Appendix H – Responses to Additional Comments

This appendix includes comments received after public circulation of the Draft Supplemental Environmental Impact Report (SEIR) prepared for the One Beverly Hills Overlay Specific Plan Project (project).

The Draft SEIR was circulated for a 53-day public review period that began on December 18, 2020 and ended on February 8, 2021. See Section 8, *Responses to Comments on the Draft SEIR*, of the Final SEIR for the comment letters received during the public review period of the Draft SEIR, as well as the City's responses to those comment letters.

Since the end of the public review period, one comment letter was received on the Draft SEIR. The comment letter is included herein, along with responses to the environmental concerns raised by the commenter, even though the lead agency is not required to respond to untimely comments such as these.

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Letter 10

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April 22, 2020

Planning Commission
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

Re: Comments to the Final Supplemental Environmental Impact Report for the One Beverly Hills Overlay Specific Plan Project; Planning Commission Public Hearing: April 22, 2021; Agenda Item No. 1

Dear Commissioners:

Our firm submits these comments on the draft Final Supplemental Environmental Impact Report ("SEIR") for the One Beverly Hills Overlay Specific Plan Project ("Project" or "One Beverly Hills") on behalf of The Belvedere Hotel Partnership ("Belvedere"), the owner of The Peninsula Beverly Hills ("The Peninsula"). The Peninsula is a long-standing member of the City of Beverly Hills (the "City") and the local civic and business community and Belvedere seeks to ensure that any impacts and changes to the unique identity and character of the City, of which the Peninsula is a strong part, are sufficiently addressed. We previously submitted comments on the Notice of Preparation for the Project ("NOP"), which we requested be included and incorporated into the environmental review and analysis of One Beverly Hills. Belvedere appreciates the opportunity to comment now on the SEIR. As a preliminary matter, neither our office nor Belvedere received the notice that the Draft SEIR was made available for public review on December 18, 2020 and we question whether, in fact, such notice was properly given. As soon as we were made aware that the City was proceeding with its consideration of the Project late last week, we began our review of the SEIR and we offer the following initial comments for your consideration. We hereby request that our office and Belvedere receive all public notices concerning the Project going forward and we reserve our right to supplement these comments as we continue to review and evaluate the SEIR. 10.1

In addition to our comments on the SEIR provided below, Belvedere is concerned that the proposed condominiums at the Luxury Hotel & Residences will be rented as hotel rooms or fractionally on a daily basis. The draft conditions of approval would prohibit this practice at the Santa Monica Residences and Garden Residence and include a placeholder at Condition 109 for rental and fractional ownership restrictions at the Wilshire Building, as may be appropriate. We request that the same restrictions in draft conditions 107 and 108 be applied to the Wilshire Building. 10.2

A. CEQA Requires a New, Subsequent EIR for One Beverly Hills Rather than a Supplemental EIR in Order to Analyze the Whole of the Action

We reiterate the concern expressed in our NOP comment letter that the City is avoiding analysis of the impacts of the whole of the Project by preparing a SEIR rather than a new Subsequent EIR. The California Environmental Quality Act ("CEQA") is clear that where an Environmental Impact Report ("EIR") has already been prepared for a project, another EIR for that project is required only when at least one of three conditions described in Public Resources Code § 21166—(1) substantial changes to the project, (2) substantial changes to the surrounding circumstances, or (3) new information since the previous EIR—is present.[1] The City's Initial Study and preparation of a Supplemental EIR acknowledge that subsequent environmental review is required for the Project, and therefore either a (new) Subsequent EIR[2] or a Supplemental EIR must be prepared. However, CEQA Guidelines[3] § 15163(a) allows for a lead agency to prepare a Supplemental EIR rather than a Subsequent EIR when *only minor additions or changes* would be necessary to make the previous EIR adequately apply to the project in the changed situation."[4] (CEQA Guidelines § 15163(a) (emphasis added.)) 10.3

Accordingly, if—as here—anything more than minor additions or changes (*e.g.,* major changes) are needed to make the previous EIR adequately apply to the project in the changed situation, than preparation of a Supplemental EIR, *rather than a Subsequent EIR*, would be a violation of CEQA. In other words, a Supplemental EIR, rather than a Subsequent EIR, would only be appropriate when it is necessary to modify only limited portions of the previous EIR rather than to overhaul significant portions of the document. Given the extent of the changes in One Beverly Hills and the changed circumstances, *major* EIR revisions are necessary to make the previous EIR adequately apply to One Beverly Hills. The SEIR in fact does make major revisions to the previous EIRs—adding new analyses, completely overhauling the traffic analysis with a new methodology, and modifying numerous mitigation measures. Accordingly, describing

[1] Public Resources Code § 21166 provides in its entirety: "[w]hen an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report. (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report. (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available."

[2] The Supreme Court, in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 952, fn.3, held that "[a]lthough CEQA distinguishes "subsequent" EIRs (§ 21166) from initial [, new] EIRs (see § 21151), both types of EIRs [will yield substantially the same result, as both] are subject to the same general procedural and substantive requirements."

[3] The CEQA Guidelines are found in title 14 of the California Code of Regulations, section 15000 et seq.

[4] As elaborated more fully below, note the use of the *singular* "previous EIR" here.

the SEIR as a supplement misleads the public into thinking that revisions to the previous EIRs are minor when they are, in fact, major.

To start with, the City seeks to combine the EIRs from two separately approved projects—the Beverly Hilton Specific Plan 2008 EIR ("2008 EIR") and 9900 Wilshire Specific Plan 2008 EIR[5] and 2016 SEIR ("2016 SEIR")—into a single Supplemental EIR for One Beverley Hills.[6] However, a complete combination of two separate project EIRs is not a minor change to whichever of the EIRs is considered the previous EIR. In either instance, adding the environmental analysis from the 2008 EIR to the 2016 SEIR or from the 2016 SEIR to the 2008 EIR entails more than "minor additions or changes" to whichever one is considered the previous EIR. CEQA Guidelines § 15163(a) discusses making the previous EIR adequately apply to the project in the singular. In other words, it does not contemplate making the previous EIR*s* (plural) adequately apply to the project in the changed situation. And the City does not evidence any other authority for this consolidated approach.

