially adverse environmental impacts. Assuming that the proposed project of 1,293,000
7 square feet of floor area for residential use would generate *less traffic* than existing conditions
8 of 35,000 square feet of floor area for largely office use, the EIR found that the no-project
9 alternative “would have a greater contribution to future cumulative base traffic conditions,
10 mobile emissions, and mobile noise at the Project, since *existing traffic at the site is greater*
11 *than under the Project.*” (Emphasis supplied.)

12 50. The draft EIR overstated the development rights claimed by existing uses on
13 the project site by improperly applying one of the Trip generation factors detailed in the
14 CCNSP. The three existing structures on the project site, as defined in the EIR, are a bank,
15 a drive-through bank facility, and a restaurant/nightclub. The CCNSP details the Trip
16 generation factor that is to be used for each structure. The EIR improperly used the Trip
17 generation factor for the drive-through bank facility for both the drive-through bank facility
18 structure and the first floor of the bank structure. The Trip generation factor for a drive-
19 through bank facility is more than 1370% of the Trip generation factor for other office
20 commercial, the Trip generation factor that should have been used. This error resulted in an
21 inaccurate description of the existing uses, an error that permeated the entire EIR.

22 51. The draft EIR also understated the vehicle trips that would be generated by the
23 project. Although the EIR clearly stated that the 7.55 Trips per dwelling unit in section 2 of
24 the CCNSP dictates the number of Trips required for compliance with the CCNSP, the EIR
25 used a 4.18 vehicle trip per dwelling unit number in assessing the environmental impacts of
26 the project. The forecasting vehicle trip generation factor of 4.18 vehicle trips per dwelling
27 unit is only 55% of that mandated by the CCNSP.

28

1 52. The draft EIR found these calculations consistent with the CCNSP and, based
2 on these calculations, further found that there was no need to mitigate the land use and
3 planning impacts, the operational traffic impacts, or the operational air quality impacts of the
4 project.

5 53. In an attempt to show that there are enough Trips associated with the project
6 site, as required by the CCNSP, the draft EIR relied upon Trips that were transferred from the
7 project site to another parcel, and then back to the project site, in violation of the CCNSP and
8 the Planning Department's supporting policies and procedures.

9 54. On or around January 15, 2006, Petitioners submitted detailed comments
10 regarding the draft EIR. Petitioners began their comments with the overarching observation
11 that the "EIR is too flawed and inaccurate to adequately review. The traffic study overstates
12 existing uses, the project does not have the development rights it purports to have We
13 cannot assess whether the impacts of the project have been addressed because they are not
14 accurately stated to begin with." Petitioners went on to specifically state that the project relied
15 upon Trips that were improperly transferred back to the donor site, in contravention with the
16 CCNSP and the Planning Department's own policies and procedures. Furthermore,
17 Petitioners stated that the claimed Trips were inconsistent with the stated uses of the buildings
18 located on the potential project site and were improperly transferred to the project site.
19 Petitioners asserted that the discussion of Trips was inadequate and this failing permeated the
20 entire EIR. Along with their comments Petitioners submitted another report from Brohard and
21 Associates, dated January 10, 2006. That report further questioned the accuracy of the EIR's
22 traffic-related analyses.

23 55. On or around April 23, 2006, the final EIR was made available. The final EIR
24 ignored a number of Petitioners' concerns, including issues regarding the impacts that result
25 from both the overstatement of Trips generated by existing uses and the understatement of
26 Trips that will be generated by the project. In response to Petitioners' comments, the final
27 EIR did purport to address the isolated issue of the overstatement of the existing uses. To this
28 end, the EIR conducted an additional analysis of the potential project Trips and traffic

