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June 18, 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:

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

Background

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 three second-level appeals from the same appellants as the first-level appeal:

- 1) CREED LA (October 6, 2023)
- 2) Digital Realty (October 6, 2023)
- 3) SAFER (October 3, 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 a 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 was subsequently appealed by the following two appellants:

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

Both the VTTM and CPC appeals were responded to by the Department of City Planning in a Letter to the Planning and Land Use Management (PLUM) Committee of the City Council, dated May 2, 2024, and uploaded to Council File Nos. 23-1150 and 23-1151. On May 7, 2024, the appeals were agendaized to be heard before the PLUM Committee. On this date, CREED LA submitted a Supplemental Letter to support their appeal; Digital Realty withdrew their appeal; and the Applicant requested to continue the item to June 18, 2024. On June 12, 2024, the Department of City Planning submitted a Response to the CREED LA Supplemental Letter to both Council Files. However, it should be noted that both the Department's Letters to PLUM dated May 2, 2024, and June 12, 2024 inadvertently listed SAFER as an Appellant for the CPC Case (CF-23-1150), when in fact they had only appealed the VTT Case (CF-23-1151).

Supplemental Letter and Responses

On June 13, 2024, SAFER submitted a Comment on the Final Environmental Impact Report, dated June 13, 2024, to supplement their appeal (SAFER Supplemental Letter). This serves to respond to the points raised in the SAFER Supplemental Letter. The SAFER Supplemental Letter primarily reiterates appeal points from previously submitted comment letters, which are referenced in the Staff Responses to the Supplemental Appeal Points below.

- 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);
- 3) The first-level appeal of Case No. VTT-74876-CN (VTTM First-Level Appeal); and
- 4) The second-level appeal of Case No. VTT-74876-CN (VTTM Second-Level 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 LOD;
- 3) The VTTM First-Level Appeal was responded to in the Appeal Report; and
- 4) The VTTM Second-Level Appeal was responded to in the PLUM Letter dated May 2, 2024 (May PLUM Letter).
- 5) Additionally, staff prepared a Supplemental PLUM Letter (June Supplemental PLUM Letter) dated June 12, 2024, to address appeal points submitted by CREED LA, which included similar and/or identical appeal points.

Appeal points from the SAFER Supplemental Letter are addressed below.

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

Supplemental Appeal Point 1

The EIR fails to analyze the potentially significant air quality impacts.

Staff Response 1

The Appellant claims that in reviewing the CalEEMod output files included in the air quality and greenhouse gas analysis, several model inputs were found to be inconsistent with information disclosed in the DEIR. As a result, the models may underestimate the Project's emissions; specifically relating to changes to the length of construction phase and off-road construction equipment unit amount; and unsubstantiated reductions to carbon dioxide intensity factor, number of gas-operated fireplaces, and hauling trip numbers.

The Appellant concedes in their comment that the CalEEMod Manual permits changes to the default values of the model to better reflect project components, while asserting that the changes must each be disclosed and justified. However, the majority of model changes were based on Project-specific details which are self-evident in their justification and were specifically disclosed within the EIR document, as demonstrated by the Appellant themselves. The Appellant's justification includes an Appendix with an analysis from SWAPE regarding the EIR's air quality, health risk, and greenhouse gas analyses. This SWAPE memo itself identifies where the Project-specific changes were disclosed in the Draft EIR. Specifically, the construction phasing, off-road equipment unit amount, and gas-operated fireplaces are all Project-specific details that were adjusted in CalEEMod to provide an accurate, if not more conservative, account of the Project, and which are documented and disclosed in the EIR.

