

May 2, 2024

BY ELECTRONIC MAIL

**Honorable Members of the Los Angeles City Council  
Planning and Land Use Management Committee  
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Los Angeles, CA 90012**

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Re: 8th, Grand & Hope, Council File Nos. 23-1150 and 23-1151  
Response to Comments and CPC Appeals;  
CPC-2017-505-TDR-ZV-SPPA-DD-SPR, ENV-2017-506-EIR,  
VT-74876-CN-1A, and ZA 2021-7053-ZAI

Dear Honorable Members of the PLUM Committee:

On behalf of our client, Mitsui Fudosan America (the “**Applicant**”), which proposes to redevelop the property located at 609-625 West 8<sup>th</sup> Street and 754 South Hope Street within the Central City Community Plan area, below are responses to certain comments submitted to the City Planning Commission (the “**CPC**”) and three appeals filed by (i) Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“**CREED**”); (ii) Lozeau Drury on behalf of the Supporters Alliance for Environmental Responsibility (“**SAFER**”); and (iii) Richard Becher on behalf of Digital Realty Trust, Inc (“**Digital Realty**”), a data center operator and owner of an adjacent parking garage, to CPC’s determination issued on September 26, 2023.

As background, the Draft Environmental Impact Report (the “**EIR**”) for the 8th, Grand & Hope (the “**Project**”) circulated for public review and comment from November 18, 2021 through January 5, 2022. Following public review, the City of Los Angeles (the “**City**”) published a comprehensive Final EIR on January 19, 2023, which included responses to comments received during the Draft EIR public review period.

Prior to the Hearing Officer/ Deputy Advisory Agency (the “**DAA**”)/Zoning Administrator (the “**ZA**”) public meeting that the City held on February 15, 2023, three letters were received in opposition to the Project that included comments on the EIR. The three opposition letters were from Adams Broadwell Joseph & Cardozo on behalf of CREED; Lozeau Drury on behalf of SAFER; and Richard Becher on behalf of Digital Realty. Each of these parties also subsequently filed appeals to the DAA’s and ZA’s determinations. The City’s responses and actions based on the administrative record demonstrate that both the Draft and Final EIRs meet the requirements of the California Environmental Quality Act (“**CEQA**”); the analyses presented therein are accurate and the conclusions are based on substantial evidence; many of the issues raised in the new comment letter and appeals to CPC’s determinations have already been addressed in the Final EIR and the Staff Reports; and the Appellants’ claims are not supported by substantial evidence.

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Prior to the CPC hearing, CREED submitted a comment letter on July 11, 2023 (the “**Prior to CPC Hearing Letter**” or “**PC Letter**”), which is addressed below. On September 26, 2023, the CPC denied the appeals to the VTTM, EIR and ZAI, approved the CPC case, and certified the EIR. Subsequently, CREED, SAFER and Digital Realty filed three separate appeals. The justifications for these land use-related appeal points are provided and responded to below. In general, the comment letter and appeals raise similar comments that have been responded to as part of the Final EIR and in Staff Reports. As demonstrated by the responses below, the appeal justifications do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

#### **CREED – PC Letter – Comment No. 1**

#### **IV. The Project Does Not Provide Affordable Housing, In Conflict With Local Land Use Goals, Objectives, And Policies**

CREED LA previously commented that while the Project proposes to construct 580 residential units, it fails to provide any of the residential units at a below-market rate. The Project’s lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing in the 2021–2029 Housing Element. To begin with, the Project would not contribute to meeting the City’s RHNA for below-market rate housing, and is thus inconsistent with the Housing Element. Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City’s RHNA are inconsistent with the City’s Housing Element, a primary goal of which is to meet the RHNA. The Staff Report responds that the Project would be consistent with the Housing element because an 86% annual increase in production of Above Moderate housing is required to meet the City’s RHNA target for 2021–2029. The Staff Report ignores that the City must achieve a 1347% increase in Very Low Income housing, a 1514% increase in Low Income, and a 7739% increase in Moderate Income housing.<sup>13</sup> Indeed, production of Above Moderate housing is the least necessary housing category for the City to meet its RHNA targets, as “[t]he City is therefore projected to fall short at the affordable (below 120% AMI) income ranges, but may meet the above moderate (market-rate) production levels.”<sup>14</sup> The Housing Element states that in the previous cycle, 2014-2021, the City has met its overall RHNA target of 82,002 units; but did not produce enough housing in the lower and moderate income categories.<sup>15</sup> In fact, the City overproduced Above Moderate housing—the RHNA Goal for Above Moderate housing was 35,412, and 105,522 such units were built in 2014–2020. Thus, this Project is inconsistent with the Housing Element by failing to provide affordable housing necessary to help the City meet its RHNA for below-market units.

The Staff Report further states that the Project will be conditioned to comply with the City’s Transfer of Floor Area (TFAR) ordinance, by contributing approximately \$10 million to the City’s affordable housing trust fund. The Housing Element’s evaluation of this program in its “Evaluation of 2013–2021 Goals, Policies, Objectives and Programs” states that “[w]hile this program brought in funding for an array of public benefits downtown, the program has not met objectives with regard to funding and the creation of new affordable housing units downtown ...

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The program is being revised with the update to the Downtown Community Plan, with the aim to prioritize the production of onsite affordable units directly in new construction.”<sup>16</sup> Thus, simply paying the TFAR Public Benefit fee is no substitute for provision of onsite affordable units.

