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May 2, 2024

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: Council Members

Dear Honorable Members:

APPEAL RESPONSES FOR THE 8TH, GRAND AND HOPE PROJECT; CF 23-1150 / CF 23-1151

On May 26, 2023, the Deputy Advisory Agency (DAA) certified the 8th, Grand and Hope Project Environmental Impact Report (EIR) (Case No. ENV-2017-506-EIR) and approved Vesting Tentative Tract Map (VTTM) No. 74876-CN for the merger and re-subdivision of three lots into one ground lot and nine airspace lots for residential and commercial condominium purposes, and a Haul Route for the export of approximately 89,750 cubic yards of soil; and the Associate Zoning Administrator (AZA) approved ZA-2021-7053-ZAI, with clarifications to parking and open space requirements, in connection with the 8th, Grand and Hope Project (Project). The Project involves the construction of a 50-story, mixed-use development comprised of 580 residential dwelling units and up to 7,499 square feet of ground floor commercial/retail/restaurant space with a maximum height of 592 feet and total floor area of 554,927 square feet on a 34,679 square-foot site, for a floor area ratio (FAR) of 9.25:1. To accommodate the Project, an existing surface parking lot and a four-story parking structure would be demolished.

On June 5, 2023, the DAA and AZA actions were appealed by the Coalition for Responsible Equitable Economic Development Los Angeles (CREEDLA), Digital Realty, and Supporters Alliance for Environmental Responsibility (SAFER). On September 26, 2023, the City Planning Commission (CPC) issued its decision and denied the appeals, thereby sustaining the decision of the DAA in certifying the EIR and in approving Vesting Tentative Tract Map No. 74197, and the decision of the AZA in approving Case No. ZA-2021-7053-ZAI. The AZA decision was final and not appealable. The VTTM received two second-level appeals from:

- 1) CREED LA (October 6, 2023)
- 2) Digital Realty (October 6, 2023)

In addition, on September 26, 2023, the CPC issued its decision on Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and recommended that the City Council approve Transfer of Floor Area Rights (TFAR) for up to 346,853 square feet from the Los Angeles Convention Center (Donor Site) to the Project Site (Receiver Site), thereby permitting a maximum 9.25:1 FAR, in lieu of the otherwise permitted 6:1 FAR; dismissed as not necessary, a Zone Variance related to compact and tandem parking; approved Zone Variances related to relief from parking standards; approved Project Permit Adjustments related to ground floor treatments and balcony projections; a

Director's Decision related to in-lieu fee payments for on-site trees; and a Site Plan Review. The CPC decision on the Zone Variances, Project Permit Adjustments, Director's Decision, and Site Plan Review received appeals from:

- 1) CREED LA (October 6, 2023)
- 2) Digital Realty (October 6, 2023)
- 3) SAFER (October 3, 2023)

Provided that the CREED LA and Digital Realty appeals on both the VTTM and CPC appeals were identical, provided below is a summary of each Appellants' Appeal Points and Staff's Responses for both the cases, where applicable, and clarity where necessary for purposes of assisting PLUM and the City Council in their consideration of the Project and the appeals.

APPELLANT 1: ADAMS, BROADWELL, JOSEPH & CARDOZO ON BEHALF OF COALITION FOR RESPONSIBLE EQUITABLE ECONOMIC DEVELOPMENT LOS ANGELES (CREEDLA)
RE: CF-23-1150 (CPC-2017-505-TDR-ZV-SPPA-DD-SPR-1A) and CF-23-1151 (VTT-74876-CN-2A)

Comment letters previously submitted by this Appellant that are referenced in the Appeal Points and Responses below include:

- 1) Comments on the Draft EIR, dated January 5, 2022 (Draft EIR Comments);
- 2) A letter to the DAA following the distribution of the VTTM Staff Report, but prior to the scheduled public hearing, dated February 15, 2023 (Final EIR Letter); and
- 3) The first-level appeal of Case No. VTT-74876-CN (VTTM Appeal).

These comment letters were responded to by the City in the following documents:

- 1) Draft EIR Comments were responded to in the Final EIR;
- 2) The Final EIR Letter was responded to in the City's VTTM Appeal Report to the CPC, July 13, 2023 (Appeal Report); and
- 3) The VTTM Appeal was responded to in the Appeal Report.

In addition, the subject Appellant submitted a 48-hour correspondence to the CPC, dated July 11, 2023, following the distribution of the CPC Staff Report, but prior to scheduled CPC meeting (Letter to CPC); and a Supplemental Appeal Justification, dated March 1, 2024, following the filing of the second-level appeal. Both of these documents are formally addressed below in the following responses.

The current appeal is responded to below, unless otherwise specified:

Appeal Point 1-1

The Commission's approval of the Vesting Tentative Tract Map, Project Permit Adjustment, and Zone Variance are contrary to law and unsupported by the record.

Staff Response 1-1

The Appellant states that a VTTM and other entitlements must be denied as it would place the community in a condition dangerous to its health and safety and fails to incorporate mitigation measures to mitigate the negative environmental effects of the Project. Specifically, the Appellant asserts that the Project would have detrimental health risk, air quality, greenhouse gas, noise, and other impacts on the surrounding properties. and, as a result, the CPC lacked substantial evidence to make the necessary findings to sustain the approval of the VTTM, a Project Permit

Adjustment to allow deviations from the Downtown Design Guide (DDG), and the Zone Variance. More specifically, the comment states that the EIR failed to adequately disclose impacts from Diesel Particulate Matter (DPM), and would exceed cancer risk thresholds on children. In addition, the significant construction noise impacts were not reduced to the fullest extent feasible.

This comment was previously submitted CREED LA's first-level appeal to the VTTM. As addressed in Staff's July 13, 2023 VTTM Appeal Report to the CPC (Appeal Report), (see Staff Response to CREED LA Appeal Points 1, 2, 4, and 5), the EIR was completed in full compliance with CEQA, and the Appellant's assertions regarding DPM and noise analysis were based on inappropriate methodology and thresholds, and no substantial evidence was provided to demonstrate that impacts were incorrectly determined or that feasible mitigation measures were not adopted. All feasible mitigation measures were identified in the Project's Mitigation Monitoring Program (MMP), which are included as Conditions of Approval in both the VTTM and CPC Letters of Determination (LODs). Furthermore, the Appellant does not provide any new or additional information in this appeal that was not already previously addressed in the Final EIR and/or the Appeal Report.

Appeal Point 1-2

The Project's environmental review fails to comply with CEQA.

Staff Response 1-2

The Appellant asserts the City cannot adopt a Statement of Overriding Considerations because the EIR fails to disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas emissions; failed to support the significance findings with substantial evidence; and failed to mitigate the Project's significant impacts to the greatest extent feasible.

The Appellant incorporates by reference their previous comments and letters but does not provide new or additional information that was not previously addressed in the Final EIR and/or the Appeal Report. As discussed in Staff Response 1-1, these assertions were based on inappropriate methodology and thresholds, and no substantial evidence was provided to demonstrate that impacts were incorrectly determined or that feasible mitigation measures were not adopted. In addition, the EIR was completed in full compliance with CEQA, and no substantial evidence was provided to demonstrate that the Project's EIR or CEQA findings, including the Statement of Overriding Considerations, was inadequate.

SUPPLEMENTAL APPEAL JUSTIFICATION DATED MARCH 1, 2024

Subsequent to submitting first and second level appeals of the Project, on March 1, 2024, the Appellant submitted a supplemental appeal justification presenting new information to further substantiate their appeal. The Supplemental Submission included the following appeal points, summarized below, an opinion letter from a fire safety professional, and an unreleased and unapproved Information of Fire Flow Availability Report (IFFAR) for a proposed development located across the street from the Project. The following responses address the Supplemental Submission.

Supplemental Point S1-1

The Project did not provide substantial evidence to support that the fire flow requirements pursuant to LAMC can be served by existing infrastructure. A new IFFAR has been prepared for a project directly across the street which finds that water pressure in the area is now inadequate to serve that project.

Staff Response S1-1

The Appellant asserts that based on a 2023 IFFAR prepared for the 775 South Hope Street Project, the Project EIR improperly evaluated available fire flow, and did not disclose that fire flow available to the Project would be inadequate. However, the Project obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019, and included in Appendix F.1 of the Project EIR, which states that, “[t]he required fire flow for this project has been set at 6,000 to 9,000 G.P.M. from four to six fire hydrants flowing simultaneously.” Pursuant to Section 57.507 of the Los Angeles Municipal Code (LAMC), “fire-flows shall comply with Table 57.507.3.1 for any structures, group of structures or facilities by the type of land development, or as otherwise determined by the Chief.” Based on the determination by LAFD, the Project EIR analyzed the more conservative flow of 9,000 G.P.M. from six hydrants flowing simultaneously. Additionally, per LAMC and Building Code requirements, the Project would be required to install fire sprinkler systems, subject to review and approval by LAFD. As discussed in Appendix I of the Draft EIR, Utility Infrastructure Technical Report: Water, an IFFAR was submitted to the Los Angeles Department of Water and Power (LADWP) to determine if the existing public water system would have adequate water pressure to serve the Project’s anticipated fire and domestic water needs. The results of the IFFAR approved by LADWP demonstrate that the applicable requirement of 6,000 to 9,000 G.P.M. can be met by the existing infrastructure. As the Project fire flow requirement would be adequately served by the existing infrastructure, any fire response or fire sprinkler demand would also be adequately served by existing infrastructure.

Furthermore, the IFFAR for the 775 South Hope Street Project applies to a different project located on a separate block west of the Project Site, consisting of new and existing uses on a larger site. In addition, the group of fire hydrants determined by the IFFAR to be the hydrants that would service the 775 South Hope Street Project are not the same fire hydrants that were determined to be applicable for the Project IFFAR. In particular, three of the hydrants for the Project are served by a different water main not included in the 775 South Hope Street Project IFFAR. Therefore, the 775 South Hope Street Project IFFAR does not constitute substantial evidence that the Project EIR failed to disclose fire flow requirements or is insufficient in its analysis of water infrastructure.

Supplemental Point S1-2

The Project EIR failed to disclose the information found in the adjacent project IFFAR, misinforming the decision makers, and possibly resulting in increased fire severity, limited firefighting capabilities, increased loss of life and property, and increased risk of fire spread – a significant impact under CEQA.

Staff Response S1-2

The Appellant asserts that the Project EIR should have disclosed information contained in an IFFAR for an adjacent project located at 775 Hope Street Project and, as a result, misinformed decision makers, possibly leading to fire service inadequacies and a subsequent CEQA impact. The Appellant attached an IFFAR for the adjacent 775 Hope Street Project, dated March 6, 2023.

The IFFAR report the Appellant attached to their letter was an earlier version of an IFFAR for a proposed project at 775 Hope Street to redevelop a portion of The BLOC mixed-use site (The BLOC Project). The final and approved IFFAR, also dated March 6, 2023, was published on March 28, 2024, as Appendix F to the Draft EIR for The BLOC Project and indicated that fire flow would be sufficient to serve The BLOC Project. The BLOC Project IFFAR makes no statements related to the 8th, Grand, and Hope Project’s fire flow or IFFAR. The availability of The BLOC Project IFFAR document was several years after the release of the 8th, Grand, and Hope Project Initial Study, which was released on May 10, 2019, and which established the baseline for the Project.

The availability of The BLOC Project IFFAR report also occurred well after the publication of the Project's Draft EIR in November 2021 Final EIR in January 2023, and initial certification of the Project's EIR in May 2023. Therefore, the Project EIR did not "misinform" any decision-makers, as the information regarding the adjacent project's IFFAR was not available at the time of Project's EIR preparation and certification. In addition, the IFFAR is specific to the development details of The BLOC Project and considered infrastructure not applicable to the Project.

As discussed above and in Staff Response S1-1, the technical appeal points related to inadequate fire flow and infrastructure serving the Project are not supported by substantial evidence. The Project EIR disclosed all relevant information, and the Project will be required to provide code-required fire safety systems in the new construction.

Supplemental Point S1-3

Substantial evidence shows that the Project would require the construction of new or expanded water facilities and impacts would result in significant impacts, which were not disclosed and which requires the recirculation of the Project EIR.

Staff Response S1-3

The Appellant asserts the Project would need to expand water facilities, based on an attached IFFAR for the 775 Hope Street Project. As discussed in Staff Response S1-2, the IFFAR and justification provided by the Appellant are not relevant to the Project. Fire flow for the Project was determined to be adequate to serve the Project, and for which no new significant public infrastructure would be required. Therefore, the appellant fails to provide new or substantial information to substantiate the appeal point; and recirculation of the Project EIR is not required. In addition, the Project EIR analyzed impacts associated with construction activities for the Project, and anticipated the installation of new on-site infrastructure and limited off-site work, including trenching and limited closure of adjacent streets. Construction activities for the Project were adequately addressed, and any potential off-site infrastructure upgrades would be limited and would not exceed the scope of construction analysis for the Project, including for such topics as Air Quality, Energy, Greenhouse Gas Emissions, Noise, and Utilities impacts. Further, LAFD evaluated the Project in a letter attached to the DEIR as Appendix F Public Service Response Letters, where LAFD required the same Fire Flow requirements as analyzed in the IFFAR for the Project, and did not identify any further improvements needed to serve the Project.

Supplemental Point S1-4

The City erred in approving the VTTM as the City is unable to make the finding that the site is physically suitable for the type or density of development

Staff Response S1-4

The Appellant asserts that the site is not physically suitable for the development based on the 775 Hope Street Project IFFAR. As discussed above, the referenced IFFAR does not invalidate the Project's VTTM findings related to suitability of the site for the proposed type or density of development nor the Project's own IFFAR; therefore, the Appellant does not provide substantial evidence to support their assertion that the City erred in approving the VTTM for the Project.

CPC LETTER DATED JULY 11, 2023

Prior to the start of the July 11, 2023, CPC meeting, CREED LA submitted a comment letter as part of the day of submissions to the CPC. Staff verbally addressed this letter briefly at the conclusion of their CPC meeting presentation and below provides more robust written responses

to supplement the discussion at the CPC meeting. The CPC considered the appeal points within this submission as part of their deliberations on the appeal; however, the information provided here is intended to better inform the PLUM Committee in their evaluation of the appeals.

Point 1A-1

The City is required to analyzed health risk impacts.

Staff Response 1A-1

The Appellant sates that the City is required to prepare a qualified Health Risk Assessment (HRA) for the Project because CEQA requires health risks be disclosed with relevant specifics. The Appellant further acknowledges that an HRA was prepared for informational purposes in the FEIR, but claims it was insufficient because it employs flawed logic related to the analysis of Diesel Particulate Matter (DPM), and asserts, without evidence, that cancer risk is affected by both duration and concentration of Toxic Air Contaminants (TACs) as well as their toxicity. The Appellant cites the Office of Environmental Health Hazard Assessment (OEHHA) guidance for a recommended threshold for preparing HRAs and asserts that an HRA is required for any construction activity with a duration of two months or more. The comment was previously raised and addressed as Comment Nos. CREED-2 and CREED-3 within the Appeal Report prepared for the Project, as well as within the FEIR response to comments (Comment No. 3-6 through 3-8, and 3-28 through 3-30). SCAQMD's CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. Furthermore, cancer risk is based on a 70-year exposure duration and duration is part of the inputs for cancer risk. As construction results in a short-term exposure period (i.e., 3 years out of a 70-year or 30-year lifetime), further evaluation of construction TAC emissions within the DEIR was not warranted or required. Nonetheless, the HRA (Appendix FEIR-2 of the Final EIR) prepared in response to comments demonstrates that the Project would not result in significant impacts associated with health risk.

Point 1A-2

The FEIR fails to disclose and mitigate significant health impacts on sensitive populations.

Staff Response 1A-2

In addition, the Appellant asserts that the Final EIR failed to respond to evidence regarding cancer risk, and that the Project's Condition of Approval regarding that the applicant would "make a good faith effort" to use Tier 4 equipment during construction is too vague.

As discussed above in Staff Response 1A-1 and in Response to Comment No. 3-6 of the Final EIR, due to their limited duration, construction activities would only be a short-term source of TAC emissions and operation of the Project would not generate a substantial source of TAC emissions. As such, an HRA was not required or warranted as part of the Draft EIR. The HRA included as part of the Final EIR was prepared to respond to public comments for informational purposes. The comment regarding Age Sensitivity Factors (ASFs) was already addressed in the Final EIR and in Response to Comment Nos. CREED-2 and CREED-4 within the Appeal Report. As also discussed therein, a quantified HRA using ASFs is not required, and the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies based on the supporting evidence for evaluating a project's impacts including potential impacts related to health risk.

With regard to the Condition of Approval, Tier 4 off-road equipment would be used based on a good faith effort because implementation of the mitigation measure is not required to reduce a

significant and unavoidable impact. As this equipment is becoming more readily available as technologies are updated, it is expected that most off-road diesel equipment meeting Tier 4 emissions standards would indeed be used for the Project.

Point 1A-3

The FEIR still fails to require all feasible mitigation measures to reduce significant noise impacts.

Staff Response 1A-3

The Appellant asserts that the EIR fails to include feasible mitigation measures to reduce the Project's construction noise impacts. This comment is addressed in Response to Comment Nos. 3-39 and 3-40 of the Final EIR and in Staff Response CREED-4 of the Appeal Report. As demonstrated therein, the Appellant's suggested mitigation measures are not feasible mitigation measures that have been shown by substantial evidence to be effective or financially or legally possible. Furthermore, as discussed in greater detail in Staff Response 1A-5 in the appeal responses below, the Appellant has not addressed the additional impacts that would be created by their suggestion of installing scaffolding and plexiglass up to 53 stories in height. As all feasible mitigation has been incorporated in the MMP for the Project.

Point 1A-4

The Project does not provide affordable housing, in conflict with local land use goals, objectives, and policies; and therefore, the Advisory Agency's Approval of a Vesting Tentative Tract Map, and the CPC's approval of the Project were contrary to law and unsupported by the record.

Staff Response 1A-4

The Appellant asserts that the Project must include on-site affordable housing to be consistent with the Housing Element of the General Plan. However, the City's Housing Element does not require that each development to provide affordable units; but rather that the majority of entitlements require consistency Findings with the Housing Element goals. Under State Planning and Zoning law (Government Code Section 65000, et seq.), strict conformity with all aspects of a plan is not required. As decided in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, State CEQA law does not require an exact match between a project and a relevant plan. The court concluded that for a project 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, but need not be in perfect conformity with every plan policy. (Id. at page 719.) Further, as discussed in the Project EIR Section IV.D, Land Use, Appendix D Land Use Tables, and further in the Findings of the Staff Report, the Project is consistent with a number of policies, objectives, and goals of the 2021–2029 and 2014-2021 Housing Element. Therefore, even without affordable housing, a market-rate housing project can be considered consistent with the Housing Element.

The Appellant reiterates arguments previously submitted in their VTTM Appeal, which have been responded to in the Appeal Report, and on which the CPC acted to deny the Appellant's appeal and sustain the decision of the Advisory Agency because the Project would support the City's housing goals by increasing the range of housing choices available to Downtown employees and residents.

The Appellant also asserts a corollary claim that the Public Benefit Payment required by the TFAR entitlement is not sufficient nor would it further City goals or Regional Housing Needs Assessment (RHNA) allocations. The TFAR entitlement requires a Public Benefit Payment which, in

consultation with Council District (CD) 14, the Applicant opted to include a payment to the CD 14 Public Benefit Trust Fund for Affordable Housing. The CPC recommended this payment plan be adopted by Council and considered the broader consistency with land use plans in adopting findings for the associated entitlements for the Project.

Point 1A-5

The Advisory Agency's Approval of a Vesting Tentative Tract Map was contrary to law and unsupported by the record

Staff Response 1A-5

The Appellant asserts that the City did not provide the requisite findings for the Project's entitlements and that the approvals are not in substantial conformance, nor in the public interest, and create adverse effects, specifically related to air quality and noise impacts. These comments are made based on the unsubstantiated claims made above and in the Appellant's previous correspondence. Refer to Appeal Response CREED-1 of the VTTM Appeal Report regarding the substantial evidence and supported findings made for approval of the VTTM.

The Appellant makes no new substantiated claims or revival of claims that have not already been sufficiently addressed in previous responses, including in the City's findings. Furthermore, the EIR has been completed in full 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.

Point 1A-6

The CPC cannot make the requisite findings to approve the project's entitlements

Staff Response 1A-6

The comment reasserts Appellant's contentions regarding cancer risk, affordable housing and the sufficiency of the TFAR public benefits. The Appellant asserts the City did not provide the requisite findings for the Project's entitlements based on unsubstantiated claims made above and in their previous letters that the approvals are not in substantial conformance, nor in the public interest, and create adverse effects, specifically related to air quality and noise impacts.

The Appellant makes no new substantiated claims or revival of claims that have not already been sufficiently addressed in previous responses, including in the City's findings. Furthermore, the EIR has been completed in full 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.

APPELLANT 2: DIGITAL REALITY RE: CF-23-1150 (CPC-2017-505-TDR-ZV-SPPA-DD-SPR-1A) AND CF-23-1151 (VTT-74876-CN-2A)

Comment letters previously submitted by this Appellant that are referenced in the Appeal Points and Responses below include:

- 1) A letter to the DAA following the distribution of the VTTM Staff Report, but prior to the scheduled public hearing, dated February 15, 2023 (Final EIR Letter);
 - 2) The first-level appeal of Case No. VTT-74876-CN, dated June 1, 2023 (VTTM Appeal);
- and

- 3) The appeal of Case No. ZA-2021-7053-ZAI decision, dated June 9, 2023 (ZAI Appeal).

These comment letters were responded to by the City in the following documents:

- 1) The Final EIR Letter was addressed in a supplemental Memo to the Zoning Administrator, dated June 22, 2023, and attached to the VTTM LOD;
- 2) The VTTM Appeal was responded to in the Appeal Report; and
- 3) The ZAI Appeal was responded to in the Appeal Report.

The current appeal is responded to below:

Appeal Point 2-1

Impacts on Historical Resources are neither disclosed nor fully analyzed.

Staff Response 2-1

The Appellant asserts that the EIR did not adequately analyze Project impacts to historic resources associated with Boston Dry Goods Store (J. W. Robinson's Building), a designated City Historic Cultural Monument (HCM) and Third Church of Christ, Christian Scientist Reading Room. This same appeal point was submitted for the VTTM Appeal, and responded to in the VTTM Appeal Report, and no new evidence or justification was provided to substantiate this claim. However, the Appellant includes an additional point that the City failed to include an analysis of the Auto Center Garage as a potential historic resource, as it is identified in SurveyLA, the City of Los Angeles' citywide historic resources survey, and, therefore, the Appellant asserts that the applicable historic vibration criteria was not correctly applied as part of the analysis for impacts related to Noise and Vibration.

The EIR appropriately treated the J.W. Robinson's Building and Third Church of Christ as historical resources, for purposes of CEQA, in the analysis of Project impacts, including potential direct impacts resulting from construction activity as discussed in the Initial Study, and potential indirect impacts resulting from the introduction of new development on the Project Site. Specifically, the J.W. Robinson's Building and the Third Church of Christ, Scientist Reading Room are located approximately 250 feet and 178 feet north of the Project Site, respectively, and are physically separated from the Project Site by existing buildings, such that there would be no potential significant impacts resulting from construction or operation of the Project and relating to historic resources. Additionally, construction noise and vibration impacts to these buildings would be less than significant, as supported by the analysis in Section IV.E, Noise, of the Draft EIR, which confirms that noise vibration levels would not exceed the threshold that would indicate potential damage during construction to these nearby potential historical resources. The DEIR includes Mitigation Measure NOI-MM-2, a vibration monitoring program to ensure vibration levels remain below building damage thresholds. Therefore, the EIR correctly concluded that potential direct impacts resulting from construction activity associated with noise vibration would be less than significant.

The Appellant correctly states that the Auto Center Garage was not identified in the Initial Study as a potential historic resource; however, similar to the other potential historic resources identified above, the Project would not alter or affect the integrity of the Auto Center Garage and would not result in any significant impacts to the garage. In addition, the vibration criteria applied in the Noise and Vibration analysis in the EIR for the garage appropriately relied on the building construction type for its thresholds analysis, and therefore did not utilize the more conservative vibration threshold for more fragile historic buildings, as it would not be applicable to the subject building based on the construction type. Nonetheless, in response to the omission of the Auto Center Garage in the Cultural Resources section, the Historic Resources Group (HRG) prepared a

supplemental memorandum (Attachment 1 to Exhibit 1 of this report) which establishes that the Auto Center Garage character-defining features consist of primarily internal features, such as “well appointed” women’s restrooms, and confirms that the Project would not result in any direct or indirect impacts on historical resources and that the mitigation for vibration is appropriate. The report further establishes that the Auto Center Garage would retain the essential features that convey its historic significance, and it would not be materially impaired as a result of new construction as proposed by the Project.

Appeal Point 2-2

The land use impacts of the Project’s significant departure from Protective Design Standards are ignored.

Staff Response 2-2

The Appellant contends that the EIR failed to acknowledge the Appellant’s pending application for the Data Center, proposed directly adjacent to the Project Site, from consideration when discussing land use and planning impacts, and the conflict with tower spacing requirements, as set forth in the Downtown Design Guide (DDG), must be disclosed. The Appellant further suggests that the Project’s lack of compliance with this standard in its analysis of land use impacts would be in conflict with a land use regulation adopted for the purpose of avoiding or mitigating a significant environmental impact, and result in the Project being prohibitively close to the Appellant’s Data Center to the north.

An analysis of DDG compliance was provided in pages IV.D-37 through IV.D-40 of Section IV.D, Land Use and in Table 6 of Appendix D: Land Use Tables of the Draft EIR. As demonstrated therein, in conjunction with the approval of the requested entitlements, the Project would be consistent with the DDG. In addition, on page 41 of Appendix D of the Draft EIR, the potential conflict with the tower spacing regulation is discussed, as the tower has been designed considering the tower spacing with regard to the two existing adjacent buildings to its north, including the Appellant’s Project Site, determining that no conflict with the DDG was found and no environmental impacts would occur as a result. Further, the Appellant’s application was submitted to the City March 23, 2023, after the Project FEIR was released in January 2023. The Appellant’s claims that the Project would create wind tunnels is unsupported by substantial evidence, in addition to the absence of a specific threshold that would provide the basis for analysis in the EIR.

Additionally, the Appellant cites that the DDG’s requires that projects take into consideration towers that do not currently exist but could be constructed in the future as a consideration for tower spacing. The DDG provides for a number of scenarios, and accompanying standards, in which possible adjacent towers could be built, including those with “limited development opportunities” such as constrained lot sizes and lots with existing development. In addition, only Building Code required spacing applies when the largest windows in primary rooms are not facing one another, and the Digital Realty proposal does not include any residential uses and windows. Accordingly, the EIR analyzed and concluded that the Project is consistent with the DDG, and the entitlements and findings for compliance with the DDG also supported this conclusion.

Appeal Point 2-3

The FEIR fails to include Digital’s neighboring Data Center in the Project EIR’s cumulative impact analysis.

Staff Response 2-3

The Appellant asserts that the EIR failed to include the Appellant's pending application for the Data Center, proposed directly adjacent to the Project Site, as a Related Project and, subsequently, in the cumulative analysis in the EIR; the City abused its discretion by not identifying a cutoff date for future projects; and the CEQA analysis should be updated to consider the changes surroundings.

The Appellant notes that the application for the Data Center was submitted in March 2023. CEQA Guidelines Sections 15125(a) and 15126.2(a) establishes the baseline for environmental analysis as the date of the Notice of Preparation (NOP), dated May 10, 2019. Not only did the application filing date follow the publication of the NOP, but the publication of the Draft EIR on November 18, 2021, the release of the Final EIR in January 2023, and the joint public hearing for the Project held on February 15, 2023. In preparing the EIR, the City complied with CEQA Guideline Section 15125 which requires the lead agency to describe the physical environment conditions as they exist at the time the notice of preparation is published. As such, Section III, Environmental Setting appropriately used an adequate baseline and clearly explained the rationale and evidence supporting the baseline decision used in existing and anticipated projects for cumulative impacts. Further, while CEQA requires a list of present, past, and reasonably foreseeable projects to be included in the related projects list for cumulative analysis purposes, it allows for only reasonable speculation and, per CEQA Guidelines Sections 15125(a)(2) and 15125(a)(3), must be supported by substantial evidence when forecasting future conditions. As the City lacked substantial evidence to contemplate such a proposal by the Appellant at the time of NOP, the inclusion of such a project would have been speculative.

Appeal Point 2-4

Impacts of Paleontological Resources are not evaluated in the EIR.

Staff Response 2-4

The Appellant claims that the EIR is inadequate because the Initial Study identified that impacts to paleontological resources would be less than significant with mitigation; and any impacts which require mitigation require a full analysis in the EIR.

The Initial Study, included as Appendix A to the Draft EIR, provided a detailed analysis of potential impacts associated with paleontological resources (refer to pages 54 and 55). As discussed therein, this analysis was based on the geotechnical report, the depth of excavation, and the records search conducted for the Project by the Los Angeles County Natural History Museum (NHM), included as Appendix IS-5 to the Initial Study. As provided in Appendix IS-5 of the Initial Study, according to the records search conducted for the Project by the NHM, no vertebrate fossil localities lie directly within the Project Site boundaries. However, that analysis concluded that it may be possible that deeper-lying paleontological artifacts that were not recovered during prior construction or other human activity may be present. Thus, Mitigation Measure GEO-MM-1 was included that requires a qualified paleontologist to be retained to perform periodic inspections of excavation and grading activities. Therefore, with implementation of this mitigation measure, potential impacts to any previously undiscovered paleontological resources would be reduced to less than significant levels. The analysis of potential impacts associated with paleontological resources was completed in full compliance with CEQA requirements.

Appeal Point 2-5

Transportation impacts related to the Project's noncompliance with driveway standards are ignored.

Staff Response 2-5

The Appellant asserts that the Project would result in impacts related to driveway standards and spacing and therefore does not address potentially significant and unmitigated impacts. The Los Angeles Department of Transportation (LADOT) prepared the “Transportation Assessment Guidelines” (TAG) to guide applicants and the City in determining transportation impacts, and identifies multiple documents that projects are required to analyze. The Appellant, however, primarily focuses on LADOT Manual of Policies and Procedures 321 (MPP).

The analysis referenced by the Appellant falls under Threshold question (a), which asks if the Project would “conflict with a plan, program, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities.” Generally, the TAG centers analysis on conflicts with these documents. Specifically, the TAG instructs, “[t]he threshold test is to assess whether a project would conflict with an adopted program, policy, plan, or ordinance that is adopted to protect the environment. In general, transportation policies or standards adopted to protect the environment are those that support multi modal transportation options and a reduction in VMT. Conversely, a project would not be shown to result in an impact merely based on whether a project would not implement a particular program, plan, policy, or ordinance. Many of these programs must be implemented by the City itself over time, and over a broad area, and it is the intention of this threshold test to ensure that proposed development projects and plans do not preclude the City from implementing adopted programs, plans and policies. This determination may require consultation with LADCP and LADOT.” (TAG page 2-2) The specific issues the Appellant raises were discussed in Table 2.1 of the Transportation Assessment (TA), which analyzes conflicts with plans, policies, programs, or ordinances related to driveway location, spacing, and number, and was approved by LADOT; and in the Transportation section of the Draft EIR. Nonetheless even if the Project were not consistent with the driveway standard, that alone would not result in an impact, as the DOT methodology states.

Further, the MPP 321 is characterized by the Appellant as a requirement; however, the MPP permits that applicants may be granted exceptions from the driveway location distances if granted by the Transportation Engineer. Separately, driveway spacing from intersections and adjacent driveways is implemented “where feasible”, with design prescriptions where adjacent driveway spacing cannot be met. As discussed in Table 2.1 of the TA, only the 8th Street frontage is more than 250 feet (approximately 337 feet). As the street frontage on both Hope Street and Grand Avenue is less than 250 feet (approximately 114 feet and 102 feet, respectively), the driveway provision cited by the Appellant does not apply to those streets.

Finally, an analysis of the introduction of a “Dangerous Design Feature”, was analyzed under Threshold question (c) was also provided in the TA and discussed in the Transportation section of the Draft EIR. Impacts for both Threshold questions were determined to be less than significant.

Appeal Point 2-6

The City failed to evaluate the Project's inconsistency with the General Plan Housing Element's affordable housing goals and policies.

Staff Response 2-6

The Appellant asserts that the CPC failed to address the Project's inconsistencies with the affordable housing policies set forth by the City's 2021-2029 Housing Element specifically identifying that the Project's parcel is listed as a site for future residential development, including the development of more than one affordable unit, in the Inventory of Sites prepared and adopted in connection with the City's 2021-2029 Housing Element. The Appellant further contends that the Project violates objectives and policies set forth in the Housing Element due to its failure to include any affordable housing and claims that the Project is required to address how the Project's lack of affordable housing comports with the Housing Element's affordable housing goals.

Insofar that the conflict with the Housing Element could result in an environmental impact, a detailed analysis of the Project's consistency with the General Plan Housing Element's was provided in Section IV.D, Land Use, of the Draft EIR and in Table 4 of Appendix D: Land Use Tables of the Draft EIR. The analysis demonstrates that no impact from conflict with goals, policies, and objectives of the of the General Plan Housing Element 2013-2021 would occur from construction and operation of the Project.

As discussed in the Staff Report prepared for the Project, the Project is consistent with the applicable goals, policies, and objectives of the 2021-2029 Housing Element. As discussed on pages F-13-F15 of the Staff Report, the Project would contribute to the housing needs of the City, while providing the requisite amenities for residential units, while locating new residential uses in Downtown LA, a hub of jobs, amenities, cultural institutions, and transportation options, elements identified in the policy and objective cited by the Appellant (pages F-13 through F-15).

While the Project does not propose any affordable residential units, the Project does include 580 market rate residential units. The Project would be in conformance with Senate Bill (SB) 166, which was adopted on September 29, 2017, and amended Government Code Section 65863, and also known as the No Net Loss Law, to require sufficient adequate sites to be available at all times through the Housing Element Planning period to meet a jurisdiction's remaining unmet Regional Housing Needs Assessment (RHNA) goals for each income category. Pursuant to SB 166, as jurisdictions make decisions regarding zoning and land use, or development occurs, jurisdictions must assess their ability to accommodate new housing in each income category on the remaining sites in their housing element site inventories. A jurisdiction must add additional sites to its inventory if land use decisions or development results in a shortfall of sufficient sites to accommodate its remaining housing need for each income category. In particular, a jurisdiction may be required to identify additional sites if a jurisdiction rezones a site or approves a project at a different income level or lower density than showing in the site's inventory.

As discussed in the Staff Report on Page F-15, the 2021-2029 Housing Element identified the Project Site as a "candidate site" to which 1.59 Low Income Units have been allocated. SB 166 requires that the reduction on an individual project site in allocated density is consistent with the City's General Plan and that the remaining sites identified in the Housing Element are adequate to meet the City's RHNA's allocation, which are demonstrated below.

The Housing Element anticipated that the Project Site could accommodate up to 1.59 Low Income Units, the City has capacity to accommodate the remaining RHNA Allocation for the 2021-2029 Planning period. As of April 1, 2023, the City's remaining RHNA Allocation for the 2021-2029 Planning period is as follows: 112,281 Very Low-Income Units, 67,086 Low Income Units, 74,964 Moderate Income Units, and 168,892 Above-Moderate Income Units. As of April 1, 2023, the City has a remaining capacity of 330,056 Very Low-Income Units, 332,096 Low Income Units, 63,107 Moderate Income Units, and 907,466 Above-Moderate Income Units. The excess Above-

Moderate Income Unit capacity may accommodate both Moderate and Above-Moderate Unit RHNA Allocations.

As previously noted above, the Project does not conflict with SB 166 and findings demonstrating consistency with the Housing element and RHNA Allocation were made in the Staff Report. Further, while the Project includes no on-site affordable housing, it does include, as part of its Transfer of Floor Area Rights (TFAR), payment to the public benefit payment trust fund and to the CD 14 Affordable Housing Trust Fund (subject to City Council approval). The payments would serve to further fund other affordable housing projects throughout the City on parcels likely identified by the Housing Element, as well as within CD 14. As such, the Project is consistent with the policies and objectives of the General Plan Housing Element 2013-2021.

Appeal Point 2-7

Construction related vibration impacts associated with the Project are not fully mitigated.

Staff Response 2-7

The Appellant contends that Mitigation Measure NOI-MM-2 is not a proper mitigation measure because it requires approval by the Appellant to access their property to document interior structural elements of the parking garage. Without consent, the Appellant contends that the Applicant and City cannot assure its enforceability or effectiveness. However, the mitigation measure requires that photo documentation of the condition of the existing structure be made “to the extent feasible from the Public Right of Way,” and that vibration monitoring occur at the property line, neither of which require access to the Appellant’s property.

The Appellant also asserts that because the EIR did not explicitly identify the historic resources located adjacent to the Project Site, namely the Third Church of Christ, Christian Scientist Reading Room and Auto Center Garage, that the vibration analysis is incomplete and the vibration analysis must be re-studied, re-analyzed, and recirculated. As discussed in the Draft EIR, vibration with respect to building damage is determined based on distance from the source of vibration. Given that the Third Church of Christ, Christian Scientist Reading Room is located approximately 178 feet north of the Project Site, it would not have any potential vibration impacts from Project construction. Nevertheless, vibration impacts associated with the Project construction were analyzed at the Christian Scientist Reading Room (as represented by receptor location R8). As provided in the Draft EIR (Table IV.E-23), the estimated vibration levels due to Project construction at receptor location R8 were up to 63.7 VdB, which is equal to approximately 0.006 PPV, which would be well below the most stringent vibration threshold of 0.12 PPV (applicable to building extremely susceptible to vibration damage). Therefore, as concluded in the Draft EIR, vibration impacts associated with the Project construction at the Christian Scientist Reading Room would be less than significant and the requested additional vibration impacts analysis for the Christian Scientist Reading Room is not warranted.

Based on the public building permit records for the adjacent Auto Center Garage, the construction is comprised of reinforced concrete and thus not extremely sensitive to vibration. Nonetheless, the vibration monitoring system set forth in Mitigation Measure NOI-MM-2 would be fully implemented by a structural engineer or qualified professional to address potential impacts associated with building damage during construction. In addition, as described in the Draft EIR (page IV.E-49), the Project construction would be subject to LAMC Section 91.3307.1 (Protection Required), which states that adjoining public and private property shall be protected from damage during construction, remodeling, and demolition work. Therefore, the construction vibration analysis and mitigation measures proposed are in compliance with CEQA, and the EIR has demonstrated that vibration impacts to nearby buildings would be less than significant.

Appeal Point 2-8

An inadequate range of alternatives is considered because no alternative is examined that avoids significant below-grade excavation.

Staff Response 2-8

The Appellant asserts that the Draft EIR fails to study an alternative that corresponds to the nature of the project and its environmental effects, namely, an Alternative to the Project with no subterranean excavation, and that decision makers should not approve the Project without evaluating a feasible alternative that involves less excavation and construction, and thus fewer environmental impacts.

This same appeal point was previously submitted and is identical to Appeal Point 2-6, which was previously discussed in the VTTM Appeal Report, and states that an EIR does not have to include every conceivable alternative, only a reasonable range of alternatives that would meet the majority of the Project Objectives while reducing or avoiding the significant impact identified in the EIR (CEQA Guidelines Section 15126.6). As discussed in Section V, Alternatives, of the Draft EIR includes Alternatives 2 and 3, both of which reduce the subterranean parking levels to two levels. As discussed in the Draft EIR, while these alternatives would reduce the amount of grading, and as noise impacts are based on peak days, the Alternatives with fewer subterranean parking levels would still have the same construction noise impacts as the Project on peak days at the upper levels of the receptor locations. Section V, Alternatives, also includes a detailed discussion of why other alternatives to eliminate the significant construction noise and vibration impacts during construction would be infeasible and were rejected. Furthermore, assuming an alternative with all above-ground parking would be technically feasible, such an alternative would still require grading and excavation for foundations which would result in construction noise and vibration (associated with human annoyance) impacts at the upper levels of the receptor locations. Additionally, as discussed in the VTTM Appeal Report, the three build-alternatives in the Draft EIR are a reasonable range of alternatives that can meet some or most of the Project Objectives. The Appellant provides no evidence that these three build-alternatives fail to meet the requirements of CEQA or that an all-above ground alternative would eliminate the Project's significant and unavoidable construction related impacts.

Appeal Point 2-9

The City, as lead agency, failed to comply with CEQA's procedural requirements.

Staff Response 2-9

The Appellant notes in response to the unavailability of the Draft EIR at the Central Library, additional thumb drives containing the Draft EIR were distributed to libraries in the project vicinity; however, as they did not specify when the thumb drives were made available or whether they were available for 30 days, the Draft EIR did not meet the legally required time for public review and the Final EIR should be recirculated. This appeal point was submitted as part of the VTTM Appeal and responded to in the Appeal Report. As explained therein, the Draft EIR was circulated for a total of 48 days, from November 18, 2022, through January 5, 2023, and was conducted in accordance with the City's practices that extend beyond CEQA requirements for a minimum 30-day circulation period. When Planning Staff became aware that the Central Library was unable to locate or was not sent the flash drive containing the DEIR, a replacement flash drive was furnished to the Central Library. It should also be noted that Draft EIR copies are also made available digitally on the City's website, the State Clearinghouse, and at other libraries, while physical copies are available at City Planning offices, and instructions for access during COVID restrictions were provided on City notices. Specifically, copies of flash drives that included the Draft EIR were

sent to the Central Library, Little Tokyo Branch Library, Pico Union Branch Library, Chinatown Branch Library, Echo Park Branch Library, and Felipe de Neve Branch Library. Even if the commentor was unable to download the DEIR on their personal device, a web version of the DEIR was available. Furthermore, the commentor did not communicate to the City that they were ultimately unable to access the document. As such, the Appellant provides no evidence to support their contention that the public did not have sufficient time to access and comment on the Draft EIR.

Appeal Point 2-10

A change in circumstances necessitates preparation of a subsequent or supplemental EIR.

Staff Response 2-10

The Appellant asserts that a subsequent or supplemental EIR should be required due to the fact that the Appellant submitted an application for a project following the establishment of the environmental baseline, and a change in circumstances necessitates additional analysis and a subsequent EIR. The Appellant reiterates many of the arguments stated above. See Staff Response 2-3 above.

Appeal Point 2-11

The project fails to qualify for a Variance.

Staff Response 2-11

The Appellant asserts that the Variance findings do not demonstrate that there is a special circumstance regarding the property, or that a privilege is being deprived of the property. The Appellant references the findings in the CPC LOD, pages F-4 through F-6, asserting the findings argument "restates the applicable legal standard and lists several characteristics of the MFA Parcel intended to distinguish it from surrounding, similarly situated sites." The Appellant fails to provide specific counter arguments, as the findings for granting a Variance generally require establishing practical difficulties or unnecessary hardship from applying the standard, special characteristics of the site that differentiate it from sites in the vicinity, the granting of the variance would provide for the protection of a specific property right, granting of the Variance would not result in impacts to public welfare or adjacent structures, and consistency with the General Plan despite the deviation. As identified, pages F-4 through F-6 of the CPC LOD establish that the Project Site's dimensions result in a wide but shallow lot as compared to other existing high-rise, mixed-use projects in the vicinity. As a result of driveway placement requirements and easement requirements of the Downtown Design Guidelines, as well as standard drive aisle width and turning radii requirements of the LAMC, the Applicant is constrained in site design options leading to a narrow garage and limited parking stalls per floor. The Appellant selectively quotes the Findings and dismisses the other elements of the Variance findings and provide no evidence that these Findings were made inappropriately in the CPC LOD. As the Findings establish, this special condition serves as basis for granting of the Variance, with the Findings further satisfying all requirements for the granting of the Variance, the assertion is without merit.

Appeal Point 2-12

The Project does not demonstrate consistency with the Central City Community Plan, the Downtown Design Guide, and the City's Housing Element.

Staff Response 2-12

The Appellant asserts that the CPC failed to make the consistency findings required for approval of the VTTM and Site Plan Review (SPR) entitlement by claiming that the Project is inconsistent with the Central City Community Plan, the DDG, and the Housing Element.

The Appellant specifically cites two Objectives of the Central City Community Plan, Objective 1-2 and Objective 2-1, that would be undermined by the Project due to a lack of affordable housing and the potential to restrict development of surrounding sites due to lack of separation with existing or proposed buildings, specifically being in violation of the DDG tower spacing requirements. However, Objective 1-2 contains no language requiring affordable housing in every development in the Central City area, but rather “to increase the range of housing choices available;” and the Project complies with the DDG, as discussed in Staff Response 2-2, and as discussed in the Project LOD, the Project is consistent with the Central City Community Plan. With regard to consistency with the Housing Element, refer Staff Response 2-6 above.

Furthermore, the DAA LOD sets forth the required Subdivision Map Act Findings with substantial evidence to support adopting the VTTM, which includes a discussion of Project consistency with the Central City Community Plan. The CPC upheld the decision of the DAA, including the certification of the EIR, as all requisite findings were made. The CPC made the necessary finding for approval based on the Project’s consistency with the Central City Community Plan, the DDG, and the Housing Element.

Appeal Point 2-13

The CPC failed to adequately assess future passive or natural heating or cooling options, pursuant to Gov. Code, §66473.1 by virtue of not considering the Appellants subsequent application and development and the limitations on the Project’s ability to comply with the requirements

Staff Response 2-13

The Appellant asserts that the VTTM fails to comply with the Subdivision Map act by virtue of lack of consideration of a design standard that cities “provide to the extent feasible future passive or natural heating or cooling options” in subdivision projects. The Appellant further cites, 64 Ops.Cal.Atty.Gen. 328 a decision by the Attorney General about the enforceability of the section and local government authority to deny VTTMs that do not meet the Design Standard. The Appellant’s argument hinges on the assertion that the “applicant has not considered the proposed development of the Data Center on the adjacent site,” and must do so to consider adequate passive heating and cooling. The Appellant fails to include relevant language in Government Code 66473.1, which clarifies the design consideration is applied “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.” The Section continues implementation of “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.” As the VTTM complies with the Subdivision Map Act and Government Code Section 66473.1, the Appellant’s contention that their proposed development must be considered in the VTTM is unfounded.

Appeal Point 2-14

The Project is incompatible with future development on surrounding parcels.

Staff Response 2-14

The Appellant asserts that the CPC failed to make the required Site Plan Review (SPR) finding which requires the Project to be compatible with existing and future development on adjacent properties and neighboring properties, specifically resulting from the placement of balconies and residential units immediately adjacent to the Appellant's property to the northern property line, suggesting that development that close to the property line assumes that the adjacent site will be left undeveloped. In addition, the Appellant asserts that the CPC did not analyze the impact of the Projects' failure to provide setbacks from neighboring properties, and that the compatibility findings should have been made with the consideration of future development on the Appellant's parcel. The CPC LOD issued for the Project included findings and analysis of each element of the Project design, including setbacks and balconies. Thus, the findings are sufficient to grant the requested entitlement.

APPELLANT 3: LOZEAU DRURY LLP ON BEHALF OF SUPPORTERS ALLIANCE FOR ENVIRONMENTAL RESPONSIBILITY (SAFER) CF-23-1151 (VTT-74876-CN-2A)

Previously submitted comment letters submitted by this Appellant that are referenced in the Appeal Points and Responses below include:

- 1) Comments on the Draft EIR, dated January 5, 2022 (Draft EIR Comments);
- 2) A letter to the DAA following the distribution of the Staff Report, but prior to the scheduled public hearing, dated February 13, 2023 (Final EIR Letter); and
- 3) The first-level appeal of Case No. VTT-74876-CN (VTTM Appeal).

These comment letters were responded to by the City in the following documents:

- 1) Draft EIR Comments were addressed in the Final EIR;
- 2) The Final EIR Letter was addressed in a supplemental Memo to the Zoning Administrator Dated June 22, 2023, and attached to the VTTM LLOD; and
- 3) The VTTM Appeal was responded to in the Appeal Report.

Appeal points from the second-level VTTM Appeal are addressed below:

Appeal Point 3-1

For the reasons described in the attached February 13, 2023, letter, the EIR fails to adequately analyze the Projects environmental impacts and impose all feasible mitigation measures.

Staff Response 3-1

The Appellant relies on a previously submitted letter, which was responded to by the City, and provides no new evidence or specifics to substantiate the claim that the Project EIR was inadequate. As discussed in the City's response to the February 13, 2023, letter and in the VTTM Appeal Report, the Appellant's specific appeal points were without merit. As no new information has been presented, the claims remain without merit.

Appeal Point 3-2

The Vesting Tentative Tract Map approval is invalid because substantial evidence to support the findings for the VTTM was not provided.

Staff Response 3-2

The Appellant bases this appeal point on the contentions in the same letter, discussed in Response 3-1, which was responded to by the City in a Memo to the AZA and in the VTTM Appeal Report prepared for the Project. The Project EIR complies with CEQA, and substantial evidence to support the certification of the Project EIR and approval of the VTTM has been provided in the VTTM Letter of Determination.

Appeal Point 3-3

The EIR does not take into account the cumulative impacts associated with the Data Center project proposal.

Staff Response 3-3

The Appellant asserts an appeal point which is substantially similar to Appeal Point 2-3 submitted by Appellant 2. Please see Staff Response 2-3.

Conclusion

In conclusion, the Appellants have failed to demonstrate how the CPC erred or abused its discretion in approving VTTM No. 74876-CN and the entitlements associated with Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and the appeals have not provided any substantial evidence to dispute the findings of the EIR. The EIR is comprehensive and has been completed in full compliance with CEQA. As demonstrated by the responses to the appeal points, there are no new impacts or substantial increases in previously identified impacts that would result from the comments raised herein. As such, in accordance with CEQA Guidelines Section 15088.5, no substantial evidence or details to support the conclusory statements regarding the supposed inadequacy of the EIR, mitigation measures, statements of overriding consideration, or the supposed inadequacy of the findings, have been provided to demonstrate that there are new impacts or substantial increases in previously identified impacts, or that revision of the Draft EIR is warranted. The City Planning Commission correctly made findings of approval consistent with the California Subdivision Map Act and the LAMC, and the provisions of CEQA. Therefore, in consideration of all the facts, Planning staff recommends that the PLUM Committee and City Council deny the appeals, sustain the decisions of the City Planning Commission, and certify the EIR.