The likely reason that CEQA Guidelines § 15163(a) only discusses the appropriateness of a Supplemental EIR in the context of a *single* previous EIR is that because for purposes of CEQA, a "project" is defined as comprising "the whole of an action" that has the potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (CEQA Guidelines §15378(a).) "[A] narrow view of a project could result in the fallacy of division [citation], that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole." [Citation.]" (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 ("*San Joaquin Raptor*").) A single project may not be divided into smaller pieces (*i.e.,* piecemealed) for individual environmental reviews that do not adequately account for the project's overall impacts. (*Aptos Council v County of Santa Cruz* (2017) 10 Cal.App.5th 266.) The rule against piecemealing "ensures 'that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.' [Citations.]" (*San Joaquin Raptor*, *supra*, at 730.)

10.3 cont.

Combining the prior environmental reviews of two smaller projects (*i.e.*, the 2008 EIR and 2016 SEIR) into a single environmental document, albeit one which will be supplemented, necessarily results in piecemealing the larger project in order to avoid identifying, analyzing, and mitigating the environmental impacts of the new unified larger project; and as such renders the

[5] It is unclear from the SEIR Introduction chapter and CEQA findings whether the 2008 EIR prepared for the Beverly Hilton Specific Plan is the same EIR that supported the Wilshire Specific Plan EIR in 2008. In any event, the SEIR appears to ignore entirely the environmental analysis conducted in 2008 for the Wilshire Specific Plan, looking only to the 2016 SEIR.

[6] As the City knows, One Beverly Hills is a proposed unified development plan that consists of three sites—(1) Beverly Hilton Specific Plan site, which has an approved entitlement for development that underwent prior environmental review in the 2008 EIR; (2) 9900 Wilshire Specific Plan site which has an approved entitlement for development that underwent prior environmental review in 2008 and again in the 2016 SEIR; and (3) 9988 Wilshire Boulevard ("Gas Station Site"), which has no approved entitlement for development.

previous environmental documents misleading because neither evaluated the "whole of the project." The environmental review here must be rewritten from the ground up and look at the whole of One Beverly Hills and not just at its individualized subcomponents in isolation. The dual notion of there being both a single project encompassing the whole of the action and two separate specific plans and a third property with commercial zoning that is encompassed with the SEIR necessarily piecemeals the environmental analysis. Sometimes, "the whole is greater than the sum of its parts"—and the City must, in compliance with CEQA, find out if that is the case here.

For example, it appears that the City's analysis may either intentionally or inadvertently accede to "cherry-picking" the previously identified environmental effects (or lack thereof) in order to avoid further environmental analysis for the "whole of" One Beverly Hills. The analysis falls through the cracks, which unquestionably subverts the mandated "adequacy, completeness, and [] good faith effort at full disclosure" of an EIR. (*See* CEQA Guidelines § 15151.) Additionally, there is not one place where a member of the public can go to understand the mitigation measures that will be required for the Project. For example, it is unclear what mitigation measures will be required for air quality and transportation impacts. 10.3 cont.

Accordingly, under the clear direction of the abovementioned CEQA principles, we believe the City must prepare a Subsequent (*i.e.*, new) EIR to analyze the entire One Beverly Hills and all unstudied significant environmental impacts of the Project when considered as a whole; and the City's attempt to prepare a combined Supplemental EIR in its stead, without this holistic environmental analysis, is unmistakably done in error.

B. The SEIR Does Not Provide an Accurate, Stable and Finite Project Description as Required by CEQA

The project description is an indispensable element of a valid draft and final EIR. (*Washoe Meadows Community v. Department of Park & Recreation* (2017) 17 Cal.App.5th 277, 287, 225 Cal.Rptr.3d 238, citing *Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 898) That project description must be accurate, stable and finite. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16) 10.4

In *Washoe Meadows*, the Department of Parks and Recreation proposed five alternatives for the project without specifying a preferred alternative. Rather, the Department would select a preferred alternative after receipt and evaluation of public comments. A discussion of that decision would be included in the final EIR. The Court of Appeal found the open-ended and indefinite project description utilized by the Department was legally impermissible under CEQA. It did not matter to the *Washoe Meadows* court that the draft EIR thoroughly analyzed the alternative that was ultimately selected in the final EIR. "[T]he problem with an agency's failure to propose a stable project is not confined to 'the informative quality of the EIR's environmental forecasts.' " (*Washoe Meadows*, *supra*, 17 Cal.App.5th at p. 288, 225 Cal.Rptr.3d 238.) Rather, a

failure to identify or select a project at all "impairs the public's right and ability to participate in the environmental review process." (*Ibid.*)

Similarly, in *Stopthemillennium.com*, the draft EIR presented different conceptual scenarios that the developer may follow for development of the site. The court found that the concepts and development scenarios, none of which may ultimately be constructed, do not meet the requirement of a stable or finite proposed project. "The development regulations that were incorporated into the project description provide the public and decision makers little by way of actual information regarding the "design features" or the "final development scenario." Rather, these regulations simply limit the range of construction choices for future developers." (*Stopthemillenniumhollywood.com, supra,* 39 Cal.App.5th at 18.

Here, the SEIR also does not describe a project. Instead, it presents an alternative development scenario that "would not affect or replace the two existing, previously approved specific plans that regulate portions of the project site or the current C-3 zoning on the portion of the project site located at 9988 Wilshire Boulevard (the gas station site)."[7] Further, the proposed Overlay Specific Plan, even if adopted by the City Council, seems to apply only "upon collective approval of all project property owners and lenders."[8] In addition, the SEIR describes itself as the first tier of environmental review for development projects proposed on the project site,[9] suggesting that further refinement, changes, and analysis will occur. As written, it is impossible for members of the public or City decisionmakers to understand the implications of these limitations on the City's legislative purview. In addition, neither the public nor the City can be sure as a practical matter whether development of the properties will occur under the proposed Overlay Specific Plan or under the already approved entitlements. It is also impossible for the public or the City to understand how the "collective approval of all project property owners and lenders" or lack thereof will be documented or what the status of the present SEIR would be in the absence of such "collective approval." It is unclear what mitigation measures apply to the development of the site and whether the property owners can essentially cherry-pick their conditions of approval and mitigation measures as they wish between the 2008 EIRs, 2016 SEIR and this SEIR. It also appears as if an unknown future construction lender or multiple lenders might have veto power over the applicability of the Overlay Specific Plan and the SEIR, even if it is approved by the City Council. The net result is a project description that is neither stable nor finite.

10.4 cont.

[7] SEIR Introduction chapter, page 1-1.

[8] *Id.*

[9] SEIR Introduction, page 1-12.