CREED LA’s FEIR comments explained that the Project was inconsistent with Objective 1.2 (facilitate the production of housing, especially projects that include Affordable Housing), Objective 2.5 (target affordable housing in Transit Oriented Districts and designated Centers), and Objective 3.2 (promoting locating affordable and mixed-income housing near high quality transit). The Staff Report is nonresponsive to those comments.

As a result of these inconsistencies, the Project fails to comply with the Housing Element of the General Plan.

13 Housing Element, pg. 99, Table 1.28.

14 Housing Element, pg. 19.

15 Housing Element, pg. 227.

16 Housing Element, Appendix 5.1—Evaluation of Programs, row 17.

### **Response to CREED – PC Letter – Comment No. 1**

The Appellant makes unsubstantiated claims of noncompliance with the City’s Housing Element that were also previously submitted appealing the DAA’s determinations on the Project’s tract map and certification of the EIR. The City provided sufficient appeal responses, and the CPC acted to deny the Appellant’s appeal and sustain the decision of the Advisory Agency that were based on substantial evidence provided in the EIR’s land use analysis and Findings that concluded the Project is not in conflict with any applicable land use plans, including the City’s Housing Element.

The Appellant’s unsubstantiated claims are flawed in that the City’s 2021-2029 Housing Element was adopted by the City Council on November 24, 2021, with subsequent amendments incorporated on June 14, 2022, both after the Project’s Draft EIR circulated on November 18, 2021. Regardless, the Project is not in conflict with the previous Housing Element as demonstrated in the EIR, as well as the current 2021-2029 Housing Element as demonstrated in the CPC’s Findings providing substantial evidence that the Project is consistent with its policies and objectives. Additionally, the City’s Housing Element does not require each development to provide affordable units. Further, not complying with every policy, goal or objective of a land use plan does not constitute an environmental impact. It is settled case law that a conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a “significant environmental effect” as defined by CEQA Guidelines Section 15382. Under State Planning and Zoning law (Government Code Section 65000, et seq.), strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. As discussed in the ruling in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, State law does not require an exact match between a project and a relevant plan. Rather, to be “consistent,” the project

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must be “compatible with the objectives, policies, general land uses, and programs specified in the applicable plan,” meaning that a project must be in “agreement or harmony” with the applicable land use plan to be consistent with that plan, but need not be in perfect conformity with every plan policy. (Id. at page 719) As demonstrated in the land use analysis in the EIR and Findings, and the fact that the Project is providing much needed housing to the City that furthers the goals and objectives of the City’s Housing Element, the Project would not conflict with the relevant provisions of any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Moreover, in the CPC’s determination letter to deny the tract map appeal and the EIR appeal, the CPC acknowledged that the Project would support the City’s housing goals since the Project “would increase the range of housing choices available to Downtown employees and residents by replacing a parking structure and surface parking lot with 580 multi-family residential units and neighborhood serving commercial, retail, and restaurant uses...With regard to the General Plan Housing Element, the Project would support the City’s objective to provide an equitable distribution of housing opportunities by type and cost by providing a mixed-use development that would include a variety of new multi-family residential units. The Project would therefore also support the City’s objective to plan the capacity for and encourage production of housing units of various types to meet the projected housing needs of the future population by introducing a range of new multi-family residential units to a site that currently provides parking uses. The Project would also support the City’s objective to encourage the location of new multi-family housing in proximity to transit by locating a mix of multi-family housing types in an area well-served by public transit” (page F-52). Further, in the CPC’s determination letter to approve the Project’s entitlements, they found, based on substantial evidence, that the Project would satisfy its affordable housing obligation, that the Project “will provide new multi-family housing, commercial retail, and restaurants in the City’s Downtown Center, as well as providing a public benefit in the way of a contribution towards affordable housing, including to the Council District’s Affordable Housing Trust Fund” (page F-13). The City was able to make these findings based on the EIR’s adequate land use analysis, which concluded that the Project would not conflict with any land use policies, goals, or objectives; and thus, not create an environmental impact.

### **CREED – PC Letter - Comment No. 2**

#### **V. The Advisory Agency’s Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record**

As explained in CREED LA’s appeal, LAMC Section 17.15(c)(2), “Vesting Tentative Maps,” provides that “a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines ... (a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.” And Government Code, section 66474 requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Here, the Project’s operational and construction health risk impacts exceed the 10 in 1 million cancer risk significance threshold due to emissions of DPM.

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Dr. Clark's analysis found that for a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000. Further, the Project has significant noise impacts. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

#### VI. The CPC Cannot Make the Requisite Findings to Approve the Project's Entitlements

In addition to the Vesting Tentative Map already approved by the Advisory Agency, the CPC will consider approval of the Project's Transfer of Floor Area Rights ("TFAR"), Zone Variances, a Specific Plan Project Adjustments, a Director's Decision regarding the amount of trees to be planted on-site, and Site Plan Review. To approve the Project's TFAR, the CPC must find that the Project serves the public interest.<sup>17</sup> But without mitigation of the Project's construction noise impacts to the greatest extent feasible, or demonstrating that the Project's benefits outweigh its costs, including providing employment opportunities for highly trained workers,<sup>18</sup> the CPC cannot find that the Project is truly aligned with the public interest. Further, the Project fails to provide onsite affordable housing, which is inconsistent with policies in the Housing Element.