VINCENT P. BERTONI, AICP
Director of Planning


Polonia Majas
City Planning Associate

VPB:MZ:MN:JM:PM

c: Gerald Gubatan, Planning Director, Council District 14

Attachments:

Exhibit 1 – Response to CPC Appeals Memo, Eyestone Environmental, Dated April 28, 2024

Attachment 1 - Building Permit for 746 South Hope Street

Attachment 2 - Historic Resources Technical Report, Historic Resources Group, June 12, 2023

Attachment 3 - KPFF Response to Supplemental Comments, Dated April 5, 2024



MEMORANDUM—RESPONSE TO CPC Appeals

TO: Polonia Majas
City Planning Associate

FROM: Eystone Environmental

SUBJECT: 8th, Grand and Hope Project—Response to Appeals and Comments Received
July and October 2023
CPC-2017-505-TDR-ZV-SPPA-DD-SPR, ENV-2017-506-EIR,
VTT-74876-CN-1A, and ZA-2021-7053-ZAI

DATE: April 28, 2024

CC: Polonia Majas, Department of City Planning

The Draft Environmental Impact Report (EIR) for the 8th, Grand & Hope Project circulated for public review and comment from November 18, 2021, through January 5, 2022. Following public review, 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 Deputy Advisory Agency/Hearing Officer/Zoning Administrator public meeting that the City held on February 15, 2023, three letters were received in opposition to the Project that include comments on the EIR. The three opposition letters were from (i) Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development (CREED) Los Angeles; (ii) Lozeau Drury on behalf of the Supporters Alliance for Environmental Responsibility (SAFER); and (iii) Digital Realty, an operator of data centers that owns an adjacent parcel. Each of these parties has also subsequently filed appeals regarding the Project. Note that as part of its appeal to the City Zoning Administrator's ZA-2021-7053-ZAI approval, Digital Realty submitted a letter dated June 1, 2023, and a letter dated June 9, 2023. Responses to these letters and appeals were provided as part of a June 2023 memorandum (June 2023 Appeal Responses). These responses 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 letters were already addressed in Section II, Responses to Comments, of the Final EIR; and the Appellants' claims are not supported by substantial evidence.



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Prior to the City Planning Commission hearing, CREED submitted a comment letter on July 11, 2023, which is responded to below. On September 26, 2023, the City Planning Commission rejected 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 appeals are provided and responded to below. In general, the comment letter and appeals raise the same comments that have been responded to as part of the Final EIR and/or the June 2023 Appeal Responses. As demonstrated by the responses below, the appeals justifications do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

Response to July 11, 2023, CREED Letter Submitted Prior to Planning Commission Meeting

Comment No. CREED—PC Letter-1

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") to provide comments on City Planning Commission ("CPC") Agenda Item #8 in support of our appeal of the City of Los Angeles ("City") Advisory Agency's approval of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN) ("Project"), proposed by Mitsui Fudosan America ("Applicant"). The scope of the Advisory Agency's approval includes approval of a Vesting Tentative Tract Map; certification of an Environmental Impact Report ("EIR"); and adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program ("MMRP"). We also provide comments on Agenda Item #10, under which the CPC will consider approval of a 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 a Site Plan Review (CPC-2017-505-TDR-ZV-SPPA-DD-SPR). Please include the letter in the City's record of proceedings for both Agenda Items.

CREED LA filed an appeal of the Advisory Agency's decision on June 2, 2023, attaching CREED LA's comments on the Project's Draft EIR ("DEIR"), submitted on January 5, 2022, and on the Final EIR ("FEIR"), submitted on February 15, 2023. CREED LA's appeal and EIR comments demonstrated that the Advisory Agency abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient

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CEQA document and without substantial evidence to support the approval findings.¹ The Staff Report prepared for the July 13th hearing includes responses to CREED LA's comments on the FEIR. This letter addresses the responses to CREED LA's comments contained in the Staff Report, attaching analysis from air quality and hazards expert James Clark, Ph.D [sic] and noise expert Derek Watry. This letter demonstrates that the Staff Report does not contain substantial evidence to support denial of our appeal. Further, this letter demonstrates that the CPC lacks substantial evidence to make the requisite findings to approve 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.

¹ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

Response to Comment No. CREED—PC Letter-1

The comment asserts that the City lacked substantial evidence to support denial of Appellant's appeal. As demonstrated in the previous responses to the Appellant's prior comments in the Final EIR, the June 2023 Appeal Responses, and in the responses to comments below, the Appellant has not provided substantial evidence to demonstrate that the City could not make the requisite findings to certify the environmental document and subsequently approve the discretionary actions for the Project. In addition, both the Draft EIR and Final EIR provide substantial evidence to support its analysis and were completed in full compliance with CEQA. Additionally, the staff reports prepared for the Project include the requisite findings to justify certification of the Project EIR, as well as Project entitlement requests. Further, the responses to this letter demonstrate that the Appellant has not provided substantial evidence to support the claim that the City should not have denied the Appellant's appeal.

Comment No. CREED—PC Letter-2

I. The City is Required to Analyze Health Risk Impacts

CREED LA's comments on the DEIR explained that the City was required to prepare a quantified HRA for the Project because CEQA requires that a project's health risks "must be 'clearly identified' and the discussion must include 'relevant specifics' about the environmental changes attributable to the Project and their associated health outcomes."²

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In response, the City prepared an HRA for the Project's construction and operations and included it in the FEIR.³ But the Staff Report reiterates that the HRA was only conducted for informational purposes, and continues to assert that a HRA is not required by CEQA.⁴ The Staff Report, in Response to Comment No. CREED-2, reasons that construction emissions of Diesel Particulate Matter ("DPM") need not be analyzed in an HRA because they occur over a shorter time period than 70 years. This reasoning is flawed, as individual cancer risk is not just affected by the duration of exposure to Toxic Air Contaminants ("TACs"), but also the concentration of the individual's unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA⁵ guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.⁶

² Sierra Club v. County of Fresno (2018) 6 Cal.5th 502, 518.

³ Appendix FEIR-2.

⁴ FEIR, pg. II-33; Appendix FEIR-2, pg. 2.

⁵ OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

⁶ See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html ("OEHHA Guidance"), p. 8-18.

Response to Comment No. CREED—PC Letter-2

The comment asserts that the EIR did not provide an adequate HRA. This comment was already raised and responded to in previous comments by the Appellant. As discussed in Response to Comment Nos. CREED-2 and CREED-3 within the June 2023 Appeal Responses and in Responses to Comment No. 3-6 through 3-8, and 3-28 through 3-30 in Section II, Responses to Comments, of the Final EIR, the City as the Lead Agency, has the discretion to select appropriate thresholds and the Project is not the type of land use that generates substantial TACs. Furthermore, cancer risk is based on a 70-year exposure duration and duration is part of the inputs for cancer risk. Because there is such a short-term exposure period during construction (i.e., 3 years out of a 70-year or 30-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted or required. Nonetheless, the HRA prepared in response to comments (refer to Appendix FEIR-2 of the Final EIR) demonstrates that the Project would not result in significant impacts associated with health risk.

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Comment No. CREED—PC Letter-3

II. The FEIR Still Fails to Disclose and Mitigate Significant Health Impacts on Sensitive Populations

CREED LA's comments on the FEIR explained that the Project's HRA failed to analyze impacts on all sensitive receptors. Health risk impacts on children are measured using Age Sensitivity Factors ("ASFs").⁷ ASFs "account for increased sensitivity of early-life exposure to carcinogens."⁸ ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project's estimated emissions of TACs. In the Project's HRA, the City failed to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project's health risk impacts on this group of sensitive receptors.

The FEIR contended that use of ASFs is not required for measuring DPM health impacts, relying on U.S. EPA guidance⁹ related to early life exposure adjustment factors whereby the adjustment factors are only considered when carcinogens act "through the mutagenic mode of action."¹⁰ The FEIR reasoned that DPM is not mutagenic because only a small portion of its constituent particles are mutagenic. The FEIR failed to cite to scientific authority in support of the claim that DPM is not a mutagenic carcinogen. And the FEIR failed to cite to scientific authority suggesting that all of the constituent compounds of a pollutant must be mutagenic for it to be considered mutagenic.

CREED LA's comments on the FEIR presented substantial evidence that DPM is well-known to operate through the mutagenic mode of action. For instance, the U.S. EPA—on whose guidance the City claims to be relying—plainly states that DPM is mutagenic:

[D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: [...] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.¹¹ [emphasis added]

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The Staff Report is nonresponsive to this substantial evidence, instead reiterating the erroneous claim that DPM is not mutagenic because not all of its constituent compounds are. Again, the Staff Report fails to identify scientific support for this claim. Therefore, the City's failure to apply ASFs still lacks the support of substantial evidence. Courts have held that a clearly inadequate or unsupported study is entitled to no judicial deference."¹²

Dr. Clark corrected the City's analysis to include ASFs, and found that the Project's operational and construction impacts exceed the maximum incremental cancer risk threshold of 10 in one million. Dr. Clark's analysis found that for a resident living near the Project site, the risk for a child born and living during the 1st two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold. Thus, the Project would have a significant health risk impact unanalyzed in the EIR that requires mitigation.

In response to CREED LA's comments, the City adopted a Condition of Approval providing that the applicant shall "make a good faith effort" to ensure that all offroad diesel-powered equipment greater than 50 hp used during Project construction activities meet USEPA Tier 4 Final emissions standards. While use of Tier 4 equipment would reduce emissions, the COA's purported mandate to "make a good faith effort" is vague, unenforceable and ineffective. The COA should be revised to remove this non-binding language, as follows:

Construction Equipment. The applicant shall ~~make a good faith effort to~~ ensure that all offroad diesel-powered equipment greater than 50 hp used during Project construction activities meet USEPA Tier 4 Final emissions standards. A copy of each such unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided on-site at the time of mobilization of each applicable unit of equipment to allow the Construction Monitor to compare the on-site equipment with the inventory and certified Tier specification and operating permit.

⁷ Appendix FEIR-2, pg. 4.

⁸ Appendix FEIR-2, pg. 4; see also City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

⁹ U.S. EPA. 2006. Memorandum—Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance—Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action.

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¹⁰ Appendix FEIR-2, pg. 6.

¹¹ U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at https://iris.epa.gov/static/pdfs/0642_summary.pdf.

¹² *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), *quoting Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

Response to Comment No. CREED—PC Letter-3

The comment asserts that the Final EIR failed to respond to evidence provided by Appellant's consultant regarding cancer risk and that the condition of approval regarding Tier 4 equipment is too vague. As discussed above in Response to Comment No. CREED—PC Letter-2 and in Response to Comment No. 3-6 of the Final EIR, due to their limited duration, construction activities would only be a short-term source of TAC emissions and operation of the Project would not generate a substantial sources of TAC emissions. As such, an HRA was not required or warranted as part of the Draft EIR. The HRA included as part of the Final EIR was prepared to respond to public comments for informational purposes. This comment regarding ASFs was already addressed in Response to Comment Nos. CREED-2 and CREED-4 within the June 2023 Appeal Responses. As also discussed therein, a quantified HRA using ASFs is not required and the City as the Lead Agency has the discretion, as the Appellant itself acknowledged, to select the appropriate thresholds of significance and methodologies based on the supporting evidence for evaluating a project's impacts including potential impacts related to health risk. With regard to the condition of approval, Tier 4 off-road equipment would be used based on a good faith effort because implementing the mitigation measure is not required to reduce a significant and unavoidable impact. As this equipment is becoming more readily available as technologies are updated, it is expected that most off-road diesel equipment meeting Tier 4 emissions standards would be used for the Project.

Comment No. CREED—PC Letter-4

III. The FEIR Still Fails to Require All Feasible Mitigation Measures to Reduce Significant Noise Impacts

The EIR acknowledges that the Project would have significant construction noise impacts. CREED LA's comments on the DEIR and FEIR identify additional feasible mitigation measures that would reduce the Project's significant construction noise impacts, including

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provision of either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction. Mr. Watry's attached comments provide further support for the feasibility of these measures.

Response to Comment No. CREED—PC Letter-4

The comment asserts that the EIR fails to include feasible mitigation measures to reduce the Project's construction noise impacts. This comment is addressed in Response to Comment Nos. 3-39 and 3-40 of the Final EIR and in Response to Comment CREED-14 of the June 2023 Appeal Responses. As demonstrated therein, the Appellant's suggested mitigation measures are not feasible mitigation measures that have been shown by substantial evidence to be effective or financially or legally possible. Furthermore, as demonstrated in Response to Comment No. CREED-6 in the appeal responses below, the Appellant has not addressed the additional impacts that would be created by the installation of scaffolding and plexiglass, which themselves could result in new impacts which would serve as a basis for infeasibility.

Comment No. CREED—PC Letter-5

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.¹³ 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

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to fall short at the affordable (below 120% AMI) income ranges, but may meet the above moderate (market-rate) production levels.”¹⁴ 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.¹⁵ 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 ... 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.”¹⁶ 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.

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Response to Comment No. CREED—PC Letter-5

The comment asserts that the Project must include affordable housing and that providing substantial funds to develop off-site affordable housing is insufficient to support the TFAR transfer. Appellant reiterates arguments previously submitted in prior submissions appealing the Advisory Agency's decision on the Project's tract map and certification of the EIR. In addition to the June 2023 Appeal Responses that addressed their earlier unsubstantiated claims submitted prior to and in the appeal to the Advisory Agency's decision, the City also provided additional appeal responses, and the CPC acted to deny the Appellant's appeal and sustain the decision of the Advisory Agency in part because the Project would support the City's housing goals by increasing 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 in proximity to public transit; as well as providing a public benefit in the way of a contribution toward affordable housing, including to the Council District's Affordable Housing Trust Fund. 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, not create an environmental impact. Appellants have not submitted substantial evidence that the City's findings are not correct.

Moreover, in response to the Appellant's unsubstantiated claims, the City's 2021–2029 Housing Element was last adopted by the City Council on November 24, 2021, and with amendments on June 14, 2022, both after the Project's Draft EIR circulated on November 18, 2021. Nonetheless, the Project is consistent and not in conflict with the current Housing Element and its policies and objectives, as demonstrated in the CPC's Findings, outlining how the Project would meet and further its many policies and objectives. In addition, the City's Housing Element does not require each development to provide affordable units. Further, under State Planning and Zoning law (Government Code Section 65000, et seq.), strict conformity with all aspects of a plan is not required. As decided in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, State CEQA law does not require an exact match between a project and a relevant plan. The court concluded that for a project 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, but need not be in perfect conformity with every plan policy. (Id. at page 719.)

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As such, neither the Appellant's claim that the Project is required to provide on-site affordable housing nor that the TFAR benefit findings are inadequate, are well-taken, nor supported by substantial evidence.

Comment No. CREED—PC Letter-6

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. 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.¹⁷ 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,¹⁸ 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.

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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.¹⁹ 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.²⁰ 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.²¹ However, CREED LA's comments on the FEIR explain that the Project fails to provide affordable housing in conformity with Housing Element Policies.

VII. CONCLUSION

CREED LA respectfully requests that the CPC uphold the appeal and vacate the Advisory Agency's approval of the Project, and urges the CPC not to approve the Project's entitlements until the flaws in the Project's environmental review are remedied, and the Project is brought into conformity with all local 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 Comment No. CREED—PC Letter-6

The comment reasserts Appellant's contentions regarding cancer risk, affordable housing and the sufficiency of the TFAR public benefits. The Appellant asserts the City did not provide the requisite findings for the Project's entitlements based on unsubstantiated claims made above and in their previous letters that the approvals are not in substantial conformance, not in the public interest, or create adverse effects, specifically related to air quality and noise impacts. Refer to Response to Comment No. CREED-11 of the June 2023 Appeal Responses regarding the Project's less than significant impacts associated with health risk. Also refer to Response to Comment No. CREED-4 within the appeal responses below regarding the feasible mitigation measures that would be implemented to reduce the significant short-term construction noise impacts of the Project.

The Appellant makes no new substantiated claims or revival of claims that have not already been sufficiently addressed in previous responses, including in the City's findings. Furthermore, the EIR has been completed in full 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.



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Responses to City Planning Commission Appeals

SAFER Appeal Justification

The appeal to the City Planning Commission's determinations on the Project's VTTM and EIR was filed on October 2, 2023.

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Comment No. SAFER-1

I. REASON FOR THE APPEAL

Supporters Alliance for Environmental Responsibility ("SAFER") appeals the Planning Commission's approval of the Vesting Tentative Tract Map (VTT-74876-CN-1A) for the 8th, Grand and Hope Project (CPC-2017-505-TDR-ZV-SPPA-DD-SPR; ENV-2017-506-EIR) ("Project"). The Vesting Tentative Tract Map approval is invalid because it is based upon incorrect findings. In particular, the Environmental Impact Report ("EIR") prepared for the Project fails to comply with the California Environmental Quality Act ("CEQA"). The City of Los Angeles ("City") must set aside all Project approvals and circulate a revised EIR prior to considering approvals for the Project.

II. SPECIFICALLY THE POINTS AT ISSUE

Specifically, for the reasons described in the attached comment letter dated February 13, 2023, the EIR fails to adequately analyze the Project's environmental impacts and fails to impose all feasible mitigation measures to reduce the Project's impacts including, but not limited to, impacts to air quality. Furthermore, the EIR fails as an informational document because it does not take into account the cumulative impacts associated with the Data Center Project proposal that is directly adjacent to the Project. A revised EIR must be prepared to remedy these issues.

Because the EIR prepared for the Project fails to comply with CEQA, the approval of the Project's Vesting Tentative Tract Map was in error. Proper CEQA review must be complete

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before the City approves the Project’s entitlements. (*Orinda Ass’n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 [“No agency may approve a project subject to CEQA until the entire CEQA process is completed and the overall project is lawfully approved.”].) Additionally, by failing to properly conduct environmental review under CEQA, the City lacks substantial evidence to support its findings for the Vesting Tentative Tract Map approvals. The City must comply with CEQA prior to *any approvals* in furtherance of the Project.

III. HOW YOU ARE AGGRIEVED BY THE DECISION

Members of Appellant Supporters Alliance for Environmental Responsibility (“SAFER”) live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated.

IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION

The Planning Commission adopted the EIR and approved a Vesting Tentative Tract Map for the Project despite a lack of substantial evidence that impacts would be less than significant and a failure to impose all feasible mitigation measures to reduce the Project’s impacts. Furthermore, the Project was approved despite actual knowledge of the proposed Data Center Project, and the City failed to analyze and account for the cumulative impacts of having both projects built concurrently. The Department of City Planning should therefore have prepared a revised EIR and recirculated the revised document prior to consideration of approvals for the Project. The City is not permitted to make any approvals in furtherance of the Project until the EIR’s deficiencies are remedied.

Response to Comment No. SAFER-1

SAFER states that approval of the VTTM is invalid because it was approved based on an inadequate EIR which failed to comply with the CEQA because of: (i) all the reasons set forth in Appellant’s February 23, 2023, comment letter; (ii) failure to adequately analyze all environmental impacts; (iii) failure to impose all feasible mitigation measures including, but not limited to, impacts to air quality; (iv) failure to include the Data Center Project in the cumulative impacts assessment; and (v) failure to include a Statement of Overriding

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Considerations (SOC) that the Project's economic benefits outweigh its environmental costs, including the consideration of employment opportunities for highly skilled workers. As a result of these alleged failures, Appellant contends that the VTTM findings were incorrect and that approval must be invalidated until a revised and recirculated EIR is prepared.

The Appellant provides no new facts to support its allegations and instead relies on its previous submission. As set forth in the June 2023 Appeal Responses, pages 59 through 100 (attached hereto as Attachment 1), both the Draft and Final EIRs meet the requirements of CEQA; the analyses presented therein are accurate and the conclusions are based on substantial evidence; many of the issues raised in the comment letter were already thoroughly addressed in Section II, Responses to Comments, of the Final EIR; and the Appellant's claims are not supported by substantial evidence. In summary, the following responds to the points raised by Appellant as more fully set forth in Attachment 1:

1. The SOC: Findings made pursuant to CEQA Guidelines Section 15043(b) do not require that a project specify what employment opportunities for highly trained individuals would be created by the project but rather that the City make a finding that specific economic, legal, social, technological, or other considerations, which can include the provision of employment opportunities for highly trained workers, outweigh the significant effects of the Project on the environment. The staff report prepared for the Project includes a statement of overriding considerations that is further supported by findings that the benefits of the Project outweigh the temporary construction noise impacts and the CPC's Findings include an SOC that sets forth those benefits with specificity.
2. Environmental Impacts: The contention that the EIR fails to consider the environmental impacts of indoor air quality and further fails to include mitigation measures related to indoor air quality is without merit. The Appellant's analyses of the Project's potential indoor air quality impacts was made without providing substantial or relevant evidence, including relying on overstating exposure (e.g., related to assumed exposure of 70-years and 24 hours per day from birth to death as discussed in Response to Comment SAFER-7 of the June 2023 Appeal Responses), speculation as to the content of the materials that would be used in the Project and failure to consider compliance with applicable regulations regarding the content of materials and green construction requirements. The

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Appellant provides recommended mitigation measures that are not justified and cannot be legally required since mitigation is only required when there is a potentially substantial environmental impact. As explained in Response to Comment No. CREED-12 of the June 2023 Appeal Responses, pursuant to CEQA, indoor air quality is not an environmental condition which must be analyzed in an EIR and, therefore, there is no potentially significant impact to mitigate relating to indoor air quality. Also, Appellants recommend the implementation of a mitigation measure that would require the Project to include MERV 13 filtration. However, the Project is required to comply with the City's Green Building Code, which mandates MERV 13 filtration. As such, the Project would already provide for the mechanical supply of outdoor air ventilation suggested by Appellant. Appellant also suggests that a different methodology to determine air quality impacts should have been used. The City of Los Angeles as the Lead Agency for CEQA review has the discretion to apply the thresholds of significance and appropriate methodologies used for impact analysis. The City applied the thresholds from the CEQA Guidelines, and used methodologies customary for air quality impacts, and consistent with guidelines and policies of the relevant regulatory agencies. The City's choice of thresholds and methods is supported by substantial evidence in the administrative record.

3. Cumulative Impacts: As to the contention that the EIR should have analyzed the proposed data center project to determine the environmental impacts of potentially overlapping construction, the entitlement application for the Data Center project was submitted to the City on or around March 22, 2023, nearly four years after the City issued the Project's notice of preparation. As set forth in 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. Moreover, the Appellant fails to provide substantial evidence that either the proposed adjacent project would be entitled and approved prior to commencement of construction of the Project or that, if approved, it would be constructed currently with the Project. Considering the time to complete an environmental review and obtain project approvals, it is pure speculation that there would be any overlapping construction activities.

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Additionally, CEQA does not require a deviation from baseline conditions in the EIR's cumulative analysis unless there are unusual circumstances that would warrant additional analysis. Appellant provides no substantial evidence that development within the vicinity of the Project Site is a significant new development as development and redevelopment within Downtown Los Angeles is a constant occurrence. Therefore, the EIR adequately analyzed the cumulative impacts of the Project utilizing the list of past, present and probable projects known as of the baseline date pursuant to CEQA Guidelines Section 15130(b). As such, the EIR complies with CEQA and no additional cumulative impact analysis is required.

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CREED Appeal Justification

The appeal to the City Planning Commission's determinations on the CPC case, EIR, VTTM, and the ZAI case was filed on October 5, 2023.

Comment No. CREED-1

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On behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit this appeal of the City of Los Angeles ("City") City Planning Commission ("Commission") September 26, 2023 approvals of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) ("Project"), proposed by Mitsui Fudosan America ("Applicant"). On September 26, 2023, the Commission issued three separate Letters of Determination ("LOD") for Case Numbers VTT-74876-CN, CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and ZA-2021-7053-ZAI. This appeal concerns Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR.

The scope of the Commission's determination for Case No. VTT-74876-CN includes approval of a Vesting Tentative Tract Map; certification of an Environmental Impact Report ("EIR"); adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program ("MMRP"); denying the appeal in part and granting the appeal in part, and sustained the decision of the Advisory Agency dated May 26, 2023. The scope of the Commission's determination for Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR includes approval of zone variances, approval of Specific Plan Project Permit Adjustments, approval of a Director's Decision to allow 79 trees to be planted on-site, Site Plan Review, and a recommendation to City Council to approve a Transfer of Floor Area Rights ("TFAR"). The Commission issued its LOD on September 26, 2023.

CREED LA submitted comments on the Project's Draft EIR ("DEIR") on January 5, 2022 during the public review period required by Section 15087 of the California Environmental Quality Act ("CEQA") Guidelines.¹ CREED LA's comments on the DEIR demonstrated that the DEIR fails to comply with CEQA by failing to accurately disclose potentially significant

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impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. The City included responses to comments in the Final EIR ("FEIR") pursuant to Section 15088 of the CEQA Guidelines. CREED LA submitted comments explaining that the DEIR's flaws were not remedied in the City's FEIR. Subsequently, a public hearing for the Project was held by the Deputy Advisory Agency and Hearing Officer on behalf of the City Planning Commission on February 15, 2023. The Advisory Agency's LOD was mailed on May 26, 2023. CREED LA appealed the Advisory Agency's determination to the Commission. CREED LA's appeal and other approvals were considered by the Commission at its July 13, 2023, meeting.

CREED LA hereby appeals all actions taken by the Commission with regard to the Project as described in the LODs for Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR. This appeal is timely filed in compliance with the LAMC. The reasons for this appeal are set forth herein and in the attachments, which include CREED LA's comments on the DEIR and FEIR,² appeal to the Advisory Agency,³ and letter to the Advisory Agency responding to the staff report prepared for the Project.⁴ We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.⁵

As explained herein and in the attached comments, the Commission abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.⁶

I. STANDING TO APPEAL

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

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Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

Section 17.06 of the LAMC, "Tentative Map and Appeals," provides that "[t]he subdivider, the Mayor, any member of the City Council, the Advisory Agency, or any other interested person adversely affected by the proposed subdivision may appeal any action of the Appeal Board⁷ with respect to the tentative map or the kinds, nature or extent of the improvements required by the Appeal Board to the City Council." CREED LA and its members are interested persons who would be adversely affected by the Vesting Tentative Tract Map approved by the Advisory Agency.

Section 12.27(O) of the LAMC, "Variances," provides that "[a]n appeal from a decision of the Area Planning Commission granting or affirming the grant of a variance may be filed by the applicant or any person aggrieved by the decision." CREED LA and its members are aggrieved by the Commission's decision. And Section 11.5.7(J) of the LAMC, "Specific Plan Procedures," provides for appeal of Area Planning Commission decisions to the City Council.

As CREED LA's appeal is timely filed, CREED LA has standing to appeal the Commission's decision to City Council.

II. REASONS FOR APPEAL

A. The Commission's Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record

The Subdivision Map Act ("SMA") provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Government Code, section 66474, provides:

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A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

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:

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(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; or

(b) The condition or denial is required in order to comply with state or federal law.

Here, approval of the vesting tentative tract map would place the community in a condition dangerous to its health and safety.

¹ 14 Cal. Code Regs. §§ 15000 et seq.; see Cal. Pub. Res. Code §§ 21000 et seq.

² Attachment A: Letter from Adams Broadwell Joseph & Cardozo to City re: Comments on 8th, Grand and Hope FEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (February 15, 2023); Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

³ Attachment B: Appeal of Advisory Agency Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN). (June 2, 2023)

⁴ Attachment C: Letter from ABJC to City Re: Agenda Item 8 and 10—8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) (July 11, 2023).

⁵ We reserve the right to supplement these comments at later hearings and proceedings on the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199–1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121, [sic]

⁶ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

⁷ LAMC Section 17.02 defines “Appeal Board” as “The Area Planning Commission where the map is located for any parcel map or tentative map that: (a) creates or results in less than 50,000 gross square feet of nonresidential floor area; or (b) creates or results in fewer than 50 dwelling units, guest rooms, or combination of dwelling units and guest rooms; or (c) involves a lot with fewer than 65,000 square feet of lot area. Otherwise, the City Planning Commission.”

Response to Comment No. CREED-1

This comment introduces the appeal letter, provides CREED’s standing to appeal and reasons for appeal, and states the Appellant’s belief that the EIR fails to meet the requirements of CEQA. Contrary to this comment, both the Draft EIR and Final EIR were completed in full compliance with CEQA. In particular, all public comments, including those received from the Appellant, were comprehensively addressed in the Final EIR and in

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response to subsequent appeals, and no substantial evidence was provided to demonstrate that the Draft EIR was inadequate. Specific issues raised by the Appellant in this new letter and associated new exhibits are addressed in Response to Comment Nos. CREED-2 through CREED-12, below. Attachment A was specifically addressed as part of the Final EIR and Attachment B was previously addressed as part of the June 2023 Appeal Responses. Attachment C, which is the letter that was submitted prior to the Planning Commission meeting on July 11, 2023 is addressed above. As demonstrated by the response to comments herein and the previous response to comments from the Appellant, the Appellant's claims are not supported by substantial evidence. In particular, the vesting tentative tract map was approved with the requisite findings required by law, specifically including a finding that the Project would not place the community in a condition dangerous to health or safety. The findings to approve the tract map were supported by the analysis in the EIR and findings prepared for the certification of the EIR. Overall, this letter does not provide new facts that were not addressed in the Final EIR or the June 2023 Appeal Responses.

Comment No. CREED-2

First, CREED LA's comments on the EIR explained that the EIR failed to adequately disclose and analyze significant health impacts on the community from exposure to Diesel Particulate Matter ("DPM") generated by construction activities or Project operations. Specifically, the EIR failed to analyze impacts on all sensitive receptors, including children. Analysis of impacts on children is essential due to the increased sensitivity of children to Toxic Air Contaminants like DPM. As discussed in CREED LA's comments on the FEIR, Dr. James Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million cancer risk significance threshold. 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, which exceeds the 10 in 1 million threshold. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

Response to Comment No. CREED-2

This comment references CREED's comments on the Draft EIR regarding health risk impacts. Please refer to Response to Comment Nos. 3-6 through 3-8 and 3-28

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through 3-30 of the Final EIR for specific responses to CREED's comments on the Draft EIR regarding DPM and how the Draft EIR adequately disclosed and analyzed health impacts on the community from DPM generated by construction and operation of the Project. As discussed therein, the qualitative assessment of health risk impacts in the Draft EIR was sufficient and a quantitative HRA was not warranted. Nonetheless, a combined construction and operational HRA was prepared pursuant to the California Air Pollution Control Officers Association (CAPCOA) Guidance Document for Health Risk Assessments for Proposed Land Use Projects in response to these referenced comments to confirm, as the Draft EIR concluded, that no significant health risk impacts would occur from the Project. The HRA was provided as Appendix FEIR-2 of the Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is significantly below the applicable SCAQMD significance threshold of 10 in one million.

This comment also references CREED's prior comments on the Final EIR in which Dr. Clark's evaluation of the HRA concluded impacts would exceed 10 in 1 million threshold when using age sensitivity factors (ASFs) for children. Please refer to Response to Comments Nos. CREED-2 through CREED-6 and CREED-10 through CREED-13 of the June 2023 Appeal Responses. As discussed therein and specifically in Response to Comment CREED-5, below, a quantified HRA using ASFs is not required and the City, as the Lead Agency has the discretion, as the Appellant itself acknowledged in the comment, to select the appropriate thresholds of significance and methodologies based on supporting evidence for evaluating a project's impacts including potential impacts related to health risk. However, in response to CREED LA's comments on the Final EIR, and general concern over diesel exhaust emissions, additional consideration was given to reducing Project-related diesel exhaust emissions. While not required as mitigation since the Project would result in less than significant health risk impacts, the Applicant committed to the use of all off-road diesel-powered equipment greater than 50 hp during construction to meet USEPA Tier 4 Final emissions standards. This commitment was incorporated into a Condition of Approval for the Project. Use of Tier 4 equipment would further reduce air quality emissions and associated exposure to health risk.

Based on the above, there is no evidence to support that the vesting tentative tract map would be dangerous to health or safety and thus should be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

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Comment No. CREED-3

Second, the Project would have significant construction noise impacts. As explained in CREED LA's comments, excessive noise or significant increases in noise can impact public health. The City must adopt all feasible mitigation measures to reduce these noise impacts before the Project can be approved. CREED LA's expert identified mitigation measures which would reduce the magnitude of these impacts. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and the SMA unless this impact is mitigated to the fullest extent feasible.⁸

⁸ Government Code, section 66474.01.

Response to Comment No. CREED-3

The comment asserts that the Project must incorporate all the Appellant's suggested noise reduction mitigation measures. Please refer to Response to Comment No. CREED-14 of June 2023 Appeal Responses for responses to comments from CREED's expert, Mr. Watry regarding the suggested noise mitigation measures. As demonstrated therein, the mitigation measures suggested by Mr. Watry would not be effective or financially or legally possible. Also refer to Section IV.E, Noise, of the Draft EIR regarding the feasible noise mitigation measures that would be implemented to reduce the short-term construction noise impacts associated with the Project.

Comment No. CREED-4

For these reasons, and others discussed in CREED LA's comments, approval of the Project is likely to cause significant air quality, public health, greenhouse gas, and noise impacts. The Commission therefore lacked substantial evidence to make the necessary findings. The City must correct the errors in the EIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

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B. The Commission's Approval of Project Permit Adjustments Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant LAMC Section 11.5.7(E), a Specific Plan Project Permit Adjustment for a Director's Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide, as well as a Specific Plan Project Permit Adjustment to allow a deviation from Section 5 of the Downtown Design Guide to allow building and balcony projections up to nine feet and 25 feet into the sidewalk easements along Hope Street and Grand Avenue respectively, and allow projections to begin at an elevation of 25 feet above grade along Hope Street and Grand Avenue.

LAMC Section 11.5.7 (E)(3) requires the following findings to be made in order to approve a Project Permit Adjustment, in addition to any other required specific plan findings that may pertain to the Project Permit Compliance:

- (a) That there are special circumstances applicable to the project or project site which make the strict application of the specific plan regulation(s) impractical;
- (b) That in granting the Project Permit Adjustment, the Director has imposed project requirements and/or decided that the proposed project will substantially comply with all applicable specific plan regulations;
- (c) That in granting the Project Permit Adjustment, the Director has considered and found no detrimental effects of the adjustment on surrounding properties and public rights-of-way; and
- (d) That the project incorporates mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.

As summarized herein and in the attachments, the Project would have detrimental health risk, air quality, greenhouse gas, noise, and other impacts on the surrounding properties.

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The Project fails to incorporate the requisite mitigation measures to mitigate the negative environmental effects of the Project to the extent physically feasible. As a result, the Commission could not make the requisite findings to approve the Project Permit Adjustments.

C. The Commission's Approval of Zone Variances Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant to LAMC Section 12.27, a Zone Variance to allow relief from providing an additional 10-inch clear space to the parking stall widths when adjoined on their longer dimension by an obstruction, and a Zone Variance to allow relief to allow reduced drive aisle widths of 24 feet in lieu of the required drive aisle width.

LAMC Section 12.27(D) requires the following findings to be made in order to approve a Zone Variance.

1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
4. 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; and
5. that the granting of the variance will not adversely affect any element of the General Plan.

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Additionally, Section 12.27(E) provides that the decisionmaker may impose those conditions it deems necessary to remedy a disparity of privileges and necessary to protect the public health, safety or welfare and assure compliance with the objectives of the General Plan and the purpose and intent of the zoning.

The Commission approved the Project's Zone Variances despite the Project's health risk, air quality, greenhouse gas, noise, and other impacts. These impacts are materially detrimental to the public welfare. These impacts precluded the Commission from making the requisite findings to approve the Project Permit Adjustments. And the Commission failed to use its authority to adopt the necessary conditions to protect the public health, safety and welfare.

D. The Project's Environmental Review Fails to Comply with CEQA

CREED LA's comments on the EIR demonstrated that the EIR fails to comply with CEQA. As explained more fully in CREED LA's comments on the DEIR and FEIR, the EIR failed to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas emissions. The EIR failed to support its significance findings with substantial evidence, and failed to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot adopt a statement of overriding considerations pursuant to CEQA.⁹

III. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the City Council uphold this appeal and vacate the City Planning Commission's approval of the Project.⁹ Pub. Resources Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁹ Pub. Resources Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

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Response to Comment No. CREED-4

The Appellant makes similar unsubstantiated claims to those previously submitted in response to and in appeal of the prior decisions on the Project's entitlement, EIR and tract map and have been responded to as part of the Final EIR and administrative record. These comments claim that the City Planning Commission lacked substantial evidence to support the findings for the Project that would most likely cause significant air quality, public health, greenhouse gas, and noise impacts, and fails to incorporate the requisite mitigation measures to mitigate the negative environmental effects to the extent physically feasible. All these comments have been addressed previously in the Final EIR the June 2023 Appeal Responses.

As demonstrated by the analyses within Section IV.A, Air Quality, and Section IV.C, Greenhouse Gas Emissions, of the Draft EIR, the Project would not result in significant impacts associated with air quality, public health or greenhouse gases. As demonstrated by the analysis within Section IV.E, Noise, of the Draft EIR, the Project would result in significant short-term construction noise impacts that have been mitigated to the extent feasible. These mitigation measures have been incorporated into the Project as part of the Project's Mitigation Monitoring Program. Contrary to the Appellant's comments, there is no substantial evidence to support that the Project would have a significant impact other than the short-term significant and unavoidable construction noise and vibration impacts. Rather, both the Draft EIR and Final EIR were completed in full compliance with CEQA. Thus, the Appellant has not provided substantial evidence to support the claims that the findings for the statement of overriding considerations, Zone Variances, Project Permit Adjustments have not been properly made or that the Planning Commission failed to adopt necessary conditions to protect the public health, safety and welfare.

Comment No. CREED-5

Attachment: July 10, 2023 Letter from Clark & Associates

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the January 2023 City of Los Angeles Final Environmental Impact Report (FEIR) of the above referenced project.

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Response To Comment No. CREED-2, 3, 4, 5, & 11—Lack of Construction and Operational HRA, Use of ASFs, Short Duration of Exposure

Eystone contends that the City as the Lead Agency has discretion to select the appropriate levels of significance and methodologies for evaluating a project's impacts including potential impacts related to health risk. Since the City resides in the South Coast Air Basin it is subject to rules from the South Coast Air Quality Management District (SCAQMD). Based on the City of Los Angeles' own L.A. CEQA Threshold Guide (page B-1 of the 2006 Guide) it is clear that the City defers to the SCAQMD's Air Quality Handbook and threshold levels. The answer from Eystone regarding thresholds is clearly contradicted by the SCAQMD Air Quality Significance Thresholds, which defines the thresholds for TACS to be the maximum incremental cancer risk greater than or equal to 10 in 1,000,000, a cancer burden greater than 0.5 cancer cases in areas with greater than 1 in 1,000,000 cancer risk, or a chronic and acute hazard index greater than or equal to 1. The only way to assess the cancer risk, cancer burden or hazard index from TACs against the SCAQMD's Air Quality Significance Thresholds it to perform a health risk analysis. The L.A. CEQA Threshold Guide further states that there is no specific concentration of carcinogenic air contaminants that can be considered completely safe. Thus, the amount of increased risk a person has of getting cancer from exposure to carcinogenic air toxics is used as an indicator of potential significant health risks (pg B.3-2 of 2006 LA CEQA Threshold Guide).

The City further states in the 2006 LA CEQA Threshold Guide that the impacts from toxic air contaminants can occur during either the construction or operational phases of a project. Eystone's response regarding the short-term use of DPM-generating equipment and the potential health risks that may develop after exposure to the TACs is not in alignment with the guidance from OEHHA, the State's toxicology program, DTSC, U.S. EPA, ATSDR, and other authoritative bodies; and ignores the concept of increasing risk with the duration of exposure. The potency of the chemical is the primary driver of the potential to develop cancer. The duration of the exposure is a secondary consideration.

According to the City of Los Angeles's Air Quality And Health Effects guidance,¹ exposure to DPM may be a health hazard, particularly to *children* (emphasis added) whose lungs are still developing and the elderly who may have other serious health problems. This statement from the City's guidance clearly indicates that the City is aware that age of exposure to DPM has a significant impact on the potential health outcomes.

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Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the FEIR is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised final environmental impact report.

¹ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10

Response to Comment No. CREED-5

The comment reiterates Appellant's contention regarding the Project's potential health impacts. These comments were already raised in previous comments by the Appellant and have been responded to as part of the Final EIR (Response to Comment Nos. 3-6 through 3-8 and 3-28 through 3-30) and administrative record. As discussed in Response to Comment Nos. CREED-2 and CREED-5 and CREED-11 within the June 2023 Appeal Responses and in the responses within the Final EIR, the City as the Lead Agency, has the discretion to select appropriate thresholds and the Project is not the type of land use that generates substantial TACs. Furthermore, cancer risk is based on a 70-year exposure duration and duration is indeed part of the inputs for cancer risk. Because there is such a short-term exposure period (i.e., 3 years out of a 70-year or 30-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted or required. Nonetheless, the HRA prepared in response to comments as part of the Final EIR demonstrates that the Project would not result in significant impacts associated with health risk.

The comment regarding DPM and impact to children was also specifically addressed in Response to Comment Nos. CREED-10 and CREED-11 of the June 2023 Appeal Responses. As discussed therein, for the HRA prepared in the Final EIR, the HRA relied upon USEPA guidance relating to the use of early life exposure adjustment factors (Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens, EPA/630/R-003F) whereby adjustment factors are only considered when carcinogens act "through the mutagenic mode of action." While diesel particulate contains polycyclic aromatic hydrocarbons (PAHs) which are mutagenic, they comprise less than one percent of diesel particulate mass. Therefore, early life exposure adjustments were not considered in the HRA presented as Appendix FEIR-2.

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Comment No. CREED-6

Attachment: July 9, 2023 Letter from Wilson Ihrig

In January 2022, we reviewed and provided comments on the DEIR for this project, and February 14th of this year we provided comments on the City's FEIR responses to our original comments. Our comments on the FEIR document have now been responded to by Eystone Environmental in a memorandum to the City of Los Angeles Planning Department:

8th, Grand and Hope Project

Response to Letters Received on February 15, 2023 and Appeal Comments ("Appeal Responses") Eystone Environmental, June 22, 2023

This letter provides comments on the Appeal Responses.

Additional Comments on Construction Noise Mitigation

In our previous comments, we noted that the project did not consider adding noise barriers at the elevated receptor locations, and we suggested this might be done by either attaching scaffolding to the receptor buildings and hanging noise blocking material—possibly clear, thick vinyl— from the scaffolding or adding Plexiglas or other clear-material panels to the balconies that overlook the project site. The Appeal Response states that my previous commentary “does not provide substantial evidence that such a measure would in fact reduce the Project's significant and unavoidable construction noise impacts, and the comment does not demonstrate that such mitigation measures would be feasible.” [Appeal Response at p. 54]

Assessing economic feasibility is outside my area of expertise, but I do believe it is within my purview to note that a previous project Wilson Ihrig worked on did erect scaffolding outside a neighboring building to support noise control blankets (with that building management's cooperation, of course), and the developer of another project we reviewed agreed to replace old, plate-glass windows in an adjacent building with new, double-paned windows to mitigate construction noise. So, it is not unprecedented for project developers to implement construction noise control on properties they do not own.

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With respect to efficacy of the suggested noise control measures, the DEIR indicates that the three receptors most affected by construction noise will be R1, R5, and R6 at which construction noise will exceed the significance criteria by, respectively, 10.7, 10.7, and 5.2 dBA. ½-pound-per-square foot transparent PVC barrier material has a Sound Transmission Class (STC) rating of 20 which will reduce construction noise at least 10 dB.¹ A ¼-inch-thick sheet of Plexiglas has an even higher rating, STC 29.² So, transparent materials that would reduce the construction noise to less-than-significant levels are readily available.

The Appeal Responses correctly notes that small gaps in noise barriers can cause a reduction in performance, but there is no fundamental reason why the noise barriers couldn't be well designed and properly installed. For the scaffolding approach, it is common for adjoining blankets to overlap somewhat to seal the gap. For the buildings with balconies (R1 and R6), the Plexiglas options are slightly different. The balconies at R1 are only open on the side facing construction (Fig. 1), so Plexiglas would be installed deck-to-ceiling. Yes, this would temporarily make the balcony an "interior" space, but it would still be usable. Building R6 is kitty-corner to the project site, so only two sides would have to be sealed from deck-to ceiling (Fig. 2). In the same way a highway noise barrier blocks traffic noise, this arrangement would block construction noise because the remaining open side would face in the opposite direction.

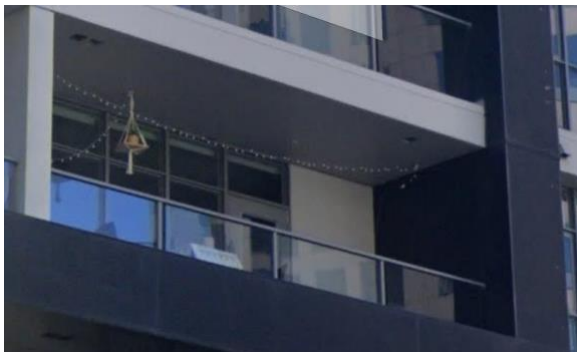


Figure 1 Balcony at R1

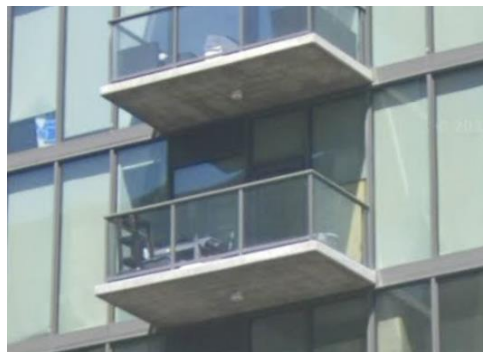


Figure 2 Balcony at R6

As I noted in previous comments, treating the balconies is an option that individual occupants could make according to their own sensibilities. Having worked at Wilson Ihrig for 31 years, I can attest to the fact that there are many people who loath construction noise.

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¹ <https://www.soundseal.com/files/content/industrial/products/flexible-noise-barriers/B-5%20CV%20Data%20Sheet.pdf>

² <https://www.eoplastics.com/blog/sound-transmission-plexiglass-sheets>

Response to Comment No. CREED-6

The comment reiterates suggested construction noise mitigation measures. The suggested mitigation measures were fully reviewed and considered by the City in Response to Comments Nos. 3-38 through 3-40 of the Final EIR and in Response to Comment No. CREED-14 in the June 2023 Appeal Responses. The letter by Wilson Ihrig submitted in support of the use of one of these two suggested mitigation measures itself shows that the mitigation measures would not be feasible. The letter attached to the CREED LA comments to the Draft EIR specifically states that a noise control blanket could cause light and aesthetic impacts and that scaffolding would have to be directly attached to the buildings for lateral support, a Plexiglass system would require that the panels would need to extend from the existing parapet to the balcony floor above with only a small opening for ventilation, the panels would need to be able to withstand wind loads, there may be fire code or other code requirements to permit the mitigation measure and that the mitigation measure would require a detailed noise analysis. As fully explained in Response to Comments Nos. 3-38 and 3-39 of the Final EIR, such mitigation measures are not feasible because: they would require physical construction activities to be implemented at the high-rise residential buildings that are not owned or operated by the Applicant; the heavy construction equipment such as forklifts and aerial lifts as well as the tools that would be needed to attach the scaffolding and blankets along the entire extent of the building façades, which are up to 33 stories, or along the balconies of the sensitive receptors with balconies, would result in significant noise impacts; daylight into these buildings would be reduced and the outdoor balconies on one of the buildings (R1) would not be usable if scaffolding and a sound blanket were to be erected; including an opening in the noise control panel would reduce the effectiveness of the mitigation (for example, a 5-percent opening would reduce the noise reduction by half), and having no opening would inhibit proper ventilation; and these mitigation measures would require the approval of other property owners to implement and that approval cannot be guaranteed.



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Digital Realty Justification

The appeal to the City Planning Commission's determinations on the CPC and VTTM was filed on October 6, 2023.

Comment No. Digital Realty-1

Richard Becher
Senior Director, Design, Engineering, and Construction
Digital Realty
365 Main St.
San Francisco, CA 94105-2009

I write on behalf of Digital Realty Trust, Inc. ("**Digital**"), owner of the property located at 727 S. Grand Avenue, Los Angeles (the "**City**"), California 92651 (the "**Digital Parcel**"). The Digital Parcel's southern boundary abuts the site of a 50-story/592-foot ("**ft**") mixed-use development, comprised of 580 residential dwelling units and 7,499 square feet ("**sf**") of commercial floor area (the "**MFA Tower**" or the "**Project**"), proposed by MFA 8th Grand and Hope LLC ("**MFA**") for the property at 754 S. Hope Street and 609 and 625 W. 8th Street (the "**MFA Parcel**"). On behalf of Digital, I write to appeal (i) the two Zone Variances, two Specific Plan Project Permit Adjustments, and the Vesting Tentative Tract Map approved by the City Planning Commission (" W. ") and (ii) the Environmental Impact Report certified in connection with the Project.

I. INTRODUCTION.

In its letter of decision for Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR (the "**Project LOD**"), issued September 26, 2023, the CPC, in compliance with the California Environmental Quality Act ("**CEQA**"), certified the Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("**FEIR**") for the Project and purported to adopt environmental findings, a statement of overriding considerations, and a Mitigation Monitoring Program prepared for the Project. However, these actions are invalid as the Initial Study, DEIR, and FEIR: fail to adequately analyze and disclose the full impacts of the Project; discuss legally inadequate alternatives; and propose infeasible mitigation measures that, in any event, do not mitigate the Project's impacts below the level of significance. Finally, the City, as lead agency, failed to comply with the procedural requirements regarding the circulation and public review of the DEIR. For these reasons,

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Digital requests that the FEIR be revised, recirculated for further public review and comment, and then re-presented as required by CEQA in conjunction with any Project approvals.