C. The Mitigation Monitoring and Reporting Program is Incomplete

In order to ensure that mitigation measures and project revisions identified in an EIR are implemented, CEQA Guideline §15097 requires public agencies to adopt a program for monitoring or reporting on the revisions that are required in the project and the measures it has imposed to mitigate or avoid significant effects. The Mitigation Monitoring and Reporting Program ("MMRP") for the Project does not include all required mitigation measures and is therefore incomplete. For example, the SEIR transportation analysis assumes roadway improvements that were previously identified to be constructed as part of the approved entitlements will be constructed, but these improvements are not included in the MMRP. These include important roadway improvements such as the reconstruction of Merv Griffin Way and its signalization with North Santa Monica Boulevard.[10] Simply put, there is no comprehensive list of mitigation measures that would apply to the Project if it is developed under the Overlay Specific Plan. 10.5

D. The Changes to the Projects and Changed Circumstances Requires a New, Subsequent EIR

Even assuming combining multiple previous EIRs is compliant with CEQA, given the extent of the changes to the project*s* (even considered as a whole) and the changed circumstances under which One Beverly Hills is being undertaken, the City must look at One Beverly Hills as a new project and accordingly prepare a new, subsequent EIR that appropriately considers the impacts of a well-defined project and eliminates the dual notion of a unified project and also two separate specific plans combined with a commercially-zoned former gas station.

Compared to the prior projects, One Beverly Hills *inter alia* includes an alternative "unified" site development with modified land uses (*e.g.,* 67 more total residential units[11]), an additional parcel, which moreover was previously utilized as a gas station (a use linked to hazardous materials), and most saliently substantially increased building heights (*e.g.*, a staggering 236' 0" (and ~221%) *increase* to the maximum building height of the 9900 Wilshire Boulevard site (to 410' 0")). These encapsulate a substantially changed project. 10.6

Furthermore, the circumstances and environment surrounding the Project has also substantially changed, especially since the time the 2008 EIR was certified. Since 2008, significant nearby development has been completed, including 10000 Santa Monica, the Century City Mall expansion, the redevelopment of the Century Plaza Hotel, as well as other changes in the 12-years since certification. Moreover, in 2010, subsequent to the 2008 EIR certification, the City adopted a new General Plan that not only modifies the controls for the One Beverly Hills

[10] SEIR Transportation, pages 4.9-2 and 4.9.-3.

[11] This assumes all 30 accessory spaces are used as staff living quarters.

sites, but also for the entire City as a whole. These encapsulate substantially changed circumstances.

Collectively, these encapsulate a substantially changed situation that questions the informational value of the 2008 EIR and 2016 SEIR and accordingly necessitates new environmental review. For example, changed circumstances require *major* EIR revisions with respect to air quality, greenhouse gas emissions, hazards and hazardous materials"), land use and planning, noise, transportation, tribal cultural resources, and utilities and service systems.

10.6 cont.

As discussed above, pursuant to CEQA Guidelines § 15163(a)[12], so long as major revisions (as opposed to only minor additions or changes) are necessary to make the 2008 EIR and 2016 SEIR apply to One Beverly Hills in the changed situation, the City must prepare a Subsequent (*i.e.*, new) EIR to analyze the substantially changed situation of One Beverly Hills and all unstudied significant environmental impacts of the substantially changed Project and circumstances; and the City's attempt to prepare a combined Supplemental EIR in its stead is unmistakably done in error.

E. Expanded Environmental Analysis is Required

Belvedere appreciates the City's decision to *at the very least* resume the CEQA analysis by preparing a SEIR for One Beverly Hills and undertaking further study of various subject areas that due to the changed situation of One Beverly Hills may result in either new significant environmental effects that were not identified previously or a substantial increase in the severity of previously identified significant effects.[13] Belvedere is concerned, however, with portions of the environmental analysis, or lack thereof, as described below.

10.7

1. *Geology and Soils Impacts Analysis of the SMFZ Needs to be Included*

We appreciate that the SEIR included analysis of recent revisions to the Alquist-Priolo Earthquake Fault Zoning Map to include extensions of the Santa Monica [Earthquake] Fault Zone ("SMFZ") nearby the One Beverly Hills site. We believe an updated analysis was required because the designation is new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2008 EIR and 2016 SEIR were certified. (Public Resources Code § 21166(c); CEQA Guidelines 15162(a)(3).)

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[12] Again, this is based on the erroneous assumption that combining two previous EIRs is compliant with CEQA Guidelines § 15163(a) (and CEQA generally).

[13] As per the IS, the City will undertake further environmental review, in some capacity, of ten subject areas: (1) Air Quality; (2) Cultural Resources; (3) GHG; (4) Hazardous Materials; (5) Land Use; (6) Noise; (7) Public Services; (8) Transportation; (9) Tribal Cultural Resources; and (10) Utilities; (as well as cumulative impacts). The sheer number of areas that require further environmental review can *prima facie* be understood to mean that major changes are needed to the prior environmental documentation.

However, we are concerned that the technical support for the analysis of Project impacts associated with the newly-designated fault generally pre-dates the 2018 active fault designation, especially when an active fault was previously inferred on the gas station site and the prior project conditions required a setback from this property for safety reasons. It appears that LCI has now reversed this inference without conducting any field work and based only on a second-look review of the same studies that previously inferred an active fault at this location. The SEIR analysis provides no information as to the substantial evidence to support the conclusion that no active fault exists on the gas station site.

10.7 cont.

Additionally, the SEIR acknowledges that the Project proposes taller buildings than the approved entitlements would allow, but it brushes aside any need to analyze impacts associated with substantially taller buildings with respect to seismic ground shaking. The only analysis of the height increase associated with the Project is that a future site-specific geotechnical investigation would take into account building height in its recommendations for seismic design parameters. CEQA requires that environmental impacts be analyzed now within the SEIR and not as part of a future study. The SEIR does not provide substantial evidence to support that this future study can require feasible mitigation to reduce Project impacts to less-than-significant levels and therefore Mitigation Measure MM-GEO-1 impermissibly defers mitigation in violation of CEQA. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296).

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2. *Project Impact Splitting*

As discussed above, any supplemental environmental analysis leveraged from multiple disparate previous EIRs (*i.e.*, both the 2008 EIRs and 2016 SEIR) runs the risk of not only ignoring environmental issues due to project splitting, but also of not appropriately quantifying the prior cumulative environmental impacts. The Beverly Hilton Specific Plan and the 9900 Wilshire Specific Plan along with development of the gas station site were never fully analyzed in the previous EIRs. Accordingly, more detailed analysis is required in the current SEIR to establish the baseline from which to analyze any incremental environmental impacts of the proposed One Beverly Hills Overlay Specific Plan. Failure to accomplish a current analysis of the cumulative effects subverts the mandated "adequacy, completeness, and a good faith effort at full disclosure" of an EIR. (*See* CEQA Guidelines § 15151.).