To approve the Project's Zone Variance Findings, the CPC must find that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.<sup>19</sup> And to approve the Project's Project Permit Adjustments, the decisionmaker must have considered and found no detrimental effects of the proposed project on surrounding properties and public rights-of-way. But as discussed in CREED LA's comments on the FEIR, the Project's operational and construction health risk impacts exceed the 10 in 1 million cancer risk significance threshold due to emissions of Diesel Particulate Matter ("DPM"). For a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million significance threshold. Further, the City has not mitigated the Project's significant construction noise impacts to the greatest extent feasible.

To approve the Project's Site Plan Review, the CPC must find that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan.<sup>20</sup> And to approve the Project's Zone Variance Findings, the CPC must find that the granting of the variance will not adversely affect any element of the General Plan.<sup>21</sup> However, CREED LA's comments on the FEIR explain that the Project fails to provide affordable housing in conformity with Housing Element Policies.

17 Staff Report, pg. F-2.

18 Pub. Res. Code § 21081(a)(3), (b).

19 Staff Report, pg. F-6.

20 Staff Report, pg. F-12.

21 Staff Report, pg. F-7.

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## **Response to CREED – PC Letter - Comment No. 2**

The Appellant makes similar comments as those submitted in prior submittals alleging that the City did not provide the requisite findings for the Project's entitlements based on unsubstantiated claims that the approvals are not in substantial conformance with the Housing Element of the General Plan, not in the public interest, or create adverse effects, specifically related to air quality and noise impacts. Putting the environmental-related claims aside, such as the Appellant's claims regarding air quality and noise health risks and their suggested infeasible mitigation measures, which have been made in previous comments by the Appellant and sufficiently addressed by the City in the EIR and Findings, and the Administrative Record, the Appellant contends that the City failed to establish a proper justification for the Project's various entitlements, and that, therefore, the findings justifying the variances are inadequate and unsupported by substantial evidence. The appeal is not based on a contention that the findings are incorrect in the analysis of the Project, but rather is based on a disagreement with the CPC's determination that these characteristics are sufficient to justify the requested entitlements. Contrary to Appellant's contention, the CPC's Findings contain a detailed discussion of each specific finding as required with facts to support each finding.

With regard to the Transfer of Floor Area Ratio (the "TFAR"), CPC's Findings clearly provide that the Project serves the public interest, "As part of the Transfer Plan, a Public Benefit Payment is required and must serve a public purpose, such as: providing for affordable housing; public open space; historic preservation; recreational; cultural; community and public facilities; job training and outreach programs; affordable childcare; streetscape improvements; public arts programs; homeless services programs; or public transportation improvements. The transfer serves the public interest by facilitating a project that will contribute to the sustained economic vitality of the Central City area, and by contributing a total Public Benefit Payment of \$9,828,451 (based on a formula that includes the transfer of 346,853 square feet) and a TFAR Transfer Payment of \$1,734,265 (based on the transfer of 346,853 square feet from the Convention Center multiplied by \$5), in accordance with LAMC Section 14.5.10 (p. F-2).

The City provided sufficient justification to demonstrate that the Zone Variance would not be materially detrimental to the public welfare to those within the Project's vicinity or on the Project Site. In addition to demonstrating that the reduction of private drive aisles would be internal to the Project Site, the Findings explain that the Project will not only not be detrimental, but would "improve existing site conditions by redeveloping an underutilized lot, and will enhance the public welfare and surrounding neighborhood by providing wider sidewalks and other pedestrian improvements, and by eliminating the existing driveways along 8th Street, consolidating vehicular access to the rear of the site" (p. F-6).

The City also provided sufficient justification for the Project Permit Adjustment requests. Neither the requested relief from the Downtown Design Guide's policies related to ground floor treatment or sidewalk easement projections would have detrimental effects on the surrounding properties or public rights-of-way. The City acknowledged that an alternative design is expected from such a uniquely narrow Project Site, which the Downtown Design Guide allows relief from - "These

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deviations are appropriate to develop the proposed mix-use building consisting of 580 residential units and ground floor commercial, retail and restaurant uses. The alternative design to the sidewalk easement projections and ground floor treatment frontage requirements is appropriate in that it substantially complies with the provisions of the Downtown Design Guide with regard sidewalk easement projections along Grand Avenue, and ground floor requirements for active uses and would not pose any detrimental effects on surrounding properties and public-rights-of way” (p. F-10).

Similarly, LAMC Section 62.177(d) allows for an in-lieu fee option for projects that are not able to spatially or structurally accommodate the entirety of the residential tree requirement on-site. Staff also provided a detailed analysis of the Project’s design, operation and programming to ensure substantial conformance with all applicable plans and documents. In addition, refer to Response to CREED PC Letter - Comment No. 1, above, regarding how the Project would be consistent with relevant policies regarding affordable housing.

Moreover, contrary to the Appellant’s contention, the EIR is not required to demonstrate that a project provides opportunities for highly trained workers, and, therefore, no such finding is required. When a project has a significant and unavoidable impact, the City must find that the benefits of the project outweigh the impact. This finding can be made if: “Specific economic, legal, social, technological, **or** other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.” (CEQA Guidelines Section 15091(a)(3), **emphasis added**). There is no requirement that a project’s benefits must include opportunities for highly trained workers as CEQA only lists this as one potential “other condition”. The CPC Findings includes a statement of overriding considerations that is supported by facts that support the finding that the benefits of the Project outweigh the temporary construction noise impacts and sets forth those benefits with specificity. As such, the City’s Findings are fully compliant with CEQA.