In the Project LOD, the CPC also approved: (i) a Zone Variance (“**ZV**”) to allow relief from providing an additional 10-inch clear space to the parking stall widths when adjoined on their longer dimension by an obstruction; (ii) a ZV to allow relief to allow reduced drive aisle widths of 24 feet in lieu of the required drive aisle width; (iii) a Specific Plan Project Permit Adjustment (“**SPPA**”) for a Director’s Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide; (iv) a SPPA to allow for a deviation from Section 5 of the Downtown Design Guide to allow building elements and balconies to project up to 9 ft and 25 ft into the sidewalk easements along Hope Street and Grand Avenue respectively, and allow projects to begin at an elevation of 25 ft above grade along Hope Street and Grand Avenue; (v) a Director’s Decision to allow 79 trees to be planted on-site in lieu of the otherwise required 145 trees, and to allow an in-lieu fee to be paid for the remaining 66 required on-site trees; and (vi) a Site Plan Review (“**SPR**”) for a development project creating an increase of more than 50 dwelling units.

In its letter of decision for Case No. VTT-74876-CN-1A (the “**VTTM LOD**”), also issued September 26, 2023, the CPC, notwithstanding Digital’s prior appeal, adopted: (i) Vesting Tentative Tract Map No. 74876-CN for the merger and re-subdivision of the MFA Parcel and (ii) a Haul Route for the export of approximately 89,750 cubic yards of soil from the Project site (collectively, the “**VTTM**”).

In its approval of the Project and issuance of the Project LOD and the VTTM LOD, in addition to failing to comply with CEQA, 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. (See Code Civ. Proc., § 1094.5(b).) The Project LOD and VTTM LOD fail to offer adequate evidence in support of their findings. Set forth below please find a detailed analysis of this Appeal.

Response to Comment No. Digital Realty-1

The comment asserts that the EIR fails to: adequately analyze and disclose the full impacts of the Project; discuss legally inadequate alternatives; propose feasible mitigation

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measures; and comply with the procedural requirements regarding the circulation and public review of the DEIR. The Appellant has provided similar comments in a previous comment letter and appeals. As demonstrated by the response to comments herein, within the Final EIR, and within the June 2023 Appeal Responses, the EIR was completed in full compliance with CEQA and City requirements. The comments submitted and the responses to these comments do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. As discussed below, the City fully complied with the procedural requirements under CEQA and adequate findings were made to support the discretionary actions for the Project.

Comment No. Digital Realty-2

II. THE CITY HAS FAILED TO COMPLY WITH CEQA.

A. Environmental Impacts Have Not Been Fully Analyzed and Disclosed.

The FEIR makes errors, omissions, and unexplained and unjustified assumptions in its analysis of several environmental impacts studied. Namely, land use and cultural resources are inadequately or improperly studied, and the FEIR fails to adequately analyze transportation impacts associated with the Project. As a result, the FEIR fails to fully disclose the Project's likely impacts and must be revised and recirculated.

1. Impacts on Historical Resources Are Neither Disclosed nor Fully Analyzed.

Projects that may cause a substantial adverse change in the significance of a historical resource are considered projects that may have a significant effect on the environment for CEQA purposes. (Pub. Res. Code, § 21084.1.) A historic resource is a resource listed in, or eligible for listing in, the California Register of Historic Resources (the "**Register**"). Resources listed in a local register or survey are also presumed to be historically significant unless the preponderance of the evidence demonstrates the resource is not historically or culturally significant. (Pub. Res. Code, § 21084.1; CEQA Guidelines, § 15064.5(a)(2).) Even if a resource has not been listed, or officially determined eligible for listing, in the Register or a local survey or register, the lead agency may still determine a resource is a historical resource for the purposes of CEQA. (Pub. Res. Code, § 21084.1.)

The FEIR neglects to include any discussion of the Project's impact on relevant historic and cultural resources. First, the IS concludes, without adequate analysis, that due to the

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Project's distance, approximately 250 ft, from the Boston Dry Goods Store, a designated City Historic Cultural Monument also known as the J.W. Robinson's Building, "the Project would not cause a substantial adverse change in the significance of a historical resource ... and potential impacts to historical resources would be less than significant" (Initial Study [the "IS"]. p. 46.) The analysis is threadbare, and no consideration is given to the impact of construction activities, noise, and vibrations.

Second, the IS, the DEIR, and the FEIR fail to include any analysis of the Project's impacts on two potentially historic structures located to the Digital Parcel's north. These structures—the Auto Center Garage located at 746 Hope Street and the Third Church of Christ, Christian Scientist Reading Room located at 730 Hope Street—were both identified by the City as potentially historic in the Historic Resources Survey Report for the Central City Community Plan Area, a copy of which is attached as **Exhibit A**. The Project site directly abuts the Auto Center Garage.

Notwithstanding the City's own Historic Resources Survey Report, the City, as lead agency, failed, as is required by CEQA, to evaluate in the IS, DEIR, or FEIR whether these structures are eligible for listing in the Register for purposes of CEQA. (IS, p. 46.) Because the IS, DEIR, and FEIR fail to acknowledge the potentially historic nature of these buildings, they do not study whether the Project will cause a substantial adverse change to either source by, for instance, towering over them both, creating significant construction and vibration and other construction-related disturbances that could significantly damage the structures, and demolishing a building that shares a wall with the Auto Center Garage or at minimum has a wall that is pressed up against the wall of the Auto Center Garage. This Project will be excavating to the depth of three subterranean parking levels (i.e., approximately 63 ft), which could have an enormous impact on the stability of the Auto Center Garage since the wall of the garage is on the Property line. Any impact on the stability of the Auto Center Garage would amount to a substantial adverse change in the significance of a historical resource and thus would be a significant effect on the environment. (CEQA Guidelines, §15064.5(b); *Taxpayers for Accountable Sch. Bond Spending v San Diego Unified Sch. Dist.* (2013) 215 Cal.App.4th 1013, 1043.) Notwithstanding this potential for a significant impact, the IS, DEIR, and FEIR fail to even acknowledge the presence of these potentially historic structures in the vicinity of the Project.

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Response to Comment No. Digital Realty-2

The comment asserts that the EIR fails to discuss impacts to all potentially historical resources. This comment was previously responded to as part of the June 2023 Appeal Responses. As discussed in Response to Comment No. Digital Realty 2-1 of the June 2023 Appeal Responses, there are no historical resources on the Project Site. The Project Site is in the vicinity of the Boston Store—J.W. Robinson's at 600 W. 7th Street, which is a designated Historic-Cultural Monument (HCM #357); and the Third Church of Christ, Scientist Reading Room at 730 S. Hope Street, which was identified as potentially eligible by SurveyLA, the City of Los Angeles' citywide historic resources survey. SurveyLA meets the requirements of PRC Section 5024.1(g); therefore, the City appropriately treated them as historical resources for purposes of CEQA in the analysis of Project impacts. Impacts to these historical resources would be less than significant. This includes potential direct impacts resulting from construction activity as discussed in the Initial Study, and potential indirect impacts resulting from the introduction of new construction on the Project Site. Specifically, the J.W. Robinson's is located approximately 250 feet north of the Project Site and is physically separated from the Project Site by existing buildings, and the Third Church of Christ, Scientist Reading Room is located approximately 178 feet north of the Project Site and is also physically separated from the Project Site by existing buildings such that there would be no potential significant impact resulting from construction activity. This is supported by the analysis in Section IV.E, Noise, of the Draft EIR, which confirms that the vibration levels would not exceed the threshold that would indicate potential damage during construction to these nearby historical resources. Therefore, the City correctly concluded that potential direct impacts resulting from construction activity would be less than significant.

With regard to the Auto Center Garage, as discussed in Response to Comment No. Digital Realty 2-2 of the June 2023 Appeal Responses, although the Auto Center Garage was not identified as a potential historical resource in the Initial Study, due to its proximity to the Project Site, potential impacts due to construction activity were evaluated in the Draft EIR and appropriate mitigation was included to reduce potential impacts to a less-than-significant level. Specifically, potential vibration impacts associated with construction of the Project were evaluated in Section IV.E, Noise, of the Draft EIR and were concluded to be less than significant with implementation of Mitigation Measure NOI-MM-2. Furthermore, as described in the Draft EIR (page IV.E-49), Project construction would be subject to LAMC Section 91.3307.1 (Protection Required), which states that adjoining

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public and private property shall be protected from damage during construction, remodeling and demolition work.

In addition, Historic Resources Group (“HRG”) has prepared the attached memorandum (refer to Attachment 2—HRG Report), which confirms the conclusion in the EIR that the Project would not result in any direct or indirect impacts on historical resources. Specifically, the HRG Report confirms that the mitigation for vibration is appropriate and that the Auto Center Garage would retain the essential features that convey its historic significance, and it would not be materially impaired as a result of new construction as proposed by the Project. Therefore, there would be no potential impacts to the Auto Center Garage as a result.

Comment No. Digital Realty-3

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.)

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 tower¹ 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

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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’s property line to the 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 (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.)

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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.

¹ 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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Response to Comment No. Digital Realty-3

The comment asserts that the EIR fails to address inconsistencies with the Downtown Design Guide. These same comments regarding spacing and the Downtown Design Guide were already addressed in Response to Comment No. Digital Realty 2-3 of the June 2023 Appeal Responses. As noted therein, the Draft EIR provided a detailed analysis of the Project's consistency with the Downtown Design Guide provided on pages IV.D-37 through IV.D-40 of Section IV.D, Land Use of the Draft EIR and in Table 6 of Appendix D: Land Use Tables of the Draft EIR. As demonstrated therein, with the approval of the Project's requested entitlements, the Project would be consistent with the Downtown Design Guide. In addition, with regard to the Guide related to 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 adjacent buildings to its north.

In response to Appellant's claims that the Project would minimize views to the sky from the public realm, the claim is not a CEQA impact. As noted in the Initial Study, included as Appendix A of the Draft EIR, and the June 2023 Appeal Responses, 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 do not raise a CEQA issue related to an environmental impact. Furthermore, there are no zoning rules that govern view obstruction within Downtown Los Angeles.

In response to the Appellant's claims that the Project would create wind tunnels, the claim is unsupported by substantial evidence. Moreover, if any such environmental issues would 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 Appeal 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 the Downtown Design Guidelines.

With regard to baseline and cumulative impacts, as discussed in Response to Comment No. Digital Realty 3-1 of the June 2023 Appeal Responses, under CEQA, the

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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 Data Center, as the Appellant claims. Digital Realty submitted their project to the Department of City Planning on March 31, 2023, several years after this Project began its environmental review. For example, the Project's Notice of Preparation (the "NOP") of a Draft EIR was publicly circulated on May 10, 2019, and the Draft EIR was circulated on November 18, 2021. Further, 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 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 or include it in its baseline at the time the NOP was published.

Comment No. Digital Realty-4

4. Impacts on Paleontological Resources Are Not Evaluated in the FEIR.

The IS states that the Project will involve excavation to a depth of 63 ft and that paleontological resources may be present at this depth. Nevertheless, the IS concludes that such excavation shall result in a less than significant impact provided Mitigation Measure GEO- MM-1, which sets forth procedures that apply in the event of an inadvertent paleontological discovery, is complied with. When an impact may be potentially significant, even if mitigable, and an EIR is being prepared, that issue shall be evaluated in the EIR fully. Here, these issues surrounding the impact on paleontological resources are not analyzed in the FEIR, rendering the document inadequate.

Response to Comment No. Digital Realty-4

The comment asserts that impacts on paleontological resources are not addressed in the Draft EIR. This comment was responded to in Response to Comment No Digital Realty 2-4 of the June 2023 Appeal Responses. As explained therein, contrary to Appellant's contention, the Draft EIR does analyze potential impacts related to paleontological resources, concludes that there are no known resources, and determined

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that the Mitigation Monitoring Program includes Mitigation Measure GEO-MM-1, will ensure that potential impacts to any previously undiscovered paleontological resources would be reduced to less than significant levels (see pages 54 and 55 of the Initial Study contained in Appendix A of the Draft EIR and pages IV-14 and IV-20 in Chapter VI, Other CEQA Considerations, of the Draft EIR). Having analyzed and concluded that there would be no potentially significant impact with implementation of the Mitigation Measure, no further analysis in the EIR was required.

Comment No. Digital Realty-5

5. Transportation Impacts Related to the Project's Noncompliance with Driveway Standards Are Ignored.

As the Project's DEIR recognizes, a threshold of significance for land use impacts is whether the project will "conflict with a program, plan, ordinance or policy addressing the circulation system." (DEIR, p. IV.G-23.) Here, the DEIR improperly concludes that the Project is consistent with the driveway standards provided in Section 321, Driveway Design of LADOT's Manual of Policies and Procedures ("**MPP 321**") and thus fails to address a potentially significant and unmitigated impact.

Section V.B of MPP 321 provides that driveways on arterial highways, such as Hope Street and Grand Avenue, serving lots with more than 250 ft of street frontage cannot be placed within 150 ft of the adjacent street. Further, Section V.D of MPP 321 states, "[w]herever possible, two-way driveways should be separated by a minimum of 50 [ft] of full height curb to minimize conflict between vehicles using the adjoining driveway." However, Figure 0.3 in the 8th, Grand and Hope Project Transportation Assessment prepared by the Mobility Group, dated May 2020, revised December 2020 (the "**Transportation Assessment**"), and included in Appendix G of the DEIR, shows that notwithstanding the Project's more than 250 ft of frontage on 8th Street the Project's Grand Avenue driveway would be only 102 ft from 8th Street and the Project's Hope Street driveway would be 114 feet from 8th Street. Both driveways are in violation of the 150 ft separation required in MPP 321 for projects, [sic] like this one, with more than 250 ft of frontage on an arterial highway. Additionally, as shown in Figure 0.2 of the Transportation Assessment, the Project's Grand Avenue driveway would be separated by approximately 15 ft of full height curb from the existing driveway serving the parking garage on the Digital Parcel, which is far less than the 50-ft separation required in MPP 321.

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The response in the Transportation Assessment provided in Table 2.1 to Guiding Question No. 15 incorrectly asserts that the requirements provided in MPP 321 for the Project driveways and described in the preceding paragraph do not apply because the Project's frontages on Grand Avenue and Hope Street are less than 250 ft in length. This obscures the reality that the Project has substantial frontage along 8th Street (over 300 ft) and is thus subject to the requirement that driveways cannot be placed within 150 ft of the adjacent street. Furthermore, driveways compliant with the driveway location requirements of MPP 321 could be placed on 8th Street. Finally, noncompliance of the proposed Grand Avenue's driveway with the driveway standards is particularly problematic because inbound and outbound Project traffic at this location would conflict with transit buses using the newly dedicated Bus-Only Lane, as well as with vehicles on southbound Grand Avenue attempting to turn right onto westbound 8th Street.

The Transportation Assessment does not explain why vehicular access to the Project via 8th Street was not considered or is infeasible. Based on the lack of justification for the Project's vehicular access scheme and its non-compliance with the design standards set forth in MPP 321, a potentially significant and unmitigated impact may result. Nevertheless, the City has left this potential impact unstudied, rendering the document inadequate.

Response to Comment No. Digital Realty-5

The comment claims that the Draft EIR improperly concludes that the Project is consistent with the driveway standards provided in Section 321, Driveway Design of LADOT's Manual of Policies and Procedures (MPP 321) and thus fails to address a potentially significant and unmitigated impact. The comment refers to Section V.B of MPP 321 that states "driveways on arterial highways serving lots with more than 250 feet of street frontage should not be placed within 150 feet of the adjacent street".

The Project and its geometric design and access points were adequately analyzed for any potential increase of hazards in the Project's Transportation Assessment, reviewed by LADOT, and the EIR concluded that there would be a less than significant impact with regard to threshold (c) of the City's Transportation Assessment Guidelines for CEQA impacts.

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The comment is based on a misunderstanding of this Section of MPP 321. The section refers to the lot frontage for each of the individual streets a project fronts and is applied separately for each street frontage. For this Project, only the 8th Street frontage is more than 250 ft (at approximately 337 ft). As the lot street frontage on both Hope Street and Grand Avenue is less than 250 ft (approximately 114 ft and 102 ft respectively), this provision does not apply to those streets—as correctly stated in Table 2.1 of the Transportation Assessment. It is noted that the Project driveway locations were required by the Los Angeles Department of City Planning who required no driveways on 8th Street (consistent with other blocks on 8th Street to the east) in order to maintain and improve pedestrian sidewalk conditions. The Project driveway locations were also approved by LADOT.

The comment further refers to Section V.D of MPP 321 which states that “wherever possible, two way driveways should be separated by a minimum of 50 ft of full height curb”. The Section is not a requirement but refers to “wherever possible” recognizing that the separation may not always be possible. The constrained nature and layout of the Project Site and the lot frontage of 102 ft on Grand Avenue means that such separation is not possible. It should be noted that the proposed driveway Grand Avenue would not be a new driveway but would replace an existing driveway in approximately the same location.

In both the above instances, the Transportation Assessment and the Draft EIR correctly conclude the geometric design and access points would not substantially increase hazards, and thus, there would be no environmental impact.

Finally, the comment asserts that the Grand Avenue driveway would conflict with transit buses using the newly dedicated Bus-Only lane, as well as with vehicles on southbound Grand Avenue attempting to turn right onto westbound 8th Street. Similar driveway locations often occur elsewhere in downtown Los Angeles and are typical of traffic conditions in a densely developed central business area. Given the requirements of the Department of City Planning, and the very constrained depth of the Project Site, the driveways are located in the optimal position for both the Project and the adjacent street traffic and would not present a unique condition.

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Comment No. Digital Realty-6

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.

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

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address how the Project's lack of affordable housing comports with the Housing Element's affordable housing goals.

Response to Comment No. Digital Realty-6

The Appellant makes unsubstantiated claims that the City failed to evaluate the inconsistencies with the Housing Element's affordable housing goals and policies. The Appellant made similar claims that the Project was inconsistent with the Central City Community Plan and the Downtown Design Guide in a previous letter that was responded to as part of the June 2023 Appeals Response. As was adequately provided in the EIR's land use analysis, the Project would not conflict with any land use policies, goals, or objectives; thus, land use impacts would be less than significant.

Moreover, the City's 2021–2029 Housing Element was last adopted by the City Council on November 24, 2021, and with amendments on June 14, 2022, both after the Project's Draft EIR circulated on November 18, 2021. Nonetheless, the Project is consistent and not in conflict with the current Housing Element and its policies and objectives.

Comment No. Digital Realty-7

B. Construction Related Vibration Impacts Associated with the Project Are Not Fully Mitigated.

CEQA requires that any mitigation measures required to minimize a project's significant environmental impact be *feasible*. (Pub. Res. Code, §§ 21002.1(a), 21100(b)(3); CEQA Guidelines, § 15126.4 [emphasis added].)

Here, the DEIR identifies as a potentially significant impact vibration-induced damage to the existing parking structure located on the Digital Parcel to the north of the MFA project site. The DEIR concludes that compliance with relevant provisions of the Los Angeles Municipal Code (“**LAMC**”) and Mitigation Measure NOI-MM-2 will result in the mitigation of this impact to a level of insignificance. (See DEIR, p. IV.E-46.) To mitigate this impact, NOI-MM-2 requires documentation of the physical condition of the offsite properties to establish a baseline against which to measure potential vibration-induced damaged. Documentation of this baseline is to be completed from the MFA Parcel's property line and

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the public right of way. (See DEIR, p. [sic] IV.E-49–IV.E-50.) However, documentation of interior structural elements of the parking garage, portions of the garage located below-grade and obscured from view, and portions of the garage located on the Digital Parcel’s northern edge will be impossible and are thus not feasible. Concerns related to vibration-induced damage to these building elements that will be undocumented are particularly pronounced due to the age of Digital’s building.

Thus, for NOI-MM-2 to be feasible, access to the Digital Parcel to document the existing condition will be required. Such access would require the consent of Digital. The DEIR fails to acknowledge the consent required and MFA has not obtained the required consent. If MFA does not obtain consent from Digital to inspect the parking structure there will be no baseline against which to assess potential impacts rendering NOI-MM-2 infeasible, ineffectual, and out of compliance with the requirements set forth under CEQA..

In addition, the DEIR’s vibration analysis is woefully incomplete. It begins with the incorrect premise that “there are no historical resources located on or adjacent to the Project Site.” (DEIR, p. IV-E-44.) As discussed above, there are two potentially historic structures that are completely ignored by the IS, DEIR, and the FEIR—the Auto Center Garage located at 746 Hope Street and the Third Church of Christ, Christian Scientist Reading Room located at 730 Hope Street. The City was required to analyze these structures as potentially historic, and thus should have evaluated the Project’s potential construction and operation-related vibration impacts on these structures under the threshold for “buildings extremely susceptible to vibration damage.” This is the methodology that the DEIR uses for the Boston Store–J.W. Robinson’s Building, and thus would have been applied to the Auto Center Garage and Christian Scientist Reading Room had the potentially historic nature of these structures been acknowledged as required. Construction can have massive impacts on older buildings constructed under outdated standards, particularly in the case of this Project which will be excavating to the depth of three subterranean parking levels. Instead, the DEIR applies the much higher vibration significance criteria to the Auto Center Garage under an unfounded, unexplained assumption that it is a “reinforced-concrete, steel and timber building.” As for the Christian Scientist Reading Room, the DEIR’s vibration analysis ignores the existence of that building altogether and does not assess vibration impacts on that building at all, under any criteria. Accordingly, the DEIR’s vibration analysis must be re-studied, re-analyzed, and then recirculated.

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Response to Comment No. Digital Realty-7

The comment asserts that vibration impacts were not adequately analyzed in the EIR. This comment was already provided by the Appellant and responded to as part of the June 2023 Appeal Responses. As stated in Response to Comment No. Digital Realty 2-5 of the June 2023 Appeal Responses, the Appellant's contention that the mitigation measure would require its approval is mistaken. Mitigation Measure NOI-MM-2 specifically states that the inspection and monitoring will be conducted to the extent feasible within the public-right-of way and at the Project Site property line. Therefore no consent is required from the Appellant to inspect the visible portions of the parking structure or to monitor the vibration levels from Project construction. Mitigation Measure NOI-MM-2 is feasible and will be implemented as part of the Project. In the event that the Appellant will not allow access to its parking structure to observe the existing conditions, Mitigation Measure NOI-MM-2 specifically states that, "The inspection survey shall be made to the extent feasible from the public right of way and within the Project Site's property line." Furthermore, based on the public building permit records for the parking structure at 746 S. Hope Street the parking structure is comprised of reinforced concrete and thus not extremely sensitive to vibration. Nonetheless, the vibration monitoring system set forth in Mitigation Measure NOI-MM-2 would be fully implemented by a structural engineer or qualified professional to address potential impacts associated with building damage during construction. In addition, as described in the Draft EIR (page IV.E-49), the Project construction would be subject to LAMC Section 91.3307.1 (Protection Required), which states that adjoining public and private property shall be protected from damage during construction, remodeling and demolition work. As such, the Project would be required to protect the parking structure at 746 S. Hope Street from damage during the Project construction.

Additionally, the Appellant provides no substantial evidence that dispute the EIR's findings that compliance with existing regulations regarding protection of adjoining properties (LAMC Section 91.3307, and specifically Section 91.3307.1 regarding required protection) combined with Mitigation Measure NOI-MM-2 would not be sufficient to reduce the potentially significant construction vibration impacts to a less than significant level. As such, this contention is without merit.

Furthermore, potential building damage associated with building construction is generally limited to buildings/structures that are located within 20 feet of the construction site, based on the most stringent vibration criteria of 0.12 PPV for building extremely

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susceptible to vibration damage. As provided in the previous responses to Digital Realty comments, the noted Christian Scientist Reading Room (located at 730 Hope Street) is approximately 178 feet north of the Project Site and would not have any potential vibration impacts from Project construction. Nevertheless, vibration impacts associated with the Project construction were analyzed at the Christian Scientist Reading Room (as represented by receptor location R8). As provided in the Draft EIR (Table IV.E-23), the estimated vibration levels due to Project construction at receptor location R8 were up to 63.7 VdB, which is equal to approximately 0.006 PPV, which would be well below the most stringent vibration threshold of 0.12 PPV (applicable to building extremely susceptible to vibration damage). Therefore, as concluded in the Draft EIR, vibration impacts associated with the Project construction at the Christian Scientist Reading Room would be less than significant and the requested additional vibration impacts analysis for the Christian Scientist Reading Room is not warranted. Furthermore, as set forth in Response to Comment No. Digital Realty-2, above, and confirmed by the HRG Report included in Attachment 2, no indirect or direct impacts to the Christian Science Reading Room or other historical resources in the Project vicinity would occur as a result of the Project.

Comment No. Digital Realty-8

C. An Inadequate Range of Alternatives is Considered Because No Alternative is Examined that Avoids Significant Below-Grade Excavation.

CEQA requires an analysis of a reasonable range of alternatives to a proposed project, with a focus on those alternatives that would reduce or eliminate significant environmental impacts of the project. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 403; CEQA Guidelines, § 15126.6(a).) And although the number of alternatives required to be analyzed in an EIR is subject to a “rule of reason,” the range of alternatives considered should correspond to the nature of the project and its environmental effects. (CEQA Guidelines, § 15126.6(1); *Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 565-66).)

Here, the DEIR fails to study a critical alternative, the construction of the Project with no below-grade construction. There is no effort to evaluate an alternative that reduces, or eliminates entirely, subterranean development. Although such an alternative may not completely avoid the Project’s significant construction period noise and vibration impacts, eliminating subterranean development would greatly reduce the number of heavy truck

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trips (via the reduction in soil export), corresponding transportation impacts, and the severity of the significant construction period noise and vibration impacts. Failing to evaluate an alternative that reflects reduced transportation, noise, and vibration impacts means that decision-makers are acting blindly, without any awareness of an alternative that would avoid these impacts. Furthermore, given the proximity of potentially historic resources and unstudied yet potentially significant impacts the Project's construction and excavation will have on them, as set discussed in **Section II.A** and **Section II.B** above, the failure to evaluate an appropriate alternative that would reduce vibration and excavation risks is especially problematic and contrary to California law. Decision-makers should not approve the Project as proposed without evaluating whether there is a feasible alternative that involves less excavation and less construction, and thus fewer environmental impacts.

Response to Comment No. Digital Realty-8

The comment asserts that the EIR did not include an adequate range of alternatives. This comment is identical to Comment No. Digital Realty 2-6 that was responded to as part of the June 2023 Appeal Responses. As explained therein, Section V, Alternatives, of the Draft EIR includes Alternatives 2 and 3, both of which reduce the subterranean parking levels to two levels. While these alternatives would reduce the amount of grading, as discussed in the Draft EIR, as noise impacts are based on peak days, construction noise impacts at the upper levels of the receptor locations would be similar to the Project. Section V, Alternatives, also includes a detailed discussion of why alternatives to eliminate the significant construction noise and vibration impacts during construction would be infeasible. Furthermore, even assuming an alternative with all above-ground structures would be technically and financially feasible, such an alternative would still require grading and excavation for foundations which would result in construction noise and vibration (associated with human annoyance) impacts at the upper levels of the receptor locations. Finally, as explained in Response to Comment No. Digital Realty 2-7 of the June 2023 Appeal Responses, the three build alternatives in the Draft EIR are a reasonable range of alternatives that can meet some or most of the Project Objectives. The Appeal contains no evidence that these three build-alternatives fail to meet the requirements of CEQA or that an all-above ground alternative would eliminate the Project's significant and unavoidable construction related impacts. Therefore, the Appellant's contention is without merit.

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Comment No. Digital Realty-9

D. The City, As Lead Agency, Failed to Comply with CEQA's Procedural Requirements.

It is important to discuss the procedural issues associated with the environmental review of this Project. CEQA requires that the public review period for a DEIR shall be no less than 30 days and no longer than 60 days. (CEQA Guidelines, § 15105.) Indeed, CEQA further specifies that to make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. (CEQA Guidelines, §§ 15087(9), (a).)

Here, a commenter noted that they were unable to download the DEIR for review and that the City's Central Library did not have a copy available for review. In response to this comment, the FEIR notes that additional thumb drives containing the DEIR were distributed to libraries in the project vicinity. However, the FEIR preparers do not note when these thumb drives were available, nor whether they were available for the minimum 30-day period. Given this failure to make copies readily available to the public for review, the City should determine whether the DEIR was available for the legally required minimum time and, if not, should recirculate the FEIR.

Response to Comment No. Digital Realty-9

The comment assert that there were procedural issues with circulation of the Draft EIR. This comment is identical to Comment No. Digital Realty 2-7 that was responded to as part of the June 2023 Appeal Responses. As explained therein, notification and distribution of the Draft EIR was conducted in accordance with the City's practices that extend beyond CEQA requirements. When the City learned that the thumb drive could not be located at the Central Library, staff immediately contacted a librarian and sent another thumb drive that was able to be accessed by the public. Hard copies of the Draft EIR were also available the offices of the Department of City Planning. In addition, as indicated on the public notice, access to the Draft EIR was (and continues to be) available on the City's website.

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Comment No. Digital Realty-10

E. A Change in Circumstances Necessitates Preparation of a Subsequent or Supplemental EIR.

CEQA provides that a subsequent or supplemental EIR may be required if “[s]ubstantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.” (Pub. Res. Code, § 21166(b).) Changed circumstances trigger the requirement that a subsequent or supplemental EIR be prepared if the changes will result in new or more severe significant environmental impacts requiring major revisions to the prior EIR or negative declaration for the project. (CEQA Guidelines, §15162(a)(2).) Here, because Digital has applied for the entitlement of the Data Center on the Digital Parcel additional CEQA analysis may be required because the FEIR failed to contemplate any future redevelopment of the surrounding parcels and the Data Center could result in additional significant environmental impacts.

Notwithstanding the potential for additional significant environmental impacts resulting from the Data Center, the City has thus far failed to substantiate its decision not to prepare additional environmental analysis. Instead, the CPC simply dismisses the potential necessity of preparing additional environmental analysis and fails to mention the potential impacts on the analysis of the proposed Data Center. (See VTTM LOD, F-54–F-55.) Decision-makers should not have approved the Project as proposed without evaluating whether there are changes to the Project’s environmental impacts resulting from the future development of the Data Center.

Furthermore, the Data Center should be considered a future project for the purposes of the DEIR’s cumulative impacts analysis, as well as its Planning and Land Use analysis. (CEQA Guidelines, §15130(b)(1).) Even though preparation of the DEIR predates Digital’s submission of an entitlement application packet for the Data Center, there is no legal requirement that past, present, and probable projects that produce related impacts must be limited to those project’s proposed at the time of issuance of a NOP or preparation of a DEIR. Here, the City fails to identify a reasonable cutoff date and fails to support any selection of a cutoff date with substantial evidence. Given this failure to clearly establish a cutoff date and the potential impacts that may result from development of the Data Center alongside the MFA Tower, the City must consider the Data Center as a probably future

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project that could result in one or more cumulative impacts when evaluated alongside the MFA Tower.

Response to Comment No. Digital Realty-10

The comment asserts that the Appellant’s potential project should be included in the EIR analysis. As discussed in Response to Comment No. Digital Realty-3, above, Digital Realty submitted their project to the Department of City Planning on March 31, 2023, several years after this Project began its environmental review. For example, the Project’s Notice of Preparation (the “NOP”) of a Draft EIR was publicly circulated on May 10, 2019, and the Draft EIR was circulated on November 18, 2021. Further, 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 was submitted to the City; therefore, the Appellant makes an unrealistic claim that the Project’s EIR should include analysis of the Data Center project that had not been filed with the City at the time the Draft EIR circulated or include it in its baseline at the time the NOP was published. Furthermore, contrary to this comment, given CEQA’s direction for establishing a baseline for the analysis at the time of the NOP, the Appellant provides no reasonable justification that the filing of the Application by Digital Realty in March 2023, after the completion of the Final EIR for the 8th, Grand and Hope Project, results in “substantial changes” that “require major revisions in the environmental impact report” pursuant to Public Resources Code Section 21166(b).)

Comment No. Digital Realty-11

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

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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 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 Comment No. Digital Realty-11

The Appellant contends that the Project fails to qualify for any variances because the CPC failed to establish a proper justification for the requested variances and that,

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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's characteristics that the CPC found justified the variances, but rather is based on a disagreement with the CPC's determination that these characteristics are sufficient to justify the requested variances. The comment does not state a concern specific to the adequacy or conclusions of the EIR. Nonetheless, for informational purposes, the CPC findings relied on a detailed analyses and substantial evidence to justify the variances for this Project and its unique conditions in the EIR, Findings, and Administrative Record.

Comment No. Digital Realty-12

B. The Project Lack Consistency with the Central City Community Plan, the Downtown Design Guide, and the City's Housing Element.

A VTTM must be designed in compliance with the zoning regulations applicable to the subject property. (LAMC, §§ 17.05(C), 17.06(8).) Similarly, SPR requires a finding that the proposed project is in substantial conformance with the purposes, intent and provisions of the City's General Plan, applicable community plan, and any applicable specific plan. (LAMC, § 16.05(F)(1).) SPR also requires a finding that the project "consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties." (LAMC, § 16.05(F)(2).) Here, as set forth in greater detail below, the CPC has failed to make the consistency findings required for approval of the VTTM and SPR.

1. Central City Community Plan.

The CPC failed to address the Project's inconsistencies with policies set forth by the Central City Community Plan (the "**Community Plan**"). The Community Plan, and its pending update, set forth countless policies and goals providing for an active and vibrant vision for Downtown Los Angeles characterized by a walkable urban environment with active streets and a mix of commercial and residential uses. For example, the Community Plan identifies the following objectives:

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Objective 1-2: To increase the range of housing choices available to Downtown employees and residents.

Objective 2-1: To improve Central City's competitiveness as a location for offices, business, retail, and industry.

These and other goals, objectives, and policies recognize Downtown's status as the most prominent and diverse business and corporate center on the Pacific Rim and its role as a regional engine for growth. However, realization of this vision will be undermined if projects, like the MFA Tower, that feature construction of residential units abutting interior property lines and a lack of separation with existing or proposed buildings are allowed to restrict the development potential of surrounding sites. The Community Plan intends for Downtown Los Angeles to be fully built-out and revitalized, with parcels presenting a unified street frontage and developed with their highest and best use. Such a unified street frontage encourages the ground-floor activation and pedestrian activity in this area of the City necessary to realize the Community Plan's goals. And the full development of each parcel will result in the dense, urban, and walkable neighborhood described in City policy documents. MFA appears to ignore applicable policies, proposing a project that will constrain development of neighboring sites. Specifically, the proximity of the MFA Tower's norther façade to the property line of the Digital Parcel, in violation of the tower spacing requirements set forth in the Downtown Design Guide as described in greater detail throughout this letter, means that any future development on the site could need to be set back to avoid conflict with MFA and the future residents of the MFA Tower. The Downtown Design Guide proposed policies and standards intended to facilitate the development of all parcels in Downtown and avoid these conflicts. Here, the City, as lead agency, fails to identify how such a project can be compliant with the Community Plan, abused its discretion, and failed to support a determination of consistency with substantial evidence. *Downtown Design Guide*. [sic]

The Downtown Design Guide, which governs development of the MFA Tower, aims to prevent the development of towers in downtown that limit the redevelopment of neighboring sites through the establishment of development standards requiring tower separation. (See Downtown Design Guide, § 6.C.) Subject to certain exceptions, which are inapplicable here, a tower² taller than 150 ft, like the MFA Tower, 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.) This is consistent with the SPR requirement that

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projects “consist[] [sic] of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties.”

The Project approved by the CPC is inconsistent with this key tower-spacing requirement set forth by the Downtown Design Guide. The MFA Tower directly abuts Digital’s property line to the north and due to its noncompliance with the spacing requirement described above it will conflict with the Downtown Design Guide’s tower-spacing requirements and thus potentially constrain development on Digital’s parcel. 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 rapidly 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. 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. The CPC has not provided any justification or cited to any written rule or policy explaining its failure to consider the Data Center at all when assessing the MFA Tower’s compliance with the Downtown Design Guide and when assessing whether the Project consists of an appropriate building arrangement and compatibility with existing and future development on adjacent properties. Accordingly, the City, as lead agency, has abused its discretion and failed to support a determination of consistency with substantial evidence.

Even though the Project applicant will argue that the Data Center should be ignored because the Project developer filed their application first, the Project developer has waited four years since their NOP was issued before bringing their Project to hearing. In a dense, infill area changing as fast as downtown Los Angeles is changing, the circumstances surrounding a proposed project will inevitably change if a developer unreasonably delays completing their entitlements as the Project developer has done here. Developers who do not diligently pursue their entitlements to completion once their application is filed should not receive a windfall and be permitted to freeze their surrounding environment for an undetermined, unreasonable length of time to the detriment of good, sound planning for downtown Los Angeles. Accordingly, the CPC’s approval of SPR and the VTTM should have considered the Data Center, and because it did not, the City’s determination is unsupported by and amounts to an abuse of discretion.

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2. Housing Element.

The CPC failed to address the Project's inconsistencies with policies set forth by the Housing Element, particularly those related to the provision of affordable housing and the City's compliance with California Government Code Section 65863 ("**No Net Loss Law**"). (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 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.

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.

Notwithstanding the strong policy preference for affordable housing and the Project site's inclusion on the Housing Inventory, the MFA Tower neglects to include any below-market rate units. Given this failure to include affordable units, the Project violates the policies set forth in the Housing Element. Despite this failure, the CPC omits any discussion of the Project's noncompliance with the City's housing policies and appears to dismiss the issue entirely.

Indeed, the City's failure to fully justify the Project's failure to include any affordable units runs counter to current City policy initiatives intended to spur construction of units for all community members, including Mayor Karen Bass's declaration of a local housing and homelessness emergency, which specifically found that the City "faces of critical shortage of local affordable housing." (See Declaration of Local Housing and Homelessness Emergency, July 7, 2023.) Finally, the Project's failure to include any affordable units

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renders it inconsistent with the City's identification of the MFA Parcel as a site for future residential development, including the development of more than one affordable unit, in the Housing Inventory prepared and adopted in connection with the City's Housing Element.

The CPC makes a conclusory determination without support that the Project's lack of any affordable units will not violate the state's No Net Loss Law because the City's Housing Inventory contains many potential affordable sites. (Project LOD, p. F-15.) However, without providing any analysis or facts substantiating this—for instance, how many other sites on the Housing Inventory are or are not including the number of affordable units designated in the Housing Inventory—the public cannot know if this Project contributes toward jeopardizing the sufficiency of the Housing Inventory. If every proposed project is granted a pass on including affordable units, then the Housing Inventory will quickly become inadequate to accommodate the City's Regional Housing Needs Assessment (“RHNA”) allocation. Accordingly, the CPC failed to adequately quantify the Housing Inventory's ability to meet the unmet RHNA without the Project including affordable housing.

Given the lack of sufficient analysis and adequate findings on these issues, the CPC failed to support its finding of consistency with necessary evidence.

² As defined, a “tower” refers to portions of a building over 150 ft in height. (See Downtown Design Guide, § 6.C.)

Response to Comment No. Digital Realty-12

The Appellant makes the same unsubstantiated claim that the Project is inconsistent with the Community Plan and the Downtown Design Guide as they made in previous letters, including their appeal to the Advisory Agency's decision on the Project's tract map and certification of the EIR. In addition to the thorough response to the Appellant's unsubstantiated claim provided in the June 2023 Appeal Responses, the CPC acted to deny the Appellant's appeal and sustain the decision of the Advisory Agency. In the CPC's determination letter to deny the appeal, they stated the several objectives and policies of the Community Plan and Design Guide that the Project is consistent with as a result of, in part, the Project's inclusion of a range of housing choices, its contribution to a more vibrant downtown, and its implemented design standards.

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As far as the Appellant's claim that the Project lacks consistency with the City's Housing Element, please see the response to the same comment they made above, Response to Comment No. Digital Realty-6.

Comment No. Digital Realty-13

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 Comment No. Digital Realty-13

The comment asserts that the Project fails to provide for future passive or natural heating or cooling. The Project will comply with all applicable 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 equivalent. As discussed in Chapter 11, Project Description, of the Draft EIR, these sustainability features include fenestration designed for solar orientation. Moreover, as set forth in Response to Comment No. Digital Realty-3, above, the Data Center Project was filed after this Project's Final EIR was complete and it is both unreasonable to expect that the Data Center Project would have been included in any analysis for the 8th, Grand and Hope Project and such inclusion in the analysis is not required by CEQA.

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Comment No. Digital Realty-14

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.

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 Comment No. Digital Realty-14

The comment asserts that the Project is incompatible with future development on adjacent parcels. As set forth in Response to Comment No. Digital Realty-3, above, the Data Center Project was filed after the Final EIR was complete and it is unreasonable to expect that the Data Center Project would have been included in the CEQA analysis for the 8th, Grand and Hope Project. Furthermore, as analyzed in the EIR, concluded in the findings to certify the EIR, and discussed in Response to Comment No. Digital Realty-3,

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the Project is not in conflict with the land use goals, policies, and objectives, including those applicable standards in the Downtown Design Guide. With regard to setbacks, refer to Response to Comment No. Digital Realty-3.

Comment No. Digital Realty-15

IV. CONCLUSION.

Given the analysis set forth above, we respectfully request that (i) the FEIR be revised, and recirculated, for additional review and comment, and that the City provide adequate evidence and findings to support its determinations regarding the Project Approvals and (ii) the review authority reconsider the Project's approval in light of the legal deficiencies related to the Project Approvals described above. Only after the Project's full impacts are disclosed, feasible mitigation measures identified, and adequate findings are made related to the Project's compliance with applicable policies and standards can the public and decision-makers be fully aware of the ramifications of the proposed MFA Tower and its impacts.

Response to Comment No. Digital Realty-15

The comments submitted in this letter and the responses to these comments do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. The Draft EIR was prepared and circulated in full compliance with CEQA and City requirements. Furthermore, no substantial evidence has been provided to demonstrate that the City did not make adequate findings to support the approvals for the Project.



MEMORANDUM

TO: Zoning Administrator
City of Los Angeles, Department of City Planning

FROM: Eystone Environmental

SUBJECT: 8th, Grand and Hope Project—Response to Letters Received on February 15, 2023 and Appeal Comments

DATE: June 22, 2023

CC: Alan Como and Polonia Majas, Department of City Planning

Dear Zoning Administrator

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

At the February 15, 2023, Deputy Advisory Agency/Hearing Officer/Zoning Administrator public meeting, three letters were received in opposition to the Project that include comments on the EIR. The three opposition letters were from Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development (CREED) Los Angeles; Lozeau Drury on behalf of the Supporters Alliance for Environmental Responsibility (SAFER); and Digital Realty. Each of these parties has also subsequently filed appeals regarding the Project. In addition, as part of these appeals, Digital Realty has submitted a second letter dated June 1, 2023, that provides comments regarding the EIR. Finally, Digital Realty appealed the City Zoning Administrator's ZA-2021-7053-ZAI approval.

Responses to these letters and appeals are provided below. As discussed below, both the Draft and Final EIRs meet the requirements of the California Environmental Quality Act (CEQA); the analyses presented therein are accurate; many of the issues raised in the new comment letters were already addressed in Section II, Responses to Comments, of the Final EIR; and the appellants' claims are not supported by substantial evidence. The comments submitted and the responses to these comments do not constitute new



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significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

Comment Letter CREED

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Comment No. CREED-1

Please find attached **Comments re Agenda Item 1: Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN) and Attachments A-C.**

We are also providing a Dropbox link containing supporting references: <https://www.dropbox.com/scl/fo/l4pgh4j1wmag0h1hwxyzx/h?dl=0&rlkey=lxgbiral0057i5r7ab2s3i5bz>



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A hard copy of our Comments and Attachments A–C will go out today via overnight delivery.

If you have any questions, please contact Aidan Marshall.

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments on the Final Environmental Impact Report (“FEIR”) and related entitlements for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (“Project”), proposed by Mitsui Fudosan America (“Applicant”), and prepared pursuant to the California Environmental Quality Act (“CEQA”)¹ by the City of Los Angeles (“the City”). The Project’s FEIR and entitlements will be considered at the February 15, 2023 Deputy Advisory Agency, Hearing Officer, and Zoning Administrator hearing as Agenda Item #1.

The Applicant proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would be located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles, California (Assessor’s Parcel Numbers 5144-011-009 and 5144-011-016).

On January 5, 2021, we submitted comments on the Draft EIR (“DEIR”) prepared for the Project.² Our comments of the DEIR demonstrated that the DEIR failed to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project’s significant impacts to the greatest extent feasible, in violation of CEQA. As will be explained herein, these flaws have not been remedied in the City’s FEIR, which contains inadequate responses to our comments. As a result of these unresolved deficiencies, the Project’s environmental review still does not meet the standards of CEQA.

Several discretionary approvals are required to implement the Project, including a Vesting Tentative Tract Map pursuant to Los Angeles Municipal Code (“LAMC”) Section 17.03 and 17.15; a Transfer of Floor Area Rights pursuant to LAMC Section 14.5.6; Zone Variances pursuant to LAMC Section 12.27, Specific Plan Project Adjustments pursuant LAMC Section 11.5.7 E; Director’s Decision to allow 79 trees to be planted on-site in lieu of the



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otherwise required 145 trees pursuant to LAMC Section 12.21 G.2(a)(3); Site Plan Review pursuant to LAMC Section 16.05, Zoning Administrator's Interpretation pursuant to LAMC Section 12.21 A.2 (collectively, "Approvals"). Due to the Project's inadequate environmental review, the City cannot make the requisite findings to approve the Project Approvals under the City's municipal codes, or to certify the FEIR or adopt a statement of overriding considerations pursuant to CEQA.³

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D.,⁴ and noise expert Derek Watry of Wilson Ihrig.⁵ Their comments are fully incorporated herein and submitted to the City herewith.

Based upon our review of the FEIR and supporting documentation, we conclude that the FEIR fails to comply with the requirements of CEQA. Although the City revised its air quality analysis and prepared a quantified health risk analysis ("HRA") in response to our DEIR comments, our review demonstrates that the FEIR's air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete. As a result, the FEIR still fails to adequately disclose and mitigate the Project's significant public health, air quality, and noise impacts. Like the DEIR, the FEIR still lacks substantial evidence to support its conclusions and still fails to properly mitigate the Project's significant environmental impacts. Further, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised DEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the DEIR before any further action is taken on the Project.

Additionally, the agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. As will be explained below, the hearing must be continued to a later date to be properly noticed.



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I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.



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II. BROWN ACT

The agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. The Brown Act provides that members of the public have the right to review the agenda of a board's upcoming meeting in advance of the meeting. Government Code section 54954.2 specifically requires that the governing body post the agenda for a regular meeting 72 hours before the meeting and 24 hours before a special meeting. This includes posting the agenda in a physical location and on the agency's "primary internet homepage."⁶ In addition to making the agenda available, materials related to agenda items and used by the governing body during a meeting must also be made available for review.⁷

Today's hearing is a regular meeting of the Department of City Planning Subdivisions and Hearing Officer. It is not a special meeting. Accordingly, the City was required to post the agenda for public review no later than 72 hours prior to the hearing, by February 12, 2023 at 10:00a.m. [sic] The City failed to timely post the agenda. On February 14, we emailed the Department of City Planning and explained that the agenda and staff report for the Project's hearing were not available online. Later that day, these documents were uploaded to the City website.⁸ Here, the screenshot below of the agenda's⁹ document properties shows that the agenda was last modified on February 13, 2023, which demonstrates that it was not uploaded any earlier than February 13:



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Document properties

File name: 73909
File size: 119 KB

Title: 2/15 DAA/HO AGENDA
Author: -
Subject: -
Keywords: -
Created: 2/7/23, 8:32:27 AM
Modified: 2/13/23, 1:07:24 PM
Application: -

PDF producer: Skia/PDF m111 Google Docs Renderer
PDF version: 1.6
Page count: 3
Page size: 8.50 × 11.00 in (portrait)

Fast web view: Yes

Close

The document properties above show that the agenda was last modified on 2/13, indicating that it was not uploaded 72 hours before the February 15th hearing. Similarly, below is a screenshot of the staff report's¹⁰ document properties, also showing that the agenda was last modified on February 13, 2023.



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Document properties

File name:	VTT_74876.pdf
File size:	801 KB
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Title:	-
Author:	Robert Keatinge
Subject:	-
Keywords:	-
Created:	2/13/23, 10:18:51 AM
Modified:	2/13/23, 12:50:55 PM
Application:	Microsoft® Word for Microsoft 365
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PDF producer:	Microsoft® Word for Microsoft 365
PDF version:	1.7
Page count:	90
Page size:	8.50 × 11.00 in (portrait)
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Fast web view:	Yes

Close

The City's failure to timely post the agenda in a physical location and on the agency's "primary internet homepage"¹¹ is a violation of the Brown Act. This violation prejudiced CREED LA and other members of the public's ability to attend the hearing and respond to the agenda and staff report for the Project. The 90-page staff report contains Findings regarding the Project's Approvals, and necessary details of the Approvals sought. Without the necessary notice required by the Brown Act, the public has not had sufficient time to review and comment on the Project's Approvals. Per the requirements of the Brown Act, the hearing must be continued to a later date to be properly noticed.

III. THE FEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead



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agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹³

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.¹⁴ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹⁵ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹⁶

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'¹⁷

CEQA requires that a lead agency evaluate and prepare written responses to comments in an FEIR.¹⁸ Agencies are required to provide "detailed written response to comments... to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."¹⁹ When a comment raises a "significant environmental issue," the written responses must describe the disposition of each such issue raised by commentators.²⁰ Specifically, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."²¹

¹ Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 et seq.

² Attachment C: Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).