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3. *Hazardous Materials Associated with the Gas Station Site*

Given the heightened focus on analyzing Project impacts as compared to the prior environmental documents, neither of which included an analysis of the Gas Station Site, we remain concerned that the environmental impacts of including this new site have been an afterthought. We are particularly concerned about the potential hazards associated with demolition of a gas station and removal of the underground storage tanks ("USTs"). It is unclear from the SEIR analysis whether the USTs were pumped out and are empty currently. The SEIR acknowledges that corrective action has been taken and a closure letter was issued, but it also

10.10

finds that there is a risk of a significant hazard to the public or the environment from removal of the USTs as part of the Project, which suggests that petroleum products remain at the site and could pose a hazard. 10.10 cont.

4. *Cultural Resources*

The Beverly Hilton Property is comprised of a number of extant buildings and is significant under National Register of Historic Places and California Register of Historical Resources Criteria A/1, B/2, and C/3. The property appears eligible for the California Register of Historical Resources because several contributing buildings (reflected on Figure 4.3-1; i.e., Wilshire Tower, western half of the Wilshire Edge Building, Swimming Pool, Lanai Rooms, Vehicle Entry Courtyard, Palm/Oasis Court and Parking Garage) remain and Wilshire Tower remains visible from two of its three primary vantage points. The Beverly Hilton Property also meets the necessary City Landmark criteria. The Wilshire Tower may additionally qualify for listing in the National Register of Historic Places, California Register of Historical Resources, and local designation as an individual resource.

The SEIR determined that the Project would result in a significant and unavoidable impact to historical resources. Specifically, the Project has the potential to result in impacts to the Beverly Hilton Property because it includes the demolition of buildings that contribute to the significance of the property and the construction of buildings within the boundaries of the resource in addition to outside of the boundaries of the resource in its immediate vicinity, thereby altering its setting. 10.11

Of particular concern to Belvedere is that the Beverly Hilton Property appears eligible for the California Register of Historical Resources because the Wilshire Tower remains visible from two of its three primary vantage points. These viewsheds were an intentional design component of Wilshire Tower and are of major importance in Hilton hotels from this era and are a notable character-defining feature of the genre. The first of these views was lost following completion of the Waldorf Astoria Beverly Hills under the Beverly Hilton Specific Plan. Construction of the Project would collectively diminish views both to and from the Wilshire Tower, thereby altering its setting and resulting in an impact to historical resources. The Project proposes taller buildings than those previously approved, albeit further physically separated from Wilshire Tower. The loss of additional character-defining views is concerning and the SEIR does not provide substantial evidence that the increased building heights will not increase significant and unavoidable impacts associated with this loss of views.

5. *Building Heights*

While attention needs to be paid to the changed circumstances of the nearby developments in Century City in the City of Los Angeles, such as 10000 Santa Monica, the expansion of the Westfield Century City Mall, the renovation and expansion of the Century Plaza Hotel, and new Century City office buildings, it seems that in certain cases the City relies on the nearby tower development, outside of its jurisdiction, to refocus attention away from the 10.12

fact that the proposed building heights are at heights significantly greater than what the City, and its unique identity and character, currently permits. The proposed building heights are out of character with Beverly Hills and the SEIR provides no analysis whatsoever of visual impacts associated with the Project (although visual resources mitigation is included in the MMRP despite a finding of no impact).

The SEIR's assertion that it need not address visual resources ignores the real-world adverse effects of the proposed incompatible building heights. In addition, even though the SEIR asserts that aesthetic and parking impacts do not constitute significant impacts for the Project site and aesthetic impacts are therefore less than significant, the MMRP acknowledges a significant visual impact (nighttime lighting) for which the MMRP provides mitigation. Because the MMRP and therefore the SEIR acknowledge the Project would have a significant visual impact requiring mitigation, a full analysis of aesthetic impacts should be provided in the SEIR. 10.12 cont.

6. *Air Quality*

We are concerned that the SEIR reverses the prior conclusion of significant and unavoidable construction air emissions impacts. Our preliminary review of the assumptions underlying the analysis and mitigation measures are as follows:

- Tier 4 construction equipment and electric-powered cranes are assumed as part of the project. These features are mitigation measures that lack any independent project purpose. Therefore, the SEIR should disclose impacts without these mitigation measures in addition to with them. (See, *e.g.*, *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645 ["The failure of the EIR to separately identify and analyze the significance of the impacts to the root zones of old growth redwood trees before proposing mitigation measures is not merely a harmless procedural failing. . . . . It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences."]; AquAlliance v. U.S. Bureau of Reclamation (E.D. Cal. 2018) 287 F.Supp.3d 969.) 10.13

- Similarly, the SEIR states, "based on applicant-provided information, vehicle speeds on unpaved roads on-site would be limited to 15 miles per hour to control fugitive dust emissions." This restriction also is listed as mitigation (MM AQ-10). Accordingly, the SEIR should disclose the impacts without this mitigation, which it does not do. 10.14

- The SEIR includes a number of mitigation measures that have no enforcement mechanism and lack standards for determining feasibility. Some examples include:
    - MM-AQ-3 The Contractor shall promote the use of electricity or alternate fuels for on-site mobile equipment instead of diesel equipment to the extent feasible.
    - MM-AQ-5 The Contractor shall promote the use of electric welders to avoid emissions from gas or diesel welders, to the extent feasible.
    - MM-AQ-6 The Contractor shall promote the use of on-site electricity or alternative fuels rather than diesel-powered or gasoline-powered generators to the extent feasible.
    - MM-AQ-7 is misleading because none of the retrofits listed would reduce emissions of Tier 4 construction equipment.
- Page 4.1-30 states both that "Mitigation Measures MM-AQ-1 through MM-AQ-9 would be required for the proposed project" and that all the mitigation measures (MM-AQ-1–MM-AQ-17) "are carried forward and required for the proposed project." This is confusing. It is unclear to us what mitigation measures are required for the Project.

10.15

- There is no analysis of impacts from odor.

10.16

7. *Transportation*

The prior environmental review assessed traffic impacts based on level of service. The SEIR assesses transportation impacts under the now required vehicle miles traveled ("VMT") metric. (*See* CEQA Guidelines § 15064.3(b).) The change to VMT, without similarly performing a VMT analysis for the approved entitlements, does not provide an apples-to-apples comparison of impacts to the approved project.

10.17

In addition, as previously discussed with respect to the MMRP, we are concerned that important roadway improvements that were required for the approved entitlements, which the SEIR claims are "baked into" the SEIR analysis are not included as enforceable mitigation within the MMRP. We believe these roadway improvements, including the signalization of North Santa Monica Boulevard and Merv Griffin Way, are important and necessary for the City.