The Appellant does not make any new substantiated claims or revival of claims that have not already been sufficiently addressed in the EIR, and previous responses, and in the City’s Findings. Furthermore, the EIR has been completed in compliance with CEQA, and no substantial evidence has been provided to support the claim that the findings for the discretionary actions for the Project could not be made.

### **Digital Realty - Comment No. 1**

2. The Land Use Impacts of the Project’s Significant Departure from Protective Design Standards Are Ignored.

As the Project’s DEIR recognizes, a threshold of significance for land use impacts is whether the project will “[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.” (DEIR, p. IV.D-18.)

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The IS, DEIR, and FEIR fail to acknowledge the tower spacing requirement set forth in the Downtown Design Guide and omit any discussion of the Project's lack of compliance with this standard in its analysis of land use impacts. The Downtown Design Guide requires that portions of a tower<sup>1</sup> taller than 150 ft shall be spaced 40 ft from an interior property line when no adjacent tower exists, but one could be constructed in the future. (See Downtown Design Guide, § 6.C.) The Downtown Design Guide clearly notes the potential environmental impacts of close tower spacing, including the minimization of views to the sky from the public realm and the creation of wind tunnels. (See Downtown Design Guide, § 6.C.) As proposed, the MFA Tower fails to comply with these spacing requirements, resulting in a project that will be incompatible with and will conflict with the Downtown Design Guide's tower spacing requirements, a land-use regulation adopted for the purpose of avoiding or mitigating a significant environmental impact and for ensuring the orderly development and good urban planning for a dense, infill area. The Downtown Design Guide's requirement that projects take into consideration towers that do not currently exist but could be constructed in the future is consistent with CEQA Guidelines Section 15125(a)(1), which acknowledges that the baseline environmental setting can change or fluctuate over time and that consideration of expected conditions when the project becomes operational, if supported by substantial evidence can be the appropriate baseline "where necessary to provide the most accurate picture practically possible of the project's impacts."

Specifically here, the MFA Tower directly abuts Digital Realty's property line to its north and due to the Project's noncompliance with the spacing requirement described above, the Project will conflict with the Downtown Design Guide's tower-spacing requirements and will result in the MFA Tower being prohibitively close to Digital's proposed 13-story data center on the Digital Parcel adjacent to MFA Parcel's northerly parcel line (the "Data Center"). Digital's project application has been pending since March 31, 2023, and Digital has been discussing its project with the Project developer since May 2022. Moreover, given the age of the existing parking structure on the Digital parcel, the rapid-changing nature of downtown Los Angeles, and the narrow lots at this location, it has long been likely that another tower would be constructed directly adjacent to the MFA Tower in the near future. Yet, the CPC fails to address the Project's noncompliance with this standard, avoiding its discussion entirely, and does not even acknowledge the proposed development of the Data Center.

Accordingly, the IS, the DEIR, and the FEIR improperly omit Digital's Data Center from consideration when discussing land use and planning impacts. This conflict with the tower spacing requirements must be disclosed and analyzed in the IS, the DEIR, or the FEIR.

### 3. The FEIR Fails to Include Digital's Neighboring Data Center in the Project EIR's Cumulative Impact Analysis.

An EIR must include a discussion and analysis of significant cumulative impacts. (CEQA Guidelines, §15130(a).) The cumulative impact analysis should be based on a list of projects

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<sup>1</sup> As defined, a "tower" refers to portions of a building over 150 ft in height. (See Downtown Design Guide, § 6.C.)

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(considering the project together with past, present, and probable projects that produce related impacts) or a summary of projections (basing the analysis on a planning document that projects regional or areawide conditions). (CEQA Guidelines, §15130(b)(1).) Here, the DEIR identifies a list of existing and anticipated projects. (DEIR, Table 111-1.)

When preparing the list of projects, a lead agency has [sic] must select a reasonable cutoff date for the future projects to include in a cumulative impacts analysis and support that determination with substantial evidence. (South of Mkt. Community Action Network v City & County of San Francisco (2019) 33 Cal.App.5th 321, 336.) Here, the list of projects was prepared based on information provided by the Los Angeles Department of Transportation (“LADOT”) and Los Angeles City Planning (“Planning”). The City fails, however, to clearly identify in the DEIR the cutoff date for the future projects to be included in the cumulative impact analysis. Thus, the City, as lead agency, failed to select a reasonable cutoff date (indeed no cutoff date is shown), abused its discretion, and failed to support a cutoff date with substantial evidence.

Notably, the list of probably future projects omits Digital’s Data Center. An entitlement application was filed for the Data Center with Los Angeles City Planning on March 31, 2023 but Digital had been discussing the project with MFA since May 2022. And while a Notice of Preparation (“NOP”) was filed for the Project on May 10, 2019, predating Digital’s submission of an entitlement application, the Data Center should have nevertheless been considered in an updated analysis of cumulative impacts due to the potential for new significant environmental impacts, including without limitation, land use and planning impacts related to tower spacing. Given the certainty of the proposed Data Center and the length of time that MFA has known about the Data Center while MFA’s application was pending, the City’s decision to omit it entirely from its CEQA analysis is an abuse of discretion. To comport with CEQA’s underlying intent to err on the side of protecting the environment, where a developer waits four years between the NOP and taking its entitlements to hearing in a dense, urban infill area, the surrounding area will be changed during the four year pendency of the entitlements and will be unrecognizable by the time the project is approved. Therefore the CEQA analysis needs to be updated to consider the changed surroundings. Otherwise, CEQA’s purpose as a tool to disclose to the public and the decision-making body the significant environmental effects of a proposed discretionary project is defeated.