The Appellant asserts that the construction schedule should match their preferred proportionally adjusted phasing; however, no substantial evidence is provided to support such a timeline. Similarly, the Appellant cites changes to the off-road construction equipment makeup default assumptions and contends that they were made without justification, while including a citation from the DEIR appendix stating the change was due to Project specifications, which were based on the Applicant's financial, technical, physical site constraints and other considerations. The Appellant further asserts that carbon dioxide intensity factors, during operation, were changed without justification; however, the City has adjusted the analysis to reflect State law, specifically, Senate Bill (SB) 100, which requires the State energy grid to generate their energy from increasing percentage of renewable energy. In their arguments, the Appellant utilizes current emission factors in lieu of the City's reasonable projection to reflect State law, which is based on substantial evidence and is consistent with CEQA Guidelines Sections 15125(a)(2) and 15125(a)(3). While the current emission factors would result in a conservative analysis, the City's document was prepared in compliance with CEQA and is a permissible projection of future conditions. The Appellant also asserts that emissions were not disclosed as a result of the inclusion of a Project Design Feature (PDF) that would prohibit the Project from using gas-operated fireplaces. However, the use of gas-operated fireplaces is not anticipated as part of the Project, and is therefore not part of the Project Description. It is also unlikely given that the City has adopted an all-electric building ordinance which prohibits the use of natural gas fireplaces for new development projects. Finally, the Appellant asserts that the haul truck trip numbers were adjusted improperly; however, similar to above, these trips were adjusted to more accurately reflect Project specifications, and were conservatively assumed to be trips to the farthest operational landfill.

Supplemental Appeal Point 2

The Project fails to adequately analyze the Project's greenhouse gas impacts.

Staff Response 2

The Appellant claims that, based on the above analysis identifying unsubstantiated inputs within the CalEEMod, the updated analysis would have an exceedance of construction-related volatile organic compound (VOC) emissions, resulting in potentially significant GHG impacts, thus warranting the Appellant's proposed additional mitigation measures.

However, the Appellant conflates GHG emissions with VOC criteria pollutant thresholds. The CalEEMod model used for the Project provides emissions in CO₂e or carbon dioxide equivalent, rather than specific compounds. Nevertheless, the SWAPE appendix provided by the Appellant includes a discussion of VOC emissions, Diesel Particulate Matter (DPM), and calls for a Health Risk Assessment (HRA). The underlying assertion for these arguments is similar to Supplemental Appeal Point 1 with the Appellant asserting, without evidence, that the air quality modeling for the Project is flawed based on changes to the CalEEMod defaults. For detailed discussions related to DPM, VOC and HRAs, refer to City's previous responses in the Appeal Report, PLUM Letter, and Final EIR Response to Comments.

The Appellant further asserts that the quantitative analysis for the Project misrepresents emissions for the same reasons addressed in Supplemental Appeal Point 1, providing calculations determining that the Project exceeded what the Appellant claims is a SCAQMD numeric threshold for GHG emissions; a significant impact would occur; and mitigation measures should be adopted. The SWAPE Appendix supporting these assertions further claims the City erred in utilizing a qualitative analysis for GHG impacts rather than a quantitative analysis.

California courts have required that when lead agencies adopt a GHG threshold, the threshold is supported by substantial evidence. Neither the SCAQMD nor the City of Los Angeles has adopted a numeric thresholds for GHG emissions. Rather, the City relies on a project's consistency with GHG reduction plans as the appropriate threshold to determine impacts. Accordingly, the qualitative analysis provided for the Project in the EIR, which is based on consistency with plans, is consistent with CEQA Guidelines Section 15064. The quantitative analysis provided for the Project in the EIR is for informational purposes and is not used to determine significance; nonetheless, the analysis was conducted appropriately, and no mitigation measures were required. For a detailed discussion regarding Greenhouse Gas Emissions, CEQA thresholds related to Greenhouse Gas Emissions, and mitigation, refer to Final EIR Response to Comments 3-12 through 3-16 on page II 40-49.

Supplemental Appeal Point 3

The EIR fails to disclose and mitigate the Project's significant indoor air quality impacts.

Staff Response 3

The Appellant claims that the EIR fails to discuss, disclose, analyze, and mitigate the significant health risks posed by the Project from formaldehyde, a toxic air contaminant (TAC); again, citing the conclusions from a certified industrial hygienist who determined that the Project will have significant impacts to indoor air quality, and in particular, emissions of the cancer causing chemical formaldehyde. The Appellant reiterates a previous appeal point submitted by SAFER, which was addressed in the Appeal Report. Refer to Appeal Report Staff Response 5-12, which addresses methodological issues with the Appellant's analysis and further substantiates that the

Project EIR included the correct analysis. Further, as discussed in the Appeal Report, SCAQMD does not have indoor air quality standards that support the Appellant's assertions.