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- ³ Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.
- ⁴ Comments and curriculum vitae of Mr. Clark are attached to this letter as Attachment A.
- ⁵ Mr. Watry's comments and curriculum vitae are included as Attachment B.
- ⁶ Gov. Code § 54954.2)(a)(2)(A).
- ⁷ Gov. Code, § 54957.5, subd. (b)(2).
- ⁸ <https://planning.lacity.org/dcpapi/meetings/document/73909>.
- ⁹ The digital agenda is available at <https://planning.lacity.org/dcpapi/meetings/document/73909>.
- ¹⁰ Staff report, https://planning.lacity.org/plndoc/Staff_Reports/2023/02-13-2023/VTT_74876.pdf
- ¹¹ Gov. Code § 54954.2)(a)(2)(A).
- ¹² 14 CCR § 15064(b).
- ¹³ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
- ¹⁴ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
- ¹⁵ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
- ¹⁶ *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
- ¹⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355.
- ¹⁸ PRC § 21091(d); 14 CCR §§ 15088(a), 15132.
- ¹⁹ *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

Response to Comment No. CREED-1

This comment introduces the letter, provides a statement of interest, and states the appellant's belief that the Final EIR fails to meet the requirements of CEQA. Contrary to this comment, both the Draft EIR and Final EIR were completed in full compliance with CEQA. In particular, all public comments, including those received from the appellant, were comprehensively addressed in the Final EIR and no substantial evidence was provided to demonstrate that the Draft EIR was inadequate. Specific issues raised by the appellant in this new letter and associated exhibits are addressed in Response to Comment Nos. CREED-2 through CREED-13, below. As demonstrated therein, the appellant's new claims are not supported by substantial evidence. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.



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With regard to the comment that the City violated the Brown Act by not posting the agenda for the Advisory Agency hearing at least 72 hours prior to the hearing, The Brown Act governs the meetings of all local “legislative bodies,” that is, all multimember councils, boards, commissions, committees and the like of a local government agency. Only bodies created by charter, ordinance or the formal action of another legislative body are covered by the Act. Pursuant to Section 66415 of the Subdivision Map Act, “Advisory agency” means a designated official or an official body charged with the duty of making investigations and reports on the design and improvement of proposed divisions of real property...” LAMC Section 17.03 designates the Director of Planning as the Advisory Agency for the City of Los Angeles, and authorizes the Director to act in such capacity though one or more deputies who are appointed by him for that purpose. As a result, the Advisory Agency hearing does not constitute a meeting of a local legislative body. Therefore, the Advisory Agency is not subject to the agenda requirements of the Brown Act.

Comment No. CREED-2

A. The FEIR Still Fails to Recognize the City’s Legal Duty to Analyze Health Risks from Construction and Operational Emissions

In our previous comments on the DEIR, we explained that the City was required to prepare a quantified HRA for the Project because CEQA requires that a project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”²²

In response, the City prepared an HRA for the Project’s construction and operations and included it in the FEIR.²³ But the City maintains that the HRA was only conducted for informational purposes, and continues to assert that a HRA is not required by CEQA.²⁴ The FEIR, in Response to Comment 3-6, reasons that construction emissions of Diesel Particulate Matter (“DPM”) need not be analyzed in an HRA because they occur over a shorter time period than 70 years.²⁵ This reasoning is flawed and should be struck from the FEIR. Individual cancer risk is not just affected by the duration of exposure to TACs, but also the concentration of the individual’s unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA²⁶ guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.²⁷



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- ²⁰ PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).
- ²¹ 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 (“*Laurel II*”); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.
- ²² *Id.* at 518.
- ²³ Appendix FEIR-2.
- ²⁴ FEIR, pg. II-33; Appendix FEIR-2, pg. 2.
- ²⁵ FEIR, pg. II-31.
- ²⁶ OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.
- ²⁷ See “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html (“OEHHA Guidance”), p. 8-18.

Response to Comment No. CREED-2

The appellant contends that the “City was required to prepare a quantified health risk assessment (HRA)” related to any potential on-site sources of TACs and that the HRA submitted in the Final EIR is insufficient because it is presented for informational purposes only. The City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies for evaluating a project’s impacts including potential impacts related to health risk. This comment does not provide substantial evidence to demonstrate that a quantified HRA related to any potential on-site sources of TACs is required under CEQA or that the City abused its discretion in not requiring one in the Draft EIR or that including the HRA for informational purposes deprived the public or decisionmakers of the analysis contained in the HRA or somehow changed that analysis.

As discussed in Response to Comment No. 3-6, in Section II, Responses to Comments, of the Final EIR, the Draft EIR correctly identified that proposed construction activities would be limited in duration and considered a short-term source of TAC emissions. SCAQMD’s CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. The rationale for not requiring an HRA for construction activities is the limited duration of exposure. According to SCAQMD methodology, health effects from

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carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, “Individual Cancer Risk” is the likelihood that a person continuously exposed to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology and OEHHA guidance evaluates residential exposure over a 30-year duration.¹ Because the construction schedule for the Project estimates that the phases which require the most heavy-duty diesel equipment and truck² usage, such as site grading/excavation, would last for a much shorter duration (e.g., approximately three months) (refer to page B-28 of Appendix B of the Draft EIR), and the overall construction schedule (refer to page B-28 of Appendix B of the Draft EIR) would be limited to approximately three years, construction of the Project would not result in a substantial, long-term (i.e., 70-year or 30-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (i.e., 3 years out of a 70-year or 30-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted or required. This supporting information is also consistent with 2006 L.A. City CEQA Thresholds Guide in making a case-by-case determination of significance.³ As such, the Draft EIR correctly concluded that Project-related TAC emission impacts during construction would be less than significant and consequently not result in a potential health risk impact.

¹ SCAQMD CEQA Handbook, 1993. Chapters 5, 9, and 10. It should be noted that SCAQMD is the City’s air quality expert agency.

² Heavy-Duty trucks range between Class 5 through Class 8 Truck (Weight Classification). A Class 5 heavy duty truck with a Gross Vehicle Weight Rating of 16,001 to 19,500 pounds, equipped with a medium-heavy duty engine (e.g., utility bucket truck). A Class 6 heavy duty truck with a Gross Vehicle Weight Rating of 19,501 to 26,000 pounds, equipped with a medium-heavy duty engine (e.g., school bus). A Class 7 heavy duty truck with a Gross Vehicle Weight Rating of 26,001 to 33,000 pounds (e.g., delivery truck), equipped with either a medium-heavy duty engine or a heavy-heavy duty engine. A Class 8 Truck with a heavy duty truck with a Gross Vehicle Weight Rating of 33,001 pounds or greater, equipped with a heavy-heavy duty engine (e.g., concrete/dump truck).

³ The Department of City Planning now uses the CEQA Appendix G environmental checklist questions as thresholds of significance. The 2006 L.A. CEQA Thresholds Guide is no longer the City’s default threshold, but may be used as a reference guide.



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From an operational standpoint, the Draft EIR correctly identified that the Project would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic toxic air contaminants. In addition, the proposed land uses would not generally involve the use of heavy-duty diesel trucks with the exception of occasional moving trucks, trash trucks or delivery trucks. The Appellant is referred to SCAQMD guidance below that provides clarification as to when an HRA may be warranted:

The SCAQMD published and adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, which provides recommendations regarding the siting of new sensitive land uses near potential sources of air toxic emissions (e.g., freeways, distribution centers, rail yards, ports, refineries, chrome plating facilities, dry cleaners, and gasoline dispensing facilities).⁴ The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units).

As discussed in Response to Comment No. 3-6 in Section II, Responses to Comments, of the Final EIR, the proposed uses are conservatively estimated to generate approximately eight trucks per day. Furthermore, SCAQMD guidance does not list emergency generators as a use warranting additional analysis in an HRA. Based on SCAQMD guidance, no quantitative analysis was required to assess future cancer risk within the vicinity of the Project as the Project is consistent with the recommendations regarding the siting of new sensitive land uses near potential sources of TAC emissions provided in the *SCAQMD Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Specifically, the Project is not considered to be a substantial source of diesel particulate matter (DPM) warranting a refined HRA since daily truck trips to the Project Site would not exceed 100 trucks per day or more than 40 trucks with operating TRUs, well below the SCAQMD recommendations, above.

⁴ SCAQMD, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*, May 6, 2005.



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As further discussed in Response to Comment No. 3-6 in Section II, Responses to Comments, of the Final EIR, an HRA related to any potential on-site sources of TACs is not required by SCAQMD or the City, and no guidance for HRAs for construction has been adopted by SCAQMD or the City. Accordingly, the HRA provided as Appendix FEIR-2 of the Final EIR was done voluntarily for informational purposes only to supplement the administrative record and respond to comments, and further demonstrated that even if an HRA was necessary (which it was not) the Project would not have a significant air quality impact. The HRA, based upon appropriate methodology and assumptions, demonstrated that health risks from the Project (combined construction and operation) would result in a maximum incremental cancer risk of 3.9 in one million people and would occur at residences located east of the Project Site, across South Grand Avenue. The Project-related incremental cancer risk is below the applicable SCAQMD significance threshold of 10 in one million people.⁵

Comment No. CREED-3

B. The FEIR's HRA Fails to Analyze Health Risk Impacts on All Groups of Sensitive Receptors

CEQA requires analysis of human health impacts. Its fundamental purpose is to maintain a quality environment for "the people" of the state. [sic] CEQA's statutory scheme and legislative intent include an express mandate that agencies consider and analyze human health impacts, acknowledges that human beings are an integral part of the "environment", [sic] and mandates that public agencies determine whether a the [sic] "***environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly***,"²⁸ and to "take immediate steps to identify any critical thresholds for the ***health and safety of the people*** of the state and take all coordinated actions necessary to prevent such thresholds being reached."²⁹

The HRA prepared in response to CREED LA's comments fails to analyze impacts on all sensitive receptors, and therefore remains inadequate. Health risk impacts on children are

⁵ SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.



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measured using Age Sensitivity Factors (“ASFs”).³⁰ As stated in the FEIR, ASFs “account for increased sensitivity of early-life exposure to carcinogens.”³¹ ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project’s estimated emissions of Toxic Air Contaminants (“TACs”). In the Project’s HRA, the City fails to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project’s health risk impacts on this group of sensitive receptors. The Project site is surrounded by residential and mixed-use land uses that can hold children, as identified in the EIR’s environmental setting.³²

The FEIR incorrectly states that relevant guidance does not support the use of ASFs to analyze health impacts of DPM generated by construction activities or Project operations.³³ This response is a red herring which ignores CEQA’s legal requirement to analyze whether the “environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly,”³⁴ which necessarily includes children and infants. Children and infants are more sensitive to acute exposure to TACs, and suffer greater health impacts over short periods of exposure. ASFs are a scientifically accepted method of quantifying the risk to children and infants. The City provides no alternative analysis.

The FEIR considers guidance by California Office of Environmental Health Hazard Assessment (“OEHHA”), acknowledging that it recommends an age-weighting factor be applied to all carcinogens regardless of purported mechanism of action.³⁵ Since DPM is carcinogenic, the OEHHA guidance provides that ASFs should be applied to analyze this Project’s DPM impacts on children.³⁶ But the FEIR argues that the OEHHA guidance should not be considered because it has not been adopted by SCAQMD as a CEQA significance threshold.³⁷ This argument is flawed because the City does not identify any supporting evidence demonstrating that OEHHA’s scientific conclusions regarding children’s heightened susceptibility to TACs such as DPM should be overlooked. The FEIR’s argument also overlooks the City’s ability to select its own methodology, independent of those used by regulatory agencies, if the methodology is supported by substantial evidence, as with OEHHA’s.³⁸ Further, the City elects to rely on guidance from U.S. EPA,³⁹ which like the OEHHA guidance, also has not been adopted by SCAQMD as a CEQA significance threshold, rendering the FEIR’s justification for omitting ASFs specious.



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The FEIR elects to rely on U.S. EPA guidance⁴⁰ related to early life exposure adjust factors whereby the adjustment factors are only considered when carcinogens act “through the mutagenic mode of action.”⁴¹ The FEIR concludes that DPM is not mutagenic because only some of its constituent particles are mutagenic—and as a result, use of ASFs is not required for measuring DPM health impacts. In support, the FEIR cites to the U.S. EPA’s Integrated Risk Information System (“IRIS”). However, the FEIR’s interpretation of this guidance is incorrect. IRIS Chemical Assessment Summary for Diesel Particulate Matter states that DPM is mutagenic:

[D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: [...] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.⁴² [emphasis added]

The U.S. EPA clearly identifies DPM as a mutagenic carcinogen. Thus, even by the City’s preferred methodology, the effect of the Project’s DPM emissions on children must be analyzed using ASFs. Further, Dr. Clark identifies additional guidance from the Scientific Review Panel identifying DPM as mutagenic.⁴³ And the City of Los Angeles’s own Air Quality And Health Effects guidance provides that exposure to DPM may be particularly harmful to children, whose lungs are still developing.⁴⁴

As demonstrated above, health impacts on children are not disclosed without use of ASFs due to the increased sensitivity of children to the harmful effects of DPM. Because the City’s HRA omitted application of ASFs, the Project’s health risk impacts on especially-sensitive populations has not been analyzed. The omission of information regarding the Project’s health effects on children constitutes an ongoing failure to analyze a potentially significant impact under CEQA.

²⁸ Pub. Res. Code (“PRC”) § 21083(b)(3), (d) [emphasis added].

²⁹ See PRC §21000 et seq. [emphasis added]

³⁰ Appendix FEIR-2, pg. 4.



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- ³¹ Appendix FEIR-2, pg. 4; see also City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.
- ³² DEIR, pg. III-2.
- ³³ Appendix FEIR-2, pg. 4-6.
- ³⁴ PRC § 21083(b)(3), (d) (emphasis added).
- ³⁵ Appendix FEIR-2, pg. 4.
- ³⁶ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.
- ³⁷ Appendix FEIR-2, pg. 4-5.
- ³⁸ *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.
- ³⁹ Appendix FEIR-2, pg. 6.
- ⁴⁰ U.S. EPA. 2006. Memorandum—Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance—Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action.
- ⁴¹ Appendix FEIR-2, pg. 6.
- ⁴² U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at https://iris.epa.gov/static/pdfs/0642_summary.pdf.
- ⁴³ Clark Comments, pg. 4.
- ⁴⁴ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10, available at https://planning.lacity.org/odocument/e1a00fbf-6134-4fa9-b6fd-54eee631effb/City_of_LA_-_Air_Quality_and_Health_Effects_and_Attachments.pdf.

Response to Comment No. CREED-3

The appellant contends that the HRA contained in the Final EIR is inadequate because it fails to analyze health risk impacts on all groups of sensitive receptors. The purpose of the HRA provided as Appendix FEIR-2 of the Final EIR was to identify the impact at the maximum exposed sensitive receptor. This receptor was identified east of the Project Site, across Grand Avenue (for combined construction and operational emissions). The Project-related incremental cancer risk was below the applicable SCAQMD significance threshold of 10 in one million people.⁶ As shown on page 49 (SRC

⁶ SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.



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Diagram-Construction) of Appendix FEIR-2, the DPM concentration decreases substantially at greater distances (Construction DPM concentration decreases by a factor of 7 approximately 150 feet from the maximum concentration). Thus, the reported maximum impact identified in the HRA was appropriately used for comparison to the SCAQMD significance threshold. As a point of clarification, an HRA is not inadequate if it does not analyze impacts on “all” sensitive receptors for the reasons discussed above (impacts decrease over distance away from the source and impacts are less than significant at the maximum exposed sensitive receptor).

It is important to understand the purpose of the OEHHA guidance cited in this comment as it is not applicable to the Project. OEHHA adopted the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (2003 Guidance Manual) in October of 2003. The Guidance Manual was developed by OEHHA, in conjunction with the California Air Resources Board (CARB), for use in implementing the Air Toxics “Hot Spots” Program (Health and Safety Code Section 44360 et. seq.). The Air Toxics “Hot Spots” Program requires certain stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics “Hot Spots” Program are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

OEHHA adopted a new version of the *Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments* (2015 Guidance Manual) in March of 2015.⁷ CARB acknowledges that the Guidance Manual does not include guidance for projects prepared under the auspices of CEQA and that it would be “handled by individual [Air Pollution Control] Districts.”⁸ As noted by CARB,

⁷ Office of Environmental Health Hazard Assessment, *Air Toxicology and Epidemiology, Adoption of Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*. March 6, 2015, <https://oehha.ca.gov/air/cmr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁸ CARB, *Risk Management Guidance for Stationary Sources of Air Toxics*, July 23, 2015, www.arb.ca.gov/toxics/rma/rmgssat.pdf, p. 19.



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The Air Toxics “Hot Spots” Information and Assessment Act (AB 2588, 1987, Connelly) was enacted in September 1987. Under this, stationary sources are required to report the types and quantities of certain substances their facilities routinely release into the air. Emissions of interest are those that result from the routine operation of a facility or that are predictable, including but not limited to continuous and intermittent releases and process upsets or leaks...

The Act requires that toxic air emissions from stationary sources (facilities) be quantified and compiled into an inventory according to criteria and guidelines developed by the ARB, that each facility be prioritized to determine whether a risk assessment must be conducted, that the risk assessments be conducted according to methods developed by OEHHA....⁹

There are two broad classes of facilities subject to the AB 2588 Program: Core facilities and facilities identified within discrete industry-wide source categories. Core facilities subject to AB 2588 compliance are sources whose criteria pollutant emissions (particulate matter, oxides of sulfur, oxides of nitrogen, and volatile organic compounds) are 25 tons per year or more as well as those facilities whose criteria pollutant emissions are 10 tons per year or more but less than 25 tons per year. Industry-wide source facilities are classified as smaller operations with relatively similar emission profiles (e.g., auto body shops, gas stations, and dry cleaners using perchloroethylene). It is apparent that the emissions generated from the construction and subsequent occupancy of a mixed-use development project are not classified as core operations nor subject to industry-wide source evaluation.

The intent in developing the 2015 Guidance Manual was to provide HRA procedures for use in the Air Toxics Hot Spots Program or for the permitting of new or modified stationary sources. As noted above, the Project is not a new or modified stationary source that requires air quality permits to construct or operate. Air districts are to determine which facilities will prepare an HRA based on a prioritization process. The 2015

⁹ CARB, *Overview of the Air Toxics “Hot Spots” Information and Assessment Act*, ww2.arb.ca.gov/overview-air-toxics-hot-spots-information-and-assessment-act.



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Guidance Manual provides recommendations related to cancer risk evaluation of short-term projects regarding certain stationary sources. As discussed in Section 8.2.10 of the 2015 Guidance Manual, “[t]he local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation.” Short-term projects that would require a permitting decision by SCAQMD typically would be limited to site remediation (e.g., stationary soil vapor extractors) and would not be applicable to the Project. The 2015 Guidance Manual does not provide specific recommendations for evaluation of short-term use of mobile sources (e.g., heavy-duty diesel construction equipment).

OEHHA’s 2015 Guidance Manual provides Age Sensitivity Factors (ASFs) to account for potential increased sensitivity of early-in-life exposure to carcinogens. For risk assessments conducted under the auspices of AB 2588, a weighting factor is applied to all carcinogens regardless of purported mechanism of action. In comments presented to the SCAQMD Governing Board (Meeting Date: June 5, 2015, Agenda No. 28) relating to toxic air contaminant exposures under Rules 1401 (New Source Review of Toxic Air Contaminants), use of the 2015 OEHHA guidelines and their applicability for projects subject to CEQA, as they relate to the incorporation of early-life exposure adjustments, it was reported that:

The Proposed Amended Rules are separate from the CEQA significance thresholds. The Response to Comments Staff Report PAR 1401, 1401.1, 1402, and 212 A - 8 June 2015 SCAQMD staff is currently evaluating how to implement the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will evaluate a variety of options on how to evaluate health risks under the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will conduct public workshops to gather input before bringing recommendations to the Governing Board.

SCAQMD, as a commenting agency, has not conducted public workshops nor developed policy relating to the applicability of applying the 2015 OEHHA guidance for projects prepared by other public/lead agencies subject to CEQA.



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To emphasize variability in methodology for conducting HRAs, regulatory agencies throughout the State of California including the Department of Toxic Substances Control (DTSC) which is charged with protecting individuals and the environment from the effects of toxic substances and responsible for assessing, investigating and evaluating sensitive receptor populations to ensure that properties are free of contamination or that health protective remediation levels are achieved have adopted the U.S. Environmental Protection Agency's (USEPA's) policy in the application of early-life exposure adjustments.

Specifically, USEPA guidance relating to the use of early life exposure adjustments (*Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*, EPA/630/R-003F) are considered when carcinogens act "through the mutagenic mode of action." As reported:

The Agency considered both the advantages and disadvantages of extending the recommended, age dependent adjustment factors for carcinogenic potency to carcinogenic agents for which the mode of action remains unknown. EPA recommends these factors only for carcinogens acting through a mutagenic mode of action based on a combination of analysis of available data and long-standing science policy positions that set out the Agency's overall approach to carcinogen risk assessment, e.g., the use of a linear, no threshold extrapolation procedure in the absence of data in order to be health protective. In general, the Agency prefers to rely on analyses of data rather than on general defaults. When data are available for a susceptible lifestage, they should be used directly to evaluate risks for that chemical and that lifestage on a case-by-case basis. In the case of nonmutagenic carcinogens, when the mode of action is unknown, the data were judged by EPA to be too limited and the modes of action too diverse to use this as a category for which a general default adjustment factor approach can be applied. In this situation per the Agency's Guidelines for Carcinogen Risk Assessment, a linear low-dose extrapolation methodology is recommended. It is the Agency's long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-

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specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity.

It is acknowledged that this comment identifies that USEPA has identified that diesel exhaust (DE) has "...known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases."²⁸ However, as discussed in Appendix FEIR-2, for diesel particulates, polycyclic aromatic hydrocarbons (PAHs), and their derivatives, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass.¹⁰ To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action.¹¹

Based on a review of relevant guidance on the applicability of the use of early life exposure adjustments to identified carcinogens, the use of these factors would not be applicable to the HRA provided in the Final EIR as neither the Lead Agency nor SCAQMD have developed recommendations on whether these factors should be used for CEQA analyses of potential DPM construction or operational impacts. For the HRA prepared in the Final EIR, the HRA relied upon USEPA guidance relating to the use of early life exposure adjustment factors (Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens, EPA/630/R-003F) whereby adjustment factors are only considered when carcinogens act "through the mutagenic mode of action." As discussed above, PAHs and their derivatives within diesel particulate, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass. To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action. Therefore, early life exposure adjustments were not considered in the HRA presented as Appendix FEIR-2.

¹⁰ United States Environmental Protection Agency, Health Assessment Document for Diesel Engine Exhaust (EPA/600/8-90/057F, 2002).

¹¹ United States Environmental Protection Agency, National Center for Environmental Assessment, 2018; Integrated Risk Information System (IRIS), Diesel Engine Exhaust.



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As discussed above in Response to Comment No. CREED-2, a quantified HRA using ASFs is not required and the City as the Lead Agency has the discretion, as the appellant admits, to select the appropriate thresholds of significance and methodologies based on the above supporting evidence for evaluating a project's impacts including potential impacts related to health risk. Thus, the HRA presented as Appendix FEIR-2 adequately addresses impacts to sensitive receptors including impacts on children.

Comment No. CREED-4

C. Substantial Evidence Demonstrates that the Project will have a Significant Health Risk Impact on Children

The FEIR's HRA concludes that the Project's impacts will not exceed the City's significance threshold, which provides that health impacts are significant when the Project exposes sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.⁴⁵ But as explained above, this HRA fails to apply ASFs to evaluate impacts on children. Dr. Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million threshold.

Dr. Clark conducted this analysis using the concentrations of DPM calculated by the City, but incorporating ASFs to evaluate impacts on children.⁴⁶ This analysis finds that for a resident living near the Project site, the risk for a child born and living during the 1st two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold.⁴⁷ Thus, the Project would have a significant health risk impact unanalyzed in the EIR. Thus, the FEIR must be revised and recirculated.

⁴⁵ Appendix FEIR-2, Executive Summary, pg. 1.

⁴⁶ Clark Comments, pg. 5.

⁴⁷ Clark Comments, pg. 5.



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Response to Comment No. CREED-4

The appellant further contends that the HRA contained in the Final EIR is inadequate because ASFs were not included in the HRA and summarizes Dr. Clark's calculations using ASFs. Please refer to Response to Comment No. CREED-3 regarding the City's discretion to select the appropriate thresholds of significance and methodologies based on substantial evidence as to why ASFs were not considered in the HRA presented as Appendix FEIR-2. Dr. Clark's updated analysis using ASFs is noted for the record and will be forwarded to the decision-makers for their review and consideration. Please refer to Response to Comment No. CREED-12 for additional discussion of the applicability of ASFs.

Comment No. CREED-5

D. The FEIR Fails to Mitigate the Project's Significant Health Risk Impact to a Less-Than-Significant Level

As demonstrated in Dr. Clark's comments, the Project would have a significant health risk impact as of result of DPM emitted during Project construction and operations. The mitigation measures identified in the FEIR's Mitigation Monitoring Program ("MMRP") fail to reduce these impacts to a less-than-significant level. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts.⁴⁸ To fully mitigate the Project's significant health risk impacts, the FEIR must be revised to identify measures that limit DPM emissions during construction. For example, requiring use of construction equipment that meets EPA Tier 4 engine emissions standards would reduce emissions of PM and NOx over uncontrolled emissions.⁴⁹ Use of such equipment is feasible and effective.⁵⁰

⁴⁸ Pub. Resources Code § 21002.

⁴⁹ See Emissions Standards, US Nonroad Diesel Engines, available at <https://dieselnet.com/standards/us/nonroad.php>.

⁵⁰ San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, available at: https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf.



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Response to Comment No. CREED-5

The appellant contends that the Final EIR is inadequate because it fails to mitigate health risk impacts to a less than significant level. As discussed above in Response to Comment No. CREED-2, the HRA provided as Appendix FEIR-2 of the Final EIR was done voluntarily for informational purposes only to supplement the administrative record and respond to comments, and further demonstrated that even if an HRA was necessary (which it was not) the Project would not have a significant air quality impact. The HRA demonstrated that health risks from the Project (combined construction and operation) would result in a maximum incremental cancer risk of 3.9 in one million people. This maximum impact would occur at residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions). The Project-related incremental cancer risk is below the applicable SCAQMD significance threshold of 10 in one million people.¹² No additional mitigation measures are warranted based on the HRA's cancer risk determination or this comment.

Comment No. CREED-6

E. The FEIR Fails to Analyze and Mitigate Potentially Significant Health Risks from Exposure to Natural Gas

The Project's operations would involve residential use of natural gas.⁵¹ The Project's operations would consume a total of 4,859,882 cf of natural gas each year.⁵² Although the Project will not use natural gas fireplaces, the Project's EIR does not preclude use of other gas appliances like stoves.⁵³

Substantial evidence demonstrates that residential natural gas use has potentially significant health risks on residents.⁵⁴ In a 1992 meta-analysis of studies on this topic, scientists at the EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.⁵⁵ Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis

¹² SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.

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of 41 studies found that gas cooking increases the risk of asthma in children and that NO₂ exposure is linked with currently having a wheeze.⁵⁶ Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.⁵⁷ Dr. Clark's comments present further evidence demonstrating the potentially significant nature of this impact. The City cannot approve the Project unless this impact is analyzed and mitigated.

To mitigate this impact, the City must analyze the feasibility of measures which reduce the toxicity of operational natural gas use. These may include building electrification measures. The City's project design feature AIR-PDF-2, which precludes use of gas-powered fireplaces, does not implicate stoves in residential units. And GHG-PDF-1, which calls for the use of Energy Star-labeled appliances, would not reduce natural gas emissions from stoves, as "[t]here is no Energy Star label for residential ovens, ranges, or microwave ovens at this time."⁵⁸

⁵¹ DEIR, IV.B-15.

⁵² DEIR, IV.B-25.

⁵³ FEIR, IV-3.

⁵⁴ <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>; [sic]

⁵⁵ Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; Journal of the Air & Waste Management Association Volume 42, 1992—Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.

⁵⁶ Lin et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, International Journal of Epidemiology, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>.

⁵⁷ Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, Int. J. Environ. Res. Public Health 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>.

⁵⁸ https://www.energystar.gov/products/appliances/microwaves_ovens_and_ranges.

Response to Comment No. CREED-6

The appellant contends that the Final EIR is inadequate because it fails to analyze and mitigate potentially significant health impacts from exposure to natural gas. The

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information regarding natural gas in this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration. The City approved Ordinance No. 187,714 in December of 2022, which requires all newly constructed buildings to be all electric. Cooking equipment contained within kitchens in a public use area, such as restaurants, commissaries, cafeterias, and community kitchens is exempt as long as electrical infrastructure is installed. The Project is required to comply with this ordinance and would address the concerns raised in this comment. That is, compliance with the ordinance would ensure that there would be no gas cooking appliances installed in the residential units. As such, there would be no potential for any health impacts due to usage of gas stoves and, therefore, no potential impacts to analyze in the EIR. Regardless, it is important to note that there are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk from indoor air quality. In fact, indoor air quality is not within the jurisdiction of SCAQMD.

Comment No. CREED-7**F. The FEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Noise Impacts**

The FEIR acknowledges that the Project would have significant construction noise impacts. In our initial comments, Mr. Watry identified additional feasible mitigation measures that would reduce the Project's significant construction noise impacts. Mr. Watry recommended that the FEIR's mitigation measure be revised to provide either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction in order to further reduce noise above the FEIR's proposed noise barrier.⁵⁹

In Responses 3-39 and 3-40, the City argues that these measures would be infeasible. The City first reasons that the project Applicant does not own the affected buildings, and thus cannot require the implementation of Mr. Watry's proposed measures. But Mr. Watry explains that the Applicant can make offers to neighboring residents to install noise-attenuating barriers. Mr. Watry points to other projects that implemented similar mitigation, demonstrating their general feasibility.⁶⁰



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The City also reasons that constructing the proposed noise barriers would in and of itself would create a significant noise impact. But Mr. Watry's comments explain that temporarily installing clear plexiglass or acrylic panels around balconies that face the project site would not be expected to generate a significant noise impact.⁶¹ The City must consider this mitigation in a revised FEIR.

⁵⁹ Watry DEIR Comments, pp. 2-3.

⁶⁰ Watry FEIR Comments, pg. 2.

⁶¹ Watry FEIR Comments, pg. 2.

Response to Comment No. CREED-7

Please refer to Response to Comment No. CREED-14 for responses to Mr. Watry's comments regarding the noise mitigation measures.

Comment No. CREED-8

IV. THE PROJECT DOES NOT PROVIDE AFFORDABLE HOUSING, IN CONFLICT WITH LOCAL LAND USE GOALS, OBJECTIVES, AND POLICIES

The Project proposes to construct 580 residential units, but fails to provide any of the residential units at a below-market rate.⁶² The Project's lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing. CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans," which includes regional housing plans.⁶³ Therefore, the Project's inconsistency with applicable goals, objectives, and policies is also a violation of CEQA.

A. The Project is Inconsistent with the Housing Element Update of the General Plan

The Regional Housing Needs Assessment ("RHNA") is the California State-required process that seeks to ensure cities and counties plan for enough housing in their Housing Element cycle to accommodate all economic segments of the community.⁶⁴ Accordingly, the Housing Element of the City's General Plan identifies the City's housing conditions and

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needs, evaluates the City's ability to meet its RHNA numbers, establishes the goals, objectives, and policies of the City's housing strategy, and provides an array of programs to create mixed-income neighborhoods across the City.⁶⁵ The Housing Element Annual Progress Report ("APR"), as required by Government Code Section 65400, requires jurisdictions to report on the annual progress towards meeting the RHNA during the calendar year, as well as on the status of implementation programs identified in the Housing Element.

The City's 2021 Housing Element APR shows that the City has not produced enough housing in the lower and moderate-income categories. As shown in the excerpted tables below from the 2021 APR, Los Angeles was obligated to identify capacity for 82,002 new units of housing in the 2013-2021 RHNA cycle.⁶⁶ And while the City produced more than 82,002 new units (118,604 total), the City failed to produce enough very-low, low, and moderate-income housing, with a deficit of 32,491 units.⁶⁷

Income Level		RHNA Allocation by Income Level	2021	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	20,427	1,979	8,991	11,436
	Non-Deed Restricted		-		
Low	Deed Restricted	12,435	536	4,263	8,172
	Non-Deed Restricted		-		
Moderate	Deed Restricted	13,728	18	845	12,883
	Non-Deed Restricted		-		
Above Moderate		35,412	13,082	118,604	-
Total RHNA		82,002			
Total Units			15,615	132,703	32,491

In the current cycle (2021-2029), Los Angeles is obligated to identify capacity for 456,643 new units of housing.⁶⁸ 115,978 of this total must be for very-low income housing, 68,743 for low income housing, and 75,091 for moderate housing.⁶⁹ But the City's models show that the City is not on track to meet this RHNA requirement. AB 1397 (2017) requires the City to model the new housing units permitted during the upcoming cycle. However, the Housing Element concludes that the "model's prediction of approximately 47,000 new units being permitted in the city within the bonus-zoned cap in the span of 8 years falls an order of magnitude short of the city's upcoming cycle RHNA of 456,643 units."⁷⁰ The City



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estimates that affordable housing benefits would raise the 8-year prediction for new units permitted within the bonus-zoned cap from 47,208 to 61,158, which still falls short.⁷¹

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 Project does not provide any affordable units, and is therefore inconsistent with the Housing Element affordable housing goals. Specifically, Objective 2.2 states: "Promote sustainable neighborhoods that have mixed-income housing, jobs, amenities, services and transit." The City claims that the Project is consistent with this Objective because the Applicant would construct a mixed-use development with residential units at varying cost levels.⁷² But the EIR fails to require the range of cost levels to include low-income units. The City does not acknowledge that while Objective 2.2 plainly promotes mixed-income housing, the Project fails to include any mixed-income affordable units. Thus, the Project is inconsistent with Objective 2.2.

Objective 2.5 provides that the City must "[p]romote a more equitable distribution of affordable housing opportunities throughout the city." Accordingly, Policy 2.5.2 provides: "Foster the development of new affordable housing units citywide and within each Community Plan area." The City failed to analyze the Project's consistency with Objective 2.5 and Policy 2.5.2.⁷³ To analyze consistency with these provisions, the City must revise the EIR to disclose the availability of affordable housing opportunities in the Central City Community Plan area, and analyze whether the Community Plan area has sufficient affordable housing relative to the rest of the City. Here, because the Project fails to provide any affordable housing, there is no evidence that the Project contributes to an equitable distribution of affordable housing opportunities throughout the City.

Policy 2.5.1 further provides: "Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers." The City also failed to analyze the Project's consistency with this policy.⁷⁴ Here, the Project proposes residential units in a Transit Oriented Communities Area and designated High Quality Transit Area ("HQTA").⁷⁵ But, whereas Policy 2.5.1 promotes locating affordable housing in such areas, the Project



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fails to include any affordable units and fails to take advantage of affordable housing incentives. Thus, the Project is inconsistent with Policy 2.5.1.

Further, the Project is not consistent with the Housing Element Update, which was adopted on June 14, 2022. Housing Element Update Policy 1.1.2 states: "Plan for appropriate land use designations and density to accommodate an ample supply of housing units by type, cost, and size within the City to meet housing needs, according to Citywide Housing Priorities and the City's General Plan." [emphasis added]. Here, the City produced enough above-moderate housing units in 2013 through 2021, but fell short in production of very-low, low, and moderate income housing. By proposing 580 residential units, but zero affordable housing units, the Project fails to provide an ample supply of housing units by costs which meet the City's housing needs, as required by the Housing Element.

Objective 1.2 states: "Facilitate the production of housing, especially projects that include Affordable Housing and/or meet Citywide Housing Priorities." Accordingly, Policy 1.2.1 provides: "Expand rental and for-sale housing for people of all income levels. Prioritize housing developments that result in a net gain of Affordable Housing and serve those with the greatest needs." Because the instant Project fails to provide affordable housing, approval of the Project would be inconsistent with the Policy 1.2.1's prioritization of affordable housing development.

Objective 3.2 states: "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." Accordingly, Policy 3.2.2 provides: "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 proposes residential units in a designated HQTAs.⁷⁶ But whereas Policy 3.2.2 promotes locating affordable and mixed-income housing in such areas, the Project fails to include affordable units. Thus, the Project is inconsistent with Policy 3.2.2.

As a result of these inconsistencies, the Project fails to comply with the Housing Element of the General Plan. The FEIR further fails to disclose and mitigate the above



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inconsistencies, in violation of CEQA. The FEIR must be revised and recirculated before the Project can be approved.

- ⁶² DEIR, pg. IV.D-26, Appendix D, Table 4, pg. 6; FEIR, Section II, Responses to Comments; Planning Department Staff Report (these documents discuss the Project's consistency with housing policies but fail to identify any low-income housing provided by the Project).
- ⁶³ See also *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.
- ⁶⁴ Cal. Gov. Code Section 65580–65589.9; see City of Los Angeles, Draft Housing Element 2021–2019: What to Know about: RHNA, Site Selection, and Rezoning, available at [https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What to Know about RHNA, Site Selection, and Rezoning - Updated.pdf](https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What%20to%20Know%20about%20RHNA,%20Site%20Selection,%20and%20Rezoning%20-%20Updated.pdf)
- ⁶⁵ City of Los Angeles, Draft Housing Element 2021-2019, Executive Summary, pg. 16–17, available at [https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive_Summary_\(Adopted\).pdf](https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive_Summary_(Adopted).pdf).
- ⁶⁶ City of Los Angeles, 2021 Housing Element Progress Report, Table B, [https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los Angeles 2021 APR - Summary.pdf](https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los_Angeles_2021_APR_-_Summary.pdf).
- ⁶⁷ *Id.*
- ⁶⁸ SCAG 6th Cycle Final RHNA Allocation Plan (approved by HCD on 3/22/21 and modified on 7/1/21), pg. 3, available at <https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-final-allocation-plan.pdf?1625161899>.
- ⁶⁹ *Id.*
- ⁷⁰ Housing Element 2021–2029, Appendix 4.6-3, available at [https://planning.lacity.org/odocument/15117d38-35ca-416b-9980-25eb20201ba2/Appendix 4.6 - Regression Methodology.pdf](https://planning.lacity.org/odocument/15117d38-35ca-416b-9980-25eb20201ba2/Appendix_4.6_-_Regression_Methodology.pdf).
- ⁷¹ *Id.*
- ⁷² DEIR, Appendix D, Table 4, pg. 26.
- ⁷³ DEIR, Appendix D, Table 4.
- ⁷⁴ DEIR, Appendix D, Table 4.
- ⁷⁵ DEIR, Section IV.D-17.
- ⁷⁶ DEIR, Section IV.D-17.

Response to Comment No. CREED-8

The appellant contends that the EIR is inadequate for failure to include affordable housing and not consistent with the Housing Element Update that was adopted in 2022. As set forth on page 26 of Table 4 within Appendix D: Land Use Tables of the Draft EIR,

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the Project would be consistent with Objective 2.2 of the 2021 Housing Element. Specifically, as stated therein:

The Project would create a mixed-use development consisting of residential and commercial/retail/restaurant uses. Specifically, the Project would provide 580 new residential units (i.e., studios, one-, two-, and three-bedroom) at varying cost levels. The Project would also be located in an area well-served by public transit, including the 7th Street/Metro Center Rail Station (approximately two blocks north of the Project Site) and numerous bus lines. The Project would also provide bicycle parking on-site to encourage alternative modes of transportation. Furthermore, as discussed in Section II, Project Description, of this Draft EIR, the Project would incorporate sustainability features to support and promote environmental sustainability. Therefore, the Project would not conflict with this objective.

The Project is in fact consistent with the policies and goals of the Housing Element, including its amendments that were approved in 2022. As Table 1.28 of the Housing Element provides, in order for housing production to meet the 2021-2029 RHNA allocation, for the Above Moderate Income category, it is estimated that an average annual 86 percent increase in production is required, approximately 26,604 dwelling units per year.¹³ In total, the City will need to produce over 456,000 new dwelling units over the next 8 years. Therefore, the Project's proposed 580 dwelling units, regardless of income level, would be a welcome contribution to the City's much needed housing stock.

Further, 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. This significant financial contribution to the fund may then be utilized to preserve existing affordable housing and/or construction of new affordable housing units.

¹³ City of Los Angeles. Los Angeles Housing Element of the General Plan 2021-2029. [https://planning.lacity.org/odocument/1fb853cf-c80c-4b87-bf40-14975d1ae5f9/2021-2029_Housing_Element_Book_\(Adopted\)_-_High_Res..pdf](https://planning.lacity.org/odocument/1fb853cf-c80c-4b87-bf40-14975d1ae5f9/2021-2029_Housing_Element_Book_(Adopted)_-_High_Res..pdf). April 13, 2023.



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Comment No. CREED-8

B. City of Los Angeles General Plan Framework

Policy 4.1.1 of the City of Los Angeles General Plan Framework states: "Provide sufficient land use and density to accommodate an adequate supply of housing units by type and cost within each City subregion to meet the twenty-year projections of housing needs." Here, the Project fails to propose any affordable residential units while the City fails to meet its RHNA. Thus, this Project fails to contribute to an adequate supply of housing units by cost.

Response to Comment No. CREED-8

The appellant contends that the Project is inconsistent with the Framework Element because it contains no affordable housing units. Section IV.D, Land Use of the Draft EIR and Appendix D: Land Use Tables of the Draft EIR provide an analysis of the objective related to this policy within the Housing Chapter of the General Plan Framework. Specifically, Objective 4.1.1 states: "Plan the capacity for and develop incentives to encourage production of an adequate supply of housing units of various types within each City subregion to meet the projected housing needs by income level of the future population to the year 2010." As set forth in Section IV.D, Land Use of the Draft EIR and Table 4 of Appendix D, the Project would provide 580 new multi-family residential units, including 108 studios, 258 one-bedroom units, 66 one-bedroom units with dens, 143 two-bedroom units, and five two-bedroom plus den or three-bedroom units. The Project would therefore support the City's objective to plan the capacity for and develop incentives to encourage production of housing units of various types to meet the projected housing needs. There are no legal requirements for the Project to include affordable housing. In fact, the Project is consistent with the City's TFAR ordinance, and will be contributing approximately \$10 million that can be used to fund the development of affordable housing.

Finally, State law requires the City to update its Housing Element every eight years and demonstrate sufficient zoned capacity for housing to accommodate the number of units identified in the Regional Housing Needs Assessment (RHNA). On June 29, the California Department of Housing and Community Development (HCD) informed the City of Los Angeles that its 2021-2029 Housing Element was in full compliance with State law.



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Comment No. CREED-9

V. CONCLUSION

As is explained herein, timely access to the hearing's agenda and staff report is required for the public to have an adequate opportunity to review and comment on the Project's Approvals. The hearing must be continued to a later date to comply with the Brown Act.

Further, the FEIR's air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete, failing to comply with the requirements of CEQA. As a result, the FEIR still fails to adequately disclose and mitigate the Project's significant public health, air quality, and noise impacts. As a consequence of these impacts, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised FEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the FEIR before any further action is taken on the Project.

Response to Comment No. CREED-9

This comment concludes the letter and restates the appellant's claim that the Final EIR is inadequate. Refer to Response to Comment Nos. CREED-2 through CREED-8, above. As demonstrated therein, the Draft EIR and Final EIR have been completed in full compliance with CEQA and the appellant's claims are not supported by substantial evidence. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.



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Comment No. CREED-10

ATTACHMENT A

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the January 2023 City of Los Angeles Final Environmental Impact Report (FEIR) of the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

The Project involves the construction of a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished. Upon completion, the total building floor area would be 554,927 square feet with a maximum height of 592 feet and a Floor Area Ratio (FAR) of approximately 9.25:1.

The Project is located at 754 South Hope Street and 609 and 625 West 8th street in the City of Los Angeles. The parcels that comprise the Project Site are rectangular in shape and the site is comprised of two tax assessor parcels (APNs: 5144-011-009 and 5144-011-016), which encompass a total of approximately 34,679 square feet of lot area (0.83 acre). The Project Site is currently developed with a low-rise four-story parking structure and a surface parking lot that is entirely paved and devoid of landscaping. The currently existing commercial parking structure provides 324 parking spaces.

The maximum depth of the subterranean levels (parking) for the Project would be approximately 63 feet below ground level. The building would include levels 1 through 50 with a maximum height of 592 feet above grade to the top of the parapet. The ground floor



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of the new building would be occupied by a residential lobby on 8th Street, as well as commercial/retail/restaurant uses, which will be located on the corner of Hope Street and 8th Street and at the corner of Grand Avenue and 8th Street.

Construction of the Project would commence with site clearance and demolition of the existing parking structure and parking lot, resulting in approximately 15,000 cubic yards of demolition debris, followed by grading and excavation for the subterranean levels. Construction is anticipated to occur over a 36-month period and is anticipated to be completed in 2025. Approximately 89,750 cubic yards of soil would be exported and hauled away from the Project Site during the excavation phase.

In response to comments from the community on the DEIR, the City has added two mitigation measures to the FEIR related to air quality. Project Design Feature AIR-PDF-1 requires the use of electricity from power poles or solar powered generators where possible rather than temporary diesel or gasoline generators during construction. Project Design Feature AIR-PDF-2 prohibits the use of natural gas-fueled fireplaces in the residential units. Neither of these PDFs will provide sufficient decreases in the air quality impacts during the construction and operational phases of the project.

The conclusion from the City that all other potential impacts would be less than significant is in fact without merit. There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised environmental impact report (REIR).

Response to Comment No. CREED-10

This comment introduces the attachment and summarizes the Project Description. Specific issues raised by the appellant are addressed in Response to Comment Nos. CREED-11 through CREED-15, below. Note that the City did not add any mitigation measures to the Final EIR. Project Design Feature AIR-PDF-1 and Project Design Feature AIR-PDF-2 were already included in Section IV.A, Air Quality, of the Draft EIR.



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Comment No. CREED-11

Specific Comments:

- 1. The City's Air Quality Analysis Includes A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And Operational Phase Of The Project For The Nearest Sensitive Receptor(s) That Fails To Include An Analysis Of The Most Sensitive Receptors (Infants and Children), Underestimating The Potential Health Impacts**

The City has failed to conduct a numerical health risk analysis (HRA) for Project. According to the HRA in Appendix 2 of the FEIR:

"Exhaust emissions from construction and operational equipment were treated as a set of side-by-side elevated volume sources. The release height was assumed to be 12 feet. This represents the mid-range of the expected plume rise from frequently used construction equipment and operational heavy-duty trucks during daytime atmospheric conditions. All construction exhaust emissions were assumed to take place over a 36-month (3 year) duration on weekdays between 7 A.M. to 3 P.M. (8-hour period). Operational exhaust emissions were assumed to take place 6-days per week between 7 A.M. to 3 P.M. (8-hour period) and included 15 minutes of idle time to account for ingress, egress, and travel on-site.

Emergency generator emissions were assumed to take place for up to 200 hours per year. Operating hours were assumed to occur at any time of the year (24-hours a day). The release height was assumed to be 15 feet high, with a stack diameter of 6 inches, and an exit temperature of 852°F or 455°C."¹

In the spreadsheet provided in the HRA² which the City cites a cumulative risk of 3.9 in 1,000,00 it is clear that the input values for the HRA do not reflect the construction and operational phases of the Project nor do the breathing rates reflect the current assumptions outlined by OEHHA.



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Residential Receptor - 70 year Exposure Duration

Diesel Particulate Matter Emission Rate Calculation / Scaler		Construction	Operations
Year -->		2022-2025	2025-2092
Average Annual Emission Rate (g/s) ^a		7.96E-03	-
Scaler Concentration (ug/m3) ^b		27.10	-
Diesel Particulate Concentration (ug/m3)		0.216	0.0001
Cancer Risk Calculations - DPM			
Parameter	2022-2025	2026-2092	Total
Breathing Rate	393	393	
Exposure Frequency (EF)	350	350	
Exposure Duration (ED) (years)	3.00	67.00	70
AT	25550	25550	
70-Year (Lifetime) Concentration (ug/m3)	2.16E-01	1.25E-04	
70-Year (Lifetime) Dose (mg/kg-d)	8.13E-05	4.72E-08	
Carcinogen Potency (CPF) (mg/kg-d) ⁻¹			
- Diesel Particulate Matter	1.1	1.1	
Cancer Risk	3.83E-06	4.97E-08	3.88E-06
Risk per Million (DPM)	3.8	0.05	3.9

^a Emissions based on a 4-year average

^b Scaler concentration based on an AERMOD emission rate of 1 g/s, 8-hours per day

The averaged breathing rate assumed in the HRA, 393 Liters per kilogram of body weight (L/kg) is not reflected in the current Air Toxic Hot Spots Program Guidance Manual (Dated February 2015) list of residential daily breathing rates.

Table 5.6 Point Estimates of Residential Daily Breathing Rates for 3rd trimester, 0<2, 2<9, 2<16, 16<30 and 16-70 years (L/kg BW-day)

	3 rd Trimester ^a	0<2 years	2<9 years	2<16 years	16<30 years	16<70 years
L/kg-day						
Mean	225	658	535	452	210	185
95th Percentile	361	1090	861	745	335	290

^a 3rd trimester **breathing rates** based on breathing rates of pregnant women using the assumption that the dose to the fetus during the 3rd trimester is the same as that to the mother.

The HRA fails to consider the impact that the age of exposure will have on residents near the site. In its 1998 Report On Diesel Exhaust,³ the Scientific Review Panel (SRP) staffed by members of the California Air Resources Board (CARB) and the Office of Environmental



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Health Hazard Assessment (OEHHA) has concluded that "Diesel exhaust contains genotoxic compounds in both the vapor phase and the particle phase. Diesel exhaust particles or extracts of diesel exhaust particles are *mutagenic* (emphasis added) in bacteria and in *mammalian cell systems*, and *can induce chromosomal aberrations, aneuploidy, and sister chromatid exchange in rodents and in human cells in vitro*. Diesel exhaust particles induced unscheduled DNA synthesis in vitro in mammalian cells."⁴

In the SCAQMD's recent MATES V (Multiple Air Toxics Exposure Study in the South Coast AQMD) study in the risk characterization section of the study AQMD noted that the method utilized combined exposure factor that accounted for the exposure factor for each assigned age bin. Each assigned age bin was made up of the daily breathing rate, exposure duration of the age bin, fraction of time at home, and ***an age sensitivity factor***.⁵ SCAQMD is stating that they included the use of the ASFs that were previously identified for DPM.