1 conditions that will result from the project if the Trips from the existing uses are recalculated
2 based on data supplied by Petitioners and others. Based on that analysis, the final EIR
3 identified one traffic intersection that would be adversely affected. To alleviate this adverse
4 impact, the EIR identified a “potential improvement” that the project applicant voluntarily
5 agreed to implement. The response did not include a recalculation of the Trips that the project
6 would generate and did not conduct a review of all of the impacts based on the recalculated
7 existing uses. And still, the final EIR asserted that “existing traffic at the site is greater than
8 under the Project.” In fact, the final EIR concluded that no mitigation measures were required
9 to mitigate the increased traffic during project operation, and that no mitigation was required
10 as a result of any inconsistency with the CCNSP. Moreover, the EIR concluded that with
11 mandatory implementation of the CCNSP, no cumulative impacts are anticipated as a result
12 of development related to the transfer of Trips or the replacement of Trips for existing uses.

13 56. On May 24, 2006, there was a hearing before a deputy advisory agency of the
14 Planning Department (for later appeal to the Planning Commission) and before a hearing
15 officer who would report findings to the Planning Commission. During that hearing
16 Petitioners submitted comments, incorporating various comments submitted on the draft EIR
17 and expressing their concerns regarding the proposed project’s calculation of development
18 rights and discussion of traffic generation issues. Shortly after the hearing, Petitioners
19 submitted additional comments regarding the EIR’s calculation of Trips and the description
20 of the existing land uses, the traffic generation values used to calculate the traffic expected
21 to result from the project, and the inaccurate traffic calculations for the project resulting in an
22 inaccurate assessment of regional traffic impacts.

23 57. On July 12, 2006, the deputy advisory agency filed its determination, including
24 the findings purporting to satisfy Government Code section 66474.61 that the project
25 conformed to the CCNSP. On July 22, 2006, that entire determination was timely appealed
26 by Tract 7260 and others to the Planning Department, specifically the Los Angeles City
27 Planning Commission (“Planning Commission”).

28

1 58. On September 14, 2006, the Planning Commission considered the report from
2 the Hearing Officer and heard the appeal from the deputy advisory agency's determination.
3 At that hearing, Petitioners and others voiced concerns regarding existing traffic cutting
4 through the surrounding neighborhoods, the failure of the EIR to accurately and adequately
5 forecast net new Trips from the project, the failure of the EIR to fully address cumulative
6 impacts of development, the appropriate transfer of those Trips relied upon by the project, and
7 the accuracy of the Trips assigned to replace existing uses on the project site. Petitioners also
8 observed that the project's approval was not in compliance with the CCNSP.

9 59. The Planning Commission voted to, *inter alia*, certify the EIR; adopt the
10 Statement of Overriding Considerations; grant Project Permit Compliance; approve Site Plan
11 Review and the Vesting Tentative Tract Map; and deny the appeals.

12 60. The determinations of the Planning Commission, including certification of the
13 EIR, adoption of the Statement of Overriding Considerations, the grant of Project Permit
14 Compliance, and the approval of the Site Plan Review and the Vesting Tentative Tract Map
15 were appealed to the City Council. The Planning and Land Use Management Committee of
16 the City Council ("PLUM Committee") was originally scheduled to consider the project on
17 November 14, 2006. However, at that hearing the agenda item was continued to the following
18 week so that the Council Member in whose district the project site is located, and who also
19 sits on the PLUM Committee, Council Member Jack Weiss, could attend the hearing.

20 61. On November 15, 2006, one day after the PLUM Committee hearing was
21 originally scheduled to take place, Council Member Weiss sent a letter to Gail Goldberg, the
22 Director of the Planning Department, and requested that the Planning Department confirm that
23 the proposed project "has sufficient development rights to be as proposed and clarify whether
24 the alternative trip generation factor applies. Additionally, we ask that you describe in greater
25 detail the methodologies used to assess the Project's potential traffic impacts and discuss
26 whether the assessment finds a significant impact."