10.18

8. *Construction-Related Mitigation Measures*

We are concerned about the temporary impacts of construction of such a major project at an important intersection and at the gateway to the City. We want to be certain that robust,

10.19

effective, and enforceable mitigation measures are required for the Project with respect to noise, dust, haul routes, hours of work and other similar construction-related disturbance. 10.19 cont.

F. Conclusion

In summary, Belvedere urges the City to follow the clear direction of CEQA and prepare a Subsequent (*i.e.*, new) EIR to analyze the entire One Beverly Hills, and all unstudied significant environmental impacts of the Project when considered as a whole, in one new environmental document.

Thank you for considering these comments. By this letter, Belvedere seeks to highlight some of the most obvious errors in the City's environmental review approach (and compliance with CEQA) for One Beverly Hills. By not commenting on each and every portion of the SEIR, Belvedere does not concede that the City's methodological approach or that the analysis is otherwise complete or correct. Belvedere therefore reserves all of its rights to make further comments, at the appropriate time, throughout the environmental review process for One Beverly Hills. 10.20

Very truly yours,

Cox, Castle & Nicholson LLP

David P. Waite

Cc: Masa Alkire, City Planning Department
Laurence Wiener, City Attorney
Bob Wunderlich, Mayor
Lili Bosse, Vice Mayor
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Lester Friedman, Councilmember

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Letter 10

COMMENTER: David P. Waite, Cox, Castle & Nicholson LLP, on behalf of The Belvedere Hotel Partnership

DATE: April 22, 2021

Response 10.1

The commenter, on behalf of The Belvedere Hotel Partnership (Belvedere), states that they nor Belvedere received notice from the City regarding the availability of the Draft SEIR for public comment.

The comment is noted. The Draft SEIR was circulated for a 53-day public review period that began on December 18, 2020 and ended on February 8, 2021. The Notice of Availability of the Draft SEIR was (1) posted at www.beverlyhills.org/environmental; (2) sent to all property owners and residents within 1,000 feet of the project site; (3) published in two local newspapers, the Beverly Hills Courier and the Beverly Hills Weekly; (4) posted at four locations on site. Specifically, the City mailed a copy of the Notice of Availability of the Draft SEIR to the ownership address for Belvedere listed with the County of Los Angeles Registrar-Recorder/County Clerk. In addition, a Planning Commission meeting on the Draft SEIR took place on January 28, 2021 to receive additional written and verbal comments.

Response 10.2

The commenter states concern that the proposed Luxury Hotel & Residences will be rented as hotel rooms or fractionally on a daily basis. The commenter requests the conditions of approval for the proposed project prohibit such use of the residences.

The issue of fractional ownership and daily rental issues do not raise issues with respect to the environmental impacts of the project; however, the City Council will consider how to address these potential uses.

Response 10.3

The commenter states that a new subsequent EIR, rather than a supplemental EIR should be prepared for the project. In addition, the commenter states that the SEIR does not evaluate the whole of the project. The commenter also notes that there is no place for all the applicable mitigation measures.

As discussed in Section 1.5, *Scope and Content*, of the SEIR:

> Pursuant to *CEQA Guidelines* Section 15163, a lead agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if any of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. The *CEQA Guidelines* further state the following:
>
> - A supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.
> - A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087.

- A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.
- When the agency decides whether to approve the project, the decision-making body shall consider the previous EIR as revised by the supplemental EIR. A finding under Section 15091 shall be made for each significant effect shown in the previous EIR as revised.

The proposed project is similar to development envisioned in the Existing Specific Plans originally entitled in 2008 and 2016; therefore, the City has determined that a Supplemental EIR (SEIR) is the appropriate CEQA document in this situation.

The proposed project is similar to the two previously approved projects (the 2008 Beverly Hilton Specific Plan and the 2016 9900 Wilshire Specific Plan), based on the project's similarity and general adherence with the development intensity (floor area ratio [FAR]) and land uses (residential, hotel, and retail) authorized by the two approved specific plans. The proposed project would result in a minor expansion of the project site footprint and floor area.

In summary, *CEQA Guidelines* Section 15163(a)(2) states that a lead agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if only minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation. The City determined that a supplemental EIR is the appropriate CEQA compliance document for the proposed project since only minor additions/changes were necessary to make the previous Beverly Hilton Specific Plan 2008 EIR and 9900 Wilshire Specific Plan 2016 SEIR apply. In addition, these previous environmental documents both retain informational value. Nevertheless, the environmental impact analyses in the Initial Study and the SEIR are based on a full set of new studies and analyses that provide a comparison between the proposed project and existing conditions, which is the same environmental analysis baseline that would be used in a 'new' EIR for the project, in addition to a comparison of the proposed project and Approved Entitlements based on current conditions, thresholds, regulations, and cumulative conditions. This was done for informational purposes and for the ease of comparison between the proposed project and the Approved Entitlements for the public and decision makers. In addition, the commenter states that the SEIR does not evaluate the whole of the project. The SEIR considers the totality of the project or the "whole of an action," including the portion of the unified development proposed on the gas station site, which was not previously considered in the existing environmental documentation.

The commenter is referred to the Mitigation Monitoring and Reporting Program (MMRP) for all mitigation measures that are applicable to the proposed project, including all applicable mitigation measures from the previous EIRs.

No revisions to the SEIR are necessary in response to this comment.

Response 10.4

The commenter states that the project description in the SEIR is inadequate under CEQA.

Section 15124, Project Description, of the *CEQA Guidelines* states, "The description of the project…should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." Section 15124 also includes a list of project information that is required, including:

- Precise location and boundaries of the proposed project shall be shown on a detailed map (see Figures 2-1 and 2-2 of the SEIR)

- Objectives of the proposed project (see Section 2.6, *Project Objectives*, of the Draft SEIR)
- A general description of the project's characteristics, considering the principal engineering proposals if any and supporting public service facilities (see Section 2.5, *Project Characteristics*, of the Draft SEIR, which includes the project features, including necessary utilities and transportation improvements, as well as sustainability features and the required demolition, grading, and construction aspects of the project)
- A list of the agencies that are expected to use the EIR in their decision making, a list of permits and other approvals required to implement the project, and a list of the lead agency's decisions subject to CEQA (see Section 2.7, *Required Approvals*, of the Draft SEIR)

As discussed above, Section 2, *Project Description*, of the SEIR fulfils the requirements of a project description under the *CEQA Guidelines*.

