

# **BRENTWOOD RESIDENTS COALITION**

October 14, 2010

Los Angeles City Planning Commission  
Los Angeles Department of City Planning  
200 North Spring Street  
Los Angeles, California 90012

**Re: Core Findings Zoning Code Update  
Case No. CPC-2010-1572-CA  
Env. No. ENV-2010-1573-ND**

Dear Planning Commissioners:

The Brentwood Residents Coalition (“BRC”)<sup>1</sup> supports the Planning Department’s effort to revise the Zoning Code by establishing “core findings” and eliminating language that is redundant and confusing. The difficulty is that, in attempting to make such purely formal revisions to the Zoning Code, changes may later be construed to alter the substance of the Code. The process of “wordsmithing” the proposed ordinance therefore requires very careful attention to assure that the proposed changes are content neutral. While the Planning Department’s current draft is generally excellent, we believe that further revisions are necessary to achieve the Department’s goal of clarifying the mandated findings without changing the substance of those findings.

**First**, the proposed “Project Compatibility” finding should be revised to include the phrase “public health, welfare, safety, or physical environment” within its protective scope, which can be accomplished by inserting this language at the end of the Project Compatibility finding as follows:

“that the project’s location, size, height, operations and significant features will be compatible with and will not adversely affect or further degrade the surrounding neighborhood **or the public health, welfare, safety, or physical environment.**” (Changes are in bold.)

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<sup>1</sup> The BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

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**Second**, the proposed “Traffic” finding should be revised to (1) prevent adverse traffic impacts on ingress and egress to a project site, which the proposed language does not necessarily address, and (2) clarify that a project cannot be approved if there will be adverse traffic impacts in the area where the project lies, not just in the surrounding neighborhood. This can be accomplished by making the following revisions (highlighted in bold) to the proposed Traffic finding:

“that it will not **impair access, ingress or egress to or from the project site or create traffic congestion or** an adverse impact on street access or circulation in the **area or** surrounding neighborhood based on data provided by the City Department of Transportation or by a licensed traffic engineer”

**Third**, the proposed “Project Design” finding uses the term “surrounding neighborhood” instead of the term “neighboring properties,” which is sometimes used in the current Code. There is concern that the term “surrounding neighborhood” encompasses a broader area than “neighboring properties,” thereby allowing projects that are incompatible with “neighboring properties” if they are deemed compatible with those in the “surrounding neighborhood.” But replacing the proposed term “surrounding neighborhood” with “neighboring properties” might unduly restrict the area to be protected. We recommend that the Project Design finding be revised by using both terms:

“that the project provides for an arrangement of uses, buildings, structures, open spaces and other private and public improvements that are compatible with the **neighboring properties and the** surrounding neighborhood.”

**Fourth**, the proposed “General Plan” finding creates unnecessary confusion by use of the word “provisions” instead of the simpler, more accurate term “language,” as indicated by the following proposed revision:

“that the project is in substantial conformance with the purposes, intent and **provisions language** of the General Plan and applicable community and specific plans.”

We note, however, our strong disagreement with those who have criticized the use of the term “intent” in this core finding as being unduly vague. It is critical that ordinances, like *all* laws, be applied in a manner consistent with statutory intent. That is because words are never plain in themselves – they are “plain” only by virtue of a context that, in the

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case of an ordinance or other law, necessarily requires consideration of the enacting body's purpose and intent in enacting the law. *Fernandez v. California Dept. of Pesticide Regulation*, 164 Cal.App.4th 1214, 1228 (2008) (“we do not view the words of a statute in isolation, but construe them in context, keeping in mind the statutory purpose, interpreting legislation reasonably and attempting to give effect to the apparent purpose of the statute”). Thus, the California Supreme Court, in construing the scope of a City of Los Angeles ordinance, observed that “[t]he fundamental rule of statutory construction is that the court should ascertain the *intent* of the Legislature so as to effectuate the purpose of the law” and that the ordinance must therefore be “construed so as to be given a reasonable result consistent with the legislative purpose.” *Cossack v. City of Los Angeles*, 11 Cal.3d 726, 732-733 (1974). The proposed core finding's reference to purpose and intent thereby focuses the decision-maker on that which is critical to any application of the General, community and specific plans.

**Fifth**, some have complained that use of the term “substantial conformance” throughout the proposed ordinance creates ambiguity. The term “substantial compliance,” however, has a well-established meaning. The California Supreme Court has defined *substantial compliance* to mean “actual compliance in respect to the substance essential to *every* reasonable objective of the statute.” *Stasher v. Harger-Haldeman*, 58 Cal.2d 23, 29 (1962). While we believe that there is no difference in meaning between “substantial compliance” and “substantial conformance,” use of the phrase “substantial compliance” would ensure that there is no confusion as to meaning. We therefore recommend that “conformance” be replaced with “compliance.”

**Sixth**, the provisions describing the mandated findings no longer specify that such findings must be made in writing. We strongly recommend that the Code specify that all mandated findings, including all core findings, must be made in writing. This type of written specification is necessary for meaningful administrative and judicial review and also ensures that all of the mandated findings have been made.

**Seventh**, the proposed revisions to the Hillside section of the Zoning Code are premature because the City is currently considering major changes to land-use regulations in hillside areas under the Baseline Hillside Ordinance (BHO), which is currently being reviewed by the Office of the City Attorney. There should be no changes to hillside-related provisions of the Zoning Code until after the BHO is passed and the Planning Department and the public have had an opportunity to examine the proposed changes in light of the BHO.

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We appreciate the Planning Department's work on the draft ordinance and support this endeavor. But we believe that additional revisions are necessary to ensure that the proposed changes to the Zoning Code are impact neutral as intended. To that end, we request that the Planning Commission direct the Planning Department to establish a working group to make the necessary revisions. We look forward to working with the Department in an effort to clarify the language of the ordinance.

Respectfully submitted,



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