27 62. On November 21, 2006, the PLUM Committee hearing took place. Again
28 Petitioners presented a detailed account of all those issues with which they were concerned

1 regarding the EIR, including the EIR's inconsistency with the CCNSP, the Planning
2 Department's own policies and procedures, established industry practice, past traffic studies
3 in the same area, and actual vehicle counts. Petitioners also explained that the Project Permit
4 Compliance, Site Plan Review, and Vesting Tentative Tract Map approvals were invalid due
5 to the project's inconsistency with the CCNSP. Petitioners also stated that they had submitted
6 a request for the consideration of an alternative trip generation factor.

7 63. Following the public comment period, Council Member Weiss requested that
8 the Planning Department address the concerns in his November 15 letter. In response, the
9 Planning Department stated that the EIR considered all those issues addressed by Petitioners
10 and that there had been no request for an alternative trip generation factor. Council Member
11 Ed Reyes, chairman of the PLUM committee, asked the Planning Department if the public
12 should be provided with additional time to comment on the Planning Department's statements.
13 The Planning Department stated that the public should not be provided with additional time
14 to comment, asserting that none of the information presented was new.

15 64. On a 2-0 vote, the PLUM Committee recommended that the City Council, *inter*
16 *alia*, certify the EIR, adopt the Statement of Overriding Considerations, grant Project Permit
17 Compliance, approve the Site Plan Review and the Vesting Tentative Tract Map, and deny
18 the appeals.

19 65. The full City Council held a meeting on November 29, 2006, regarding the
20 project. Prior to that hearing Petitioners submitted comments objecting to the introduction
21 of new information at the PLUM Committee without an opportunity to comment, including
22 the information introduced by the Planning Department. Despite these objections, the City
23 Council unanimously adopted the PLUM Committee's recommendations without any further
24 testimony. To avoid any reconsideration of the matter, the City Council sent the matter
25 "forthwith" — finalizing Respondents' certification and adoption of the EIR and adoption
26 of the Statement of Overriding Considerations as well as the grant of Project Permit
27 Compliance and the approval of the Site Plan Review and the Vesting Tentative Tract Map.

28

1 71. In certifying and approving of the EIR and in adopting the related approvals and
2 findings, Respondents failed, in at least the following respects, to make decisions supported
3 by substantial evidence and to comply with CEQA and its implementing regulations:

4 a. Respondents violated CEQA by, *inter alia*, ignoring substantial evidence in
5 support of a fair argument that the impacts of the project were not completely
6 or adequately considered. Petitioners' arguments were supported by substantial
7 evidence on the record that: (1) the EIR did not comply with the CCNSP, as,
8 for example, the Trips related to the project were improperly calculated; (2) the
9 existing uses on the project site were overstated, resulting in an inaccurate
10 baseline that permeated the entire EIR; (3) the existing uses on the project site
11 were overstated, resulting in an inaccurate no-project alternative; and (4) the
12 project impacts were improperly understated, resulting in inadequate analysis
13 and mitigation of those impacts.

14 b. CEQA requires that the baseline conditions for determining the significance of
15 a proposed project's environmental impact reflect conditions actually in
16 existence at the time the notice of preparation is published. Respondents' use
17 of an improper and inconsistent baseline condition undermines the entire EIR.
18 Respondents violated CEQA by, *inter alia*, certifying and adopting an EIR that
19 is based on an improper baseline and fails to analyze in a meaningful way the
20 differences among alternatives to the project, or the significance of the
21 environmental impacts of the project.

22 c. CEQA requires the EIR to discuss all significant environmental impacts of the
23 project. Respondents violated CEQA by, *inter alia*, certifying and adopting an
24 EIR that is inadequate and insufficient and fails to adequately address
25 numerous potentially significant adverse environmental impacts, especially
26 when substantial evidence does not support the EIR's conclusions and findings
27 that the Project will cause only those significant adverse impacts identified in
28 the EIR.