In this case, the project is the One Beverly Hills Overlay Specific Plan, and which is the sole subject of the SEIR. This is not a situation of multiple potential alternatives for the project, as was the case in the *Washoe Meadows* case cited in the comment. Further, the One Beverly Hills Overlay Specific Plan defines the scope of the development that is allowed, and clearly articulates the design features and development scenario contemplated by the project.

While the developer could opt to develop pursuant to the One Beverly Hills Specific Plan, or under the existing specific plans (both of which were the subject of CEQA review that is now final), that option does not impact the description of the One Beverly Hills Overlay Specific Plan, which is stable and finite.

No revisions to the SEIR are necessary in response to this comment.

Response 10.5

The commenter states that the MMRP is incomplete as it is missing roadway improvements that would occur under the proposed project.

The roadway improvements to which the commenter refers are not considered mitigation for the proposed project, but rather, are incorporated as part of the project as design features. Because such design features are not mitigation for significant impacts to the project, they are not required to be included in the MMRP. Through conditions of approval that would be imposed on the project if approved, the project developer would be required to construct in accordance with the approved plans, including the identified project design features. No revisions to the SEIR or MMRP are necessary in response to this comment.

Response 10.6

The commenter reiterates that a new subsequent EIR, rather than a supplemental EIR should be prepared for the project.

See Response 10.3 above. No revisions to the SEIR are necessary in response to this comment.

Response 10.7

The commenter states that an updated analysis of the Santa Monica Fault Zone (SMFZ) is required, as the relatively new SMFZ location was not included in the Beverly Hilton Specific Plan 2008 EIR and 9900 Wilshire Specific Plan 2016 SEIR.

It is first noted that the SMFZ have been on geologic maps for decades but only recently (in 2018) has been designated as an Alquist-Priolo Earthquake Fault Zone. As stated in Section 4.4, *Geology and Soils*, of the Draft SEIR, "The Alquist-Priolo Earthquake Fault Zoning Map for the Beverly Hills Quadrangle was revised in January 2018 to include an extension of the SMFZ northeast into portions of the City of Beverly Hills. The project site is located approximately 60 feet north at its closest point to the delineated Alquist-Priolo Special Study Zone for the SMFZ (CGS 2018b)." As stated under Impact GEO-1:

Although the Santa Monica Fault Zone was recently designated as an Alquist-Priolo Earthquake Fault Zone, the proposed project is not located within 50 feet of this Fault Zone. Furthermore, no active faults exist within the project site and no active faults are trending toward the project site. Therefore, regardless of whether the project is compared to existing conditions or Approved Entitlements, impacts related to surface rupture would be less than significant.

Furthermore, several geologic studies are cited in Section 4.4 of the Draft SEIR and discuss the SMFZ, including Parsons-Brinkerhoff (2011), Kenney Geoscience (2012), Geocon (2013, 2014, and 2016), Earth Consultants International (2018), Wood Environment & Infrastructure Solutions, Inc. (2018), and Lettis Consultants International, Inc. (LCI; 2020). These studies and investigations for the project site are included in Appendix E of the Draft SEIR. The commenter is also referred to Figure 4.4-2 of the Draft SEIR for a map that shows transects, trenches, and fault studies as it relates to the project site. No revisions to the SEIR are necessary in response to this comment.

Response 10.8

The commenter states that the SEIR does not analyze impacts associated with the taller building with respect to seismic ground shaking.

As stated under Impact GEO-2, "Seismically-induced ground shaking could damage structures and infrastructure, resulting in loss of property or risk to human safety. Similar to the Approved Entitlements, the design and construction of the proposed project would be required to comply with applicable provisions of the Beverly Hills Municipal Code and [the California Building Code (CBC)]." Section 4.4, *Geology and Soils*, of the SEIR also states:

[R]ecent geotechnical studies summarized in Section 4.4.1, *Setting*, have determined that no active faults exist within the project site, and no active faults are trending toward the project site. Furthermore, the 50-foot structural setback from the boundary between the 9900 Wilshire Boulevard site and the gas station site originally recommended by Geocon (2014) was determined to no longer be required by LCI's (2020) most recent fault rupture study as the LCI study concluded that no active faults traverse the 9988 Wilshire site.

Regardless of the increased height of the proposed buildings, compared to the Approved Entitlements, construction of the proposed project in conformance with the CBC is intended to prevent the catastrophic collapse of structures during a seismic event. The performance of structures during recent seismic events indicates that the newer buildings and structures perform as intended, and catastrophic failure is more associated with antiquated designs and the secondary effects of ground shaking (i.e., liquefaction or tsunamis).

The SEIR also includes Mitigation Measure MM-GEO-1, as revised from the Beverly Hilton Specific Plan 2008 EIR. Additions and revisions are shown as italicized, underlined text. Deletions are shown as strikethrough text.

MM-GEO-1 *A Registered Civil Engineer and Certified Engineering Geologist shall complete a final geotechnical investigation specific to the proposed project. The geotechnical evaluation shall include, but not be limited to, an estimation of both vertical and horizontal anticipated peak ground accelerations and seismic design parameters.* The ~~Approved~~ proposed project shall be designed and constructed in accordance with recommendations contained in the site-specific geotechnical investigation ~~Report of Geotechnical Investigation prepared by Mactec Engineering and Consulting, Inc.~~ and in accordance with all applicable local, state, and federal regulations, such as the California Building Code (CBC) and Title 9 of the Beverly Hills Municipal Code. *All buildings shall be engineered to withstand the expected ground acceleration that may occur at the project site. The building designs shall take into consideration the most current and applicable seismic attenuation methods that are available. Recommendations contained in the site-specific geotechnical investigation shall be reviewed and approved by the Building Official and incorporated into final grading and structural design plans, as deemed appropriate by the Community Development Director. Compliance with these requirements shall be verified by the City of Beverly Hills prior to the issuance of a building permit.*

The SEIR also states on page 4.4-15:

Any structure built in California is susceptible to failure as a result of seismically induced ground shaking. However, Mitigation Measure MM-GEO-1 would ensure that the proposed project is constructed to withstand ground shaking impacts to the maximum extent feasible. Although the proposed project would include construction of taller buildings than those that currently exist on the project site and those envisioned under the Approved Entitlements, the site-specific geotechnical investigation would take into account building height in its recommendations for seismic design parameters; therefore, proposed buildings would be appropriately designed to withstand seismic ground shaking and consistent with all applicable building codes and regulations. Regardless of whether the project is compared to existing conditions or buildout of the Approved Entitlements, implementation of mitigation would reduce impacts related to ground shaking to a less than significant level. As such, the proposed project would not result in a new or more severe impact than that identified in previous environmental documentation.