Therefore, to be consistent with the State's designation of DPM as a mutagenic chemical and SCAQMD's quantification of health risks in the Air Basin, the City must evaluate the health risk from exposure to DPM in a manner consistent with the guidance from the State. To that end, ASFs of 10 for exposures prior to age 2, ASFs of 3 for exposure from age 2 to 16 , [sic] and an ASF of 1 for exposures to DPM for adults should have been performed. The City must re-evaluate the risk using the ASFs in the calculation of the risks to the residents nearby.

Using the concentrations estimated in the FEIR and incorporating the ASFs, it is clear that the exposure of residents near the site will exceed 10 in 1,000,000 from the construction phase of the Project when the actual duration of construction (3years) [sic] and operation are accurately expressed.



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Age Group	Risk	Age Sensitivity	FAH	ED	CPF	Dose Air	Cair	BR/BW
3rd Trimester	2.50E-06	10	0.85	0.25	1.1	7.48E-05	0.216	361
0<2	6.03E-05	10	0.85	2	1.1	2.26E-04	0.216	1090
2<9	4.54E-06	3	0.72	0.75	1.1	1.78E-04	0.216	861
2<16	0.00E+00	3	0.72	0	1.1	1.54E-04	0.216	745
16<30	0.00E+00	1	0.73	0	1.1	6.94E-05	0.216	335
16-70	0.00E+00	1	0.73	0	1.1	6.01E-05	0.216	290

For a resident living near the Project site, the risk for a child born and living during the 1st two years of life, the risk will exceed 60 in 1,000,000 based on the City's air model. The City must update its HRA to accurately reflect the risks based on the guidance from OEHHA that it cited in its own HRA. This update must be presented in a revised EIR.

- ¹ City of Los Angeles. 2023. FEIR. Appendix 2. Pg 14
- ² City of Los Angeles. 2023. FEIR. Appendix 2. Pg 14of [sic] 95
- ³ CARB. 2022. Findings of the Scientific Review Panel on The Report On Diesel Exhaust as adopted at the Panel's April 22, 1998, Meeting. Site reviewed August 11, 2022. <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/de-fnds.pdf>
- ⁴ CARB. 2022. Findings of the Scientific Review Panel on The Report On Diesel Exhaust as adopted at the Panel's April 22, 1998, Meeting. Site reviewed August 11, 2022. <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/de-fnds.pdf>
- ⁵ SCAQMD. 2022. MATES V Study. <http://www.aqmd.gov/docs/default-source/planning/mates-v/mates-v-final-report-9-24-21.pdf?sfvrsn=6>

Response to Comment No. CREED-11

The appellant contends that the HRA provided in the Final EIR fails to analyze impacts to the most sensitive receptors (infants and children). As discussed in Response to Comment No. 3-6 in Section II, Responses to Comments, of the Final EIR, an HRA is not required by SCAQMD or the City, and no guidance for health risk assessments for construction has been adopted by SCAQMD or the City. Contrary to what is stated in this comment, the City conducted and provided an HRA as Appendix FEIR-2. The HRA was done voluntarily for informational purposes only to supplement the administrative record and respond to comments, and it further demonstrated that even if an HRA was necessary



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(which it was not) the Project would not have a significant air quality impact. The HRA demonstrated that health risks from the Project (combined construction and operation) would result in a maximum incremental cancer risk of 3.9 in one million people.

This comment states that “the input values for the HRA do not reflect the construction and operational phases of the Project...” but provides no supporting evidence of which inputs are not reflective of the Project. The comment highlights the construction exposure duration, which shows three years. Please note that a three-year construction duration is consistent with the Draft EIR (see page II.35 of Section II., Project Description, of the Draft EIR). When evaluating a single cancer risk value for a residential receptor over a 70-year exposure duration, the potential cancer risk estimate for the inhalation exposure pathway should be based on a breathing rate representing the 95th percentile value of the breathing rate range of values (393 L/kg-day).¹⁴ The use of specific breathing rates for age specific ranges would be more applicable where use of ASFs apply. Please refer to Response to Comment No. CREED-3 regarding the City’s discretion, as the appellant admits, to select the appropriate thresholds of significance and methodologies based on substantial evidence as to why ASFs were not considered in the HRA presented as Appendix FEIR-2. Clark’s updated analysis using ASFs is noted for the record and will be forwarded to the decision makers for their review and consideration. It should be noted that application of age of exposure specific breathing rates would increase the cancer risk presented in Appendix FEIR-2 from 3.9 in one million to 6.32 in one million and health risk impacts would remain less than significant.

As discussed above in Response to Comment No. CREED-10, OEHHA’s 2015 Guidance Manual provides ASFs to account for potential increased sensitivity of early-in-life exposure to carcinogens. For risk assessments conducted under the auspices of AB 2588, a weighting factor is applied to all carcinogens regardless of purported mechanism of action. In comments presented to the SCAQMD Governing Board (Meeting Date: June 5, 2015, Agenda No. 28) relating to toxic air contaminant exposures under Rules 1401 (New Source Review of Toxic Air Contaminants), use of the 2015 OEHHA guidelines and their

¹⁴ Office of Environmental Health Hazard Assessment, *The Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*, August 2003.



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applicability for projects subject to CEQA, as they relate to the incorporation of early-life exposure adjustments, it was reported that:

The Proposed Amended Rules are separate from the CEQA significance thresholds. The Response to Comments Staff Report PAR 1401, 1401.1, 1402, and 212 A - 8 June 2015 SCAQMD staff is currently evaluating how to implement the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will evaluate a variety of options on how to evaluate health risks under the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will conduct public workshops to gather input before bringing recommendations to the Governing Board.

SCAQMD, as a commenting agency, has not conducted public workshops nor developed policy relating to the applicability of applying the 2015 OEHHA guidance for projects prepared by other public/lead agencies subject to CEQA.

To emphasize variability in methodology for conducting HRAs, regulatory agencies throughout the State of California including the DTSC which is charged with protecting individuals and the environment from the effects of toxic substances and responsible for assessing, investigating and evaluating sensitive receptor populations to ensure that properties are free of contamination or that health protective remediation levels are achieved have adopted the USEPA's policy in the application of early-life exposure adjustments.

Specifically, USEPA guidance relating to the use of early life exposure adjustments (*Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*, EPA/630/R-003F) are considered when carcinogens act "through the mutagenic mode of action." As reported:

The Agency considered both the advantages and disadvantages of extending the recommended, age dependent adjustment factors for carcinogenic potency to carcinogenic agents for which the mode of action remains unknown. EPA recommends these factors only for carcinogens acting through a mutagenic mode of action based on a combination of analysis of

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available data and long-standing science policy positions that set out the Agency's overall approach to carcinogen risk assessment, e.g., the use of a linear, no threshold extrapolation procedure in the absence of data in order to be health protective. In general, the Agency prefers to rely on analyses of data rather than on general defaults. When data are available for a susceptible lifestage, they should be used directly to evaluate risks for that chemical and that lifestage on a case-by-case basis. In the case of nonmutagenic carcinogens, when the mode of action is unknown, the data were judged by EPA to be too limited and the modes of action too diverse to use this as a category for which a general default adjustment factor approach can be applied. In this situation per the Agency's Guidelines for Carcinogen Risk Assessment, a linear low-dose extrapolation methodology is recommended. It is the Agency's long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity.

This comment cites that CARB and OEHHA concluded in 1998 that "Diesel exhaust contains genotoxic compounds in both the vapor phase and the particle phase. Diesel exhaust particles or extracts of diesel exhaust particles are *mutagenic* (emphasis added) in bacteria and in *mammalian cell systems*, and *can induce chromosomal aberrations, aneuploidy, and sister chromatid exchange in rodents and in human cells in vitro*. Diesel exhaust particles induced unscheduled DNA synthesis in vitro in mammalian cells." This conclusion is consistent with that USEPA has identified that DE has "...known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.²⁸ However, as discussed in Appendix FEIR-2, for diesel particulates, PAHs, and their derivatives, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass.¹⁵ In addition, as PAHs consist of a variety of different chemicals, studies have shown that all

¹⁵ United States Environmental Protection Agency, *Health Assessment Document for Diesel Engine Exhaust* (EPA/600/8-90/057F, 2002).



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species within the PAH class of compounds are not equally toxic per unit mass. As a result, PAHs as a whole are poorly predictive of mutagenicity.¹⁶ To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action.¹⁷

Based on a review of relevant guidance on the applicability of the use of early life exposure adjustments to identified carcinogens, the use of these factors would not be applicable to the HRA provided in the Final EIR as neither the Lead Agency nor SCAQMD have developed recommendations on whether these factors should be used for CEQA analyses of potential DPM construction or operational impacts. For the HRA prepared in the Final EIR, the HRA relied upon USEPA guidance relating to the use of early life exposure adjustment factors (Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens, EPA/630/R-003F) whereby adjustment factors are only considered when carcinogens act “through the mutagenic mode of action.” As discussed above, PAHs and their derivatives within diesel particulate, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass. To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action. Therefore, early life exposure adjustments were not considered in the HRA presented as Appendix FEIR-2.

In response to this comment and general public concern over diesel exhaust emissions, additional consideration has been given to reducing Project-related diesel exhaust emissions. While not required as mitigation since the Project would result in less than significant health risk impacts, the Applicant has committed that use of all off-road diesel-powered equipment greater than 50 hp during construction would meet USEPA Tier 4 Final emissions standards. This commitment has been incorporated into a Condition of Approval for the Project. Use of Tier 4 equipment would further reduce air quality emissions and associated exposure to health risk.

¹⁶ *Environmental Health Perspectives, Relationship between Composition and Toxicity of Motor Vehicle Emission Samples, Volume 112, Number 15, November 2004.*

¹⁷ *United States Environmental Protection Agency, National Center for Environmental Assessment, 2018. Integrated Risk Information System (IRIS). Diesel Engine Exhaust.*



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As discussed above, a quantified HRA using ASFs is not required and the City as the Lead Agency has the discretion, as the appellant admits, to select the appropriate thresholds of significance and methodologies based on the above supporting evidence for evaluating a project's impacts including potential impacts related to health risk.

Comment No. CREED-12

2. The Air Quality Analysis For The Project Fails To Include An Analysis Of The Impacts Of Natural Gas Features Included in the Project's Residential Units.

The Project proposes to construct 580 residential units. These residential uses would consume a portion of the Project's total operational natural gas consumption of 4,859,882 cf of natural gas each year.⁶ This residential nature gas use would include use of appliances that would result in unintended degradation of indoor air quality by introducing volatile organic compounds into each of the residential units. In 1996, the State of California Department of Health Services (CDHS) released guidance on reducing the exposure of occupants to VOCs. Under the Health Effects of VOCs, the State notes that "exposure to VOCs may result in short- and long-term health effects at concentrations typically measured in non-industrial environments. The United States Environmental Protection Agency (USEPA) reported that long-term health effects "...can be severely debilitating or fatal" and "...may show up years after exposure has occurred or only after long or repeated periods of exposure" (USEPA, 1993a). According to the USEPA, long-term health effects include respiratory diseases and cancer. Short-term health effects are usually treatable and "...may appear after a single, high-dose exposure or repeated exposures" (USEPA, 1993a). Short-term health effects include "...irritation of eyes, nose, and throat, headaches, dizziness, and fatigue" (USEPA, 1993a)."⁷

CDHS further stated that "VOC exposures can result in adverse health effects at concentrations typically measured in non-industrial environments (Franck, 1986; Kjærgaard et al., 1990; Mølhave, 1990). These effects are typically concurrent with the exposure and may include: (a) sensory detection, often by odor, of the air contaminants; (b) physiological irritation or inflammation of exposed skin, eyes, and mucous membranes; and (c) stress reactions to the perceived chemical (Mølhave, 1990). Tearing of the eyes; runny nose; stinging, itching, or tingling feelings in exposed tissues; changes in skin temperature;



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headache; and drowsiness are some common symptoms seen with exposure to VOCs in nonindustrial environments. Some health effects, such as nose and throat irritation, may occur with the first exposure to indoor VOCs, whereas other health effects, such as systemic and carcinogenic effects, may be delayed for years. Health effects more serious and long-term than immediate irritation have been suggested to occur with repeated exposure to indoor VOCs. These include a wide range of systemic effects such as asthma and other chronic respiratory illnesses, reproductive effects, and cancer.”⁸

VOC exposure at low levels has been associated with an increase in the risk of asthma. Because there are so many VOCs in the air, measuring total VOC concentrations in the indoor environment may not represent the exposure of individual compounds.^{9,10} [sic] Exposure to VOCs is associated with an increase in the IL-4 producing Th2 cells and a reduction in IFN- γ producing Th1 cells. Thus, the mechanism of action of VOC exposure may be allergic sensitization mediated by a Th2 cell phenotype¹¹. Different individual variations in discomfort, from no response to excessive response, were seen in one of the studies. These variations may be due to the development of tolerance during exposure¹². The author concluded that some VOCs may cause inflammatory reactions in the airways and may be the reason for asthmatic symptoms.^{13,14}

There is substantial evidence in the literature that demonstrates that residential natural gas use has health risk impacts on residents.¹⁵ In a 1992 meta-analysis of studies on this topic, scientists at the U.S. EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.¹⁶ Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis of 41 studies found that gas cooking increases the risk of asthma in children and that NO₂ exposure is linked with currently having a wheeze.¹⁷ Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.¹⁸

The most recent study of the impact of residential sources using natural gas by researchers at the Harvard T.H. Chan School of Public Health, evaluated whether air pollutants were present in unburned natural gas. Between December 2019 and May 2021, researchers collected over 200 unburned natural gas samples from 69 unique kitchen stoves and

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building pipelines across Greater Boston. From these samples, researchers detected 296 unique chemical compounds, 21 of which are federally designated as hazardous air pollutants. They also measured the concentration of odorants in consumer-grade natural gas—the chemicals that give gas its characteristic smell—and found that leaks containing about 20 parts per million methane may not have enough odorant for people to detect them. Key findings of the study included:

1. Consumer-grade natural gas supplied to Massachusetts contains varying levels of at least 21 different hazardous air pollutants, as defined by the U.S. EPA, including benzene, toluene, ethylbenzene, xylene, and hexane. Benzene, toluene, ethylbenzene, and hexane are all listed by the State of California under Proposition 65 as carcinogens or reproductive toxins.
2. Concentrations of hazardous air pollutants in natural gas varied depending on location and time of year, with the highest concentrations found in the winter.
3. Based on odorant concentrations, small leaks can be undetectable by smell—leaks up to 10 times naturally occurring levels may be undetectable, equating to a methane concentration of about 20 parts per million.
4. When gas leaks occur, even small amounts of hazardous air pollutants could impact indoor air quality because natural gas is used by appliances in close proximity to people. Persistent outdoor gas leaks located throughout the distribution system may also degrade outdoor air quality as precursors to particulate matter and ozone.

The Project will expose residents to a source of contaminants that has not been fully assessed. The Project cannot be approved unless this potentially significant impact is accurately assessed and mitigated.

⁶ DEIR, IV.B-25.

⁷ CDHS. 1996. Reducing Occupant Exposure To Volatile Organic Compounds (VOCs) from Office Building Construction Materials: Non-binding Guidelines.

⁸ CDHS. 1996. Reducing Occupant Exposure To Volatile Organic Compounds (VOCs) from Office Building Construction Materials: Non-binding Guidelines.

⁹ Rumchev K, Spickett J, Bulsara M, et al. (April 2004). "Association of domestic exposure to volatile organic compounds with asthma in young children." [sic] *british medical journal* [sic] **59** (9): 746–751



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- ¹⁰ Jeong-Hee Kim,¹ Ja-Kyoung Kim,¹ Byong-Kwan Son, (April 2005). "Effects of Air Pollutants on Childhood Asthma". *Yonsei Med J.* **46** (2): 239–244
- ¹¹ Lehmann I, Rehwagen M, Diez U, (2001). "Enhanced in vivo IgE production and T cell polarization toward the type 2 phenotype in association with indoor exposure to VOC: results of the LARS study". *International Journal of Hygiene and Environmental Health* **204** (4): 211–221.
- ¹² Harving H, Dahl R, Mølhave L. (October 1991). "Lung function and bronchial reactivity in asthmatics during exposure to volatile organic compounds.". [sic] *Am Rev Respir Dis.* **143** (4): 751–4.
- ¹³ Wieslander G, Norbäck D, Björnsson E, et al. (1997). "Asthma and the indoor environment: the significance of emission of formaldehyde and volatile organic compounds from newly painted indoor surfaces.". [sic] *Int Arch Occup Environ Health* **69** (2): 115–24.
- ¹⁴ Wieslander G, Norbäck D, Edling C, (1996). "Airway Symptoms Among House Painters In Relation To Exposure To Volatile Organic Compounds (VOCS)—A Longitudinal Study". *The Annals of Occupational Hygiene* **41** (2): 155–166.
- ¹⁵ <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>; [sic]
- ¹⁶ Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; Journal of the Air & Waste Management Association Volume 42, 1992—Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.
- ¹⁷ .Lin [sic] et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, *International Journal of Epidemiology*, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>
- ¹⁸ Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, *Int. J. Environ. Res. Public Health* 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>

Response to Comment No. CREED-12

The appellant contends that the EIR fails to analyze the impacts of natural gas consumption in the residential units. The information regarding natural gas in this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration. The City approved Ordinance No. 187,714 in December of 2022, which requires all newly constructed buildings to be all electric. Cooking equipment contained within kitchens in a public use area, such as restaurants, commissaries, cafeterias, and community kitchens is exempt as long as electrical infrastructure is installed. The Project is required to comply with this ordinance and would address the concerns raised in this comment. That is, compliance with the ordinance would ensure that there would be no gas cooking appliances installed in the residential units. As such, there would be no potential



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for any health impacts due to usage of gas stoves and, therefore, no potential impacts to analyze in the EIR. Regardless, it is important to note that there are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk from indoor air quality. In fact, indoor air quality is not within the jurisdiction of SCAQMD.

Comment No. CREED-13

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the final environmental impact report is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised environmental impact report.

Attachment: James J.J. Clark Résumé [18 pages]

Response to Comment No. CREED-13

This comment, which concludes the letter and includes the appellant's résumé and model output files, is noted for the record and will be forwarded to the decision-makers for their review and consideration. Specific issues raised by the appellant in the exhibit are addressed in Response to Comment Nos. CREED-10 through CREED-12, above. As demonstrated therein, the appellant's claims that the Project would result in significant unmitigated impacts are not supported by substantial evidence. Rather, the Draft EIR is comprehensive and was prepared in full compliance with CEQA. Thus, preparation of a revised EIR is not appropriate. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

Comment No. CREED-14

ATTACHMENT B

In January 2022, we reviewed and provided comments on the information and noise impact analyses in the following document:



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*8th, Grand and Hope Project, Los Angeles, California
Draft Environmental Impact Report ("DEIR")
November 2021*

The City of Los Angeles responded to our comments in:

*8th, Grand and Hope Project, Los Angeles, California
Final Environmental Impact Report ("FEIR")
Environ. Case: ENV-2017-506-EIR
January 2023*

This letter contains our comments on the FEIR responses.

Comments on Construction Noise Mitigation

In our comments on the DEIR, we concurred with the project sponsor's conclusion that construction noise impacts would be significant at upper floor residences in tall buildings surrounding the project site without mitigation, however, we disagreed that there was not feasible mitigation. We noted that options that were not considered include installing scaffolding outside the buildings from which to hang noise barrier blankets (Comment 3-39) and temporarily installing clear plexiglass or acrylic panels around balconies that face the project site (Comment 3-40).

In its response to Comment 3-39, the City takes the positions that:

1. The project Applicant does not own the affected buildings (the ones that require mitigation), and
2. That erecting the scaffolding would require the use of heavy equipment that would in and of itself would create a significant noise impact.

Starting with the second point, there are matters of degree. According to the DEIR, "construction of the Project is anticipated to take approximately 36 months". [DEIR at p. IV.E-20] Erecting scaffolding, in contrast, takes a matter of days. I think it is reasonable to

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assert that people who would otherwise be subjected to 36 months of construction noise would not object to a few days of construction noise to provide mitigation for the longer term.

As to building ownership, this is not necessary to make the offer to provide noise mitigation. An example of a project offering to modify the homes of neighboring residents—homes not owned by the project developer—is provided by the *Modelo Project EIR*¹:

MM-NOI-4 The Project applicant shall offer to upgrade windows on the façades of homes facing Zindell Avenue. Increasing the sound attenuation of these windows would more than offset the increases in traffic noise from Project-generated trips along Zindell Avenue. [Modelo DEIR at p. 3.11-20]

The DEIR recognizes that because this offer may not be accepted by all homeowners, it was insufficient to render the noise impact less than significant:

However, because the City is not able to ensure acceptance/compliance of a window upgrade offer by property owners, Project-related traffic noise exposure level increases for residences along Zindell Avenue would remain significant and unavoidable. [Modelo DEIR at p. 3.11-18]

As stated in my comment letter on the DEIR for this project, I was personally involved with a project in San Francisco in which the project developer arranged to have scaffolding attached to a neighboring 8-story building and then fit with noise control blankets for the duration of project construction.

The City's response to Comment 3-40 is very similar to that for Comment 3-39. In Comment 3-40, I suggest that individual balconies could be fit with clear plexiglass or acrylic panels for the duration of the construction. The City's response state that the Applicant doesn't own the buildings and that installing the temporary barriers would itself make noise. As such, my comments on these responses are the same as those regarding Response 3-39: It is not necessary to own the building to make an offer and suffering a few days of construction noise to mitigate 36 months of construction noise seems like a



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reasonable accommodation. I will add that of my two suggestions, this seems the more practical for two reasons. First, it enables individual residents to make decisions about receiving mitigation rather than requiring approval by the building community as a whole. Second, it would be far easier to implement. There would be no need to block off a street to erect scaffolding; the work could probably be done by accessing the balcony through the residence. Finally, it would not block light and views the way scaffolding and blankets would.

¹ *DRAFT Modelo Project EIR*, City of Commerce, July 2020

Response to Comment No. CREED-14

The appellant contends that failure to adopt a mitigation measure that would require the Project to erect scaffolding to support construction noise control blankets at the façades of impacted receptors (receptor locations R1, R2, R4, R5, and R6) or to install heavy Plexiglass or other clear panels around the edges of off-site balconies that face the Project Site results in the EIR failing to adopt feasible mitigation measures to lessen the Projects temporary significant and unavoidable construction noise impacts. However, the comment does not provide substantial evidence that such a measure would in fact reduce the Project's significant and unavoidable construction noise impacts, and the comment does not demonstrate that such mitigation measures would be feasible.

The letter by Wilson Ihrig submitted in support of the use of one of these two suggested mitigation measures itself shows that the mitigation measures would not be feasible. The letter attached to the CREED LA comments to the Draft EIR specifically states that a noise control blanket could cause light and aesthetic impacts that could be "somewhat ameliorated by using clear vinyl for at least some of the 'panels'", the scaffolding would have to be directly attached to the buildings for lateral support, a Plexiglass system would require that the panels would need to extend from the existing parapet to the balcony floor above with only a small opening for ventilation, the panels would need to be able to withstand wind loads, there may be other code requirements, and determining the exact number of balconies that would require treatment would require a detailed noise analysis. Providing an opening in the Plexiglass system or noise control panel would substantially reduce the noise reduction performance. For example, a five



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percent opening in the noise control panel would reduce the noise reduction by half. Furthermore, in order for the noise reduction to be effective at the residential unit, the noise control panels would need to cover both balconies and the exterior windows for the entire building, not just at the balcony area. (See Comment No. 3-38 and 3-29 in Chapter II, Responses to Comments, of the Final EIR.) Therefore, it is clear from these suggestions that the comment provides no substantial evidence that the suggested mitigations are financially or structurally feasible, would be permitted by the property owners, or would result in a reduction of the temporary construction noise to a less-than-significant level. As fully explained in Response to Comments Nos. 3-38 and 3-39 in Chapter II, Responses to Comments, of the Final EIR, such mitigation measures are not feasible because: they would require physical construction activities to be implemented at the high-rise residential buildings that are not owned or operated by the Applicant; the heavy construction equipment such as forklifts and aerial lifts as well as the tools that would be needed to attach the scaffolding and blankets along the entire extent of the building façades, which are up to 33 stories, or along the balconies of the sensitive receptors with balconies, would result in significant noise impacts; daylight into these buildings would be severely impacted and the outdoor balconies on one of the buildings (R1) would not be usable if scaffolding and a sound blanket were to be erected; and, these mitigation measures would require the approval of other property owners to implement and that approval cannot be guaranteed.

In addition, Mr. Watry indicated that the scaffolding would not be required, as the noise control blanket or Plexiglass system could be installed from the residence balcony side. However, as mentioned above, the noise control blankets need to cover both balconies and the exterior windows for the entire building in order to be effective for the residential unit. Furthermore, there are no balconies along the buildings at receptor locations R4 and R5. Thus, scaffolding would be required to install the noise control blankets. In the comment, Mr. Watry of Wilson Ihrig acknowledges that the Final EIR raised these concerns but provides no substantial evidence that either of the suggested mitigation measures could be accomplished without creating noise impacts of their own, without approval of other property owners, or without analysis of the noise impacts, code requirements or other impediments to erection of such obtrusive sound barriers. Instead, Mr. Watry and CREED LA suggest that while these mitigation measures might not be enforceable and would create noise impacts of their own, the Applicant should at least approach the other property owners to ask their permission. Thus, the February 15th Letter



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concedes that these are not feasible mitigation measures that have been shown by substantial evidence to be effective or financially or legally possible.

Comment No. CREED-15

Comments on Relativistic Threshold of Significance

In Comments 3-41 and 3-42, I noted that the DEIR noise analysis indicates that the project will push the noise environment at some residences from the “conditionally acceptable” Noise Compatibility Land Use category into the “normally unacceptable” category and that this alone should constitute a significant noise impact. The reason is that sole use of a relative, “ambient plus increment” threshold of significance (as is used in the project DEIR) is inherently incapable of limiting noise exposure over the long term because the baseline is continually reset after each project is completed. I am not an expert in other contaminants such as water pollution or air pollution, but my understanding is that there are absolute amounts of impurities above which even one more molecule or part per million is considered significant. The California Department of Transportation (Caltrans)—which is very much an expert in the noise world given its need to continually construct noise barrier walls—recognizes that sole use of an “ambient plus” criterion is insufficient so also uses absolute Noise Abatement Criteria. [Caltrans *Traffic Noise Analysis Protocol*, April 2020, p. 3-2] If the implementation of a highway results in noise levels that approach or exceed the Noise Abatement Criteria (and other feasibility criteria are met), then the roadway will be constructed with noise barrier walls as substantial cost. The Federal Highway Administration uses similar absolute criteria.

Response 3-42 avoids the substance of the comment, as so many responders do, by citing the common notion that noise level increases less than 3 dBA are not perceptible. The response states,

The comment appears to suggest using a threshold of significance that is based on the change in the land use noise compatibility category only (e.g., a noise level change from “acceptable” to “unacceptable” without accounting for the incremental change). This approach would not be reasonable. [FEIR at p. II-86]



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First, I want to confirm that using a threshold of significance based on the City's own land use compatibility guidelines is precisely what I am suggesting. At some point, the City determined that noise exposure levels above 70 dBA CNEL is "normally unacceptable" for residences, and this project will be the straw that breaks that camel's back. The City needs to recognize, just as Caltrans does, that absolute criteria are required to halt what will otherwise be an environment in which all residents are living in conditions that are fundamental unacceptable. This is not a cumulative noise impact issue as much as it is a malleable baseline issue. If every project is allowed to use only "ambient plus increment" threshold, there is theoretically no limit to the noise exposure. Only absolute thresholds can accomplish that, and the City has some at its ready disposal.

Please contact me if you have any questions about these comments on responses made to our prior comments on the *8th, Grand and Hope Project DEIR* noise analysis.

Attachment—Derek L. Watry Résumé [3 pages]

Response to Comment No. CREED-15

This comment objects to CEQA's use of a baseline to determine the impact of the Project or any other project. Specifically, the Wilson Ihrig attachment to the February 15th Letter claims that measuring noise impacts against baseline ambient noise conditions would result in ever increasing noise pollution as the baseline would change as each successive project increases the ambient noise levels. Instead of a threshold based on an increase in noise levels above ambient levels, Wilson Ihrig is contending that the threshold of significance should be based on an absolute maximum noise level from all sources. Whether or not the argument has any merit, it is a challenge to the CEQA law itself and not a proper challenge to the analysis in the EIR for the Project. As set forth 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. CEQA does not require an EIR, or any particular private project, to solve or remediate the impacts which may arise



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from living in a dense urban setting. As such, the challenge to use of the baseline ambient noise levels is misplaced and irrelevant to the analysis of noise impacts for the Project.



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Comment Letter SAFER

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Comment No. SAFER-1

On behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), attached please find comments on the EIR for the 8th Grand and Hope Project, a 50-story residential mixed-use project in the City of Los Angeles. This item is scheduled for a Hearing Officer hearing on February 15, 2023.

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Final Environmental Impact Report ("FEIR") prepared for the 8th Grand and Hope Project (SCH 2019050010), including all actions related or referring to the proposed construction of a 50-story mixed-use development comprised of 580 residential dwelling units and up to 7,499 square feet of ground floor commercial/retail/restaurant space, located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles ("Project").

After reviewing the EIR, we conclude that the EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Hearing Officer recommend to the Planning Commission that staff be directed to address these shortcomings in a revised environmental impact report ("REIR") and recirculate the REIR prior to considering approvals for the Project.



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This comment has been prepared with the assistance of indoor air quality expert Francis “Bud” Offermann (Exhibit A). We incorporate the Offermann comments herein by reference.

PROJECT DESCRIPTION

The proposed Project would include construction of a 50-story mixed-use development with 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. It would also include 636 vehicle parking spaces on three subterranean levels, eight above-grade levels, and four spaces on the ground floor. An existing surface parking lot and four-story parking structure will have to be demolished.

The Project site is bounded by parking structures to the north, a business/commercial development to the west, a mixed-use development to the east which includes a residential complex, and various office/commercial buildings and residential developments to the south. The project has a General Plan land use designation of Regional Center Commercial and is zoned by the Los Angeles Municipal Code as C2-4D (Commercial, Height District No. 4). The EIR identified 74 potential related development projects within a half-mile of the site.

The construction of the Project is anticipated to last 36 months and be complete by 2025. The applicants are seeking a Transfer of Floor Area Rights, Site Plan Review findings, several zone variances, approval of a Vesting Tentative Tract Map, two Specific Plan Project Permit Adjustments, a Development Tree Planting Requirement In-Lieu Fee, and two Zoning Administrator’s Interpretations.

LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). (See, e.g. [sic] Pub. Res. Code § 21100). The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652). “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the



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fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109).

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 CCR § 15002(a)(1)). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); *see also, Berkeley Jets*, 91 Cal.App.4th at pp. 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B)). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal. App. 4th at 1355). As the court stated in *Berkeley Jets*:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water*



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Management Dist. (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018)). "Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document." (*Id.* at 516). Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including 'detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Id.*). "The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions." (*Id.*). Whether a discussion of a potential impact is sufficient "presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference." (*Id.*). As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.



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(*Id.* at 514.) The EIR prepared by the City here is inadequate for the reasons set forth below.

Response to Comment No. SAFER-1

This comment introduces the letter, summarizes the Project Description and entitlements, and states the appellant's belief that the EIR fails to meet the requirements of CEQA. Specific issues raised by the appellant in their letter and associated exhibits are addressed in Response to Comment Nos. SAFER-2 through SAFER-16, below. As demonstrated therein, the EIR has been completed in full compliance with CEQA and the appellant's claims are not supported by substantial evidence. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

Comment No. SAFER-2

I. There is Substantial Evidence that the Project May Have a Significant Health Risk Impact from Indoor Air Quality Impacts which the EIR Failed to Analyze.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project's indoor air emissions. Indoor Environmental Engineering Comments (February 7, 2023). Mr. Offermann concludes that it is likely that the Project will expose residents and commercial employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's expert comments and curriculum vitae are attached as Exhibit A.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring,



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cabinetry, baseboards, window shades, interior doors, and window and door trims.” (Ex. A, p. 2-3).

Formaldehyde is a known human carcinogen. Mr. Offermann states that future residents of the Project would be exposed to a 120 in one million cancer risk, and commercial employees of the Project would be exposed to a 17.7 in one million risk, **even assuming** all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. (*Id.* at 4-5). This potential exposure level exceeds the SCAQMD CEQA significance threshold for airborne cancer risk of 10 per million.

Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. [sic] hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings’ interiors. (*Id.* at 12-13). These significant environmental impacts should be analyzed in a Revised EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

Response to Comment No. SAFER-2

This comment states the appellants’ belief that the Project would result in indoor air quality impacts based on Mr. Offermann’s specific comments. Specific indoor air quality impact issues raised by the appellant in their letter and associated exhibits are addressed in Response to Comment Nos. SAFER-5 through SAFER-16, below. As demonstrated therein, the EIR meets the standards of CEQA and the appellant’s claims are not supported by substantial evidence. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.



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Comment No. SAFER-3

II. The EIR's Statement of Overriding Considerations Fails to Consider Whether the Project Provides Employment Opportunities for Highly Skilled Workers.

The EIR concludes that the Project will have significant, unmitigated environmental impacts, particularly in the area of noise. As a result, the City has adopted a statement of overriding considerations. Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a "statement of overriding considerations" finding that, because of the project's overriding benefits, it is approving the project despite its environmental harm. (14 CCR §15043; PRC §21081(B); *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222). A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." (*Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist.* (1994) 24 Cal.App.4th 826, 847).

A statement of overriding considerations must be supported by substantial evidence in the record. (14 CCR §15093(b); *Sierra Club v. Contra Costa Co.* (1992) 10 Cal.App.4th 1212, 1223). The agency must make "a fully informed and publicly disclosed" decision that "specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project." (14 CCR §15043(b)). As with all findings, the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515).

Key among the findings that the lead agency must make is that:

"Specific economic, legal, social, technological, or other considerations, including ***the provision of employment opportunities for highly trained workers***, make infeasible the mitigation measures or alternatives identified in the environmental impact report... [and that those] benefits of the project outweigh the significant effects on the environment."

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(PRC §21081(a)(3), (b)).

Thus, the City must make specific findings, supported by substantial evidence, concerning both the environmental impacts of the Project, and the economic benefits including “the provision of employment opportunities for highly trained workers” created. The EIR and its supporting documents fails to consider or mention whether the Project is providing employment opportunities for highly trained workers. A revised EIR and Statement of Overriding Considerations is required to provide this information.

Response to Comment No. SAFER-3

The comment contends that the City must make the specific finding contained in CEQA Guidelines Section 15043(b) and implies that the findings cannot be made unless the Project includes employment opportunities for highly trained workers. Findings made pursuant to Section 15043(b) do not require that a project specify what employment opportunities for highly trained individuals would be created by the project but rather that the City make a finding that specific economic, legal, social, technological, **or** other considerations, which can include the provision of employment opportunities for highly trained workers, outweigh the significant effects of the Project on the environment. The EIR provides ample evidence that the benefits of the Project outweigh the temporary construction noise impacts. Specifically, the EIR provides substantial evidence that:

- The Project Would Support Regional and City Land Use and Environmental Goals in that:
 - The underlying purpose of the Project is to develop a parcel with a high-quality mixed-use development that provides new multi-family housing and commercial/retail/restaurant uses that serves the community and promotes walkability. The underlying purpose and objectives of the Project are closely tied to the goals and objectives of the Central City Community Plan, which supports the objectives and policies of applicable larger-scale regional and local land use plans, including Southern California Association of Governments’ (SCAG) 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy Framework (RTP/SCS) and the City’s General Plan.

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- The Project includes features to support the goals of the 2020–2045 RTP/SCS that address improving the productivity of the region’s transportation system and supporting an integrated regional development pattern and transportation network, reducing GHG emissions and improving air quality. Specifically, the Project would be developed within an existing urbanized area that provides an established network of roads and freeways that provide local and regional access to the area, including the Project Site. In addition, the Project Site is served by a variety of nearby mass transit options, including the Metro 7th Street/Metro Center Station, six Rapid bus lines, three Express lines and 28 Local lines in the Project area. Additional transit lines include nine Los Angeles Department of Transportation (LADOT) Commuter Express lines, five LADOT Downtown Area Short Hop (DASH) bus lines, eight Foothill Transit bus lines, two Orange County Transportation Authority bus lines, one Santa Monica Big Blue Bus line, and one Torrance Bus line. The availability and accessibility of public transit in the vicinity of the Project Site is documented by the Project Site’s location within a designated SCAG (High Quality Transit Area (HQTa) and City Transit Priority Area (TPA), as defined in the City’s Zoning Information File No. 2452 and PRC Section 21099. In addition, the Project would provide 251 bicycle parking spaces and would feature vehicle parking spaces equipped with electric vehicle (EV) charging stations as well as additional facilities capable of supporting future electric vehicle supply equipment (EVSE). As such, consistent with SCAG’s goals and objectives, the Project would maximize mobility and accessibility by providing opportunities for the use of several modes of transportation, including convenient access to public transit and opportunities for walking and biking.
- The Project would support objectives and policies of the General Plan Framework Element’s (Framework Element) Land Use Chapter. The Project would contribute to the needs of the City’s existing and future residents, businesses, and visitors by replacing a parking structure and surface parking lot with a contemporary high-rise development with 580 residential units and up to 7,499 square feet of ground floor, neighborhood-serving commercial/retail/restaurant uses. As such, the Project would create additional housing to meet a growing demand in Downtown Los Angeles, provide short- and long-term employment opportunities (including construction jobs for apprentice and trained construction workers), and would be consistent with the type of development that is envisioned for the area. In addition, the

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Project's mix of uses, sidewalk design and landscaping improvements in an area with convenient access to public transit and opportunities for walking and biking would promote a safe and improved pedestrian environment and facilitate a reduction of vehicle trips and vehicle miles traveled (VMT).

- The Project would promote the City's goals, objectives, and policies of the Framework Element's Urban Form and Neighborhood Design Chapter by introducing a new mixed-use development that would activate the existing site. Specifically, the Project would redevelop a site with an existing parking structure and surface parking lot by providing a modern residential building with ground floor commercial, retail and restaurant uses that are in close proximity to transit stations and lines. The Project would also incorporate elements that promote individual and community safety such as security cameras; proper lighting of building entries and walkways to provide for pedestrian orientation and clearly identify secure pedestrian travel and reduce areas of concealment; and designing entrances to, and exits from buildings, open spaces around buildings, and pedestrian walkways to be open and in view of surrounding sites.
- The Project Would Support City Housing Goals in 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. These uses would contribute to the employment base of the Central City Community Plan area, add to the housing stock available to local residents, and continue building on the strengths of the existing labor force and businesses in Downtown Los Angeles.
 - 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

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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.

- The Project Would Represent Smart Growth in that:
 - The Project would represent mixed-use development and the intensification of urban density on an urban infill site in the highly urbanized Downtown Los Angeles area within a City-designated TPA and SCAG-designated HQTAs in close proximity to transit. Furthermore, the Project would not require the extension of roads or utility infrastructure, and the Project would not result in urban sprawl. The Project would also provide housing in close proximity to existing jobs, thereby contributing to a jobs-housing balance. These characteristics are consistent with good planning practice, and would reduce VMT, fuel consumption, and associated GHG emissions.
- The Project Would Enhance the Project Vicinity in that:
 - The Project would enhance pedestrian activity in the area by providing improved sidewalks and human-scale commercial/retail/restaurant frontages on the ground floor, and by planting new street trees.
 - The Project would support the City's policy to provide for the siting and design of new development that enhances the character of commercial districts by introducing a mixed-use development within the Project Site that would feature a similar mix of land uses to the existing uses surrounding the Project Site.
 - The Project's close proximity to the 7th Street/Metro Center Station and numerous bus lines would also encourage use of public transit, and the provision of bicycle parking areas would promote bicycle use. Ground level uses would also include extensive windows and continuous balconies, to be situated 25 feet above grade to activate the street and sidewalk and introduce a human-scale element and visual interest to pedestrians. As such, the Project would improve Downtown's pedestrian environment and circulation and reduce parking demand and VMT by encouraging use of alternative modes of transportation available in the immediate vicinity of the Project Site.



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- The Project Would Represent Sustainable Development in that:
 - The Project would be designed and constructed to incorporate features to support and promote environmental sustainability, including incorporating “green” principles in compliance the City’s Green Building Code, which also incorporates various provisions of the California Green Building Standards Code (CALGreen), and the sustainability intent of the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED®) program in order to meet LEED certified or equivalent building standards which would be incorporated through Project Design Feature GHG-PDF-1. These Project elements include energy conservation, water conservation, waste reduction features, and a pedestrian-friendly site design with large double door glass entrances.
 - The Project would also utilize sustainable planning and building strategies and incorporate the use of environmentally-friendly materials, such as non-toxic paints and recycled finish materials, whenever feasible, and incorporate sustainability features, including, but not be limited to, high-efficiency/low-flow plumbing fixtures and drip/subsurface irrigation systems to promote a reduction of indoor and outdoor water use, and Energy Star–labeled products and appliances, energy-efficient lighting technologies and fenestration designed for solar orientation. Additionally, continuous balconies along portions of the building would provide passive shading for indoor spaces, reducing energy consumption and allowing for increased natural daylighting and natural ventilation via fully-operable balcony doors and windows.
 - In addition, the Project would meet the City’s Green Building Code requirements for parking facilities capable of supporting current and future electric vehicle supply equipment, by including 30 percent of the parking spaces capable of supporting future electric vehicle supply equipment and 10 percent of parking spaces equipped with electric vehicle charging stations.

Based on all of the above, the Project reflects a development that is consistent with the overall vision of the Central City Community Plan as well as with other primary land use plans such as SCAG’s 2020–2045 RTP/SCS, and the City’s General Plan Housing and Framework Elements. As such, the benefits of the Project, including housing, employment, and opportunities for people to live, work, and recreate within one site, would outweigh the



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effects of the significant and unavoidable impacts of the Project, all of which are temporary construction impacts. Moreover, these overriding considerations of economic, social, aesthetic, and environmental benefits for the Project justify approval of the Project and certification of the completed EIR. Each of the above-listed Project benefits provides a separate and independent grounds for the City's decision to approve the Project despite the Project's identified significant and unavoidable environmental impacts. Each separately and independently (i) outweighs the adverse environmental impacts of the Project, and (ii) justifies approval of the Project and certification of the completed EIR. In particular, achieving the underlying purpose for the Project would be sufficient to override the temporary significant environmental construction impacts of the Project. As such, the City would be justified in making a finding that the Project's numerous economic, social, aesthetic, and environmental benefits outweigh its significant, unavoidable, and temporary environmental impacts.

Comment No. SAFER-4

III. CONCLUSION

For the foregoing reasons, SAFER believes that the EIR is wholly inadequate. SAFER urges the Hearing Officer to refrain from recommending certification of the FEIR or recommending approval of the Project in order to allow staff additional time to address the concerns raised herein. Thank you for considering our comments and please include this letter in the record of proceedings for this project.

Response to Comment No. SAFER-4

This comment concludes the letter and reiterates the appellants' belief that the EIR is inadequate. Refer to Response to Comment Nos. SAFER-2 through SAFER-3 above, and SAFER-5 through SAFER-16, below. As demonstrated therein, the EIR has been prepared in full compliance with CEQA and the appellant's claims are not supported by substantial evidence. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.



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Comment No. SAFER-5

EXHIBIT A

Indoor Air Quality Impacts

Indoor air quality (IAQ) directly impacts the comfort and health of building occupants, and the achievement of acceptable IAQ in newly constructed and renovated buildings is a well-recognized design objective. For example, IAQ is addressed by major high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014). Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek. Indoor air quality also is a serious concern for workers in hotels, offices and other business establishments.

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson, 2011). With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Response to Comment No. SAFER-5

This comment providing background on indoor air quality is noted for the record and will be forwarded to the decision-makers for their review and consideration.

Comment No. SAFER-6

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest



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cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 $\mu\text{g}/\text{day}$. The NSRL concentration of formaldehyde that represents a daily dose of 40 μg is 2 $\mu\text{g}/\text{m}^3$, assuming a continuous 24-hour exposure, a total daily inhaled air volume of 20 m^3 , and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 $\mu\text{g}/\text{m}^3$. The median indoor formaldehyde concentration was 36 $\mu\text{g}/\text{m}^3$, and ranged from 4.8 to 136 $\mu\text{g}/\text{m}^3$, which corresponds to a median exceedance of the 2 $\mu\text{g}/\text{m}^3$ NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 $\mu\text{g}/\text{m}^3$, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (SCAQMD, 2015).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017b). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 $\mu\text{g}/\text{m}^3$ to 28% for the Acute REL of 55 $\mu\text{g}/\text{m}^3$.

The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.

In January 2009, the California Air Resources Board (CARB) adopted an airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products, including hardwood plywood, particleboard, medium density fiberboard, and also furniture and other finished products made with these wood products (California Air Resources Board 2009). While this formaldehyde ATCM has resulted in reduced emissions from composite wood products sold in California, they do not preclude that



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homes built with composite wood products meeting the CARB ATCM will have indoor formaldehyde concentrations below cancer and non-cancer exposure guidelines.

A follow up study to the California New Home Study (CNHS) was conducted in 2016–2018 (Singer et. al., 2019), and found that the median indoor formaldehyde in new homes built after 2009 with CARB Phase 2 Formaldehyde ATCM materials had lower indoor formaldehyde concentrations, with a median indoor concentrations of $22.4 \mu\text{g}/\text{m}^3$ (18.2 ppb) as compared to a median of $36 \mu\text{g}/\text{m}^3$ found in the 2007 CNHS. Unlike in the CNHS study where formaldehyde concentrations were measured with pumped DNPH samplers, the formaldehyde concentrations in the HENGH study were measured with passive samplers, which were estimated to under-measure the true indoor formaldehyde concentrations by approximately 7.5%. Applying this correction to the HENGH indoor formaldehyde concentrations results in a median indoor concentration of $24.1 \mu\text{g}/\text{m}^3$, which is 33% lower than the $36 \mu\text{g}/\text{m}^3$ found in the 2007 CNHS.

Thus, while new homes built after the 2009 CARB formaldehyde ATCM have a 33% lower median indoor formaldehyde concentration and cancer risk, the median lifetime cancer risk is still 120 per million for homes built with CARB compliant composite wood products. This median lifetime cancer risk is more than 12 times the OEHHA 10 in a million cancer risk threshold (OEHHA, 2017a).

With respect to the 8th, Grand and Hope Project—Los Angeles, CA the buildings consist of residential and commercial spaces.

The residential occupants will potentially have continuous exposure (e.g. [sic] 24 hours per day, 52 weeks per year). These exposures are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residential construction.

Because these residences will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor residential formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of $24.1 \mu\text{g}/\text{m}^3$ (Singer et. al., 2020).



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Response to Comment No. SAFER-6

The appellant contends that the Project would have a significant impact on indoor air quality due to formaldehyde. However, Mr. Offermann does not provide substantial evidence that the Project will be constructed with building materials with significant amounts of formaldehyde, primarily citing an article prepared by Mr. Offermann himself. Mr. Offermann provides limited corroborating data (e.g., CARB) to support his own research/opinion. In review of relevant State rules and regulations, Mr. Offermann's data was not cited. A comprehensive literature search may provide contradictory statements from experts in the field.

Mr. Offermann also cites another research paper, *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation* (Chan, W., Kim, Y., Singer, B., and Walker I. 2019. *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation*. Lawrence Berkeley National Laboratory, Energy Technologies Area, LBNL-2001200, DOI: 10.20357/B7QC7X). The research paper collected data from 70 homes (single-family dwelling units) about ventilation practices and indoor air quality and measured indoor air concentrations of formaldehyde emitted from composite wood products that might contain formaldehyde-based glues.

According to the research paper, the study characterized 70 homes built between 2011 and 2017. In order to be part of the study, buildings also had to meet several other conditions. According to the research paper, the building had to be a single-family detached structure, located in California, and built in 2011 or later. This would not be an appropriate comparison as the Project consists of a high-rise mixed-use building with a different combination of steel, concrete, and wood construction. Single-family residential construction typically would use more wood or formaldehyde containing products in comparison to high-rise construction. Therefore, directly applying results from the research paper to the Project is a false equivalency and would not be indicative of formaldehyde containing products related to Project construction. Additionally, the research paper acknowledges that California regulations have been effective in reducing formaldehyde concentrations in homes and states "[c]omparisons of indoor formaldehyde... levels with those from a prior study of new homes in California (conducted in 2007-08) suggest that



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contaminant levels are lower in recently built (after 2008) homes. California's regulation to limit formaldehyde emissions from composite wood products appears to have substantially lowered its emission rate and concentration in new homes."¹⁸ Therefore, the research paper does not represent substantial evidence that the Project would pose health risks to residents and workers from indoor air quality. Thus, the calculations provided by Mr. Offermann amount to speculation and do not reflect the actual Project uses and are thus unsupported by substantial evidence.

Comment No. SAFER-7

Assuming that the residential occupants inhale 20 m³ of air per day, the average 70-year lifetime formaldehyde daily dose is 482 µg/day for continuous exposure in the residences. This exposure represents a cancer risk of 120 per million, which is more than 12 times the CEQA cancer risk of 10 per million. For occupants that do not have continuous exposure, the cancer risk will be proportionally less but still substantially over the CEQA cancer risk of 10 per million (e.g. [sic] for 12/hour/day occupancy, more than 6 times the CEQA cancer risk of 10 per million).

The employees of the commercial spaces are expected to experience significant indoor exposures (e.g., 40 hours per week, 50 weeks per year). These exposures for employees are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in offices, warehouses, residences and hotels.