### **Response to Digital Realty - Comment No. 1**

Appellant has made similar comments regarding tower spacing and the Downtown Design Guide in previous comment letters and appeals, which the City has adequately responded to with substantial evidence supported by land use analysis the Draft EIR and Findings. As demonstrated therein, with the approval of the Project’s requested entitlements, the Project would not be in conflict with the Downtown Design Guide. In addition, with regard to the tower spacing, as discussed on Page 40 of Appendix D of the Draft EIR, the Project is consistent with the Downtown Design Guide as it considers the two existing structures directly adjacent to its north. The two parking garages to the north facing Hope Street and Grand Avenue, are approximately 90 feet and 45 feet in height, respectively; and therefore, do not reach the 150-foot elevation tower spacing threshold of the Design Guidelines. The Project would also be in compliance as it would be spaced

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greater than 80 feet from any existing tower across its three street frontages. Of the three street frontages, there are only two towers that exceed 150 feet in height. The first is the residential tower to the south across 8th Street at Grand Avenue that is approximately 310 feet in height at an approximate 90-foot distance, and the second is the existing residential tower at the southwestern portion of the 8th Street/Hope Street intersection that is approximately 245 feet in height at an approximate 170-foot distance.

As Planning staff noted in its recommendation report to CPC for the July 13, 2023 public hearing, “The building tower above 150 feet in height would be offset or spaced at least 80 feet from existing towers across the street and would provide sufficient setbacks from the adjacent interior property line to allow for future construction of towers...Overall, the Project is consistent with the Design Guide as it provides active ground-floor commercial uses, generous sidewalk widths, landscape elements, glass and aluminum store front system, building entrances along the street to encourage pedestrian activity and compatible tower spacing” (Recommendation Report, page A-16). The report further acknowledges, “The adjacent sites to the north are developed with parking garages which includes an eight-story structure along Hope Street and a four-story structure along Grand Avenue and are not subject to tower spacing since the structures do not meet the definition of a tower. Additionally, future development on the adjacent properties would require any proposed developments to provide adequate tower spacing per the requirements of the Downtown Design Guide, and would not prohibit future development of the adjacent property” (Page A-18). Therefore, the Project’s location and tower spacing does not conflict the Downtown Design Guide.

With regards to Appellant’s claims that the Project would minimize views to the sky from the public realm, the claim is unsubstantiated as there are no development standards or zoning regulations that govern view obstruction in the downtown area. The Project is located in a high density downtown urban area with several skyscrapers within its vicinity with a zoning code that does not limit heights. As noted in the Initial Study, included as Appendix A of the Draft EIR, pursuant to California Senate Bill No. 743 (the “**SB 743**”), the Project is located in a transit priority area (the “**TPA**”) in that it is located by several mass transit lines within a 0.5-mile radius. Under SB 743, aesthetic effects from projects located in a TPA are deemed less than significant, including views, visual quality, light and glare, and shade impacts that may exceed the City’s CEQA thresholds. Therefore, the Appellant’s claim that the Project would minimize views to the sky from the public realm is not in conflict with the zoning code and does not raise a CEQA issue related to an environmental impact.

The Appellant also makes unsubstantiated claims that the Project would create wind tunnels between the Project and the Appellant’s conceptual project. Should any such environmental issues arise at such time as the Appellant redevelops its property, the issues could be resolved through the design of Appellant’s future project. As such, the Appellant fails to provide evidence that the Project would cause an environmental impact due to a conflict with a relevant design standard, while the Draft EIR sufficiently provided a land use analysis, and is not in conflict with any applicable plans, including the Downtown Design Guidelines. Moreover, the Appeal provides no

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evidence that the location of the portions of the Project's tower above 150 feet will deprive Appellant of the opportunity to fully develop its property should it ever choose to do so. As such, the contention is without merit.

In response to claims with regard to the baseline and cumulative impacts, which were also included in prior comments by the Appellant, under CEQA, the proper measurement of the impact created by a proposed project is the existing environmental setting at the time that the notice of preparation is issued. (See CEQA Guidelines Sections 15125(a) and 15126.2 (a).) As stated in the CEQA Guidelines, the purpose of establishing a baseline is to determine existing physical conditions in order to focus the EIR on assessing the impact of a specific project on the environment. The Project's Initial Study and EIR did not improperly omit the potential future development of a data center (the "**Data Center**"), as the Appellant claims. Digital Realty submitted their proposed project application to the Department of City Planning on March 31, 2023, several years after this Project began its environmental review. The Project's Notice of Preparation (the "**NOP**") of a Draft EIR was circulated on May 10, 2019 for public comment, and the Draft EIR was circulated on November 18, 2021. The Notice of Availability (the "**NOA**") of the Final EIR was published in January 2023, with its first public hearing at the Deputy Advisory Agency held on February 15, 2023. All of the Project's critical environmental review dates occurred well before the Data Center project application was submitted to the City; therefore, Appellant makes an unrealistic claim that the Project's EIR omits discussions of the Data Center project that had not been filed with the City at the time the Draft EIR circulated nor at the time the Final EIR was published, and a similarly unjustifiable claim that it should have been included in its baseline at the time the NOP was published.