Accordingly, no revisions to the SEIR are necessary in response to this comment.

Response 10.9

The commenter states that more detailed analysis to establish the baseline is required for cumulative impacts because the gas station site was not included in the previous EIRs.

The existing, currently closed gas station at 9988 Wilshire Boulevard is not covered by either of the Existing Specific Plans, but it is incorporated into the scope of the Overlay Specific Plan. The SEIR does not split the project, but instead analyzes the full scope of the proposed Overlay Specific Plan, including the two existing Specific Plans and the gas station site. Further, the cumulative impacts analysis located at the end of each section in Section 4 of the Draft SEIR takes into account the collective and whole project (i.e., the Beverly Hilton Specific Plan site, the 9900 Wilshire Specific Plan, and the gas station site at 9988 Wilshire Boulevard) along with other cumulative projects as listed in Table 3-1. See Section 3.3, *Baseline and Cumulative Project Setting*, of the Draft SEIR for a description of the environmental baseline used in the resource analyses throughout the SEIR as well

as a discussion of the cumulative projects setting. No revisions to the SEIR are necessary in response to this comment.

Response 10.10

The commenter states that they are concerned about the potential hazards associated with demolition of the gas station and the removal of the underground storage tanks (USTs). The commenter also states that it is unclear whether the USTs at the gas station site are currently empty.

Section 4.6, *Hazards and Hazardous Materials*, of the Draft SEIR discusses the potential impacts associated with demolition of the gas station. Page 4.6-6 of the Draft SEIR states, "As detailed in the Initial Study (Appendix A), due to the age of structures on the project site to be demolished, including the gas station building, there is the potential for asbestos, mold, polychlorinated biphenyls (PCBs), and/or lead based paints (LBP) to be present." This page of the SEIR also states, "[T]here are three USTs underneath the gas station site, all of which held gasoline, but which have been empty since the closure of the gas station in 2019."

As stated under Impact HAZ-1, "The gas station site has three underground storage tanks that would be removed prior to construction of the proposed project. Additionally, the project site has an existing gas station, convenience store, and other buildings which may contain asbestos, LBP, and/or PCBs and would be demolished as part of the proposed project." It further goes on to state, "Regardless of whether the project is compared to existing conditions or Approved Entitlements, with implementation of the proposed mitigation measures, potential impacts related to the underground storage tanks and potentially hazardous building materials removal during construction would be less than significant." Mitigation Measures MM-HAZ-1 through MM-HAZ-7 include measures to avoid, reduce, and minimize potential impacts associated with LBP, asbestos-containing materials, and PCBs from demolition of the gas station, per current federal and State regulations. Mitigation Measure MM-HAZ-8 requires that the project applicant provides noticing to Beverly Hills Unified School District and to the administrative office of El Rodeo School at the time of the UST removal and upon receipt of approval of a UST Closure Permit from the Los Angeles County Department of Public Works Environmental Programs Division (LACDPW EPD).

Accordingly, no revisions to the SEIR are necessary in response to this comment.

Response 10.11

The commenter states that the taller buildings being proposed by the project would result in additional impacts to character-defining views of the Beverly Hilton Wilshire Tower and that the SEIR does not provide substantial evidence that the increased building heights would not increase significant and unavoidable impacts associated with this loss of "character-defining" views from a historical perspective.

As discussed under Impact CUL-1 in Section 4.3, *Cultural Resources*, of the Draft SEIR:

The previous environmental documentation concludes that a significant and unavoidable impact to historical resources would occur under the existing specific plans. Although historical resource impacts under the proposed project would not be greater than that determined in the previous environmental documentation, the proposed project would also result in a significant and unavoidable impact to historical resources, similar to the Approved Entitlements.

Pages 4.3-38 through 4.3-40 discuss in detail the proposed project's potential impacts with respect to the Approved Entitlements. Specifically, the Draft SEIR states:

[T]he redistribution of previously approved FARs throughout the project site as part of the Overlay Specific Plan would result in the construction of six buildings on the project site, ranging from 20 to 410 feet in height. Historically, the Beverly Hilton Property had three primary views from the three major primary thoroughfares that surrounded it. …While it would construct buildings taller than those previously approved, the buildings proposed as part of the Overlay Specific Plan are further physically separated from Wilshire Tower, the only contributing building that would remain on the Beverly Hilton Property following implementation of the proposed project. While character-defining views would be impacted under the Overlay Specific Plan, the scale, massing and siting of the proposed buildings would not impact character-defining views to a greater extent than Approved Entitlements.

As noted above, impacts to character-defining views are based on the building siting and separation, and not the building heights per se.

Accordingly, no revisions to the SEIR are necessary in response to this comment.

Response 10.12

The commenter states that the SEIR provides no analysis of visual impacts associated with the proposed project although mitigation for visual resources is included in the MMRP.

As explained in the Initial Study (Appendix A of the SEIR) under Section 1, *Aesthetics*:

On January 1, 2014, Senate Bill (SB) 743 became effective, adding Section 21099 to the CEQA Statute in [Public Resources Code (PRC)] Division 13 to streamline CEQA review for development projects located on urban infill sites within transit priority areas. PRC Division 13, Section 21099(d)(1) states, "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." PRC Section 21099(d)(2)(A) states that this "does not affect, change, or modify the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers provided by other laws or policies." In addition, PRC Section 21099(d)(2)(B) states that, "aesthetic impacts do not include impacts on historical or cultural resources" (e.g., impacts to historic viewsheds, which will be discussed in the SEIR under "Cultural Resources").

At the time of approval of the Beverly Hilton Specific Plan and certification of its EIR, SB 743 had not been enacted and was not in effect. As such, the Beverly Hilton Specific Plan 2008 EIR did not utilize this streamlining process. In addition, the 9900 Wilshire Specific Plan 2016 SEIR did not utilize this streamlining process. However, the proposed project would qualify for the streamlining process provided in PRC Section 21099(d)(1) based on the following criteria:

- The proposed project is located on an infill site, defined as a lot located within an urban area (i.e., the City of Beverly Hills) that has been previously developed (PRC Section 21099[a][4]). According to PRC Section 21071, although the City has a population of less than 100,000, the City of Beverly Hills qualifies as an urban area because the population of

the City and two contiguous incorporated cities (i.e., the City of Los Angeles and the City of West Hollywood) is at least 100,000 (California Department of Finance [CDOF] 2020).[1]

- The project site is located in a transit priority area, defined as an area within 0.5 mile of a major transit stop that is existing or planned (PRC Section 21099[a][7]). The definition of a major transit stop includes sites containing the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods (PRC Section 21064.3).[2] The project site is immediately adjacent to the Wilshire Boulevard/Santa Monica Boulevard and Wilshire Boulevard/Whittier Drive bus stops that service several bus routes, including but not limited to LA Metro Lines 20 and 720, which run along Wilshire Boulevard, and Lines 4 and 704, which run along Santa Monica Boulevard. These bus routes have service intervals of 15 minutes or less during peak hours.