Because the commercial spaces will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 24.1 µg/m³ (Singer et. al., 2020) [sic]

¹⁸ Chan, W., Kim, Y., Singer, B., and Walker I. 2019. *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation*. Lawrence Berkeley National Laboratory, Energy Technologies Area, LBNL-2001200, DOI: 10.20357/B7QC7X.



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Assuming that the employees of commercial spaces work 8 hours per day and inhale 20 m³ of air per day, the formaldehyde dose per work-day at the offices is 161 µg/day.

Assuming that these employees work 5 days per week and 50 weeks per year for 45 years (start at age 20 and retire at age 65) the average 70-year lifetime formaldehyde daily dose is 70.9 µg/day.

This is 1.77 times the NSRL (OEHHA, 2017a) of 40 µg/day and represents a cancer risk of 17.7 per million, which exceeds the CEQA cancer risk of 10 per million. This impact should be analyzed in an environmental impact report ("EIR"), and the agency should impose all feasible mitigation measures to reduce this impact. Several feasible mitigation measures are discussed below and these and other measures should be analyzed in an EIR.

In addition, we note that the average outdoor air concentration of formaldehyde in California is 3 ppb, or 3.7 µg/m³, (California Air Resources Board, 2004), and thus represents an average pre-existing background airborne cancer risk of 1.85 per million. Thus, the indoor air formaldehyde exposures describe [sic] above exacerbate this pre-existing risk resulting from outdoor air formaldehyde exposures.

Additionally, the Project site is located in an area with high vehicle traffic. The SCAQMD's Multiple Air Toxics Exposure Study ("MATES V") identifies an existing cancer risk at the site of 1,516 per million due to the site's elevated ambient air contaminant concentrations, which are due to the area's high levels of vehicle traffic. These impacts would further exacerbate the pre-existing cancer risk to residents, which result from exposure to formaldehyde in both indoor and outdoor air.

Response to Comment No. SAFER-7

This comment analyzes the Project's potential in-door air quality impacts without providing substantial or relevant evidence. Mr. Offermann overestimates the amount of potential residential exposure to formaldehyde from the Project in several aspects. First, he claims that residential occupants would inhale 20 cubic meters of air per day, yet cites no evidence to substantiate this claim. According to the American Lung Association, the average person inhales approximately 2,000 gallons of air per day, or roughly 7.57 cubic



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meters per day.¹⁹ Second, Mr. Offermann incorrectly applies an entire 70-year average lifetime (24 hours per day from birth to death) to calculate residential formaldehyde exposure, thus vastly overestimating any potential formaldehyde exposure to residents who would occupy the Project. Third, the review assumes that residents would live at the Project for their entire lives. This is speculative and likely incorrect. Estimations of how many times a person living in the United States moves in his or her lifetime have ranged from 9 times to 11 times, depending on age, race, and socioeconomic status, among other categories.^{20,21} Thus, it is speculative and likely incorrect to assume that the initial residents who occupy the Project would remain for the remaining duration of their lives.

Mr. Offermann's assumption that the daily exposure level of formaldehyde would be constant for a 45-year period significantly overestimates the amount of potential formaldehyde emissions from the Project in several aspects. First, it incorrectly assumes that construction materials would not comply with all applicable regulations. Second, it assumes that formaldehyde emissions from construction materials would remain constant for over 45 years, in fact, they decrease over time. Third, based on the US Bureau of Labor Statistics, the median number of years that wage and salary workers had been with their current employer was 4.1 years in January 2020.²² Mr. Offermann cites no evidence that the Project would employ the same workers consistently for 45 years. Thus, Mr. Offermann's assumptions that the employees of the Project would be exposed to a consistent dose of formaldehyde for 40 hours per week over a period of 45 years is unsubstantiated and not reflective of a real-world scenario. By significantly overstating the exposure duration time, Mr. Offermann's letter does not provide an accurate assessment of risk exposure and does not provide substantial evidence of significant impacts related to indoor air quality.

¹⁹ American Lung Association, *How Your Lungs Get the Job Done*, website: www.lung.org/blog/how-your-lungs-work, accessed October 2021.

²⁰ United States Census Bureau, *Calculating Migration Expectancy Using ACS Data*, www.census.gov/topics/population/migration/guidance/calculating-migration-expectancy.html, accessed October 2021.

²¹ FiveThirtyEight, *How Many Times Does The Average Person Move?*, website: <https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/>, accessed October 2021.

²² United States Bureau of Labor Statistics, *News Release, Employee Tenure in 2020*, released September 22, 2020, www.bls.gov/news.release/pdf/tenure.pdf, accessed October 2021.

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Mr. Offerman also speculates that the building materials to be used in the Project would be similar to those in a single-family dwelling and that the exposure to formaldehyde would be consistent with a 24 hour per day, 70-year lifetime dose. The interior building materials have not been selected and would change from time to time over the life of the Project as a result of demising interior tenant spaces and tenant improvements based on lease tenure and turn-over rates. However, as required by law, the Project would be built with materials that are compliant with current regulations, which establish appropriate levels of formaldehyde in composite wood materials.

This comment also provides reference to SCAQMD's Multiple Air Toxics Exposure Study ("MATES V") which identifies an existing cancer risk in the Project area of 1,516 per million. This information is consistent with the MATES IV study which was discussed on Page IV.A-22 of Section IV.A, Air Quality, of the Draft EIR which identified the Project area as 1,520 per million. The cancer risk in this area is predominately related to nearby sources of diesel particulate (e.g., the US-101, I-110 and I-10 freeways). This comment contends that this health risk would further exacerbate the pre-existing cancer risk to residents. Comment No. SAFER-11 provides a recommendation to include MERV 13 filtration. However, the Project would be required to comply with the City's Green Building Code which mandates MERV 13 filtration.²³ As such, the Project would already provide for the mechanical supply of outdoor air ventilation suggested by Mr. Offermann (i.e., MERV 13). Additionally, Mr. Offermann does not provide any substantial evidence of indoor air quality impacts from the Project.

Comment No. SAFER-8

Appendix A, Indoor Formaldehyde Concentrations and the CARB Formaldehyde ATCM, provides analyses that show utilization of CARB Phase 2 Formaldehyde ATCM materials will not ensure acceptable cancer risks with respect to formaldehyde emissions from composite wood products.

²³ 2020 City of Los Angeles Green Building Code Plan Check Notes, Residential Buildings.



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Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not insure [sic] that the indoor air will have concentrations of formaldehyde that meet the OEHHA cancer risks that substantially exceed 10 per million. The permissible emission rates for ULEF composite wood products are only 11–15% lower than the CARB Phase 2 emission rates. Only use of composite wood products made with no-added formaldehyde resins (NAF), such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure [sic] that the OEHHA cancer risk of 10 per million is met.

The following describes a method that should be used, prior to construction in the environmental review under CEQA, for determining whether the indoor concentrations resulting from the formaldehyde emissions of specific building materials/furnishings selected exceed cancer and non-cancer guidelines. Such a design analyses can be used to identify those materials/furnishings prior to the completion of the City's CEQA review and project approval, that have formaldehyde emission rates that contribute to indoor concentrations that exceed cancer and non-cancer guidelines, so that alternative lower emitting materials/furnishings may be selected and/or higher minimum outdoor air ventilation rates can be increased to achieve acceptable indoor concentrations and incorporated as mitigation measures for this project.

Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment

This formaldehyde emissions assessment should be used in the environmental review under CEQA to assess the indoor formaldehyde concentrations from the proposed loading of building materials/furnishings, the area-specific formaldehyde emission rate data for building materials/furnishings, and the design minimum outdoor air ventilation rates. This assessment allows the applicant (and the City) to determine, before the conclusion of the environmental review process and the building materials/furnishings are specified, purchased, and installed, if the total chemical emissions will exceed cancer and non-cancer guidelines, and if so, allow for changes in the selection of specific material/furnishings and/or the design minimum outdoor air ventilations rates such that cancer and non-cancer guidelines are not exceeded.



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1.) Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. [sic] 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. [sic] hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.

2.) Calculate Material/Furnishing Loading. For each IAQ Zone, determine the building material and furnishing loadings (e.g., m^2 of material/ m^2 floor area, units of furnishings/ m^2 floor area) from an inventory of all potential indoor formaldehyde sources, including flooring, ceiling tiles, furnishings, finishes, insulation, sealants, adhesives, and any products constructed with composite wood products containing urea-formaldehyde resins (e.g., plywood, medium density fiberboard, particleboard).

3.) Calculate the Formaldehyde Emission Rate. For each building material, calculate the formaldehyde emission rate ($\mu\text{g}/\text{h}$) from the product of the area-specific formaldehyde emission rate ($\mu\text{g}/\text{m}^2\text{-h}$) and the area (m^2) of material in the IAQ Zone, and from each furnishing (e.g. [sic] chairs, desks, etc.) from the unit-specific formaldehyde emission rate ($\mu\text{g}/\text{unit-h}$) and the number of units in the IAQ Zone.

NOTE: As a result of the high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014), most manufacturers of building materials furnishings sold in the United States conduct chemical emission rate tests using the California Department of Health "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers," (CDPH, 2017), or other equivalent chemical emission rate testing methods. Most manufacturers of building furnishings sold in the United States conduct chemical emission rate tests using ANSI/BIFMA M7.1 Standard Test Method for Determining VOC Emissions (BIFMA, 2018), or other equivalent chemical emission rate testing methods.

CDPH, BIFMA, and other chemical emission rate testing programs, typically certify that a material or furnishing does not create indoor chemical concentrations in excess of the



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maximum concentrations permitted by their certification. For instance, the CDPH emission rate testing requires that the measured emission rates when input into an office, school, or residential model do not exceed one-half of the OEHHA Chronic Exposure Guidelines (OEHHA, 2017b) for the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017). These certifications themselves do not provide the actual area-specific formaldehyde emission rate (i.e., $\mu\text{g}/\text{m}^2\text{-h}$) of the product, but rather provide data that the formaldehyde emission rates do not exceed the maximum rate allowed for the certification. Thus, for example, the data for a certification of a specific type of flooring may be used to calculate that the area-specific emission rate of formaldehyde is less than $31 \mu\text{g}/\text{m}^2\text{-h}$, but not the actual measured specific emission rate, which may be 3, 18, or $30 \mu\text{g}/\text{m}^2\text{-h}$. These area-specific emission rates determined from the product certifications of CDPH, BIFA, and other certification programs can be used as an initial estimate of the formaldehyde emission rate.

If the actual area-specific emission rates of a building material or furnishing is needed (i.e. [sic] the initial emission rates estimates from the product certifications are higher than desired), then that data can be acquired by requesting from the manufacturer the complete chemical emission rate test report. For instance if the complete CDPH emission test report is requested for a CDHP certified product, that report will provide the actual area-specific emission rates for not only the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017), but also all of the cancer and reproductive/developmental chemicals listed in the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), all of the toxic air contaminants (TACs) in the California Air Resources Board Toxic Air Contamination List (CARB, 2011), and the 10 chemicals with the greatest emission rates.

Alternatively, a sample of the building material or furnishing can be submitted to a chemical emission rate testing laboratory, such as Berkeley Analytical Laboratory (<https://berkeleyanalytical.com>), to measure the formaldehyde emission rate.

4.) Calculate the Total Formaldehyde Emission Rate. For each IAQ Zone, calculate the total formaldehyde emission rate (i.e. [sic] $\mu\text{g}/\text{h}$) from the individual formaldehyde emission rates from each of the building material/furnishings as determined in Step 3.

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5.) Calculate the Indoor Formaldehyde Concentration. For each IAQ Zone, calculate the indoor formaldehyde concentration ($\mu\text{g}/\text{m}^3$) from Equation 1 by dividing the total formaldehyde emission rates (i.e. [sic] $\mu\text{g}/\text{h}$) as determined in Step 4, by the design minimum outdoor air ventilation rate (m^3/h) for the IAQ Zone.

$$C_{in} = \frac{E_{total}}{Q_{oa}} \quad (\text{Equation 1})$$

where:

C_{in} = indoor formaldehyde concentration ($\mu\text{g}/\text{m}^3$)

E_{total} = total formaldehyde emission rate ($\mu\text{g}/\text{h}$) into the IAQ Zone.

Q_{oa} = design minimum outdoor air ventilation rate to the IAQ Zone (m^3/h)

The above Equation 1 is based upon mass balance theory, and is referenced in Section 3.10.2 “Calculation of Estimated Building Concentrations” of the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017).

6.) Calculate the Indoor Exposure Cancer and Non-Cancer Health Risks. For each IAQ Zone, calculate the cancer and non-cancer health risks from the indoor formaldehyde concentrations determined in Step 5 and as described in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments (OEHHA, 2015).

7.) Mitigate Indoor Formaldehyde Exposures of exceeding the CEQA Cancer and/or Non-Cancer Health Risks. In each IAQ Zone, provide mitigation for any formaldehyde exposure risk as determined in Step 6, that exceeds the CEQA cancer risk of 10 per million or the CEQA non-cancer Hazard Quotient of 1.0.

Provide the source and/or ventilation mitigation required in all IAQ Zones to reduce the health risks of the chemical exposures below the CEQA cancer and non-cancer health risks.



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Source mitigation for formaldehyde may include:

- 1.) reducing the amount materials and/or furnishings that emit formaldehyde
- 2.) substituting a different material with a lower area-specific emission rate of formaldehyde

Ventilation mitigation for formaldehyde emitted from building materials and/or furnishings may include:

- 1.) increasing the design minimum outdoor air ventilation rate to the IAQ Zone.

NOTE: Mitigating the formaldehyde emissions through use of less material/furnishings, or use of lower emitting materials/furnishings, is the preferred mitigation option, as mitigation with increased outdoor air ventilation increases initial and operating costs associated with the heating/cooling systems.

Further, we are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers,” (CDPH, 2017), and use the procedure described earlier above (i.e. [sic] Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Response to Comment No. SAFER-8

This comment proposes a methodology that Mr. Offerman believes should be used for analyzing carcinogenic risks in a mixed-use residential and commercial building. As a fundamental point, the City of Los Angeles as the Lead Agency for CEQA review has the discretion to apply the thresholds of significance and appropriate methodologies used for impact analysis. Here, the City applied the thresholds from the CEQA Guidelines, and used



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methodologies customary for air quality impacts, and consistent with guidelines and policies of the relevant regulatory agencies. The City's choice of thresholds and methods is supported by substantial evidence in the administrative record. Mr. Offermann cannot supplant the Lead Agency's discretion merely by proposing a new method of impact analysis. In addition, and more technically, interior finishes for the commercial component and all furnishings would be subject to tenant specifications that would not be known until after the Project is approved and constructed. Thus, any analysis regarding such materials would be speculative, and CEQA does not require speculation. Further, as specified above, the building materials would be compliant with the LAMC, L.A. Green Building Code, and other applicable regulations, which provide specifications for acceptable formaldehyde concentrations in composite wood products. The Project would be compliant with these specifications and would not cause any significant environmental impact related to indoor air quality.

There are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk from indoor air quality. In fact, indoor air quality is not within the jurisdiction of SCAQMD. Mr. Offermann cites a 10 in one million cancer risk threshold. However, this threshold is intended to be used to evaluate the increase in cancer risk above ambient conditions (outdoor air). Therefore, the application of the 10 in one million threshold for indoor air quality is not appropriate. Moreover, and even though it is not required to respond to Mr. Offermann's letter, we note that the Draft EIR contains a detailed air quality analysis, and the Final EIR includes a Health Risk Assessment (see Appendix FEIR-2: Health Risk Assessment) that further supplements the record and demonstrates that the Project does not exceed applicable thresholds, including cancer risk thresholds, as established by the relevant regulatory agencies.

CARB is responsible for actions to protect public health from harmful effects of air pollution in communities of California. The Project would be required to comply with the CARB ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products). The purpose of this airborne toxic control measure is to "reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California. The composite wood products covered by this regulation are hardwood plywood, particleboard, and medium density fiberboard." The

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measure applies to manufacturers, distributors, importers, fabricators (that use such materials to make other goods), retailers, third party certifiers who manufacture, offer for sale or supply these goods in California. The control measure assures that all building materials and furnishings manufactured, distributed, imported and used in new construction in California meet the maximum allowable concentrations to reduce indoor formaldehyde emissions from composite wood products.

According to CARB, from a public health standpoint, the Composite Wood Products (CWP) Regulation's emission standards are set at low levels intended to protect public health.²⁴ The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase II that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase II products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase II requirements. Compliance with this regulation would ensure that impacts with respect to formaldehyde would be less than significant.

Mr. Offerman's review significantly overestimates the amount of daily formaldehyde exposure from the Project and is based on the following inaccurate exposure assumptions: (1) that the construction materials would not be code-compliant with the California Composite Wood Products Regulation (California CWP Regulation) or US EPA Toxic Substances Control Act Title IV Regulation; (2) that the formaldehyde daily emissions from construction materials would be constant over 45 years; (3) that residents would inhale 20 cubic meters of air per day and live in the Project for an average 70-year lifetime and occupy their units 24 hours per day; and (4) that the employees would work at the Project Site for eight hours per day, five days per week, 50 weeks per year for 45 years (starting at 20 years and retiring at age 65). These assumptions are unreasonable and are not based on real life exposure potential. Further, it is unreasonable to assume that applicable laws and regulations pertaining to building materials would not be followed. Thus, Mr. Offermann

²⁴ California Air Resources Board, *Frequently Asked Questions for Consumers, Reducing Formaldehyde Emissions from Composite Wood Products*, ww3.arb.ca.gov/toxics/compwood/consumer_faq.pdf?_ga=2.32900281.682464648.1573169874-1026610208.1565143819, accessed December 2021.



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substantially overestimates the amount of formaldehyde emissions to which future residents and workers in the Project could be exposed, as well as potential health impacts. Moreover, Mr. Offermann is speculating that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage. As such, any further analysis on the content of indoor building materials would be speculative.

Formaldehyde, which can be found in wood products, generally contains the highest concentration when products are new, and such concentrations gradually decrease with age.²⁵ Neither the SCAQMD nor the City of Los Angeles provide significance thresholds for indoor air quality. However, the California CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood productions. All finished products sold or supplied to California are required to be compliant with the CWP Regulation or the US EPA Toxic Substances Control Act Title IV Regulation (whichever is more stringent). To the City's knowledge, there are no credible or peer-reviewed studies which assessed long-term indoor concentrations and associated lifetime exposure to formaldehyde in new homes and commercial spaces in California that suggest the existing rules and regulations on formaldehyde in building materials are ineffective. Nor has Mr. Offermann cited any such studies. The existing rules and regulations are robust and adequate to ensure that issues related to formaldehyde from building materials will not be an issue for indoor air quality for the Project.

In addition, the Project would be required to comply with the California Green Building Standards Code, which is Part 11 of the California Code of Regulations, commonly referred to as CALGreen. The Project would be built with materials that are compliant with current regulations, which are intended to set low levels of formaldehyde in composite wood materials. These measures have been established through CALGreen and are designed to reduce the quantity of air contaminants to acceptable levels. Division 4.5, Environmental Quality, of CALGreen provides mandatory residential measures to reduce the quantity of air contaminants that are odorous, irritating and/or harmful to the comfort

²⁵ County of Los Angeles Public Health, Environmental Health, Indoor Air Quality, www.publichealth.lacounty.gov/eh/TEA/ToxicEpi/indoorair.htm, accessed October 2021.



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and wellbeing of a building's installers, occupants, and neighbors. It includes VOC limits for paints, coating, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section 4.504.3, Carpet Systems, of CALGreen establishes product requirements to meet one of the following: (1) Carpet and Rug Institute's Green Label Plus Program; (2) California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1; (3) NSF/ANSI 140 at the Gold Level; or (4) Scientific Certifications Systems Indoor Advantage Gold. Furthermore, Section 4.504.5, Composite wood products, of the CALGreen Code establishes limits for formaldehyde as specified in Cal Green Table 4.504.5.²⁶

Comment No. SAFER-9

Outdoor Air Ventilation Impact. Another important finding of the CNHS, was that the outdoor air ventilation rates in the homes were very low. Outdoor air ventilation is a very important factor influencing the indoor concentrations of air contaminants, as it is the primary removal mechanism of all indoor air generated contaminants. Lower outdoor air exchange rates cause indoor generated air contaminants to accumulate to higher indoor air concentrations. Many homeowners rarely open their windows or doors for ventilation as a result of their concerns for security/safety, noise, dust, and odor concerns (Price, 2007). In the CNHS field study, 32% of the homes did not use their windows during the 24-hour Test Day, and 15% of the homes did not use their windows during the entire preceding week. Most of the homes with no window usage were homes in the winter field session. Thus, a substantial percentage of homeowners never open their windows, especially in the winter season. The median 24-hour measurement was 0.26 air changes per hour (ach), with a range of 0.09 ach to 5.3 ach. A total of 67% of the homes had outdoor air exchange rates below the minimum California Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

²⁶ California Air Resources Board, *Air Toxics Control Measure for Composite Wood as tested in accordance with ASTM E 1333*. (See California Code of Regulations, Title 17, Sections 93120 through 93120.12.)



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Response to Comment No. SAFER-9

This comment provides background on air exchange rates from outdoor ventilation is noted for the record and will be forwarded to the decision-makers for their review and consideration. In addition, this comment provides a speculative statement that many people never open their windows which will result in low outdoor air exchange rates and higher indoor air contaminant concentrations. The mechanical air supply for the Project will meet the specifications of the L.A. Green Building Code as required for residential and commercial spaces. This comment provides no substantial evidence that would require any mitigation of outdoor air ventilation.

Comment No. SAFER-10

The 8th, Grand and Hope Project—Los Angeles, CA is close to roads with moderate to high traffic (e.g., West 8th Street, South Hope Street, South Grand Avenue, West 7th Street, Harbor Freeway-110, South Flower Street, etc.).

According to the Draft Environmental Impact Report—8th, Grand and Hope Project, Los Angeles, CA (City of Los Angeles, 2021), the existing traffic noise levels reported in Table IV.E-9, range from 68.9 dBA to 71.9 dBA CNEL.

As a result of the high outdoor traffic noise levels, the current project will require a building envelope and windows with a sufficient STC such that the indoor noise levels are acceptable, as well as a mechanical supply of outdoor air ventilation to allow for a habitable interior environment with closed windows and doors. Such a ventilation system would allow windows and doors to be kept closed at the occupant's discretion to control exterior noise within building interiors.

Response to Comment No. SAFER-10

This comment provides background on mechanical supply of outdoor air ventilation to allow for a habitable interior environment is noted for the record and will be forwarded to the decision-makers for their review and consideration. In addition, this comment provides a speculative statement that the residents will keep their windows and doors closed. As



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discussed above in Response to Comment No. SAFER-9, the mechanical air supply will meet the specifications of the City's Green Building Code as required for residential and commercial spaces. This comment provides no substantial evidence that would require any mitigation of outdoor air ventilation.

Comment No. SAFER-11

PM_{2.5} Outdoor Concentrations Impact. An additional impact of the nearby motor vehicle traffic associated with this project, are the outdoor concentrations of PM_{2.5}. According to the Draft Environmental Impact Report—8th, Grand and Hope Project, Los Angeles, CA (City of Los Angeles, 2021), the Project is located in the South Coast Air Basin, which is a State and Federal non-attainment area for PM_{2.5}.

Additionally, the SCAQMD's MATES V study cites an existing cancer risk of 1,516 per million at the Project site due to the site's high concentration of ambient air contaminants resulting from the area's high levels of motor vehicle traffic.

An air quality analyses should to [sic] be conducted to determine the concentrations of PM_{2.5} in the outdoor and indoor air that people inhale each day. This air quality analyses needs to consider the cumulative impacts of the project related emissions, existing and projected future emissions from local PM_{2.5} sources (e.g. [sic] stationary sources, motor vehicles, and airport traffic) upon the outdoor air concentrations at the Project site. If the outdoor concentrations are determined to exceed the California and National annual average PM_{2.5} exceedence concentration of 12 µg/m³, or the National 24-hour average exceedence concentration of 35 µg/m³, then the buildings need to have a mechanical supply of outdoor air that has air filtration with sufficient removal efficiency, such that the indoor concentrations of outdoor PM_{2.5} particles is less than the California and National PM_{2.5} annual and 24-hour standards.

It is my experience that based on the projected high traffic noise levels, the annual average concentration of PM_{2.5} will exceed the California and National PM_{2.5} annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. [sic] MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems.

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Response to Comment No. SAFER-11

This comment provides reference to SCAQMD's Multiple Air Toxics Exposure Study ("MATES V") which identifies an existing cancer risk in the Project area of 1,516 per million. This information is consistent with the MATES IV study which was discussed on Page IV.A-22 of Section IV.A, Air Quality, of the Draft EIR which identified the Project area as 1,520 per million. The cancer risk in this area is predominately related to nearby sources of diesel particulate (e.g., the US-101, I-110 and I-10 freeways). This comment contends that this health risk would further exacerbate the pre-existing cancer risk to residents. This comment also contends that concentration of PM_{2.5} will exceed the California and National PM_{2.5} annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. [sic] MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems. The Project would be required to comply with the City's Green Building Code which mandates MERV 13 filtration.²⁷ As such, the Project would already provide for the mechanical supply of outdoor air ventilation suggested by Mr. Offermann (i.e., MERV 13) and would serve to reduce both toxic air contaminants and PM_{2.5} concentrations. Additionally, Mr. Offermann does not provide any substantial evidence of indoor air quality impacts from the Project.

Comment No. SAFER-12**Indoor Air Quality Impact Mitigation Measures**

The following are recommended mitigation measures to minimize the impacts upon indoor quality:

Response to Comment No. SAFER-12

This comment introducing the appellant's suggested mitigation measures is noted for the record and will be forwarded to the decision-makers for their review and consideration. Refer to Response to Comment Nos. SAFER-13 through SAFER-15 for a discussion of the suggested measures.

²⁷ 2020 City of Los Angeles Green Building Code Plan Check Notes, Residential Buildings.



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Comment No. SAFER-13

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. [sic] hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins (CARB, 2009). CARB Phase 2 certified composite wood products, or ultra-low emitting formaldehyde (ULEF) resins, do not insure indoor formaldehyde concentrations that are below the CEQA cancer risk of 10 per million. Only composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHA cancer risk of 10 per million is met.

Alternatively, conduct the previously described Pre-Construction Building Material/Furnishing Chemical Emissions Assessment, to determine that the combination of formaldehyde emissions from building materials and furnishings do not create indoor formaldehyde concentrations that exceed the CEQA cancer and non-cancer health risks.

It is important to note that we are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, [sic] (CDPH, 2017), and use the procedure described above (i.e. [sic] Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Response to Comment No. SAFER-13

Similar to Mr. Offermann’s argument that the City should use different methodology for impact analysis, this comment recommends mitigation measures based on a faulty assumption that the Project has significant impacts. As demonstrated by the EIR analysis, and supported by substantial evidence in the record, the Project does not have significant impacts to air quality. Moreover, as required by law, the Project would comply with Section



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5.504.4, Finish Pollutant Material Control, of the L.A. Green Building Code, which requires hardwood plywood, particleboard and medium density fiberboard composite wood products used on the interior or exterior of the building shall meet the requirements for formaldehyde as specified in CALGreen Table 5.504.4.5. Further, Section A5.504.4.5.1 of the L.A. Green Building Code requires composite wood products to be approved by the ARB as no-added formaldehyde (NAF) based resins or ultra-low emitting formaldehyde (ULEF) resins. Compliance with these requirements would be verified by the Department of Building and Safety through the plan approval process and as noted in item 23 of the City of Los Angeles Building Code Plan Check Notes—Form GRN-15.²⁸

Comment No. SAFER-14

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft² of floor area. Following installation of the system conduct testing and balancing to insure [sic] that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.

Response to Comment No. SAFER-14

This comment proposes a mitigation measure regarding outdoor air ventilation. However, the comment provides no substantial evidence of an impact that would require any mitigation of outdoor air ventilation. The mechanical air supply for the Project will meet the specifications of the City's Green Building Code as required for residential and commercial spaces. Therefore, no mitigation measures are warranted as impacts are less than significant.

²⁸ See *City of Los Angeles Building Code Plan Check Notes—Form GRN-15*, www.ladbs.org/docs/default-source/forms/green-building-2017/green-building-code-plan-check-notes-non-residential-buildings.pdf.



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Comment No. SAFER-15

PM_{2.5} Outdoor Air Concentration Mitigation. Install air filtration with sufficient PM_{2.5} removal efficiency (e.g. [sic] MERV 13 or higher) to filter the outdoor air entering the mechanical outdoor air supply systems, such that the indoor concentrations of outdoor PM_{2.5} particles are less than the California and National PM_{2.5} annual and 24-hour standards. Install the air filters in the system such that they are accessible for replacement by the occupants or maintenance personnel. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

Response to Comment No. SAFER-15

With regard to PM_{2.5} ambient concentrations and whether MERV 13 filtration is included as part of the Project, the Project would be required to comply with the City's Green Building Code which mandates MERV 13 filtration.²⁹ As such, the Proposed Project would already provide for the mechanical supply of outdoor air ventilation suggested by Mr. Offermann (i.e., MERV 13), and Mr. Offermann does not provide any substantial evidence of indoor air quality impacts from the Project and, therefore, no mitigation is required.

Comment No. SAFER-16

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²⁹ 2020 City of Los Angeles Green Building Code Plan Check Notes, Residential Buildings.



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Response to Comment No. SAFER-16

This comment, consisting of a list of references, supporting materials, and the appellant's résumé, is noted for the record and will be forwarded to the decision-makers for their review and consideration.

Comment No. SAFER-17

APPENDIX A

INDOOR FORMALDEHYDE CONCENTRATIONS AND THE CARB FORMALDEHYDE ATCM

With respect to formaldehyde emissions from composite wood products, the CARB ATCM regulations of formaldehyde emissions from composite wood products, do not assure healthful indoor air quality. The following is the stated purpose of the CARB ATCM regulation—*The purpose of this airborne toxic control measure is to “reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California”.* [sic] In other words, the CARB ATCM regulations do not “assure healthful indoor air quality”, [sic] but rather “reduce formaldehyde emissions from composite wood products”. [sic]

Just how much protection do the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products? Definitely some, but certainly the regulations do not “*assure healthful indoor air quality*” when CARB Phase 2 products are utilized. As shown in the Chan 2019 study of new California homes, the median indoor formaldehyde concentration was of 22.4 $\mu\text{g}/\text{m}^3$ (18.2 ppb), which



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corresponds to a cancer risk of 112 per million for occupants with continuous exposure, which is more than 11 times the CEQA cancer risk of 10 per million.

Another way of looking at how much protection the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products is to calculate the maximum number of square feet of composite wood product that can be in a residence without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy.

For this calculation I utilized the floor area (2,272 ft²), the ceiling height (8.5 ft), and the number of bedrooms (4) as defined in Appendix B (New Single-Family Residence Scenario) of the Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers, Version 1.1, 2017, California Department of Public Health, Richmond, CA. <https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/EHLB/IAQ/Pages/VOC.aspx>.

For the outdoor air ventilation rate I used the 2019 Title 24 code required mechanical ventilation rate (ASHRAE 62.2) of 106 cfm (180 m³/h) calculated for this model residence. For the composite wood formaldehyde emission rates I used the CARB ATCM Phase 2 rates.

The calculated maximum number of square feet of composite wood product that can be in a residence, without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF)—15 ft² (0.7% of the floor area), or
Particle Board—30 ft² (1.3% of the floor area), or
Hardwood Plywood—54 ft² (2.4% of the floor area), or
Thin MDF—46 ft² (2.0 % of the floor area).

For offices and hotels the calculated maximum amount of composite wood product (% of floor area) that can be used without exceeding the CEQA cancer risk of 10 per million for



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occupants, assuming 8 hours/day occupancy, and the California Mechanical Code minimum outdoor air ventilation rates are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF)—3.6 % (offices) and 4.6% (hotel rooms), or
Particle Board—7.2 % (offices) and 9.4% (hotel rooms), or
Hardwood Plywood—13 % (offices) and 17% (hotel rooms), or
Thin MDF—11 % (offices) and 14 % (hotel rooms)

Clearly the CARB ATCM does not regulate the formaldehyde emissions from composite wood products such that the potentially large areas of these products, such as for flooring, baseboards, interior doors, window and door trims, and kitchen and bathroom cabinetry, could be used without causing indoor formaldehyde concentrations that result in CEQA cancer risks that substantially exceed 10 per million for occupants with continuous occupancy.

Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not insure that the indoor air will have concentrations of formaldehyde that meet the OEHHA cancer risks that substantially exceed 10 per million. The permissible emission rates for ULEF composite wood products are only 11–15% lower than the CARB Phase 2 emission rates. Only use of composite wood products made with no-added formaldehyde resins (NAF), such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHA cancer risk of 10 per million is met.

If CARB Phase 2 compliant or ULEF composite wood products are utilized in construction, then the resulting indoor formaldehyde concentrations should be determined in the design phase using the specific amounts of each type of composite wood product, the specific formaldehyde emission rates, and the volume and outdoor air ventilation rates of the indoor spaces, and all feasible mitigation measures employed to reduce this impact (e.g. [sic] use less formaldehyde containing composite wood products and/or incorporate mechanical systems capable of higher outdoor air ventilation rates). See the procedure described earlier (i.e. [sic] Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.



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Alternatively, and perhaps a simpler approach, is to use only composite wood products (e.g. [sic] hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins.

Response to Comment No. SAFER-17

This comment provides the calculations of indoor formaldehyde concentrations referenced in Comment No. SAFER-8. Please refer to Response to Comment No. SAFER-8 regarding indoor formaldehyde concentrations.



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Comment Letter Digital Realty 1 (February 9, 2023)

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Comment No. Digital Realty 1-1

Please find attached to this email a comment letter regarding the project proposed for 754 S. Hope Street & 609 and 625 W. 8th Street (City Planning Case Nos. ENV-2017-506-EIR; VTT-74876-CN; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; ZA-2021-7053-ZAI). Please add this letter to the project's case file and ensure that the Zoning Administrator receives it in advance of the ZA Hearing scheduled for Wednesday, February 15. If an email address for the Zoning Administrator is available please let us know and we can also provide a copy to them directly.

I write on behalf of Digital Realty Trust, Inc. ("**Digital**"), owner of the property located at 727 S. Grand Avenue, Los Angeles (the "**City**"), California 92651 (the "**Property**").¹ The Property's southern boundary abuts the site of a 50-story/592 foot ("**ft**") mixed-use development, comprised of 580 residential dwelling units and 7,499 square feet ("**sf**") of commercial floor area (the "**MFA Tower**"), proposed by MFA 8th Grand and Hope LLC ("**MFA**") for the property at 754 S. Hope Street and 609 and 625 W. 8th Street (the "**Adjacent Parcel**"). I write to provide comments on the MFA Tower in hopes that this will guide the City's decision making process.



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Digital requests that MFA develops the site in a manner that complies with the requirements set forth in the City's Downtown Design Guide, is consistent with the future development of the Property, and furthers, rather than inhibits, the ongoing revitalization of Downtown Los Angeles. We look forward to working with the City and MFA to ensure that this occurs.

I. It Is Unclear How The MFA Tower Complies with the Downtown Design Guide.

In connection with the proposed tower, MFA has submitted an application to the City requesting several entitlements and modifications to otherwise applicable standards. Among these requests are the following deviations from the standards set forth in the Downtown Design Guide:

- Pursuant Los Angeles Municipal Code ("LAMC") Section 11.5.7 E, a Specific Plan Project Adjustment for a Director's Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide to allow 47 percent street frontage along Hope Street, 35 percent street frontage along Grand Avenue, and 67 percent frontage along 8th Street to accommodate active uses in lieu of the minimum required 75 percent; and
- Pursuant to LAMC Section 11.5.7 E, a Specific Plan Project Permit Adjustment to allow deviation from Section 5 of the Downtown Design Guide to allow balcony projections to begin at an elevation of 25 ft above grade in lieu of a height of 40 ft.

Absent from these requested deviations is a relaxation of the standards set forth in the Downtown Design Guide related to tower spacing. Subject to certain exceptions, which are inapplicable here, the Downtown Design Guide requires that portions of a tower² taller than 150 ft shall be spaced 80 ft from existing towers or possible future towers. If no adjacent tower exists, but one could be constructed in the future, the proposed tower must be 40 feet from an interior property line. (See Downtown Design Guide, § 6.C.) As proposed, the MFA Tower fails to comply with these spacing requirements. This results in a project that will not only be incompatible with but that will also inhibit the uses and development of the adjacent parcels.



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Response to Comment No. Digital Realty 1-1

The comment states that the EIR is unclear regarding how the Project would comply with the Downtown Design Guide. A detailed analysis of the Project's consistency with the Downtown Design Guide is provided on pages IV.D-37 through IV.D-40 of Section IV.D, Land Use of the Draft EIR and in Table 6 of Appendix D: Land Use Tables of the Draft EIR. As demonstrated therein, with the approval of the Project's requested entitlements, the Project would be consistent with the Downtown Design Guidelines. In addition, with regard to the Guideline related to 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 adjacent buildings to its north. The 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 threshold with which to comply. The Project would also be spaced greater than 80 feet from any existing tower across its 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.

Comment No. Digital Realty 1-2

II. The MFA Tower Is Incompatible with Uses Proposed on Adjacent Parcels.

To approve the MFA Tower, the City must find that the project "is or will be compatible with existing and future development on adjacent properties." (LAMC, § 16.05(F).) As currently proposed, the MFA Tower will be incompatible with the future development of Digital's Property to the north.

Digital has designed, and is preparing to entitle a data center to replace the existing parking garage on its Property. The data center will, however, directly abut the MFA Tower to the south and, notwithstanding requirements set forth in the Downtown Design Guide, windows, and balconies in lower-floor units along the north-eastern face of the MFA Tower will be separated from the data center's southern wall by only several feet. Views, natural light, and air flow to these units will be largely obstructed and these lower-level residential



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units, unless set back from the property line to the north, will be incompatible with the future development on Digital's adjacent property.

Indeed, the Downtown Design Guide warns of this very incompatibility. It notes that towers constructed too close to one another often minimize privacy for residents, minimize views to the sky from the public realm, create wind tunnels, and restrict the development potential of adjacent sites. (See Downtown Design Guide, § 6.C.) This is exactly the outcome that will occur here should the MFA Tower proceed as designed.

III. The MFA Tower, as Designed, Will Inhibit Redevelopment of the Surrounding Parcels.

The project proposed by MFA is not only incompatible with the future development on Digital's Property to the north, but it will slow the redevelopment of Downtown Los Angeles by inhibiting development of surrounding parcels.

The Center [sic] City Community Plan, and its pending update, sets forth an active and vibrant vision for Downtown Los Angeles characterized by a walkable urban environment with active streets and a mix of commercial and residential uses. This vision recognizes Downtown's status as the most prominent and diverse business and corporate center on the Pacific Rim and its role as a regional engine for growth. However, realization of this vision will be undermined if projects, like the MFA Tower, are allowed, through construction of residential units abutting interior property lines and a lack of separation with existing or proposed buildings, to restrict the development potential of surrounding sites. Indeed, the Downtown Design Guide aims to prevent this very outcome through the establishment of development standards that require tower separation. (See Downtown Design Guide, § 6.C.)

¹ The Property is comprised of the following APNs: 5144-011-021 & 5144-011-020.

² 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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Response to Comment No. Digital Realty 1-2

The comment contends that the Project would inhibit redevelopment of the surrounding parcels. As discussed in Section IV.D, Land Use and Planning of the Draft EIR, the Project Site is located in a highly urbanized area that encourages the high density and mix of uses that this Project proposes. The Project would replace an existing low-rise four-level parking structure and surface parking lot on-site with a new mixed-use high-rise project. The proposed uses are consistent with types of land uses already present and under construction in the surrounding area, which area mainly mixed-use buildings that have a commercial use on the ground floor and either residential or office uses in the upper floors that contribute to a lively downtown that is supported by the various mass transit options in walking distance.

In addition, the building height and massing is consistent with existing buildings in the vicinity. As the City's zoning code and Greater Downtown Housing Incentive Area plan intend, the Project utilizes the unlimited density by lot area, the ability to transfer floor area, and no yard setbacks in order to construct the much-needed housing in an employment- and transit-rich area. And although there are no yard setback areas as required by the zoning code, the City's building code ensures appropriate building separation for dwelling units with which the Project must comply. The Project is also consistent with the development density envisioned by the Central City Community Plan. Refer to Section IV.D, Land Use and Appendix D of the Draft EIR for a detailed discussion of the Project's consistency with the goals and polices of the Central City Community Plan.

Additionally, the Project would enhance pedestrian safety and access by widening the sidewalks along all of its street frontages, adding street trees, and placing active uses at the ground level. Furthermore, as discussed in the Initial Study included as Appendix A of the Draft EIR, in accordance with SB 743, the Project is a residential project located on an infill site that is located within a transportation priority area. As such, aesthetic impacts, included those related to views and lighting are deemed to be less than significant. Nonetheless, as discussed in the Initial Study, aesthetic impacts associated with scenic vistas, scenic resources, consistency with regulations regarding scenic quality and light and glare would be less than significant.



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Moreover, the Project will further the State and City goals of developing residential projects within a HQTAs while furthering the goal of meeting housing demand in the City. Rather than inhibiting adjacent development, the Project would increase the residential population in the Project vicinity thereby providing an increase in population that would be available to work in adjacent commercial developments as well as to frequent adjacent and nearby commercial uses. As a result, a mixed-use residential development which maximizes residential density near commercial businesses and public transportation would further the vision of the Central City Community Plan for a vibrant commercial and residential neighborhood.

Comment No. Digital Realty 1-3

IV. Conclusion.

We appreciate the opportunity to share our feedback about the MFA Tower. We are seeking to work together with the City and MFA to ensure a redesign of the project in a manner compatible with the future redevelopment of the surrounding parcels, and avoid any future conflict that delays realization of the Center [sic] City Community Plan's vision for this area of the City. We look forward to working closely with MFA and the City to formulate a collaborative solution to the items set forth above and to facilitate the ongoing redevelopment and revitalization of Downtown Los Angeles.

Response to Comment No. Digital Realty 1-3

The appellant expresses appreciation for the opportunity to comment on the Project and states the desire to work with the Applicant and the City to redevelop and revitalize Downtown Los Angeles. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.



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Comment Letter Digital Realty 2 (June 1, 2023)

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Comment No. Digital Realty 2-1

I write on behalf of Digital Realty Trust, Inc. ("**Digital**"), owner of the property located at 727 S. Grand Avenue, Los Angeles (the "**City**"), California 92651 (the "**Property**"). The Property's southern boundary abuts the site of a 50-story/592-foot ("**ft**") mixed-use development, comprised of 580 residential dwelling units and 7,499 square feet ("**sf**") of commercial floor area (the "**MFA Tower**" or the "**Project**"), proposed by MFA 8th Grand and Hope LLC ("**MFA**") for the property at 754 S. Hope Street and 609 and 625 W. 8th Street (the "**Adjacent Parcel**"). On behalf of Digital, I write to appeal the Vesting Tentative Tract Map and Environmental Impact Report adopted in connection with the Project.

In its letter of decision, issued May 26, 2023 (the "**May LOD**"), the City's Advisory Agency (the "**AA**") certified the Draft Environmental Impact Report ("**DEIR**") and Final Environmental Impact Report ("**FEIR**") in connection with the Project, adopted environmental findings, a statement of overriding considerations, and the Mitigation Monitoring Program prepared for the Project. However, these actions are invalid as the Initial Study, DEIR, and FEIR fail to adequately analyze and disclose the full impacts of the Project; discuss legally inadequate alternatives; and propose infeasible mitigation measures. Finally, the City, as lead agency, failed to comply with the procedural requirements regarding the circulation and public review of the DEIR. For these reasons, Digital requests that the FEIR be revised and recirculated for further public review and comment.

On May 26, 2023, the AA also adopted (i) Vesting Tentative Tract Map No. 74876-CN for the merger and re-subdivision of three lots into one ground lot and nine airspace lots for residential and commercial condominium purposes and above and below grade parking



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and (ii) a Haul Route for the export of approximately 89,750 cubic yards of soil from the Project site (collectively, the “VTTM”). (May LOD, p. 2.) In adopting the VTTM, the AA 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. (See Code Civ. Proc., § 1094.S(b).) Furthermore, the May LOD failed to offer evidence in support of its VTTM findings. Set forth below please find a detailed analysis of this Appeal.

Response to Comment No. Digital Realty 2-1

As demonstrated by the response to comments herein and within the Final EIR, the Draft EIR was completed in full compliance with CEQA and City requirements. The comments submitted and the responses to these comments do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. Rather, the EIR was certified in full compliance with CEQA. As discussed below, the City fully complied with the procedural requirements under CEQA and adequate findings were made to support adoption of the VTTM.

Comment No. Digital Realty 2-2

I. ENVIRONMENTAL IMPACTS HAVE NOT BEEN FULLY ANALYZED AND DISCLOSED.

The FEIR makes errors, omissions, and unexplained assumptions in its analysis of several environmental impacts studied. Namely, land use and cultural resources are inadequately or improperly studied. As a result, the FEIR fails to fully disclose the Project’s likely impacts and must be revised and recirculated.

A. Impacts on Historical Resources Are Neither Disclosed nor Fully Analyzed.

Projects that may cause a substantial adverse change in the significance of a historical resource are considered projects that may have a significant effect on the environment for CEQA purposes. (Pub. Res. Code, § 21084.1.) A historic resource is a resource listed in, or eligible for listing in, the California Register of Historic Resources (the “Register”). Resources listed in a local register or survey are also presumed to be historically significant unless the preponderance of the evidence demonstrates the resource is not historically or



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culturally significant. (Pub. Res. Code, § 21084.1; CEQA Guidelines, § 15064.5(a)(2).) Even if a resource has not been listed, or officially determined eligible for listing, in the Register or a local survey or register, the lead agency may still determine a resource is a historical resource for the purposes of CEQA. (Pub. Res. Code, § 21084.1.)

The FEIR neglects to include any discussion of the Project's impact on relevant historic and cultural resources. First, the IS concludes, without adequate analysis, that due to the Project's distance, approximately 250 feet ("ft"), from the Boston Dry Goods Store—J.W. Robinson's Building—a designated City Historic Cultural Monument—"the [sic] Project would not cause a substantial adverse change in the significance of a historical resource ... and potential impacts to historical resources would be less than significant." (IS, p. 46.) The analysis is threadbare and no consideration is given to the impact of construction activities, noise, and vibrations.

Second, the IS, the DEIR, and the FEIR fail to include any analysis of the Project's impacts on two potentially historic structures located to the Property's north. These structures, the Auto Center Garage located at 746 S. Hope Street and the Third Church of Christ, Christian Scientist Reading Room, were both identified by the City as potentially historic in the Historic Resources Survey Report for the Central City Community Plan Area, a copy of which is attached as **Exhibit A**. Notwithstanding this designation, the City, as lead agency, failed to evaluate whether these structures are eligible for listing in the Register. Thus, the City has left unstudied whether the Project, which will tower over both structures and result in significant construction-related impacts, could result in substantial adverse change to either resource. Indeed, the City fails to even acknowledge the presence of these potentially historic structures in the vicinity of the Project.

Response to Comment No. Digital Realty 2-2

Section IV.D, Land Use of the Draft EIR was completed in full compliance with City and CEQA requirements and demonstrates that land use impacts associated with consistency with land use plans and regulations would be less than significant. As discussed further below, this comment letter does not provide any substantial evidence to support the statement that land use impacts were improperly studied in the Draft EIR.



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With regard to historical resources, impacts associated with historical resources were analyzed in the Initial Study included as Appendix A to the Draft EIR and were concluded to be less than significant. As discussed therein, there are no historical resources on the Project Site. The Project Site is in the vicinity of the Boston Store–J.W. Robinson’s at 600 W. 7th Street, which is a designated Historic-Cultural Monument (HCM #357); and the Third Church of Christ, Scientist Reading Room at 730 S. Hope Street, which was identified as potentially eligible by SurveyLA, the City of Los Angeles’ citywide historic resources survey. SurveyLA meets the requirements of PRC Section 5024.1(g); therefore, an evaluation of potential eligibility as part of the Draft EIR is not required and the City appropriately treated them as historical resources for purposes of CEQA in the analysis of Project impacts. Impacts to these historical resources would be less than significant. This includes potential direct impacts resulting from construction activity as discussed in the Initial Study, and potential indirect impacts resulting from the introduction of new construction on the Project Site. Specifically, the J.W. Robinson’s is located approximately 250 feet north of the Project Site and is physically separated from the Project Site by existing buildings, and the Third Church of Christ, Scientist Reading Room is located approximately 178 feet north of the Project Site and is also physically separated from the Project Site by existing buildings such that there would be no potential significant impact resulting from construction activity. This is supported by the analysis in Section IV.E, Noise, of the Draft EIR, which confirms that the vibration levels would not exceed the threshold that would indicate potential damage during construction to these nearby historical resources. Therefore, the City correctly concluded that potential direct impacts resulting from construction activity would be less than significant.

Further, the Project Site is adjacent to the Auto Centre Garage, located at 746 S. Hope Street, which was identified as potentially eligible by SurveyLA. Although the Auto Centre Garage was not identified as a potential historical resource in the Initial Study, due to its proximity to the Project Site, potential impacts due to construction activity were evaluated in the Draft EIR and appropriate mitigation was included to reduce potential impacts to a less-than-significant level. Specifically, potential vibration impacts associated with construction of the Project were evaluated in Section IV.E, Noise, of the Draft EIR and were concluded to be less than significant with implementation of Mitigation Measure NOI-MM-2. In addition, the Auto Centre Garage would retain its essential features and would



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continue to convey its significance following implementation of the Project, and therefore indirect impacts as a result of the new construction would be less than significant.

Based on the above, consistent with the conclusion in the Initial Study, the Project would not result in direct or indirect impacts associated with historical resources and such impacts would be less than significant.

Comment No. Digital Realty 2-3

B. 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.)

The IS, DEIR, and FEIR fail to acknowledge the tower spacing requirement set forth in the Downtown Design Guide, a regulation intended to avoid or mitigate the environmental impacts of close tower spacing, and omit any discussions 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 tower¹ 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. This conflict must be disclosed and analyzed in the IS, the DEIR, or the FEIR.