### **Digital Realty - Comment No. 2**

#### *6. The City Failed to Evaluate the Project's Inconsistency with the General Plan Housing Element's Affordable Housing Goals and Policies.*

The CPC failed to address the Project's inconsistencies with the affordable housing policies set forth by the City's 2021–2029 Housing Element ("**Housing Element**"), which was certified by the California Department of Housing and Community Development on May 27, 2022. (See Project LOD, p. F-15.) Notably, the MFA Parcel is listed as a site for future residential development, including the development of more than one affordable unit, in the Inventory of Sites ("**Housing Inventory**") prepared and adopted in connection with the City's Housing Element. The City's Housing Element includes, but is not limited to, the following objectives and policies related to the provision of affordable housing.

Objective 1.2: Facilitate the production of housing, especially projects that include Affordable Housing and/or meet Citywide Housing Priorities.

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Objective 3.2: Promote environmentally sustainable buildings and land use patterns that support a mix of uses, housing for various income levels and provide access to jobs, amenities, services and transportation options.

Policy 3.2.2: Promote new multi-family housing, particularly Affordable and mixed-income housing, in areas near transit, jobs and Higher Opportunity Areas, in order to facilitate a better jobs-housing balance, help shorten commutes, and reduce greenhouse gas emissions.

Here, the Project violates these and other policies set forth in the Housing Element due to its failure to include any affordable units.

Furthermore, the Second District Court of Appeal recently overturned the City's CEQA analysis for another project for failing to analyze the project's lack of affordable housing in light of the Housing Element's affordable housing policies. "Although an agency need not make an express consistency finding [citation omitted], there must be some indication that the agency actually considered applicable policies." (*United Neighborhoods for Los Angeles v. City of Los Angeles* (2023) 93 Cal.App.5th 1074, 1097.) Here, while the Project LOD purports to evaluate the Project's consistency with the Housing Element, it does not address how the Project's lack of affordable housing comports with the Housing Element's affordable housing goals.

### **Response to Digital Realty – Comment No. 2**

The Appellant makes similar claims as previously submitted with regard to the Project's inconsistency with City land use plans, specifically that the City failed to evaluate the inconsistencies with the Housing Element's affordable housing goals and policies. As was adequately provided in the EIR's land use analysis and the City's Findings, the Project would not conflict with any applicable land use policies, goals, or objectives, and thus, impacts related to land use and planning would be less than significant.

Moreover, the Appellant's unsubstantiated claims are flawed in that the City's 2021-2029 Housing Element was adopted by the City Council on November 24, 2021, with subsequent amendments incorporated on June 14, 2022, both after the Project's Draft EIR circulated on November 18, 2021. Regardless, the Project is not in conflict with the previous Housing Element as demonstrated in the EIR, as well as the current 2021-2029 Housing Element as demonstrated in the CPC's Findings providing substantial evidence that the Project is consistent with its policies and objectives. Additionally, the City's Housing Element does not require each development to provide affordable units. Further, not complying with every policy, goal or objective of a land use plan does not constitute an environmental impact. It is settled case law that a conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a "significant

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environmental effect” as defined by CEQA Guidelines Section 15382. Under State Planning and Zoning law (Government Code Section 65000, et seq.), strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. As discussed in the ruling in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, State law does not require an exact match between a project and a relevant plan. Rather, to be “consistent,” the project must be “compatible with the objectives, policies, general land uses, and programs specified in the applicable plan,” meaning that a project must be in “agreement or harmony” with the applicable land use plan to be consistent with that plan, but need not be in perfect conformity with every plan policy. (Id. at page 719) As demonstrated in the land use analysis in the EIR and Findings, and the fact that the Project is providing much needed housing to the City that furthers the goals and objectives of the City’s Housing Element, the Project would not conflict with the relevant provisions of any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Moreover, in the CPC’s determination letter to deny the tract map appeal and the EIR appeal, the CPC acknowledged that the Project would support the City’s housing goals and that the Project “would increase the range of housing choices available to Downtown employees and residents by replacing a parking structure and surface parking lot with 580 multi-family residential units and neighborhood serving commercial, retail, and restaurant uses...With regard to the General Plan Housing Element, the Project would support the City’s objective to provide an equitable distribution of housing opportunities by type and cost by providing a mixed-use development that would include a variety of new multi-family residential units. The Project would therefore also support the City’s objective to plan the capacity for and encourage production of housing units of various types to meet the projected housing needs of the future population by introducing a range of new multi-family residential units to a site that currently provides parking uses. The Project would also support the City’s objective to encourage the location of new multi-family housing in proximity to transit by locating a mix of multi-family housing types in an area well-served by public transit” (page F-52). Further, in the CPC’s determination letter to approve the Project’s entitlements, they found, based on substantial evidence, that the Project would satisfy its affordable housing obligation, that the Project “will provide new multi-family housing, commercial retail, and restaurants in the City’s Downtown Center, as well as providing a public benefit in the way of a contribution towards affordable housing, including to the Council District’s Affordable Housing Trust Fund” (page F-13). The City was able to make these findings based on the EIR’s adequate land use analysis, which concluded that the Project would not conflict with any applicable land use policies, goals, or objectives; and thus, impacts related to land use and planning would be less than significant.