- 1 d. CEQA requires the EIR to disclose all significant unavoidable adverse
2 environmental impacts of the project. Respondents violated CEQA by, *inter*
3 *alia*, certifying and adopting an EIR that is inadequate and insufficient and fails
4 to adequately disclose numerous potentially significant, unavoidable, adverse
5 environmental impacts of the project.
- 6 e. CEQA requires that the EIR discuss inconsistencies between the project and
7 applicable general and regional plans. Respondents violated CEQA by, *inter*
8 *alia*, certifying and adopting an EIR that is inconsistent with the terms and
9 policies of Century City North Specific Plan.
- 10 f. CEQA requires that the EIR contain information and analysis that responds in
11 good faith to issues raised by the public in the EIR process. Respondents
12 violated CEQA by, *inter alia*, certifying and adopting an EIR that failed to
13 meaningfully respond to the comments raised in the EIR process, to adequately
14 address the issues or concerns raised by the commentators, or to sufficiently
15 supply additional required information. Consequently, the EIR is inadequate
16 and insufficient because it fails to adequately respond to the public's concerns,
17 and is also inadequate for all those reasons raised by Petitioners and all other
18 interested persons during the EIR process.
- 19 g. Respondents violated CEQA by, *inter alia*, adopting the Statement of
20 Overriding Considerations for the EIR despite the lack of substantial evidence
21 to support the findings upon which the adoption of the Statement of Overriding
22 Considerations rests.
- 23 h. CEQA requires that the public agency approving a project make adequate
24 written findings as set forth in, *inter alia*, Public Resources Code section
25 21081. Respondents violated CEQA by, *inter alia*, certifying the EIR without
26 making adequate written findings that are supported by substantial evidence.

27 72. Petitioners have a direct and beneficial interest in the action herein and bring
28 this action as private attorneys general pursuant to Code of Civil Procedure section 1021.5 to

1 vindicate their own interests and those of the taxpayers and citizens of the City of Los Angeles
2 in the proper implementation of the environmental and land use laws.

3 **SECOND CAUSE OF ACTION**

4 (Writ of Mandate, Code Civ. Proc., § 1094.5)

5 73. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 73
6 above by this reference as though set out fully herein.

7 74. Petitioners bring this action to attack, set aside, void, and annul Respondents'
8 approvals of the Project, including the Project Permit Compliance, the Site Plan Review, and
9 the Vesting Tentative Tract Map, and any and all other findings or approvals that
10 Respondents made in support of the project, because the project violates the Century City
11 North Specific Plan.

12 75. In approving the project, including the Project Permit Compliance, the Site Plan
13 Review, and the Vesting Tentative Tract Map, Respondents proceeded without, and in excess
14 of, their jurisdiction, and committed a prejudicial abuse of discretion by not proceeding in the
15 manner required by law, by issuing a decision that is not supported by the findings, and by
16 making findings that are not supported by the evidence.

17 76. Specifically, the actions set forth above violated municipal and state law, and
18 Respondents proceeded in excess of their jurisdiction, deprived Petitioners of a fair hearing,
19 and committed a prejudicial abuse of discretion, in at least the following respects:

- 20 a. Respondents proceeded in excess of their jurisdiction by, *inter alia*, acting
21 outside the scope of their statutory authority in granting the Project Permit
22 Compliance when the project did not conform to the applicable specific plan,
23 as required by Los Angeles Municipal Code sections 11.5.7 and 16.05, and by
24 Government Code section 66474.61;
- 25 b. Respondents denied Petitioners a fair hearing by, *inter alia*, presenting new
26 information and analysis in a public hearing after the opportunity for the public
27 to respond to the new information had ended, and denying the public the
28 opportunity to comment by reopening the public comment period;

1 c. Respondents made findings that are not supported by the evidence by, *inter*
2 *alia*, granting Project Permit Compliance and approving the Site Plan Review
3 and Vesting Tentative Tract Map because Respondents failed to consider
4 adequately the traffic impacts as required by the CCNSP. This failure violated
5 the laws of the State of California and the City of Los Angeles, including, *inter*
6 *alia*, the CCNSP and the Los Angeles Municipal Code. Furthermore,
7 Respondents erroneously found that the project complies with the CCNSP
8 when the evidence in the record did not support — and in fact contradicted —
9 this finding.