¹ 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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Response to Comment No. Digital Realty 2-3

A detailed analysis of the Project's consistency with the Downtown Design Guide is provided on pages IV.D-37 through IV.D-40 of Section IV.D, Land Use, of the Draft EIR and in Table 6 of Appendix D: Land Use Tables of the Draft EIR. As demonstrated therein, with the approval of the Project's requested entitlements, the Project would be consistent with the Downtown Design Guidelines. In addition, with regard to the Guideline related to 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 adjacent buildings to its north. The 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 threshold with which to comply. The Project would also be spaced greater than 80 feet from any existing tower across its 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.

Comment No. Digital Realty 2-4

C. Impacts on Paleontological Resources Are Not Evaluated in the FEIR.

The IS states that the Project will involve excavation to a depth of 63 ft and that paleontological resources may be present at this depth. Nevertheless, the IS concludes that such excavation shall result in a less than significant impact provided Mitigation Measure GEO-MM-1, which sets forth procedures that apply in the event of an inadvertent paleontological discovery, is complied with. When an impact may be potentially significant, even if mitigable, and an EIR is being prepared, that issue shall be evaluated in the EIR fully. Here, these issues surrounding the impact on paleontological resources are not analyzed in the FEIR, rendering the document inadequate.



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Response to Comment No. Digital Realty 2-4

The Initial Study included as Appendix A to the Draft EIR provided a detailed analysis of potential impacts associated with paleontological resources (refer to pages 54 and 55). As discussed therein, this analysis was based on the geotechnical report, the depth of excavation, and importantly, the records search conducted for the Project by the Los Angeles County Natural History Museum, which is included as Appendix IS-5 to the Initial Study. As provided in Appendix IS-5 of this Initial Study, according to the paleontological resources records search conducted for the Project by the Los Angeles County Natural History Museum, no vertebrate fossil localities lie directly within the Project Site boundaries. However, that analysis concluded that it may be possible that deeper-lying paleontological artifacts that were not recovered during prior construction or other human activity may be present. Thus, Mitigation Measure GEO-MM-1 was included that requires a qualified paleontologist to be retained to perform periodic inspections of excavation and grading activities. In the event that paleontological materials are encountered, the qualified paleontologist would temporarily halt development activity to assess and evaluate the discovered material(s). The certified paleontologist would provide recommendation(s), if necessary, for the preservation, conservation, or relocation of the resource. Therefore, with implementation of this mitigation measure, potential impacts to any previously undiscovered paleontological resources would be reduced to less than significant levels. Also note that a summary of this analysis along with Mitigation Measure GEO-MM-1 was also included in Section VI, Other CEQA Considerations of the Draft EIR and the mitigation measure was incorporated into the MMP for the Project. The analysis of potential impacts associated with paleontological resources was completed in full compliance with City and CEQA requirements.

Comment No. Digital Realty 2-5

II. Construction Related Vibration Impacts Associated with the Project Are Not Fully Mitigated.

CEQA requires that any mitigation measures required to minimize a project's significant environmental impact be *feasible*. (Pub. Res. Code, §§ 21002.1(a), 21100(b)(3); CEQA Guidelines, § 15126.4 [emphasis added].)



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Here, the DEIR identifies as a potentially significant impact vibration-induced damage to the Digital-owned parking structure to the north of the MFA project site. The DEIR concludes that compliance with relevant provisions of the Los Angeles Municipal Code and Mitigation Measure NOI-MM-2 will result in the mitigation of this impact to a level of insignificance. (See DEIR, p. IV.E-46.) To mitigate this impact, NOI-MM-2 requires documentation of the physical condition of the offsite properties to establish a baseline against which to measure potential vibration-induced damaged. [sic] Documentation of this baseline is to be completed "to the extent feasible" from the Adjacent Parcel's property line and the public right of way. (See DEIR, p. IV.E-49–IV.E-50.) However, documentation of interior structural elements of the parking structure, portions of the structure located below-grade and obscured from view, and portions of the building located on the Property's norther edge will be impossible. Concerns related to vibration-induced damage to these building elements that will be undocumented are particularly pronounced due to the age of Digital's building.

Thus, for NOI-MM-2 to be feasible, access to the Property to document the existing condition will be required. Such access would require the consent of Digital. The DEIR fails to acknowledge the consent required and MFA has not obtained the required consent. If MFA does not obtain consent from Digital to inspect the parking structure there will be no baseline against which to assess potential impacts rendering NOI-MM-2 infeasible, ineffectual, and out of compliance with the requirements set forth under CEQA.

Response to Comment No. Digital Realty 2-5

The Appellant contends that Mitigation Measure NOI-MM-2 is not a proper mitigation measure because the Applicant cannot assure its enforceability or its effectiveness. The Appellant's contention that the mitigation measure would require its approval is mistaken. Mitigation Measure NOI-MM-2 specifically states that the inspection and monitoring will be conducted to the extent feasible within the public-right-of way and at the Project Site property line. Therefore no consent is required from the Appellant to inspect the visible portions of the parking structure or to monitor the vibration levels from Project construction. Mitigation Measure NOI-MM-2 is feasible and will be implemented as part of the Project. In the event that the appellant will not allow access to its parking structure to observe the existing conditions, Mitigation Measure NOI-MM-2 specifically states that, "The inspection



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survey shall be made to the extent feasible from the public right of way and within the Project Site's property line." Furthermore, based on the public building permit records for the parking structure at 746 S. Hope Street (see Attachment 1), the parking structure is comprised of reinforced concrete and thus not extremely sensitive to vibration. Nonetheless, the vibration monitoring system set forth in Mitigation Measure NOI-MM-2 would be fully implemented by a structural engineer or qualified professional to address potential impacts associated with building damage during construction. In addition, as described in the Draft EIR (page IV.E-49), the Project construction would be subject to LAMC Section 91.3307.1 (Protection Required), which states that adjoining public and private property shall be protected from damage during construction, remodeling and demolition work. As such, the Project would be required to protect the parking structure at 746 S. Hope Street from damage during the Project construction.

Additionally, Appellant provides no substantial facts that dispute the EIR's findings that compliance with existing regulations regarding protection of adjoining properties (LAMC Section 91.3307, and specifically Section 91.3307.1 regarding required protection) combined with this Mitigation Measure would not be sufficient to reduce the potentially significant construction vibration impacts to a less than significant level. As such, this contention is without merit.

Comment No. Digital Realty 2-6

III. An Inadequate Range of Alternatives is Considered Because No Alternative is Examined that Avoids Significant Below-Grade Excavation.

CEQA requires an analysis of a reasonable range of alternatives to a proposed project, with a focus on those alternatives that would reduce or eliminate significant environmental impacts of the project. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988), 47 Cal. 3d 376, 403; CEQA Guidelines, § 15126.6(a).) And although the number of alternatives required to be analyzed in an EIR is subject to a "rule of reason", the range of alternatives considered should correspond to the nature of the project and its environmental effects. (CEQA Guidelines, § 15126.6(f); *Citizens of Goleta Valley v. Bd. Of Supervisors*, 52 Cal. 3d 553, 565–66 (1990).)



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Here, while the DEIR evaluates a number of alternatives, a critical alternative has not been assessed. Absent the no-project alternative, there is no effort to evaluate an alternative that reduces, or eliminates entirely, subterranean development. Although such an alternative may not completely avoid the Project's significant construction period noise and vibration impacts, eliminating subterranean development would greatly reduce the number of heavy truck trips (via the reduction in soil export), corresponding transportation impacts, and the severity of the significant construction period noise and vibration impacts. Failing to evaluate an alternative that reflects reduced transportation, noise, and vibration impacts means that decision-makers are acting blindly, without any awareness of how feasible it might be to reconfigure the Project site to avoid these impacts. Furthermore, given the proximity of potentially historic resources, as set forth in Section I.A above, the failure to evaluate an appropriate alternative that would reduce vibration risks is especially problematic. Decision-makers should not approve the Project as proposed without evaluating whether there is a feasible alternative that involves less excavation, and thus fewer environmental impacts.

Response to Comment No. Digital Realty 2-6

The appellant is incorrect, and the incorrect contention is not supported by any evidence that such an alternative would be feasible or would feasibly attain most of the basic objectives of the Project. Section V, Alternatives, of the Draft EIR includes Alternatives 2 and 3, both of which reduce the subterranean parking levels to two levels. While these alternatives would reduce the amount of grading, as discussed in the Draft EIR, as impacts are based on peak days, construction noise impacts would be similar to the Project. Section V, Alternatives, also includes a detailed discussion of why alternatives to eliminate the significant construction noise and vibration impacts during construction would be infeasible. As discussed therein, this is because the significant unavoidable construction-related noise and vibration impacts of the Project, which is an infill development in an urban area, are heavily influenced by the close proximity of the Project Site and the proposed haul route to existing noise- and vibration-sensitive uses rather than the amount or duration of Project construction activities. Also note that these impacts would be short-term and would only occur during construction of the Project.



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Moreover, an EIR does not have to include every conceivable alternative only a reasonable range of alternatives that would meet the majority of the Project Objectives while reducing or avoiding the significant impact identified in the EIR (CEQA Guidelines Section 15126.6). CEQA and case law are quite clear that an alternative that is not feasible, financially or technically, is not required to be analyzed. (CEQA Guidelines Section 15126.6(f); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3rd 553.) As stated in Section 15126(f)(1), among the “factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries....” Even assuming an alternative with all above-ground structures would be technically and financially feasible, such an alternative would still require grading and excavation for foundations which would result in construction noise and vibrations (associated with human annoyance) impacts. Moreover, such an alternative would increase the building’s height.

Additionally, CEQA only requires analysis of alternatives that address the “significant effects of the proposed project on the environment.” (CEQA Guidelines Section 15126.2(a).) The EIR complies with this requirement. As detailed in Section IV.E, Noise, of the Draft EIR, the Project would result in short-term significant unavoidable construction-related noise and vibration (associated with human annoyance only) impacts. Specifically, Project construction activities would result in significant unavoidable construction-related noise impacts related to on site construction activities, and significant unavoidable vibration (associated with human annoyance) impacts related to off-site construction traffic, as well as cumulative noise impacts from on-site construction and off-site construction traffic and cumulative vibration impacts associated with human annoyance from off-site construction traffic. Thus, these are the only impacts that are required to be addressed in an analysis of alternatives. To address these significant impacts, Chapter V, Alternatives, of the Draft EIR considers three build alternatives all of which would reduce the size of the Project and, therefore, reduce construction activities and schedule. Alternative 2, the Hotel with Ground Floor Commercial Alternative, Alternative 3, the Development in Accordance with Existing Base FAR (Reduced Residential) Alternative, and Alternative 4, the Development in Accordance with DTLA 2040 Plan Alternative, would all reduce the overall duration of construction as each would result in a smaller project, shorter tower, and less excavation with one less subterranean level (other than Alternative 4 which would have the same



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number of subterranean levels). As such, these alternatives are a reasonable range of alternatives that can meet some or most of the Project Objectives. The Appeal contains no evidence that these three build-alternatives fail to meet the requirements of CEQA or that an all-above ground alternative would eliminated the Project's significant and unavoidable construction related impacts. Therefore, the Appellant's contention is without merit.

Comment No. Digital Realty 2-7

IV. The City, As Lead Agency, Failed to Comply with CEQA's Procedural Requirements.

Finally, it is important to discuss the procedural issues associated with the environmental review of this Project. CEQA requires that the public review period for a DEIR shall be no less than 30 days and no longer than 60 days. (CEQA Guidelines, § 15105.) Indeed, CEQA further specifies that to make copies of EIRs available to the public, lead agencies should furnish copies of draft EIRs to public library systems serving the area involved. (CEQA Guidelines, §§ 15087(g), (a).)

Here, a appellant noted that they were unable to download the DEIR for review and that the City's Central Library did not have a copy available for review. In response to this comment, the FEIR notes that additional thumb drives containing the DEIR were distributed to libraries in the project vicinity. However, the FEIR preparers do not note whether additional review time was provided during the public comment period. Given this failure to make copies readily available to the public for review, the City should determine whether the DEIR was available for the legally required minimum time period and, if not, should recirculate the FEIR.

Response to Comment No. Digital Realty 2-7

The Appeal contains no facts to substantiate a claim that the comment period was in adequate, nor did the commenter who had difficulty with downloading some portions of the Draft EIR, request more time for review. Notification and distribution of the Draft EIR was conducted in accordance with the City's practices that extend beyond CEQA requirements. In addition to distributing copies of the Draft EIR at the State Clearinghouse and to public agencies, CEQA requires that a lead agency provide copies of the Draft EIR at local



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libraries in the Project area and the offices of the lead agency. As indicated on the public Notice of Availability of the Draft EIR that was sent to owners and occupants within a 500-foot radius of the Project Site and posted in the *Los Angeles Times*, thumb drives that included the Draft EIR were sent to the Central Library, Little Tokyo Branch Library, Pico Union Branch Library, Chinatown Branch Library, Echo Park Branch Library, and Felipe de Neve Branch Library. Confirmation of receipt of the thumb drives by the libraries was provided to the City. When the City heard that the thumb drive could not be located at the Central Library, staff immediately contacted a librarian and sent another thumb drive that was able to be accessed by the public. Hard copies of the Draft EIR were also available the offices of the Department of City Planning. In addition, as indicated on the public notice, access to the Draft EIR was (and continues to be) available on the City's website. The City's IT department was immediately notified when an individual had technical issues with the City's website. The City's website was tested using several browsers and all files were able to be properly accessed.

Since the Draft EIR was available at the Little Tokyo Library, the City provided more than the 45-day notice required by CEQA, and the Appeal provides no facts to support a contention that the public did not have sufficient time to comment on the Draft EIR during 48-day circulation period of November 18, 2022, through January 5, 2023, this contention is without merit.

Comment No. Digital Realty 2-8

V. The City 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 May 26, 2023, the AA adopted the VTTM. The City did so without making the necessary findings and failing to address all relevant law and policy. A VTTM must be designed in compliance with the zoning regulations applicable to the subject property. (LAMC, § 17.05(C).) Here, the VTTM is not. Namely, the AA did not address the VTTM's inconsistencies with policies set forth by the Central City Community Plan (the "**Community Plan**") and the requirements of the Downtown Design Guidelines.



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Response to Comment No. Digital Realty 2-8

The Appellant contends that the Advisory Agency should not have approved the VTTM because it failed to make adequate findings in support of the approval and failed to offer evidence in support of the approval. However, the approval of the VTTM was supported by substantial evidence and appropriate findings. The basis for the contention that the Advisory Agency failed to make the required findings is based on the Appellant's contention that the Advisory Agency could not make a finding that the Project would not conflict with the Central City Community Plan and the Design Guidelines. As discussed above, this contention is without merit. The Project is in substantial conformance and not in conflict with either the Central City Community Plan nor the Design Guidelines. The Advisory Agency's Letter of Determination ("**LOD**") sets forth the required track map and CEQA findings with substantial evidence to support such findings contained in the LOD and in the Draft EIR for the Project which was certified by the Advisory Agency. As such, the Appeal on the grounds that the required findings were not made and that the Advisory Agency lacked evidence to support the findings is also without merit.

Also, refer to Response to Comment No. Digital Realty 2-3 regarding the Project's consistency with Downtown Design Guidelines. With regard to the Central City Community Plan, a detailed analysis of the Project's consistency with the Community Plan is provided on page IV.D-29 of Section IV.D, Land Use, of the Draft EIR and Table 5 of Appendix D of the Draft EIR. As demonstrated therein, the Project would not conflict with the applicable objectives and policies of the Central City Community Plan adopted for the purpose of avoiding or mitigating an environmental effect.

The Project is in substantial conformance and not in conflict with either the Central City Community Plan nor the Design Guidelines. As such, the Appeal on the grounds that the required findings were not made and that the LOD lacked evidence to support the findings is also without merit.



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Comment No. Digital Realty 2-9

A. The MFA Project is Inconsistent with the Community Plan and the Downtown Design Guide.

The Community Plan, and its pending update, set forth an active and vibrant vision for Downtown Los Angeles characterized by a walkable urban environment with active streets and a mix of commercial and residential uses. This vision recognizes Downtown's status as the most prominent and diverse business and corporate center on the Pacific Rim and its role as a regional engine for growth. However, realization of this vision will be undermined if projects, like the MFA Tower, that feature construction of residential units abutting interior property lines and a lack of separation with existing or proposed buildings are allowed to restrict the development potential of surrounding sites. Indeed, the Downtown Design Guide aims to prevent this very outcome through the establishment of development standards that require tower separation. (See Downtown Design Guide, § 6.C.)

Response to Comment No. Digital Realty 2-9

Refer to Response to Comment No. Digital Realty 2-8 regarding the Project's consistency with the Central City Community Plan. Refer to Response to Comment No. Digital Realty 2-3 regarding the Project's consistency with the Downtown Guidelines.

Contrary to the Appellant's contentions, the Project would not obstruct the attainment of relevant goals of the Central City Community Plan or the Design Guidelines. As stated in the Appeal, regarding only one of the many plans' goals and policies analyzed in the Draft EIR, the Central City "Community Plan, and its pending update, set forth an active and vibrant vision for Downtown Los Angeles characterized by a walkable urban environment with active streets and a mix of commercial and residential uses." The Project would not conflict with this goal since it would provide residential uses and ground floor commercial uses that would enhance the Project Site, the surrounding area, and contribute to making Downtown a walkable urban environment. The Appellant's contention that the possibility that the Project would limit the potential future development of Appellant's property is, therefore, unsupported by any substantial evidence.



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Moreover, 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 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.) It is clear from the analysis in the Draft EIR, and the fact that the Project is providing much needed housing to the City, that 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. The Appellant’s suggestion that decreasing the distance between the Project’s tower portions above 150 feet on the Appellant’s property would create wind tunnels or blockage of views to the sky is unsupported by any evidence, yet alone substantial evidence. Moreover, if any such environmental issues would 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 Appeal 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 analyzed conflicts with applicable portions of the Central City Community Plan and the Design Guidelines. Moreover, the Appeal provides no 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.



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Comment No. Digital Realty 2-10

B. The MFA Project is Inconsistent with the Downtown Design Guide's Tower Spacing Requirements.

The VTTM approved by the AA is inconsistent with key tower-spacing requirements set forth by the Downtown Design Guide. The residential condominiums depicted on the VTTM allow for a building that will directly abut Digital's property line to the north and will conflict with the Downtown Design Guide's requirements related to tower spacing. Subject to certain exceptions, which are inapplicable here, of a tower² 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.) As proposed, the MFA Tower fails to comply with this spacing requirement. This results in a project that will not only be incompatible with but that will also inhibit the uses and development of the adjacent parcels.

² As defined, a "tower" refers to portions of a building over 150 ft in height. (See Downtown Design Guide, § 6.C.)

Response to Comment No. Digital Realty 2-10

Refer to Response to Comment No. Digital Realty 2-3 regarding the Project's consistency with the Downtown Design Guide.

Comment No. Digital Realty 2-11

VI. Conclusion.

The Final EIR must be revised, and recirculated, for additional review and comment. Recirculation is required because the impacts of the Project have not been adequately identified and disclosed. Furthermore, the Project should be revised so that it fully complies with the purpose and intent set forth under the Downtown Design Guide. Only after the Project's full impacts are disclosed and feasible mitigation measures identified can the public and decision-makers be fully aware of the ramifications of the proposed MFA Tower.



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Response to Comment No. Digital Realty 2-11

The comments submitted in this letter and the responses to these comments do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5. The Draft EIR was prepared and circulated in full compliance with CEQA and City requirements.

Comment No. Digital Realty 2-12

Attachment: SurveyLA Historic Resources Survey Report—Central City Community Plan Area, September 2016 [73 pages]

Response to Comment No. Digital Realty 2-12

This attachment provides information regarding historical resources within the Central City Community Plan Area from SurveyLA. As discussed in Response to Comment No. Digital Realty 2-2, above, the Project would not result in direct or indirect impacts associated with historical resources and such impacts would be less than significant.



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Comment Letter Digital Realty 3 (June 9, 2023)

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Comment No. Digital Realty 3-1

I write on behalf of Digital Realty Trust, Inc. ("Digital"), owner of the property located at 727 S. Grand Avenue, Los Angeles (the "City", California 92651 (the "Property"). The Property's southern boundary abuts the site of a 50-story/592-foot ("ft") mixed-use development, comprised of 580 residential dwelling units and 7,499 square feet ("sf") of commercial floor area (the "MFA Tower" or the "Project"), proposed by MFA 8th Grand and Hope LLC ("MFA") for the property at 754 S. Hope Street and 609 and 625 W. 8th Street. On behalf of Digital, I write to appeal the Zoning Administrator's Interpretation ("ZAI") issued on May 26, 2023 in connection with the Project.

Regarding the ZAI's CEQA determination, the City's ZA determined no supplemental or subsequent CEQA review was required in connection with issuance of the ZAI, adopted environmental findings regarding the same, and determined no additional mitigation measures were required beyond those set forth in the Environmental Impact Report adopted for the Project. These actions are invalid as the City failed to adequately analyze substantial changes to the Project; substantial changes in the surrounding circumstances, such as Digital's proposed development of a data center on its Property adjacent to the MFA parcel; new information of substantial importance; and the potential for more severe significant impacts. For these reasons, Digital requests that the CEQA determination adopted in connection with the ZAI be revised and subject to further public review and comment.

Regarding the ZAI itself, the City's Zoning Administrator (the "ZA") determined that (i) providing a recorded covenant to maintain 24-hour parking attendants to serve residential parking provided in tandem configuration for multiple dwelling units is compliant with the



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requirement of Section 12.21(A)(5)(h) of the Los Angeles Municipal Code (“LAMC”) to provide accessible parking stalls and (ii) that building cut-outs functioning as outdoor common open space for development shall not create floor area as defined in LAMC Section 12.03 and shall count as common open space as defined in LAMC Section 12.21(G)(2)(a). (ZAI, p. 1.)

In issuing the ZAI, the ZA 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. (See Code Civ. Proc., § 1094.5(b).) Furthermore, the ZA failed to offer adequate evidence in support of the interpretation set forth in the ZAI. Outlined below please find a detailed analysis of this Appeal.

Response to Comment No. Digital Realty 3-1

The first paragraph of the appeal provides introductory comments regarding the appellant and the applicant.

The second paragraph correctly states that the City determined, in its independent judgment, that no supplemental or subsequent CEQA review was required in connection with issuance of the ZAI, adopted environmental findings regarding the same, and that no additional mitigation measures are required. However, the appeal incorrectly states, without any evidence or facts that the City failed to adequately analyze substantial changes to the Project; substantial changes in the surrounding circumstances, such as Digital’s proposed development of a data center on its Property adjacent to the MFA parcel; new information of substantial importance; and the potential for more severe significant impacts. With regard to the appellant’s proposed project, which is a 13-story, 279-foot-tall, 485,892-square-foot data center to house computers, the appellant submitted its entitlement application to the City on or around March 22, 2023, nearly four years after the City issued the Project’s notice of preparation.

Whether or not the argument has any merit, it is a challenge to the CEQA law itself and not a proper challenge to the analysis in the EIR for the Project. As set forth 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



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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. CEQA does not require an EIR, or any particular private project, to solve or remediate the impacts which may arise from living in a dense urban setting. As such, the contention is without any merit. The appeal provides no evidence or facts on why the City impermissibly relied on the EIR, so a response is not possible. However, the EIR complies with CEQA, and the City's issuance of the ZAI did not require any additional CEQA analysis.

Comment No. Digital Realty 3-2

The ZA has authority to interpret the City's zoning regulations "when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation." (LAMC, § 12.21(A)(2).) Issuance of a ZAI is not appropriate where no ambiguity exists. Here the meaning of the regulations at issue is clear and not subject to multiple interpretations.

In the City, tandem parking is authorized in private garages provided the tandem parking is no more than two cars in depth and each two-car tandem space is allotted to a single unit. (LAMC, § 12.21(A)(5)(h); P/ZC 2002-001 § 1(E) (Revised June 28, 2021).) The requirements of the LAMC and those set forth by the Los Angeles Department of Building and Safety in P/ZC 2002-001 regarding parking design are clear. In the context of private garages, both spaces in a tandem parking stall must serve a single unit. The ZAI fails to establish these provisions lack clarity and/or are inconsistent with other parking requirements related to private garages in the LAMC. As a result, these zoning regulations are not properly the subject of a ZAI.

In the City, subject to several limited exceptions, all common open space must "[b]e open to the sky and have no structures that project into the common open space area." (LAMC, § 12.21(G)(2)(a).) The plain meaning of this requirement is clear, all common open space area must be free from obstruction. Again, the City failed to adequately establish this zoning regulation lacks clarity and/or results in an inconsistency with other LAMC regulations. The ZAI also cites another interpretation, ZA-2017-4745-ZAI (the "2017 ZAI"), as support for its conclusion that the relevant zoning regulations are ambiguous. While we



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do not concede the 2017 ZAI discusses the same issue as the one presented here, even if it did that alone is insufficient proof that the necessary degree of ambiguity exists, especially as the 2017 ZAI also fails to establish the proper grounds for issuance of a ZAI. Thus, like the regulations applicable to tandem parking, the zoning regulations applicable to common open space are improperly subject to a ZAI.

Finally, in the context of the open space requirements, the ZAI admits that without this favorable interpretation the Project “would be deficient in meeting its Code obligations for open space.” (ZAI, p. 9.) The purpose of a ZAI is not to facilitate a relaxation of the zoning requirements but rather it is intended to interpret ambiguous requirements. Relief from specific provisions of the City’s zoning regulations is properly addressed through a variance or zoning code amendment, not through a ZAI.

Response to Comment No. Digital Realty 3-2

The appeal contends that the zoning regulations at issue are not ambiguous and issuance of a ZAI is improper. The ZA correctly issued the ZAI pursuant to its legal powers contained in the City’s Charter, Zoning Code and well-established case law, and the appeal did not raise any facts to counter the City’s decision to interpret its own zoning code.

With regard to the appellants contentions related to tandem parking, please see Response to Comment No. Digital Realty 3-3, below. With regard to the appellants contentions related to open space, please see Response to Comment No. Digital Realty 3-4, below.

Comment No. Digital Realty 3-3

As set forth above, the City’s zoning regulations provide that any two-car tandem parking stall in a private garage must be allocated to a single unit. The ZAI suggests that this requirement, which applies only in the context of private garages, can be dispensed with because parking configurations in commercial or automated mechanical garages that render at least one of two vehicles inaccessible are allowed provided assistance is available at all times from either an attendant or an automated mechanical system. Such an interpretation fails to address the potential for additional transportation impacts.



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When tandem spaces are utilized for residential parking in a development of this size, it is likely that not all spaces will be utilized. For example, some residents of units with access to tandem parking will only use a single space. Thus, a building, like the MFA Tower, could have additional transportation impacts due to its increased number of parking spaces. The ZAI fails to consider this potential outcome and, more importantly, the ZA fails to address this issue in the context of the CEQA determination made in connection with issuance of the ZAI.

Response to Comment No. Digital Realty 3-3

First, the ZA appropriately relied on its legal powers to interpret the City's Zoning Code. The appeal provides no facts to dispute the ZA's legal powers to determine whether an inconsistency exists, and if it does, to clarify the inconsistency.

Second, the appeal simply, and conveniently, misstates the LAMC's requirements by omitting the word "required." LAMC, § 12.21(A)(5)(h) in its entirety, provides the following (emphasis added):

*(h) Tandem Parking. (Amended by Ord. No. 179,191, Eff. 11/5/07.) Each **required** parking stall within a parking area or garage shall be accessible. Automobiles may be parked in tandem in the following instances:*

(1) In a public garage or public parking area, which provides attendants to park vehicles at all times the garage or area is open for use.

(2) In a private garage or private parking area serving a one-family dwelling, an apartment house, apartment hotel, hotel, two-family dwelling, or multiple or group dwelling, where the tandem parking is not more than two cars in depth. Tandem parking shall not be allowed in parking areas for recreational vehicles or guest parking.

Pursuant to Assembly Bill (AB) 2097, the City is prohibited from imposing or enforcing minimum parking requirements on any residential, commercial or other development project (excluding event centers, hotels and similar transient lodging) that are



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within a 0.5-mile radius of a Major Transit Stop, which includes the Project Site. The Department of City Planning issued a memorandum on December 31, 2022, which serves as guidance for project applicants and staff on the implementation of AB 2097. Therefore, the Project is not **required** to provide any parking, and since the applicable LAMC section applies that the appellant is relying on only applies to **required** parking, the appellants contention that tandem parking is not allowed is legally incorrect.

Finally, with regard to potential transportation impacts, the appeal is not clear and provides no facts or evidence to support its conclusion.

Comment No. Digital Realty 3-4

The City requires that the Project provide 63,600 sf of open space. (See LAMC, § 12.21(G); ZAI, p. 3.) To satisfy this requirement, the Project includes private balconies (29,000 sf), outdoor common open spaces on landscaped decks (15,358 sf), and interior common open spaces (13,140 sf). This amount of common indoor and outdoor spaces falls short of the 18,700 sf of outdoor common open space required by the LAMC by approximately 3,342 sf.

To address the shortfall in open space, the Project proposes approximately 8,596 sf of covered outdoor open space. Outdoor open space does not, however, count toward required open space. (LAMC, § 12.21(G).) Nevertheless, the ZAI determined that, contrary to the requirement of the LAMC, covered open space included at the Property can be used to satisfy the applicable open space requirements. Repeatedly, the ZAI notes that this determination is appropriate because a failure to allow covered open space to count towards the Project's open space requirement would result in a project with less residential density or that is "physically infeasible." (ZAI, p. 9.) The notion, set forth in the ZAI, that the Project would be infeasible or that a reduction in density would be required without the proposed interpretation of the LAMC is unfounded.



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Response to Comment No. Digital Realty 3-4

The ZA appropriately relied on its legal powers to interpret the City's Zoning Code. The appeal provides no facts to dispute the ZA's legal powers to determine whether an inconsistency exists, and if it does, to clarify the inconsistency.

The ZAI thoroughly explains the issue, and based on the City's interpretation of its own Zoning Code, appropriately approved the ZAI. The appeal provides no evidence to the contrary.

Comment No. Digital Realty 3-5

Given the analysis set forth above, the ZAI fails to offer adequate evidence in support of its interpretation of the relevant zoning code requirements. Furthermore, a ZAI is not appropriate in this context because the ZA has failed to establish the plain language of the zoning regulations at issue is clear. As a result, we respectfully request reconsideration of this interpretation.

Response to Comment No. Digital Realty 3-5

As discussed above, the ZA acted entirely within its legal powers, and the ZAI is legally appropriate.

Attachment:

Attachment 1: Building Permit for 746 South Hope Street

Attachment

Attachment 1

Building Permit for 746 South Hope Street

All Applications Must be Filled Out by Applicant

Blg. Form 1

PLANS AND SPECIFICATIONS
and other data must also be filed

1

BOARD OF PUBLIC WORKS

DEPARTMENT OF BUILDINGS

Application for the Erection of Buildings

CLASS "A" - ~~"B"~~ - ~~"C"~~ *Reinforced Concrete*

12/18

To the Board of Public Works of the City of Los Angeles:

Application is hereby made to the Board of Public Works of the City of Los Angeles, through the office of the Chief Inspector of Buildings, for a building permit in accordance with the description and for the purpose hereinafter set forth. This application is made subject to the following conditions, which are hereby agreed to by the undersigned applicant and which shall be deemed conditions entering into the exercise of the permit:

First: That the permit does not grant any right or privilege to erect any building or other structure therein described, or any portion thereof, upon any street, alley, or other public place or portion thereof.

Second: That the permit does not grant any right or privilege to use any building or other structure therein described, or any portion thereof, for any purpose that is, or may hereafter be prohibited by ordinance of the City of Los Angeles.

Third: That the granting of the permit does not affect or prejudice any claim of title to, or right of possession in, the property described in such permit.

S-2015

TAKE TO
ROOM No. 6
REAR OF
NORTH
ANNEX
1st FLOOR
CITY CLERK
PLEASE
VERIFY

Lot No. 8 & a portion of lot 9 Block 28

(Description of Property)

Huber Tract

District No. 10 M. B. Page 10 F. B. Page 10

(742-46)

TAKE TO
ROOM No. 405
SOUTH
ANNEX
ENGINEER
PLEASE
VERIFY

No. 740 741 742 743 744 745 746 Street S. Hope

(Location of Job)

But 7 1/2 x 8 7/8

(USE INK OR INDELIBLE PENCIL)

O.K. City Clerk
By *[Signature]*
O.K. City Engineer
By *[Signature]*

- Purpose of Building Garage & Store No. of Rooms 13 No. of Families X
- Owner's name Seventh & Hope St Fireproof Building Co Phone
- Owner's address
- Architect's name Noerenberg & Johnson Phone TR 5831
- Contractor's name Wallace G. Dunham Phone Du 5898
- Contractor's address 2007 W. Wilshire Blvd.
- TOTAL VALUATION OF BUILDING {Including Plumbing, Gas Fitting, Sewers, Cesspools, Elevators, Painting, Finishing, all Labor, etc.} \$ 369,000
- Any other buildings on lot at present? No How used?
- Size of proposed building 79'8" x 172'2" Size of lot 80'0" x 172.34 x 172.74 feet
- Number of stories in height 9 Height to highest point 105'6"
- Material of foundation Concrete Character of soil Gravel
- Material of exterior walls Concrete
- Material of interior construction Concrete & Tile
- Material of floors Concrete
- Material of roof Composition & Concrete Roof

I have carefully examined and read the above application and know the same is true and correct, and hereby certify and agree, if a permit is issued, that all of the provisions of the Building Ordinances will be complied with, whether herein specified or not; also certify that the plans and specifications herewith filed conform to all of the provisions of the Building Ordinances and State Laws.

OVER

(Sign here)

C. E. Noerenberg
(Owner or Authorized Agent.)

FOR DEPARTMENT USE ONLY

PERMIT NO. <u>6433</u>	Plans and Specifications checked and found to conform to Ordinances, State Laws, etc. <u>2-20-25</u> <i>Noerenberg</i> Plan Examiner	Application checked and found O. K. <u>2/20/25</u> <i>NoSB</i> Clerk	Stamp Here When Permitted RECEIVED FEB 20 1925 TOO LATE -A City Clerk
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Sprinkler

11/11/25

FOR DEPARTMENT USE ONLY

APPLICATION	O. K. <i>[Signature]</i>
CONSTRUCTION	O. K. <i>[Signature]</i>
ZONING	O. K. <i>[Signature]</i>
SET-BACK LINE	O. K. <i>[Signature]</i>
ORD. 33761 (N. S.)	O. K. <i>[Signature]</i>
FIRE DISTRICT	O. K. <i>[Signature]</i>

REMARKS

Steel 510 Tons
 Cement 10000 bbls
 9/800

Attachment 2

Historic Resources Technical Report

HISTORIC RESOURCES GROUP

12 S. Fair Oaks Avenue, Suite 200
Pasadena, CA 91105

Tel 626-793-2400
historicrosourcesgroup.com

MEMO

TO: EYESTONE ENVIRONMENTAL

DATE: JUNE 12, 2023

Introduction

This memorandum addresses historical resources adjacent to the 8th, Hope and Grand project (the Project) located at 754 S. Hope Street and 609-625 W. 8th Street in the City of Los Angeles (the Project Site) to support environmental review of the Project. The Project proposes to construct a 50-story mixed use development composed of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on the 34,679 square foot Project Site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above ground levels and four vehicle parking spaces on the ground floor. To accommodate the Project, the existing surface parking lot and four-story parking structure on the Project Site would be demolished.

There are no historical resources on the Project Site. However, as identified in the Initial Study (IS) for the Project, the Project Site is adjacent to the Boston Store-J.W. Robinson's at 600 W. 7th Street, which is a designated Historic-Cultural Monument (HCM #357); and the Third Church of Christ, Scientist Reading Room at 730 S. Hope Street, which was identified as potentially eligible by SurveyLA, the City of Los Angeles' citywide historic resources survey. Further, the Project Site is adjacent to the Auto Centre Garage, located at 746 S. Hope Street, which was identified as potentially eligible by SurveyLA. Although the Auto Centre Garage was not identified as a potential historical resource in the IS, due to its proximity to the Project Site, potential impacts due to construction activity were evaluated in the Draft Environmental Impact Report (DEIR). A map identifying the Project Site and the three adjacent historical resources is shown in Figure 1.

This memorandum supports the conclusions in the DEIR related to potential impacts to the three identified historical resources adjacent to the Project Site and provides additional information as follows:

- Additional research was conducted to confirm the dates, methods of construction, and other relevant details to support review of potential impacts to all three adjacent buildings.
- The Boston Store-J.W. Robinson's building is formally designated. The Third Church of Christ, Scientist Reading Room at 730 S. Hope Street and the Auto Centre Garage at 746 S. Hope Street were identified as potentially eligible by SurveyLA. SurveyLA meets the requirements of PRC Section 5024.1(g); therefore, additional analysis of potential eligibility is not required. All three buildings are treated as historical resources for purposes of CEQA and are not re-evaluated herein.
- The IS identifies the Boston Store-J.W. Robinson's building and the Third Church of Christ, Scientist Reading Room as historical resources for purposes of CEQA. Based on additional analysis conducted for this study, it is confirmed that the IS correctly identifies that potential impacts to these two historical resources would be less than significant. This includes potential direct impacts resulting from construction activity as discussed in the IS, and potential indirect impacts resulting from the introduction of new construction on the Project Site as discussed further below.
- Potential impacts from construction activity to the Auto Centre Garage were identified and evaluated in the DEIR and appropriate mitigation was included to reduce potential impacts to a less-than-significant level. Further, the analysis in this memorandum confirms that despite proximity of the proposed new construction to the Auto Centre Garage, it would continue to convey its significance following implementation of the Project, and therefore indirect impacts would be less than significant.

FIGURE 1: SITE MAP



Historical Resources Adjacent to the Project Site

The Project Site is located within the Central City Community Plan Area (CPA) of the City of Los Angeles. The Central City CPA encompasses all of Downtown Los Angeles and adjacent areas to the east that are zoned for industrial use.¹ The CPA is relatively compact and is the second smallest Los Angeles CPA in terms of land area; though it is the most densely developed. The Central City CPA is characterized by an extraordinarily diverse built environment and is somewhat informally divided into several smaller neighborhoods, each of which has a unique identity and physical character. The Project Site is located in the Historic Core neighborhood, which is located near the center of the CPA and historically developed as the central business district of Los Angeles. This area includes a concentration of former banks, department stores, theaters, and other commercial uses that date largely to the 1910s and 1920s.

There are no historical resources on the Project Site. There are three buildings located in proximity to the Project Site that are considered historical resources for purposes of CEQA. A brief description of each is included below in order to inform the analysis of potential Project impacts. Additional photographs are included in Appendix A; historic and aerial photographs are in Appendix B; Sanborn maps are in Appendix C; and a summary of building permits is included in Appendix D.



Left: Context view looking south along S. Hope Street, showing the three historical resources in the Project vicinity that are analyzed for potential impacts resulting from the Project. Source: Historic Resources Group, June 2023. Right: Same view taken in 1974, during the demolition of the Third Church of Christ, Scientist. Source: Los Angeles Public Library, Security Pacific National Bank Collection.

¹ Description of the CPA excerpted from City of Los Angeles, "SurveyLA Central City Community Plan Area Historic

Resources Survey Report," prepared by Architectural Resources Group, September 2016.

BOSTON STORES – J. W. ROBINSON'S



Former J.W. Robinson's, view looking southwest of the Hope Street façade. Source: HRG, June 2023.

The former Boston Stores-J. W. Robinson's building occupies six parcels on the south side of W. 7th Street between S. Hope Street and S. Grand Avenue. It corresponds to the street addresses of 600-632 W. 7th Street, 710-722 S. Hope Street, and 703-719 S. Grand Avenue. It was originally constructed in 1915 and designed by the architectural firm of Noonan & Richards in the Beaux Arts architectural style. In 1934, a substantial remodel, designed by the architectural firm of Allison & Allison, gave the building its simplified Art Deco façade. The building has a rectangular plan and is six and seven stories in height with complex massing. It has a concrete

foundation with concrete walls and flooring.² In the 1934 remodel, reinforced pneumatically placed concrete was used in lieu of veneered brick on the exterior.³ The building fronts 7th Street and the primary entrance is located on this façade, which is symmetrically arranged. Architectural features include stepped parapets; fluted pilasters; wood and metal storefront on the first floor; double-hung, divided light wood windows on the upper floors, some with Neoclassical surrounds; and projecting canopies.

The former Boston Stores-J. W. Robinson's represents an early example of a department store in Downtown Los Angeles. Its original design and 1930s remodel were both undertaken by notable local architectural firms. It was designated Los Angeles Historic-Cultural Monument No. 357 in 1988. In 1999, it was listed in the California Register of Historical Resources.⁴ Therefore, it is a historical resource as defined by CEQA.

² City of Los Angeles Building Permit No. LA21150, October 28, 1914; and City of Los Angeles Building Permit No. LA17620, September 1, 1914.

³ City of Los Angeles Building Permit No. LA00890, May 9, 1934.

⁴ California Built Environmental Resources Directory, Program Reference No. 537.9-19-0218, July 27, 1999.

THIRD CHURCH OF CHRIST, SCIENTIST READING ROOM



Third Church of Christ, Scientist Reading Room, view looking southeast along Hope Street. Source: HRG, June 2023.

The Third Church of Christ, Scientist Reading Room is located at 730 S. Hope Street, on the east side of S. Hope Street between W. 7th and W. 8th Streets. It was originally constructed in 1936-37 as the reading room for the Third Church of Christ, Scientist, which was located on the adjacent parcel. The church was demolished in the 1970s.

The building is set back from the sidewalk. The property includes a free-standing neon pole sign, wrought iron perimeter fence, stone planter, landscaped garden, and a shaped brick dividing wall with a cast stone cap and display case. The building was

identified by SurveyLA as Late Gothic Revival in style. It is two stories in height with a rectangular plan, complex massing, and asymmetrical façade. It has a concrete foundation with reinforced brick masonry construction. It has a flat roof with a stepped parapet on the west façade and flat parapets on the north and south façades. There is a bay window on the primary façade; other fenestration consists of a combination of fixed and double hung wood windows with divided lights and leaded glass, and an arched opening with three pointed arched windows inset with divided lights and leaded glass. Windows typically have cast stone surrounds and sills. The primary entrance is located on the west façade at the northeast corner and has double, wood, fully glazed doors with an awning.

The Third Church of Christ, Scientist Reading Room was identified by SurveyLA as potentially eligible for listing at the federal, state, and local levels as an “excellent and rare example of a 1930s religious building in Downtown Los Angeles; one of few examples remaining from this period. Building includes a freestanding pole sign with neon illumination.”⁵ The SurveyLA evaluation is included in Appendix E. The description of the relevant context/theme/property type from SurveyLA is included in Appendix F for reference. Therefore, for purposes of this analysis, the Third Church of Christ, Scientist Reading Room is considered a historical resource as defined by CEQA.

⁵ “SurveyLA Historic Resources Survey Report: Central City Community Plan Area,” Architectural Resources Group for City of Los Angeles, 2016.

AUTO CENTRE GARAGE



Auto Centre Garage, view looking southeast along Hope Street., Source: HRG, June 2023.

The Auto Centre Garage is located at 746 S. Hope Street, on the east side of S. Hope Street between W. 7th and W. 8th Streets. It was originally constructed in 1925 as an auto garage and was designed by Noerenberg & Johnson. It is commercial vernacular in style with Beaux Arts details. It is set at the sidewalk and occupies the entire parcel with no setbacks. It is eight stories in height, with a rectangular plan, simple massing, and a symmetrical composition on the primary façade. It is of board-formed concrete construction with a concrete foundation. The roof is flat with a parapet. Fenestration primarily consists of steel fixed and awning windows with divided lights. The primary

entrance is located along S. Hope Street and has Beaux Arts architectural details.

The Auto Centre Garage was identified by SurveyLA as potentially eligible for listing at the federal, state, and local levels as an “excellent example of a 1920s parking structure in Downtown Los Angeles, exhibiting essential characteristics of the property type; one of the earliest known examples of a parking structure in the city. Notably, the garage included a ‘finely-appointed ladies’ lounge’ and catered to the largely-female clientele of nearby department stores, who could have their cars serviced and washed as they shopped.”⁶ The SurveyLA evaluation is included in Appendix E. The description of the relevant context/theme/property type from SurveyLA is included in Appendix F for reference. Therefore, for purposes of this analysis, the Auto Centre Garage is considered a historical resource as defined by CEQA.

⁶ City of Los Angeles, “SurveyLA Historic Resources Survey Report: Central City Community Plan Area,” prepared by Architectural Resources Group for City of Los Angeles, 2016.

Analysis of Potential Impacts

SIGNIFICANCE THRESHOLD

A significant effect on the environment as defined by CEQA would occur if a project results in a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5(a). Substantial adverse change is defined as “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of a historical resource would be materially impaired.”⁷ According to CEQA Guidelines Section 15064.5(b)(2), the significance of a historical resource is materially impaired when a project demolishes or materially alters in an adverse manner those physical characteristics that:

- A. Convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register; or
- B. Account for its inclusion in a local register of historical resources pursuant to PRC Section 5020.1(k) or its identification in a historical resources survey meeting the requirements of PRC Section 5024.1(g) Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
- C. Convey its historical significance and that justify its eligibility for inclusion in the California Register as determined by a Lead Agency for purposes of CEQA.

According to CEQA Guidelines Section 15064(d)(1-3), in evaluating the significance of the potential environmental effect of a project on historical resources, both direct physical changes to the environment and reasonably foreseeable indirect physical changes are considered:

- 1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project.
- 2) An indirect physical change in the environment is a physical change in the environment, which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment.
- 3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.⁸

As applied to the evaluation of potential impacts to historical resources, direct impacts are those that occur during construction and would include the demolition, material alteration, relocation, or conversion of a historical resource and/or its important character-defining features. Direct impacts may also involve potential damage related to adjacent underground excavation and general construction activities that could undermine the stability of a historical

⁷ CEQA Guidelines, Section 15064.5(b)(1).

⁸ CEQA Guidelines, Section 15064(d)(1-3).

resource. Indirect impacts may involve alteration to the surroundings of a historical resource that could remove part or all of the associated setting of an historical resource, remove character-defining features or spaces surrounding the historical resource, or substantially impair or obscure the ability of the resource to convey its historical significance. Historical resources directly adjacent to the Project Site are more likely to be adversely impacted by the Project, specifically by alteration to the immediate setting of the resources in the vicinity, or by construction activities that have the potential to de-stabilize adjacent properties. Historical resources that are physically separated from the Project Site by other buildings or streets, or by additional distance, are less likely to be adversely impacted due to this spatial separation.

POTENTIAL IMPACTS

Boston Stores – J. W. Robinson’s

Potential Direct Impacts

The Project does not propose to demolish, alter, relocate, or convert the former J. W. Robinson’s building. Because the J. W. Robinson’s building is located in proximity to the Project Site, there is the potential that it could be impacted as a result of construction activity on the Project Site. However, as identified in the IS for the Project, the J. W. Robinson Building is not immediately adjacent to the Project Site; it is located approximately 258 feet north of the Project Site and is physically separated from the Project Site by a five-level parking structure along Grand Avenue, the eight story Auto Centre Garage, and the two-story Third Church of Christ, Scientist Reading Room along S. Hope Street. The former J.W. Robinson’s is therefore physically separated from the Project Site to such an extent that there are no reasonably foreseen potential impacts as a result of construction activity on the Project Site.⁹ The Project would not materially alter the former J. W. Robinson’s building, and it would retain the essential physical characteristics that convey its historic significance. Therefore, there would be no potential direct impacts to the former J. W. Robinson’s building as a result of the Project.

Potential Indirect Impacts

The Project would construct a 50-story mixed-use tower on the Project Site. The Project therefore has the potential to impact the setting of the J. W. Robinson Building. Although the Project would introduce a new, contemporary building of significant height on the Project Site, it is located in a densely developed urban environment that developed over time and is currently characterized by buildings from different periods, in a range of architectural styles, and differing vastly in height. This includes high rise buildings in proximity to the Project Site that range from approximately 246 feet to approximately 637 feet in height. Therefore, although the Project would alter the setting of the nearby J.W. Robinson’s building, the impact would be less than significant. The new construction would be approximately 258 feet away from the J. W. Robinson Building and is separated from the historical resource by several parcels. In addition, the height and design of the new construction is consistent with other existing buildings in the immediate environs. A change in the setting of an early department store would not materially impair the resource such that it could no longer convey its historic

⁹ This is confirmed by the Noise and Vibration study prepared for the DEIR, which did not identify a potential for the Project to exceed the peak particle velocity (PPV) threshold that would indicate that the Project could result in a potential direct impact to the former J.W. Robinson’s building as a

result of construction activity, including subterranean excavation. Source: Acoustical Engineering Services, “Noise Calculations Worksheets,” 8th, Grand and Hope Project, July 15, 2019.

significance. The former J. W. Robinson's building would remain highly visible from all vantage points, despite the introduction of new construction in the vicinity. The significance of the J. W. Robinson's building as an early example of a department store in Downtown Los Angeles is expressed through its physical features, which would not be altered or obscured by the Project. The former J. W. Robinson's building would retain the essential features that convey its historic significance, and therefore, it would not be materially impaired as a result of new construction as proposed by the Project. Therefore, there would be no potential indirect impacts to the former J. W. Robinson's building as a result of the Project.

Third Church of Christ, Scientist Reading Room

Potential Direct Impacts

The Project does not propose to demolish, alter, relocate, or convert the Third Church of Christ, Scientist Reading Room. Because the Third Church of Christ, Scientist Reading Room is located in proximity to the Project Site, there is the potential that it could be impacted as a result of construction activity on the Project Site. However, as identified in the IS for the Project, the Third Church of Christ, Scientist Reading Room is not immediately adjacent to the Project Site; it is located approximately 178 feet north of the Project Site and is physically separated from the Project Site by a five-level parking structure along Grand Avenue, and the eight story Auto Centre Garage along S. Hope Street. The Third Church of Christ, Scientist Reading Room is therefore physically separated from the Project Site to such an extent that there are no reasonably foreseen potential impacts as a result of construction activity on the Project Site.¹⁰ The Project would not materially alter the Third Church of Christ, Scientist Reading Room, and it would retain the essential physical characteristics that convey its historic significance. Therefore, there would be no potential direct impacts to the Third Church of Christ, Scientist Reading Room as a result of the Project.