Therefore, the proposed project's aesthetic impacts are not considered significant due to the provisions of PRC Section 21099(d). Accordingly, the analysis of the proposed project's aesthetic impacts is provided for informational purposes only.

The one aesthetics-related mitigation measure included in the Initial Study and MMRP for the project is Mitigation Measure MM-LG-1, which has been carried over from the Beverly Hilton Specific Plan 2008 EIR and the 9900 Wilshire Specific Plan 2016 SEIR. This mitigation requires lights to be shielded and directed downwards to reduce light spillover to reduce light impacts to nighttime views. As stated in the Initial Study:

> [Beverly Hills Municipal Code (BHMC)] Section 5-6-1101 prohibits the installation, use, or maintenance of any lighting that creates an intensity of light on residential property that is greater than one foot-candle above ambient light level. On-site lighting plans would be reviewed by the Community Development Department as part of the plan check prior to the issuance of building permits to enforce this requirement. Furthermore, pursuant to PRC Section 21099(d), the proposed project's light impacts would not be considered significant impacts, although the proposed project would still be required to implement Mitigation Measure MM-LG-1 as required by the previous environmental documentation.

Accordingly, no revisions to the SEIR are necessary in response to this comment.

Response 10.13

The commenter states that with regard to the air quality analysis, Tier 4 construction equipment and electric-powered cranes that assumed as part of the project should instead be considered mitigation measures.

The quantitative air quality modeling used to analyze impacts in Section 4.1 of the Draft SEIR assumed that certain equipment would be used by the project contractor during construction. This included Tier 4 construction equipment and electric-powered cranes and is considered to be a part of the project by design and were therefore inputted into the air quality model for the project's impact analysis. Because such equipment was included as part of project design, use of such

[1] The population of the City of Beverly Hills is approximately 33,775. The combined population of the cities of Beverly Hills, West Hollywood, and Los Angeles is approximately 4,080,662 (CDOF 2020).

[2] The morning peak commute period is generally from 7:00 a.m. to 9:00 a.m., and the afternoon peak commute period is generally from 4:00 p.m. to 6:00 p.m.

equipment has been included in the conditions of approval for the proposed project. No remodeling of air quality impacts and no revisions to the SEIR are necessary in response to this comment.

Response 10.14

The commenter states that the SEIR should state the impacts associated with air quality prior to implementation of Mitigation Measure MM-AQ-10.

The SEIR discloses the impacts to air quality prior to implementation of Mitigation Measure MM-AQ-10 under Impacts AQ-2 in Section 4.1, *Air Quality*, of the Draft SEIR. It is also noted that this mitigation measure, which states, "The Contractor shall ensure that traffic speeds on all unpaved roads are reduced to 15 miles per hour or less," is required for compliance with South Coast Air Quality Management District Rule 403 and would be required by the project applicant regardless of whether it is a mitigation measure or a project design feature. No remodeling of air quality impacts and no revisions to the SEIR are necessary in response to this comment.

Response 10.15

The commenter states that several air quality mitigation measures are not enforceable, including Mitigation Measures MM-AQ-3, MM-AQ-5, MM-AQ-6, and MM-AQ-7, and that it is unclear which mitigation measures are required for the project.

It is noted that although they were included as mitigation measures in the previous EIRs, these measures are not necessary for reducing project impacts to a less-than-significant level. Nonetheless, they are included as best practices to further reduce emissions below the level of significance. As stated in Section 4.1, *Air Quality*, of the Draft SEIR, only Mitigation Measures MM-AQ-8 and MM-AQ-9 are quantified to determine whether impacts would be reduced to a less-than-significant level in the "Significance After Mitigation" section on page 4.1-30. No remodeling of air quality impacts and no revisions to the SEIR are necessary in response to this comment.

Response 10.16

The commenter states that there is no odor impact analysis.

Response to Question "d" in Section 3, Air Quality, of the Initial Study (Appendix A of the Draft SEIR) provides an analysis of potential impacts associated with odors. It was concluded that no odor impact would occur. No revisions to the SEIR are necessary in response to this comment.

Response 10.17

The commenter states that there is no vehicle miles traveled (VMT) analysis for the Approved Entitlements, and as such, an "apples-to-apples" comparison of the project's VMT impacts was not provided.

The City of Beverly Hills adopted four screening criteria, based on the California Office of Planning and Research's *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018), that the City uses to identify if a proposed project is expected to cause a less-than-significant VMT impact without conducting a detailed study. The four screening criteria are detailed in Section 4.9, *Transportation*, of the Draft SEIR and were applied to the One Beverly Hills Overlay Specific Plan to determine if the project has the potential to result in a VMT impact. The project meets Screening Criteria 3 and 4 (see page 4.9-36 of the Draft SEIR); therefore, the project can be screened out from further VMT analysis. Similarly, the Approved Entitlements (the Beverly Hilton Specific Plan and the

9900 Wilshire Specific Plan) can also screened out from further VMT analysis because they meet Screening Criteria 3 and 4. Therefore, an "apples-to-apples" comparison is provided based on the City's VMT screening criteria. No revisions to the SEIR are necessary in response to this comment.

Response 10.18

The commenter reiterates that the MMRP is incomplete as it is missing roadway improvements that would occur under the proposed project. Further, the roadway improvements and signalization of North Santa Monica Boulevard and Merv Griffin Way are required by conditions of approval that would be imposed on the project if approved.

See Response 10.5 above. No revisions to the SEIR or MMRP are necessary in response to this comment.

Response 10.19

The commenter is concerned that construction-related mitigation measures would not be enforceable.

The SEIR discusses potential impacts related to construction of the proposed project throughout Section 4. All mitigation measures have been included in the MMRP and are considered enforceable. Additionally, the City has included multiple conditions of approval that would further address potential construction noise impacts associated with after-hours work. No revisions to the SEIR are necessary in response to this comment.

Response 10.20

The commenter reiterates that a new subsequent EIR, rather than a supplemental EIR should be prepared for the project.

See Response 10.3 above. No revisions to the SEIR are necessary in response to this comment.