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**Digital Realty - Comment No. 3**

**III. THE CPC FAILED TO PROCEED IN THE MANNER REQUIRED BY LAW, FAILED TO MAKE ALL NECESSARY FINDINGS, AND FAILED TO SUPPORT THE FINDINGS WITH ADEQUATE EVIDENCE.**

On July 13, 2023, the CPC approved (i) the VTTM, (ii) two ZVs authorizing relief from parking stall and drive aisle width standards (collectively, the “**Variances**”); (iii) two SPPAs authorizing changes to standards related to ground floor treatment, building/balcony projections into existing sidewalk easements, and the height above grade at which balconies can commerce (collectively, the “**SPPAs**”); (v) a Director’s Decision to allow 79 trees to be planted on-site in lieu of the otherwise required 145 trees; and (vi) Site Plan Review (collectively, the “**Project Approvals**”). In authorizing the Project Approvals, the CPC failed to proceed in the manner required by law, failed to support the decision with adequate findings, and failed to support the findings with evidence. Given the lack of evidence to support the CPC’s decisions and the failure to address all relevant laws and policies, we respectfully request reconsideration of the CPC’s action on the Project Approvals.

Outlined below, please find a detailed analysis of the legal deficiencies associated with the CPC’s action.

**A. The Project Fails to Qualify for a Variance.**

Variances may be granted only when, because of special circumstances regarding a property, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other property in the vicinity that is categorized under the identical zoning classification. (See LAMC, § 12.27(D).) Findings that highlight a desirable project design, amenities, benefits to the community, and the alleged superiority of the project design to those that could be developed without a variance are insufficient to establish the grounds necessary to grant a variance. Furthermore, the need to improve income or add value to a property does not constitute the hardship required to demonstrate the grounds necessary for approval of a variance.

Here, the CPC has failed to adequately establish the presence of special circumstances needed to authorize approval of a variance. Rather, in the findings supporting issuance of a variance the CPC provided conclusory analysis that simply restates the applicable legal standard and lists several characteristics of the MFA Parcel intended to distinguish it from surrounding, similarly situated sites. (See Project LOD, p. [sic] F-4–F-6.) The CPC fails to provide adequate support for its conclusion that approval of the Variances is appropriate in the context of the Project. Thus, the City has failed to proceed in the manner of law, failed to support its decision with findings, and its

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findings are unsupported by substantial evidence. (*Topanga Ass'n for a Scenic Community v County of Los Angeles* (1974) 11 Cal. 3d 506, 514.)

### **Response to Digital Realty - Comment No. 3**

The Appellant disagrees with the CPC's determination that the Project's characteristics are sufficient to justify the requested variances. Contrary to Appellant's contention, the CPC findings contain a detailed discussion of each specific finding required by LAMC Section 12.27(D) with facts to support each finding. As stated in the findings, the Project Site presents unique features that render strict compliance with certain provisions of the LAMC infeasible or impractical thereby distinguishing this Project from others in the vicinity. Specifically, the Project Site's dimensions result in a relatively long property along 8<sup>th</sup> Street compared to its narrow depth as compared to other existing high-rise, mixed-use projects in the vicinity which are located on less narrow properties. Moreover, the Downtown Design Guide requirements for 8<sup>th</sup> Street results in site access and vehicular ramps which can only be located along the rear property line resulting in a narrow garage which limits the amount of parking that can be provided on each level, as well as constraining the drive aisle width and turning radii between the parking stalls. Additionally, the Downtown Street Standards require significant sidewalk easements and, while sidewalk and easement widths are required for other downtown projects, the Project Site has three street frontages which, in combination with the lot configuration issues mentioned above, present substantial evidence that the granting of the variance is necessary for the preservation and enjoyment of a substantial property right and use generally possessed by other property in the same zone and vicinity.

Additionally, the findings present substantial evidence that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the Project is located nor adversely affect any element of the General Plan, in part because: the Project will improve existing site conditions by redeveloping an underutilized lot, and will enhance the public welfare and surrounding neighborhood by providing wider sidewalks and other pedestrian improvements, and by eliminating the existing driveways along 8th Street, consolidating vehicular access to the rear of the Project Site; the variance requests to reduce the drive aisle width and to provide an additional 10-inch clear space to parking stall widths adjacent to an obstruction would be internal to the Project's vehicular parking garage, and therefore, do not constitute an unsafe or hazardous environment for surrounding properties or other properties in the vicinity; the circumstances (size and width of the Project Site) which create the need for the variance are unique to the subject property; the reduced drive aisle width and relief from clearance requirement will not affect other properties or property rights in the vicinity; the Project as conditioned will not be materially detrimental to the public welfare or injurious to the property or improvements in the same zone and vicinity in which the

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property is located; and, use of the property for a mixed-use residential and commercial purposes is consistent with the Regional Commercial land use designation and corresponding C2 zone and supports the Central City Community Plan's objectives and policies to facilitate the expansion of housing choices in order to attract new and economically and ethnically diverse households and to encourage a cluster neighborhood design comprised of housing and services.

Finally, the Appellant's reliance on *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, (Topanga) is misplaced. Unlike the situation in Topanga, the CPC findings include specific evidence of the unusual characteristics of the Project Site which render compliance with zoning regulations related to the internal parking structure unique to the Project as explained above. Thus, in addition to providing evidence as to why the variances would not impact the public welfare or the General Plan, the CPC findings rely on a detailed analysis of why the parking variances are needed for this particular Project and how that differs from other properties in the vicinity that are not as wide in length and narrow in depth, subject to street dedications on three frontages, and restricted to vehicular access at the rear of the property.