Potential Indirect Impacts

The Project would construct a 50-story mixed-use tower on the Project Site. The Project therefore has the potential to impact the immediate setting of the Third Church of Christ, Scientist Reading Room. Although the Project would introduce a new, contemporary building of significant height on the Project Site, it is located in a densely developed urban environment that developed over time and is currently characterized by buildings from different periods, in a range of architectural styles, and differing vastly in height. This includes high rise buildings in proximity to the Project Site that range from approximately 246 feet to approximately 637 feet in height. Therefore, although the Project would alter the setting of the nearby Third Church of Christ, Scientist Reading Room, the impact would be less than significant. The new construction would be approximately 178 feet away from the Third Church of Christ, Scientist Reading Room and is separated from the historical resource by several parcels. The height and design of the new construction is consistent with other existing buildings in the immediate environs. A change in the setting of an early and rare religious building would not materially impair the resource such that it could no longer convey its historic significance. In addition, the

¹⁰ This is confirmed by the Noise and Vibration study prepared for the DEIR, which did not identify a potential for the Project to exceed the peak particle velocity (PPV) threshold that would indicate that the Project could result in a potential direct impact to the former J.W. Robinson's

building as a result of construction activity, including subterranean excavation. Source: Acoustical Engineering Services, "Noise Calculations Worksheets," 8th, Grand and Hope Project, July 15, 2019.

eligibility standards developed by SurveyLA for the evaluation of religious property types acknowledge that retention of integrity of setting is not required for a property to convey its significance. The significance of the Third Church of Christ, Scientist Reading Room as an excellent and rare example of a 1930s religious building in Downtown Los Angeles is expressed through its physical features, which would not be altered or obscured by the Project. The primary façade of the Third Church of Christ, Scientist Reading Room would remain highly visible as it was historically, despite the introduction of new construction in the vicinity. The Third Church of Christ, Scientist Reading Room would retain the essential features that convey its historic significance, and it would not be materially impaired as a result of new construction as proposed by the Project. Therefore, there would be no potential indirect impacts to the Third Church of Christ, Scientist Reading Room as a result of the Project.

Auto Centre Garage

Potential Direct Impacts

The Project does not propose to demolish, alter, relocate, or convert the Auto Centre Garage. Because the Auto Centre Garage is located immediately adjacent to the Project Site, there is the potential that it could be impacted as a result of construction activity on the Project Site. The DEIR identifies that there is the potential for noise and vibration during construction that could impact the Auto Centre Garage, and includes the following mitigation measure to reduce potential impacts to a less-than-significant level:

Mitigation Measure NOI-MM-2: Prior to start of construction, the Applicant shall retain the services of a structural engineer or qualified professional to visit the multi-story parking structure adjacent to the Project Site to the north to inspect and document the apparent physical condition of the structures' readily-visible features. The inspection survey shall be made to the extent feasible from the public right of way and within the Project Site's property line.

The Applicant shall retain the services of a qualified acoustical engineer to review proposed construction equipment and develop and implement a vibration monitoring program capable of documenting the construction-related ground vibration levels at property line of the parking structure adjacent to the Project Site to the north during demolition and grading/excavation phases. The vibration monitoring system shall continuously measure and store the peak particle velocity (PPV) in inch/second. The system shall also be programmed for two preset velocity levels: a warning level of 0.45 PPV and a regulatory level of 0.5 PPV. The system shall also provide real-time alert when the vibration levels exceed the two preset levels.

In the event the warning level (0.45 PPV) is triggered, the contractor shall identify the source of vibration generation and provide feasible steps to reduce the vibration level, including but not limited to halting/staggering concurrent activities and utilizing lower vibratory techniques.

In the event the regulatory level (0.5 PPV) is triggered, the contractor shall halt the construction activities in the vicinity of the parking structure and visually inspect the building for any damage. Results of the inspection must be logged, and repairs will be

provided in the event any damage occurred. The contractor shall identify the source of vibration generation and provide feasible steps to reduce the vibration level. Construction activities may then restart once the vibration level is measured and below the warning level.

With the implementation of Mitigation Measure NOI-MM-2, potential direct impacts to the Auto Centre Garage would be reduced to less-than-significant.

Potential Indirect Impacts

The Project would construct a 50-story mixed-use tower on the Project Site. Due to its immediate adjacency to the Auto Centre Garage, the Project has the potential to impact the immediate setting of the Auto Centre Garage. Although the Project would introduce a new, contemporary building of significant height on the Project Site, it is located in a densely developed urban environment that developed over time and is currently characterized by buildings from different periods, in a range of architectural styles, and differing vastly in height. This includes high rise buildings in proximity to the Project Site that range from approximately 246 feet to approximately 637 feet in height. Therefore, although the Project would alter the immediate environs of the Auto Centre Garage, the impact would be less than significant. A change in the setting of an early auto-related resource would not materially impair the resource such that it could no longer convey its historic significance. The eligibility standards developed by SurveyLA for the evaluation of automobile related property types acknowledge that retention of integrity of setting is not required for a property to convey its significance; in fact, the eligibility standards require only retention of integrity of location, design, and feeling for an auto-related resource to continue to convey its significance. The significance of the Auto Centre Garage as an excellent example of a 1920s parking structure in Downtown Los Angeles is expressed through its physical features, which would not be altered or obscured by the Project. The primary façade of the Auto Centre Garage would remain highly visible as it was historically, despite the introduction of new construction on the neighboring parcel. The Auto Centre Garage would retain the essential features that convey its historic significance, and it would not be materially impaired as a result of new construction as proposed by the Project. Therefore, there would be no potential indirect impacts to the Auto Centre Garage as a result of the Project.

Conclusion

There are no historical resources on the Project Site. However, the Project Site is adjacent to the Boston Store-J.W. Robinson's at 600 W. 7th Street, which is a designated Historic-Cultural Monument (HCM #357); and the Third Church of Christ, Scientist Reading Room at 730 S. Hope Street, which was identified as potentially eligible by SurveyLA. As identified in the IS for the Project and confirmed through additional analysis conducted for this memorandum, the Project would not result in potential significant direct or indirect impacts to these two historical resources.

The Auto Centre Garage, at 746 S. Hope Street, was identified as potentially eligible by SurveyLA. It is located immediately adjacent to the Project Site. Analysis conducted for this memorandum confirms that despite the introduction of a 50-story tower next to the Auto Centre Garage, it

would retain the essential physical features that convey its significance, and the change in the setting would therefore not result in a significant indirect impact to the historical resource. However, due to its immediate proximity to the Project Site, the DEIR did identify the potential for significant direct impacts resulting from construction activity. CEQA requires the consideration of feasible mitigation measures in order to lessen or avoid the significant adverse impacts of a Project on the environment. The CEQA Guidelines define mitigation as those measures which could avoid the impact altogether or minimize the impact by limiting its degree or magnitude.¹¹ Therefore, the DEIR includes Mitigation Measure NOI-MM-2, which would reduce potential direct impacts to the Auto Centre Garage to a less-than-significant level.

Therefore, this memorandum supports the conclusions in the IS and the DEIR for the Project that, with mitigation, there would be no significant adverse impacts to the three historical resources adjacent to the Project Site resulting from the Project.

¹¹ CEQA Guidelines, Section 15370.

Appendix A: Current Condition Photographs



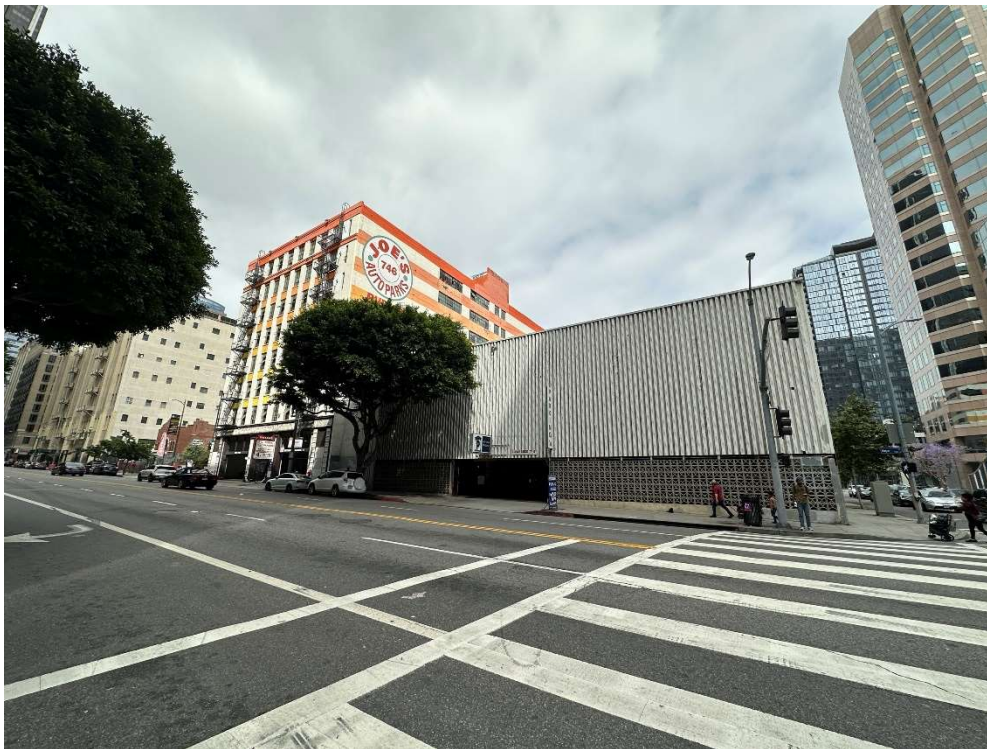
Project Site, 609 W. 8th St., view northwest.



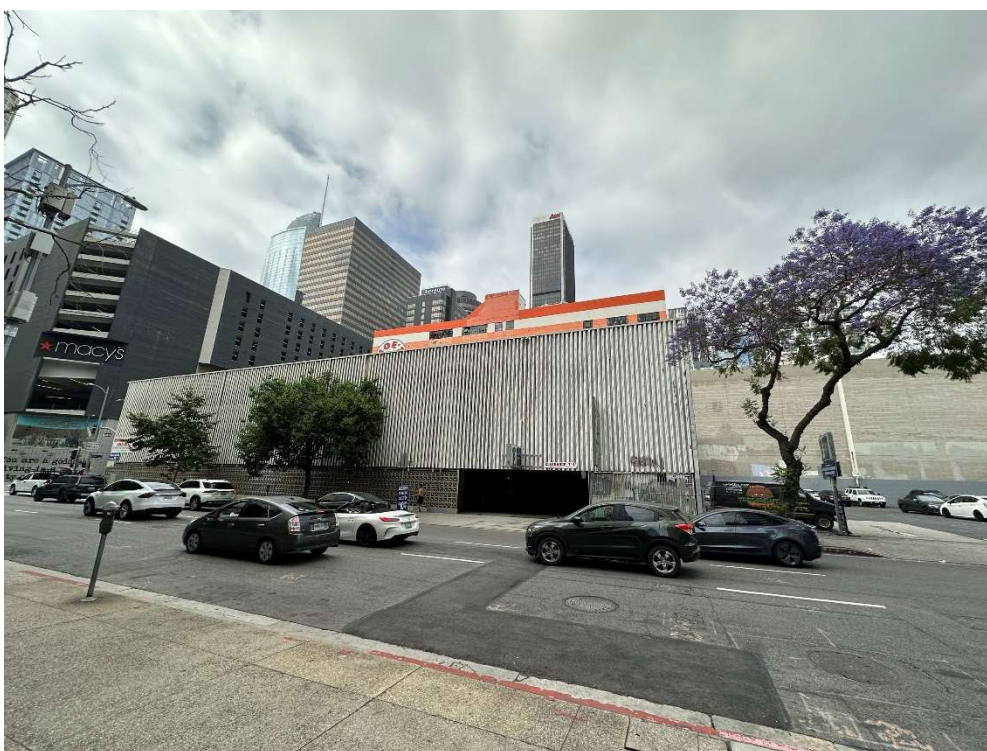
Project Site, 754 S. Hope St., view south.



Project Site, 754 S. Hope St., view northeast.



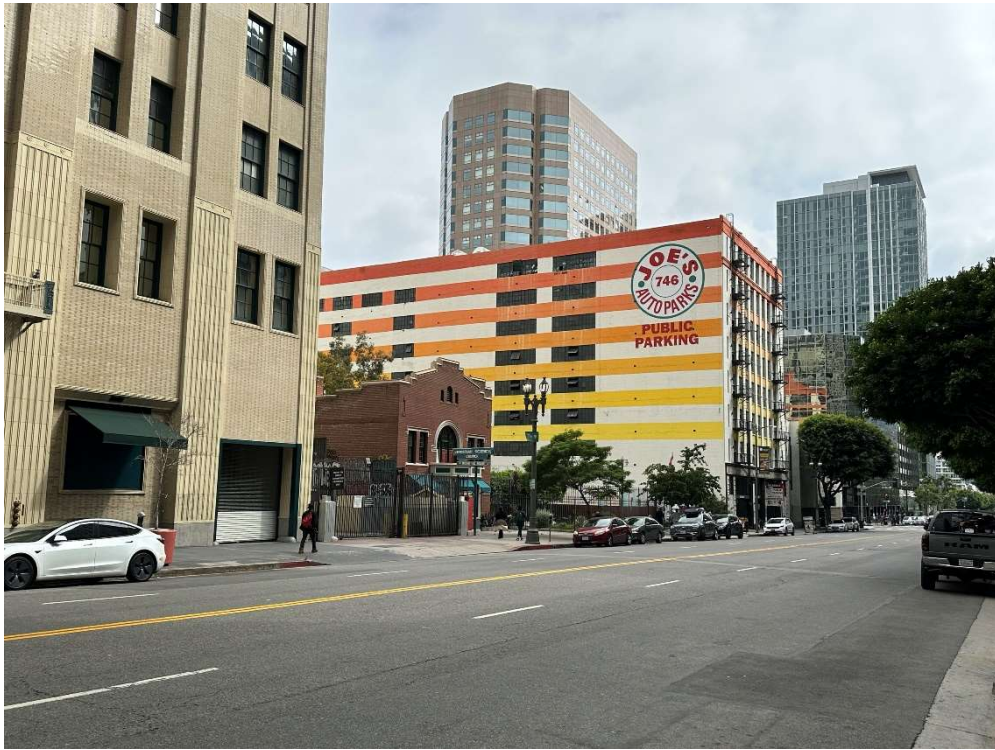
Project Site, 754 S. Hope St., and wider setting, view southeast.



Project Site: 754 S. Hope St., and wider setting, view north.



Project Site, 754 S. Hope St., and wider setting, view northeast.



Overview of adjacent historical resources along S. Hope St., view south.



Former J.W. Robinson's building, view southwest.



Former J.W. Robinson's building, view southwest.



Former J.W. Robinson's building, view northwest.



Former J.W. Robinson's building, view west.



Third Church of Christ, Scientist Reading Room, 730 S. Hope St., view southeast.



Auto Centre Garage, 746 S. Hope St., view southeast.

Appendix B: Historic & Aerial Photographs



Third Church of Christ, Scientist, 1956. Source: Los Angeles Public Library.



View looking south along S. Hope Street showing demolition of Third Church of Christ, Scientist, 1974. Source: Los Angeles Public Library, Security Pacific National Bank Collection.

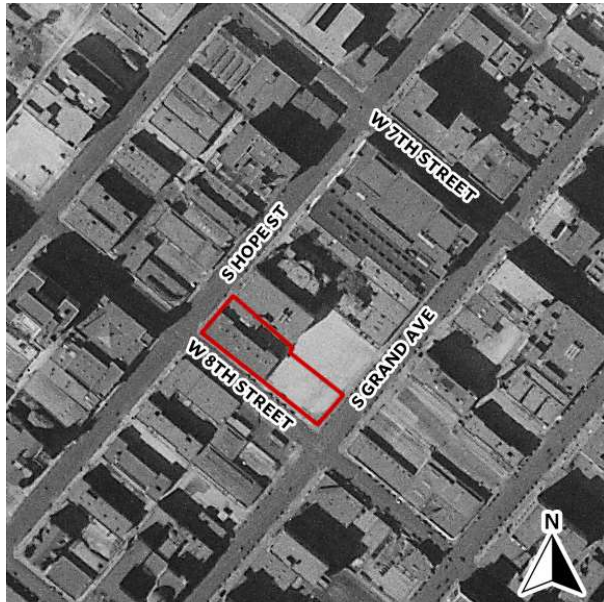


Original Beaux Arts design of the J.W. Robinson Company Store Building, c. 1920. Source: Loyola Marymount University Special Collections, Werner Von Boltensstern Postcard Collection.

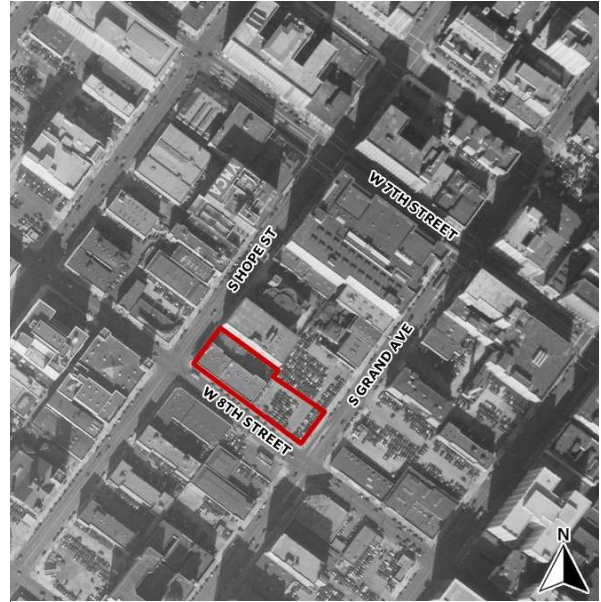


J.W. Robinson Company Store Building, c. 1940 showing 1934 remodel by Allison & Allison. Source: Loyola Marymount University Special Collections, Werner Von Boltensstern Postcard Collection.

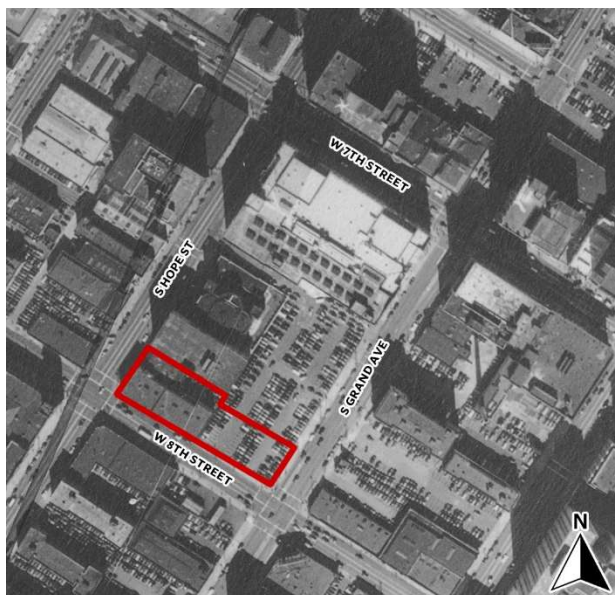
AERIAL PHOTOGRAPHS ILLUSTRATING DEVELOPMENT OVER TIME¹²



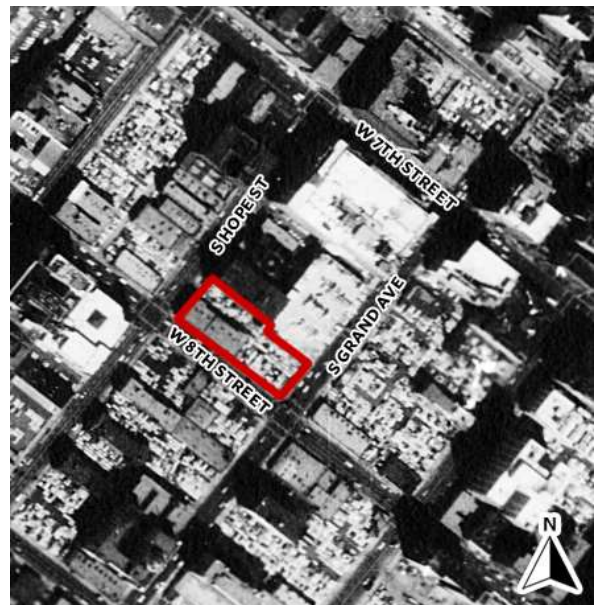
1927



1931



1940

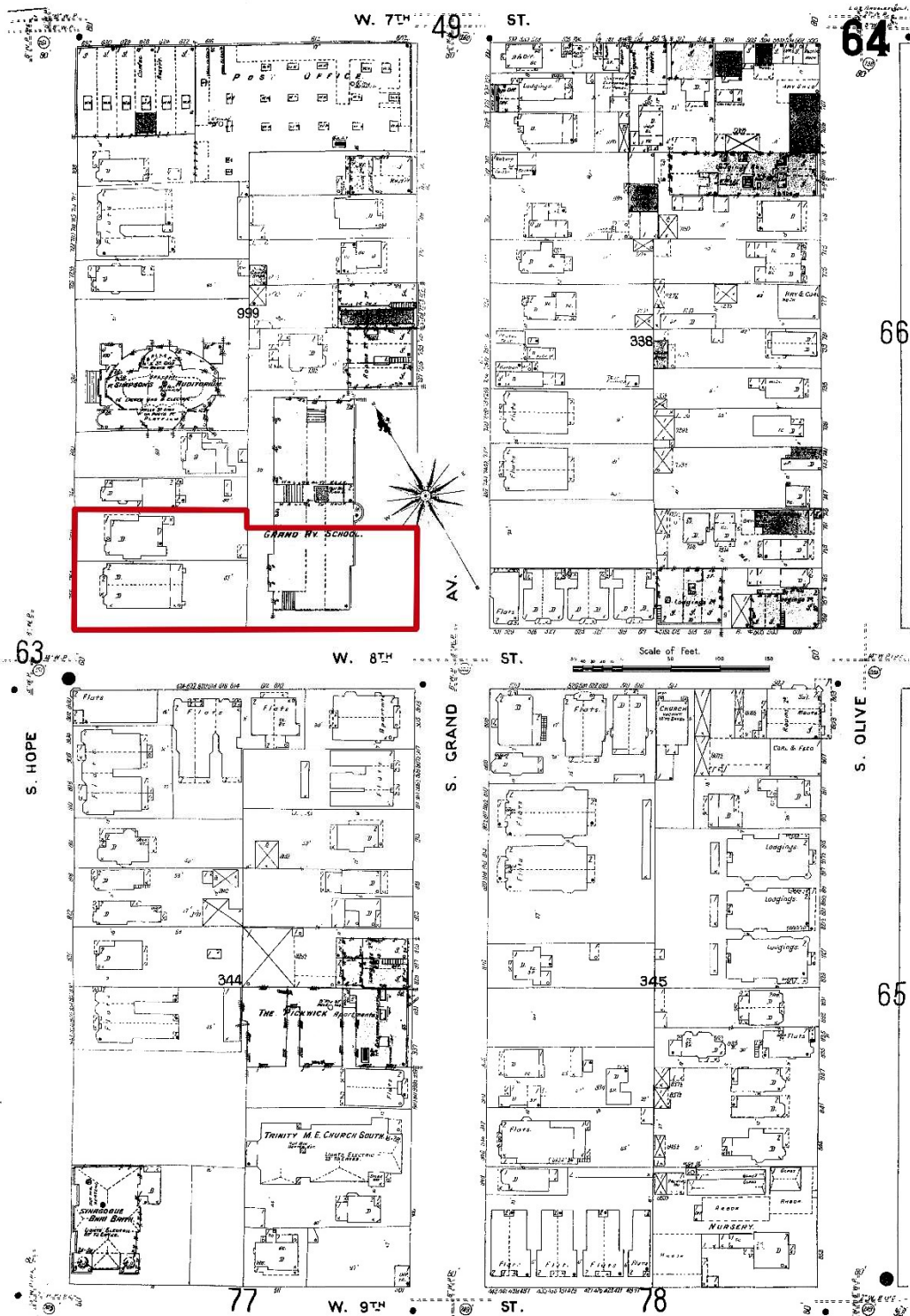


1965

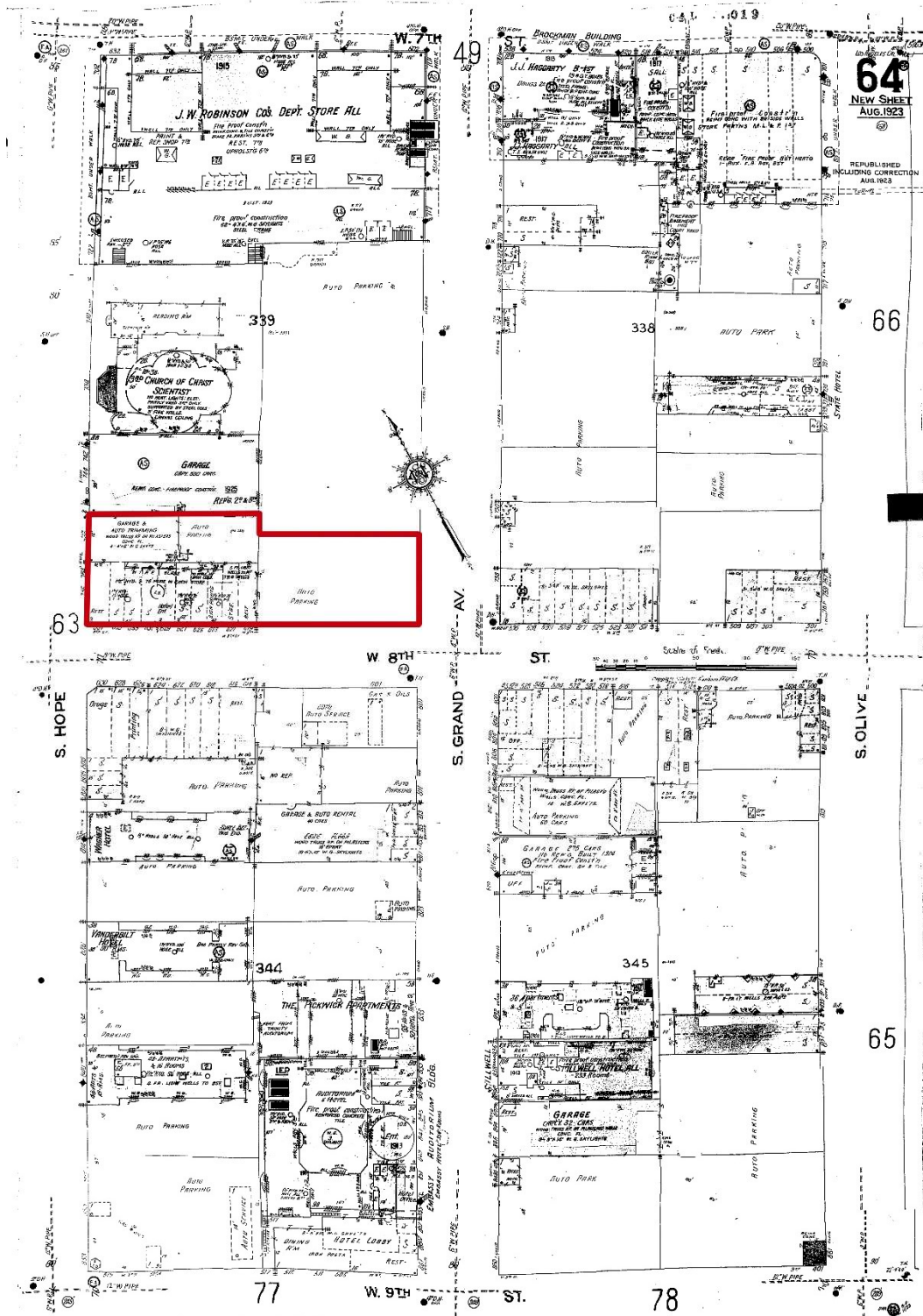
¹² Project Site highlighted in red. Source: Historic Aerial Photographs, FrameFinder UCSB Library,

mil.library.ucsb.edu/ap_indexes/FrameFinder (Accessed June 2023).

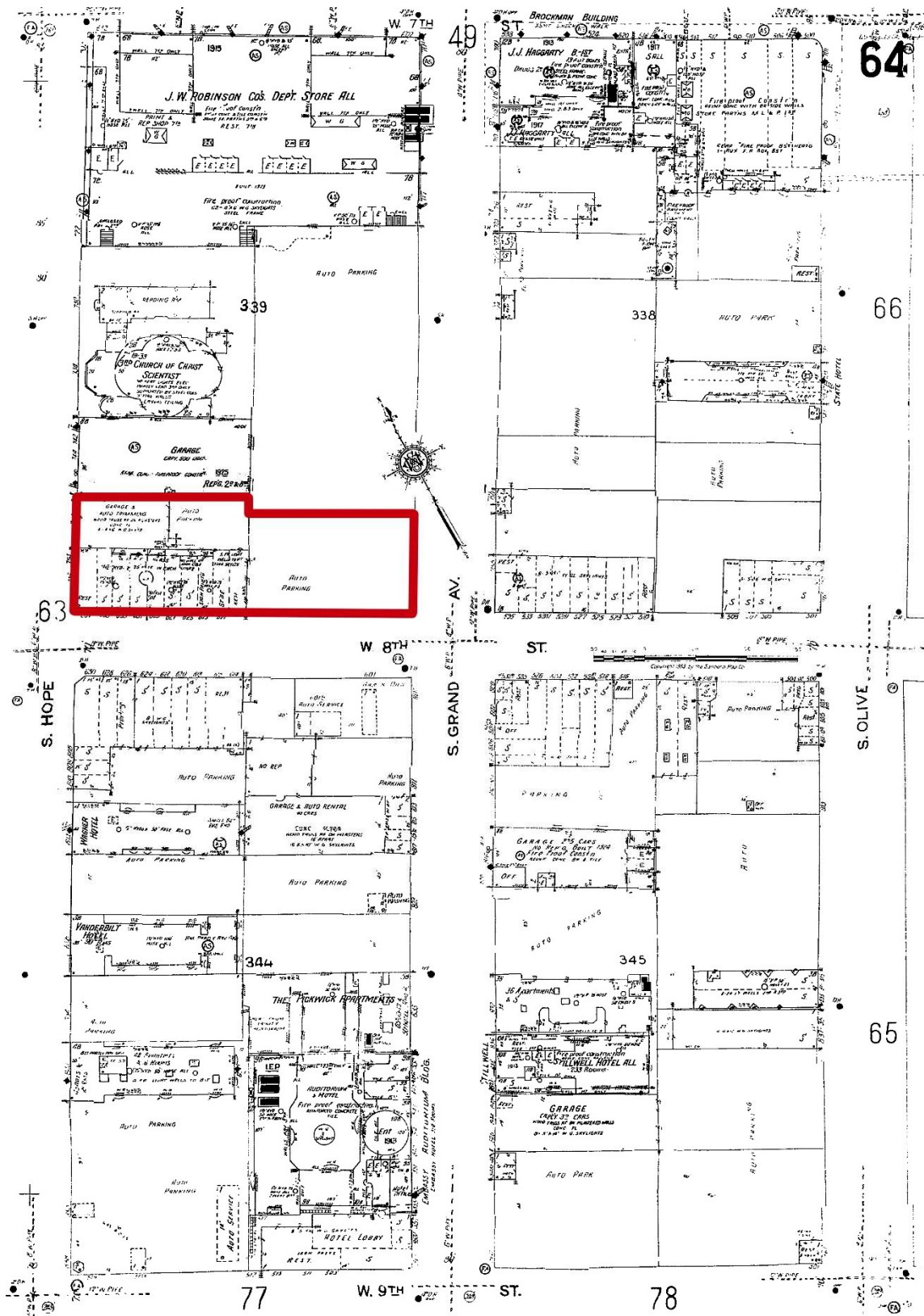
Appendix C: Sanborn Maps



Sanborn Map, 1906. Project Site outlined in red.



Sanborn Map, 1950. Project Site outlined in red.



Sanborn Map, 1953. Project Site outlined in red.

Appendix D: Permit History

DATE	PERMIT NO.	OWNER	ARCHITECT/CONTRACTOR	DESCRIPTION OF WORK
730-734 South Hope Street (Third Church of Christ, Scientist Reading Room)				
10/9/1936	1936LA27826	Third Church of Christ Scientist	G. A. Howard (architect), F. Scott Crowhurst (contractor), Blaine Noice (engineer)	New construction of 44' x 110' 2-story reinforced brick building to house Reading Room and offices. (\$20,000)
9/29/1948	1948LA26539	Christian Science Reading Room	George A. Howard (architect), 20 th Century Lites, Inc. (contractor)	Erect horizontal sign. Brick exterior wall. (\$150)
11/24/1954	1954LA99831	3 rd Church of Christ Scientist	KoolVent of California Inc. (contractor), L. Breinin (engineer)	Install aluminum awning. (\$300)
6/5/2014	14016-10000-10854	Third Church of Christ Scientist	Aurora Roofing & Repair (contractor)	Re-roof with Class A or B material weighing less than 6 pound per sq. ft. "Cool Roof" may be required per Title 24, Part 6, Section 149(b), labeled and certified by CRRC per Section 10-111. (\$8,500)
742-746 South Hope Street (Auto Centre Garage)				
2/20/1925	1925LA06433	Seventh & Hope St Fireproof Building Co.	Noerenberg & Johnson (architect), Wallace G. Dunham (contractor)	New construction of 79'8" x 172'2" 9-story concrete Garage & Store building. (\$369,000)
7/7/1925	1925LA23662	7 th & Hope St Fireproof Bldg Co.	Noreneberg & Johnson (architect), Wallace G. Dunham (contractor)	Change roof construction and outlet to roof, eight floor, and front parapet wall. (\$100)
9/16/1925	1925LA31817	7 th & Hope St. Bldg. Co.	H. A. Nichols (contractor)	Put in Tire Racks and Screen with 10 gauge 2' mesh wires. Sheathing partition 8' high 14" long doors [illegible] to ceiling. (\$95)
10/24/1925	1925LA36624	Auto Centre Bldg.	A. Nibecker Jr. (architect), H. A. Nichols (contractor)	Tile partition between Col. 7+8 and 8+2 on 6 th floor with steel roller door and metal sash. (\$300)

DATE	PERMIT NO.	OWNER	ARCHITECT/CONTRACTOR	DESCRIPTION OF WORK
11/7/1925	1925LA38303	Auto Centre Inc.	Calif. Elect. Sign Co.	Wish to erect one sign of two sections 3' to 4' x 45' as per diagram on back to be secured by knee irons of 2"x6" flat iron 1/2" x4" exp shields on building and garages with 3/8" cable + turnbuckles. (\$175)
11/24/1925	1925LA40467	L.A. Motor Services	H. A. Nichols (contractor)	Remove tile partition Bet. Col #15+21 leave open. Erect office partitions 7' high as shown starting at Col. 7+9 to bet. Col 19 + 13. (\$250)
9/27/1932	1932LA15725	H. B. Hibbard	S. Olsen (contractor)	To remove non bearing tile and plaster partitions. (\$600) COO
1/3/1952	1952LA23339	Z. Wayne Griffin	Bilt-Well Roof & Material Co. (contractor)	New composition roof – one layer of 30 lb. saturated felt and one 65 lb. cap sheet walls to be cold coated with asbestos film and ash coating. New roof to be applied over old one. (\$1,675)
3/12/1952	1952LA26367	Z. Wayne Griffin	A. J. Magory (contractor), Laurence J. Waller (engineer)	Brace [illegible] on Roof. (\$500)
10/28/1954	1954LA01288	Z. Wayne Griffin	Llewellyn A. Parker (architect and engineer)	Construct an 8' x 15' office in south front corner of building. Also, install two Fire Sprinklers in office as shown on plans, connecting to same main sprinkler system in ceiling at garage. (\$300)
8/14/1956	1956LA50644	Hill Parking System, Inc.	L. A. Parker (architect), Edw. H. Parker (engineer)	Install "Manlift" for trans. of employee floor to floor. (\$5,000)
12/9/1966	1966LA37440	Phillips Petro	Advance Neon Sign Co (contractor)	Install d/f/ proj wall sign. (\$250)
1/9/1970	1970LA01763	John Harridan	J. Corbett (engineer), Owner (contractor)	Convert office (Mezzanine) area into additional parking. (\$2,000)

Appendix E: SurveyLA Evaluations

Central City

Individual Resources - 09/02/16



Primary Address: 730 S HOPE ST
 Other Address: 734 S HOPE ST
 738 S HOPE ST
 Name: Third Church of Christ, Scientist Reading Room
 Year built: 1937
 Architectural style: Gothic Revival, Late

Context 1:

Context:	Public and Private Institutional Development, 1850-1980
Sub context:	Religion and Spirituality, 1850-1980
Theme:	Religious Property Types, 1850-1980
Sub theme:	No SubTheme
Property type:	Institutional - Religion/Spirituality
Property sub type:	Religious Building
Criteria:	C/3/3
Status code:	3S;3CS;5S3
Reason:	Excellent and rare example of a 1930s religious building in Downtown Los Angeles; one of few examples remaining from this period. The building was constructed as a reading room for the Third Church of Christ, Scientist, which was located on an adjacent property. The church was demolished in the 1970s, but the reading room remained extant. Building includes a freestanding pole sign with neon illumination.



Primary Address: 746 S HOPE ST
 Other Address: 742 S HOPE ST
 744 S HOPE ST
 Name: Auto Center Garage
 Year built: 1925
 Architectural style: Commercial, Vernacular; Beaux Arts Classicism

Context 1:

Context:	Commercial Development, 1850-1980
Sub context:	No Sub-context
Theme:	Commercial Development and the Automobile, 1910-1980
Sub theme:	The Car and Car Services, 1910-1960s
Property type:	Commercial - Auto Related
Property sub type:	Parking Structure
Criteria:	A/C; 1/3; 1/3
Status code:	3S;3CS;5S3
Reason:	Excellent example of a 1920s parking structure in Downtown Los Angeles, exhibiting essential characteristics of the property type; one of the earliest known examples of a parking structure in the city. Notably, the garage included a "finely-appointed ladies' lounge" and catered to the largely-female clientele of nearby department stores, who could have their cars serviced and washed as they shopped.

Appendix F: SurveyLA Eligibility Standards

Los Angeles' Citywide Historic Context Statement (HCS) was designed for use by SurveyLA field surveyors and by all agencies, organizations, and professionals completing historical resources surveys in the City of Los Angeles. The context statement was organized using the Multiple Property Documentation (MPD) format developed by the National Park Service for use in nominating properties to the National Register. This format provided a consistent framework for evaluating historical resources. It was adapted for local use to evaluate the eligibility of properties for city, state, and federal designation programs. The HCS used Eligibility Standards to identify the character defining, associative features and integrity aspects a property must retain to be a significant example of a type within a defined theme. Eligibility Standards also indicated the general geographic location, area of significance, applicable criteria, and period of significance associated with that type. These Eligibility Standards are guidelines based on knowledge of known significant examples of property types; properties do not need to meet all of the Eligibility Standards in order to be eligible. Moreover, there are many variables to consider in assessing integrity depending on why a resource is significant under the National Register, California Register or City of Los Angeles HCM eligibility criteria. SurveyLA findings are subject to change over time as properties age, additional information is uncovered, and more detailed analyses are completed. Resources identified through SurveyLA are not designated resources. Designation by the City of Los Angeles and nominations to the California or National Registers are separate processes that include property owner notification and public hearings.

The relevant contexts, themes, and property types that were used to evaluate the Auto Centre Garage and the Third Church of Christ, Scientist Reading Room adjacent to the Project Site are listed below.¹³

AUTO CENTRE GARAGE, 746 S. HOPE STREET

Context:	Commercial Development, 1850-1980
Theme:	Commercial Development and the Automobile, 1910-1980
Sub-theme:	The Car and Car Services, 1910-1960s
Property Type:	Parking Structure

Summary Statement of Significance

The parking structure is a building type that evolved as a facility for storing parked cars in a compact fashion. A parking structure evaluated under this sub-theme is significant in the area of Commerce; most examples may also be significant in the area of Architecture. They illustrate the evolution of the parking structure as a significant commercial building type related to the automobile and Los Angeles' flourishing car culture. They show how a building type's design is shaped by accommodation to the needs of automobile as well as the stylistic and economic trends of the day. Extant, intact examples are becoming increasingly rare.

¹³ Because the former J.W. Robinson's was already formally designated as an HCM prior to the survey of the Central City CPA, it was not re-evaluated by SurveyLA.

Eligibility Standards

- Was designed and historically used to provide compact parking for the automobile
- Is an excellent, early, or rare example of the property type
- Contains architectural and site layout features that reflect the influence of, and adaption to, the automobile
- Was constructed during the period of significance

Character Defining / Associative Features

- Retains most of the essential character defining features from the period of significance
- Of a style or mixture of styles typical of the period of construction such as Beaux Art Classicism, Spanish Colonial Revival, and Mid-Century Modern
- Typically also significant within a theme under the Architecture and Engineering context and associated with noted designers/architects
- Of the layouts typical in adapting to the needs of the automobile (e.g. multi-storied with means of transporting cars from one level to another, structure determined by the need to support load of parked cars, located in densely built-it area with little or no space for exterior auto circulation)
- May be associated with particular companies/corporations important in Los Angeles' commercial history, particularly in the Downtown area

Integrity Considerations

- Should retain integrity of Design, Location, Feeling, Association, and Materials
- Should retain as much design integrity as possible, including overall massing, significant features, and identifying details such as trim and signage
- Some original materials may have been altered, removed, or replaced
- Should retain as much of original relationship to the street and to adjacent buildings as possible, so as to establish importance of accommodating the structure to the spatial needs of the automobile and to the dense setting
- If use has changed, adaptation to new use should allow for maintenance of as much of the original design and site layout as possible
- Site integrity should retain original relationship to the street

THIRD CHURCH OF CHRIST, SCIENTIST READING ROOM, 730 S. HOPE STREET

Context:	Public and Private Institutional Development, 1850-1980
Sub-Context:	Religion and Spirituality, 1910-1980
Theme:	Religious Property Types, 1850-1980
Property Type:	Religious Building

Summary Statement of Significance

Religion is significant to the development of Los Angeles as a way of telling about the cultures that have settled and what makes the City so diverse. Religion is heavily integrated in the social and cultural happenings of a community often through services provided for the surrounding area. The physical structures relate to the development of the built environment and lend assistance to explaining the shift or stability of communities. Religious institutions that remained in an area and were designed by prominent local architects or housed congregations or activists

important to social and cultural maturation of Los Angeles are significant to the physical and social fabric of contemporary Los Angeles.

Significance is considered as a theme in the history of a particular religion specific to the broad pattern or event which undoubtedly has secular scholarly recognition. The property may have significance if it is associated with a specific event or broad pattern in a historical theme such as exploration, settlement, social, philanthropy and/or education. Some properties are unclear of what is deemed sacred and secular. In this case, the resource is considered significant if the ethno history has been historically documented and the site is clearly defined. If the resource has an association with traditional cultural values, the religion must be historically rooted in the beliefs, customs and practices and/or in association with events or series of events.

Eligibility Standards

- Is an important or rare example of a religious property type
- Dates from the period of significance

Character Defining / Associative Features

- Retains most of the essential character defining features from the period of significance
- Represents one of the best example of a religious property type
- May also be significant in the area of ethnic heritage and evaluated under Criterion A/1/1.

Integrity Considerations

- Retains sufficient integrity to convey significance
- If the type is rare, there may be a greater degree of alteration or fewer extant features
- Setting (surrounding buildings and land uses) may have changed
- Some original materials may have been altered, removed or replaced
- Use may have changed
- For local HCM may be relocated for preservation purposes

Attachment 3

KPFF Response to Supplemental Comments
dated March 1, 2024



DATE: April 5, 2024

TO: Jason McCrea and Polonia Majas, City of Los Angeles Department of City Planning

FROM: Brian Powers, P.E., KPFF

RE: 8th and Grand/Hope
Response to Supplemental Comments dated March 1, 2024

KPFF has reviewed the Supplemental Comments in Support of Appeal of City Planning Commission Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN) submitted by Adams Broadwell Joseph & Cardozo on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA) on March 1, 2024. The supplemental comment letter contained five comments. The first and second comments apply to the fire flow analysis contained in the Utility Infrastructure Technical Report of the EIR, which KPFF prepared. We have prepared the following response to the first and second comments:

Comment #1: First, the City – both in the EIR and in the approval findings – lacked substantial evidence to conclude the Project meets applicable fire flow requirements set forth in the Los Angeles Municipal Code (“LAMC”). Fire flow refers to the rate of a water supply that is available at surrounding fire hydrants for firefighting purposes. The City’s EIR relies on a Fire Flow Availability Report (“IFFAR”) prepared in 2019 which concludes that there is adequate fire flow available to the Project. But the Los Angeles Department of Water and Power prepared an IFFAR in February 2023 for a project across the street at 775 South Hope Street, well before the instant Project received its initial approval by the Advisory Agency on May 26, 2023. The 2023 IFFAR shows that fire flow available to hydrants in the area has dramatically decreased since 2019, and that fire flow available to the Project would fall short of the applicable fire flow requirement. This data was not disclosed or analyzed in the EIR, and was not considered by City decisionmakers. Inadequate fire flow would result in increased fire severity, limited firefighting capabilities, increased loss of life and property, and increased risk of fire spread – a significant impact under CEQA.

Response to Comment #1: The comment asserts that based on a 2023 IFFAR prepared for an unrelated project, the EIR’s evaluation of available fire-flow to the Project is inadequate. However, per Section 57.507 of the LAMC, “fire-flows shall comply with Table 57.507.3.1 for any structures, group of structures or facilities by the type of land development, or as otherwise determined by the Chief”. The Project obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019 (refer to Appendix F.1 of the Project’s Draft Environmental Impact Report (EIR), which states that “The required fire-flow for this project has been set at 6,000 to 9,000 G.P.M. from four to six fire hydrants flowing simultaneously”. Based on this applicable determination by LAFD, the Project EIR analyzed the more conservative flow of 9,000 G.P.M. from six hydrants flowing simultaneously. As discussed in the Utility Infrastructure Technical Report: Water (Utility Report) prepared by KPFF for the Project and included as Appendix I of the Draft EIR, an Information of Fire Flow Availability Report (IFFAR) was submitted to the Los Angeles Department of Water and Power (LADWP) to determine if the existing public water system would have adequate water pressure to serve the Project’s anticipated fire and domestic water needs. The results of the IFFAR approved by LADWP (refer to Exhibit 1 of the Utility Report) demonstrate that the applicable requirement of 6,000 to 9,000 gpm determined by LAFD can be met by the existing infrastructure. Also note that the IFFAR for 775 South Hope Street cited in this comment applies to a different project consisting of an entire block and on a separate block located west of the Project Site. In addition, the group of fire hydrants determined to be the hydrants that would service the 775 South Hope Street IFFAR are not the same fire hydrants that were determined to be applicable for the Project IFFAR. In particular, three of the hydrants for the 8th, Grand and Hope Project are served by a different water main not included in the 775 South Hope Street IFFAR. Therefore, the 775 South Hope Street IFFAR does not

demonstrate that fire flow available to the hydrants for the Project have dramatically decreased since 2019.

In addition, as set forth in the following excerpt from the Utility Report for additional information regarding project fire flow which is related to the subject comment:

Furthermore, LAMC Section 57.513, Supplemental Fire Protection, states that:

Where the Chief determines that any or all of the supplemental fire protection equipment or systems described in this section may be substituted in lieu of the requirements of this chapter with respect to any facility, structure, group of structures or premises, the person owning or having control thereof shall either conform to the requirements of this chapter or shall install such supplemental equipment or systems. Where the Chief determines that any or all of such equipment or systems is necessary in addition to the requirements of this chapter as to any facility, structure, group of structures or premises, the owner thereof shall install such required equipment or systems.

The Project will incorporate a fire sprinkler suppression system, which will be subject to LAFD review and approval during the design and permitting of the Project, and which will reduce or eliminate the public hydrant demands. Based on Section 94.2020.0 of the LAMC that adopts by reference NFPA 14-2013 including Section 7.10.1.1.5, the maximum allowable fire sprinkler demand for a fully or partially sprinkled building would be 1,250 gpm for all buildings on the Site, which as shown by the approved WSA, can be supplied to the Site by LADWP.

Based on the above, this comment does not provide substantial evidence to demonstrate that fire flow available to the Project would be inadequate.

Comment #2: Second, substantial evidence demonstrates that the Project would require the construction of new or expanded water facilities. The water main infrastructure upgrades necessary for operation of the Project would likely require street excavation and subsequent repair to access water mains. This project component was not analyzed in the EIR, and results in a significant public services impact.

Response to Comment #2: The comment asserts that the EIR does not analyze the impact of new or expanded facilities which the commenter claims would be required for the Project. As discussed in Section IV.F.1, Public Services - Fire Protection of the Draft EIR and in the response above, the Project would incorporate specific fire flow requirements specified by LAFD, and the IFFAR approved by LADWP concluded that the existing available infrastructure is capable of delivering adequate fire flow to the Project. As such, no new off-site water mains would be required. Furthermore, as discussed in Section IV.F.1, Public Services - Fire Protection of the Draft EIR, in accordance with regulatory requirements, the project would also incorporate a fire sprinkler suppression system, which would be subject to LAFD review and approval during the design and permitting of the Project, and would reduce or eliminate the public hydrant demands. Thus, this comment does not provide substantial evidence to demonstrate that fire flow available to the Project would be inadequate and that a new water main would be required.