10 **THIRD CAUSE OF ACTION**

11 (Injunctive Relief, Code Civ. Proc., § 526, subd. (a))

12 77. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 77
13 above by this reference as though set out fully herein.

14 78. Petitioners and Plaintiffs have no plain, speedy, and adequate remedy at law.
15 Unless Respondents and Defendants are enjoined by this Court to set aside and rescind or void
16 their certification and adoption of the EIR for the project, their adoption of Statement of
17 Overriding Considerations for the project, and any other findings or approvals in support of
18 the above-mentioned project, Real Parties in Interest may proceed with the development of
19 their project in violation of existing state and city laws designed to protect and preserve the
20 environment and the character of Petitioners' and Plaintiffs' community, including adequate
21 street capacity and transportation facilities. No amount of monetary damages or other legal
22 remedy can adequately compensate Petitioners and Plaintiffs for the irreparable harm that they
23 and the other residents of their community would suffer from the violations of law described
24 herein.

25 **FOURTH CAUSE OF ACTION**

26 (Declaratory Relief, Code Civ. Proc., § 1060)

27 79. Petitioners and Plaintiffs reallege and incorporate paragraphs 1 through 79
28 above by this reference as though set out fully herein.

1 with the California Environmental Quality Act, and all other applicable laws, and
2 accurately describes the existing uses and all project alternatives, and considers all
3 significant impacts of the project, and until Respondents have validly adopted all other
4 necessary findings and approvals for the Project as mandated by and in compliance
5 with state and city laws; and

6 (c) restraining Respondents from granting any grading, construction,
7 building, or use permits for the proposed condominium development at 10131
8 Constellation Boulevard, in reliance upon the unlawful Project Permit Compliance,
9 Site Plan Review, and Vesting Tentative Tract Map approvals that are the subject of
10 this action.

11 3. On the Fourth Cause of Action, that this Court issue its judgment declaring that
12 Respondents have failed to comply with their mandatory and ministerial duty to comply with
13 the provisions of the California Environmental Quality Act.

14 4. On each and every cause of action, that this Court grant Petitioners and
15 Plaintiffs their costs, including out-of-pocket expenses and reasonable attorneys' fees; and

16 5. On each and every cause of action, that this Court grant such other, different
17 or further relief as the Court may deem just and proper.

18
19 Dated: February 6, 2007

STRUMWASSER & WOOCHEER LLP

20
21 Michael J. Strumwasser
22 Fredric D. Woocher
23 Zahirah Washington
24 Beverly Grossman Palmer

25
26 By 
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28
Attorneys for Petitioners and Plaintiffs
Tract No. 7260 Association, Inc.,
California County Club Homes Association,
Cheviot Hills Home Owner's Association, Inc.,
and Home Owners of South Westwood, Inc.

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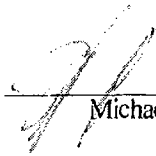
VERIFICATION OF PARTY

I, Michael Eveloff, declare:

I am the president of Petitioner and Plaintiff Tract No. 7260 Association, Inc. and make this verification on behalf of all of the Petitioners and Plaintiffs in the above-titled action. I have read the foregoing FIRST AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof to be true of my own knowledge, except as to those matters that are alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 6th day of February, 2007, at Los Angeles, California.



Michael Eveloff

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *Tract No. 7260 Association, Inc., et al., v. City of Los Angeles, et al.,*
L.A.S.C. Case No. BS 106724

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 100 Wilshire Boulevard, Suite 1900, Santa Monica, California 90401.

On February 6, 2007, I served the foregoing document(s) described as **First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief** on all appropriate parties in this action, as listed below, by the method stated.

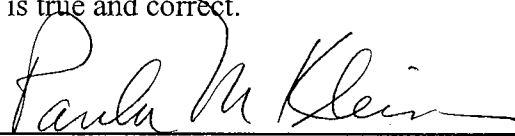
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In Propria Persona

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

Executed on February 6, 2007, at Santa Monica, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Paula M. Klein