#### **Digital Realty - Comment No. 4**

##### **C. The CPC Failed to Adequately Assess Future Passive or Natural Heating or Cooling Options.**

The design of a subdivision for which a tentative map is required 'shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.' (Gov. Code, § 66473.1.) A tentative map of a subdivision must be disapproved if it fails to meet this design requirement. (See 64 Ops.Cal.Atty.Gen. 328.) Here, the City notes that lot layout has been considered along with the topography of the site to maximize passive or natural heating and cooling opportunities. However, applicant has not considered the proposed development of the Data Center on the adjacent site, which will necessarily impact passive or natural heating or cooling options as the building's proximity to the MFA Tower's, both of which will necessarily impact shade, prevailing breezes, and orientation. The City should request additional analysis on this issue to avoid noncompliance with the requirements of Government Code Section 66473.1.

#### **Response to Digital Realty - Comment No. 4**

The Appellant claims the City failed to assess design requirements in its approval of the tract map, specifically its future passive or natural heating or cooling options. The Project will comply with all requirements regarding natural heating and cooling. The Project will also incorporate sustainability features that not only comply with the City's Green Building Code, but also the State's CALGreen code and with the requirements for obtaining LEED certification or its

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equivalent. As discussed in Chapter II, Project Description, of the Draft EIR, the Project's sustainability features include fenestration designed for solar orientation.

Moreover, as set forth in Response to Digital Realty - Comment No. 1, above, Digital Realty submitted its entitlement application for the proposed Data Center to the City after the City released the Project's Final EIR, which makes impossible the notion that the Project's CEQA analysis could have included the Data Center. Furthermore, the Data Center project will need to comply with all applicable codes and to undergo its own environmental review to ensure that it will not impact the ability of other existing or approved projects to meet their own heating or cooling requirements. Moreover, the requirement of Government Code Section 66473.1 is that a proposed subdivision be designed "to the extent feasible" for future passive or natural heating or cooling opportunities" and defines feasibility as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." Given the unique, long and narrow shape of the Project Site, the requirement that the Project comply with all applicable laws, the fact, (as acknowledged in the comment) that the City considered "lot layout" along with "the topography of the site to maximize passive or natural heating and cooling opportunities", and the lack of anything other than speculation as to the Project's impact on a potential adjacent development, the City's consideration of the feasible passive or natural heating or cooling opportunities provided by the Project design are supported by substantial evidence. Further, Government Code Section 66473.1 states "and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed," which acknowledges that the amount of housing and lot occupancy shall not be compromised in order to configure for a passive or natural heating or cooling system design on a uniquely narrow lot on an urban infill parcel located near mass transit in the midst of a housing crisis.

#### **Digital Realty - Comment No. 5**

##### **D. The Project is Incompatible with Future Development on Surrounding Parcels.**

When making the finding, required for SPR approval, that the Project is "compatible with existing and *future* development on adjacent properties and neighboring properties" the CPC must consider the Project's consistency with the future Data Center. (LAMC, § 16.05(F)(2) (emphasis added).)

At present, the Project's design fails to consider its potential impact on the surrounding parcels. Namely, the Project locates balconies and residential units immediately adjacent to the Digital Parcel's northern property line. Construction this close to property line results from an unreasonable assumption on the part of MFA that a valuable, underutilized infill site within Downtown's urban core would be left undeveloped forever and is incompatible with the future development on the Digital Parcel.

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The CPC has failed to analyze the impact of the Project's failure to provide setbacks from neighboring parcels on the overall consistency of the Project with the surrounding development. Under LAMC 16.05(F)(2) the CPC is required to analyze conformity with existing development but also with future development on adjacent parcels. Since May 2022, long before the issuance of the Project LOD, MFA has been fully aware of Digital Plan's for the neighboring parcel yet no analysis or consideration of these plans was included in the findings and justification related to the issuance of SPR approval. The CPC should request revisions to the MFA Tower to eliminate its inconsistency with the surrounding parcels or prepare written findings articulating the Project's consistency with future development on these parcels.

#### **Response to Digital Realty - Comment No. 5**

Appellant claims the City failed to provide adequate findings to support its approval of the Site Plan Review, specifically as it relates to adhering to development standards when considering existing and future development and surrounding parcels. As provided above in the Response to Digital Realty - Comment No. 1, the Data Center project application was filed after the Project's Final EIR was complete and it is unreasonable to expect or require that the EIR analyze the Data Center project that had not been filed until after the Project's first public hearing. Furthermore, as analyzed in the EIR, and concluded in the City's Findings to certify the EIR, the Project is not in conflict with any applicable land use goals, policies, objectives, and zoning standards, including setback requirements and those applicable standards in the Downtown Design Guide.

For all these reasons, and for the those set forth in the Responses to Comments in the Final EIR, the Findings made by the City, and those contained in the Administrative Record, we respectfully submit that the three appeals are without merit and that they should, therefore, be denied. Should you need additional information or have any questions, please feel free to contact me at 213-229-9548 or at [EKhalatian@mayerbrown.com](mailto:EKhalatian@mayerbrown.com).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Edgar Khalatian', with a long horizontal stroke extending to the right.

Edgar Khalatian  
Partner

cc: Jason McCrea, Department of City Planning Major Projects  
Polonia Majas, Department of City Planning Major Projects