Supplemental Appeal Point 4

The EIR fails to adequately consider the cumulative impacts with regard to the adjoining Data Center Project proposal.

Staff Response 4

The Appellant claims that the Project's cumulative impacts analysis relies on incomplete projections that fail to account for the proposed Data Center project, and thus fails to comply with CEQA.

The Appellant raises identical arguments to those addressed in both the PLUM Letter and Supplemental PLUM Letter. As discussed therein, the Project cumulative analysis was prepared in accordance with CEQA Guidelines Sections 15125(a)(2) and 15125(a)(3), and projections of future conditions were projected based on reasonable projections and substantial evidence.

Supplemental Appeal Point 5

The City was on notice for the Data Center proposal.

Staff Response 5

The Appellant claims that because the City and Applicant were both on notice of the proposed Data Center project (that a letter was sent to the City providing notice of the Data Center project on February 10, 2023, at least three months before issuing the Letter of Determination, and before conducting the Hearing Officer hearing on February 15, 2023 and the City Planning Commission hearing on July 13, 2022), that the City cannot claim that it had no knowledge of the proposed Data Center development before it reached its decisions. This assertion is substantially similar to a previous appeal point, addressed in Staff Response 2-3 in the PLUM Letter. Absent a formal filing with sufficient detail, the Appellant is asking the City to conduct a speculative analysis without substantial evidence, contrary to CEQA Guidelines Sections 15125(a)(2) and 15125(a)(3).

Supplemental Appeal Point 6

The Data Center Project is a probable future project.

Staff Response 6

The Appellant claims that the EIR is invalid as it failed to account for all probable future projects, and cites case law which held that cumulative impacts analysis must disclose and analyze projects that were merely proposed, but not yet approved; and therefore, the EIR must be revised to take into consideration the cumulative impacts associated with the Data Center project.

The Appellant raises identical arguments to those addressed by Staff in both the PLUM Letter and Supplemental PLUM Letter, Staff Response 4 above. As discussed, the Appellant misapplies CEQA guidelines, which states that the date of the Notice of Preparation (NOP) publication sets the timeframe to consider related projects and CEQA Guidelines Sections 15125(a)(2) and 15125(a)(3). The Data Center was not a proposed or known related project at the time of issuance of the NOP.

Supplemental Appeal Point 7

The City inadequately analyzed the Project's consistency with the City's Housing Element and Central City Community Plan.

Staff Response 7

The Appellant claims the City inadequately reviewed the Project's consistency with the Housing Element and Community Plan because it does not provide any affordable housing or justification for not doing so; and that by not providing affordable housing, the Project undermines the RHNA Allocation which designates at least 15% of available and suitable sites for lower income housing.

The Appellant raises similar points previously addressed by staff in the Appeal Report, PLUM Letter, and Supplemental PLUM Letter. As discussed therein, the Project is consistent with the Housing Element and Central City Community Plan. The City's Housing Element does not require that each development provide affordable units; and the approved entitlements for the Project include consistency Findings which demonstrate consistency 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.

Supplemental Appeal Point 8

The FEIR fails to sufficiently justify a Statement of Overriding Considerations.

Staff Response 8

The Appellant claims that the City cannot support its conclusion that the economic benefits of the Project outweigh the environmental costs if it does not know what the economic benefits will be; and that a fiscal analysis is required to provide this information. In addition, the City must analyze whether the Project will provide opportunities for highly trained workers during construction and operation, or whether employment opportunities will be only for low-paid, unskilled workers.

The Appellant reiterates a previous appeal point submitted by SAFER, which was addressed in the Appeal Report. Refer to Staff Response 4, which states that 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. These findings were made in the approvals of the Project.

Conclusion

The Appellant has failed to demonstrate how the CPC erred or abused its discretion in approving VTTM No. 74876-CN, and the appeals and supplemental submissions 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 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

A handwritten signature in black ink, appearing to read 'Polonia Majas', written over a horizontal line.

Polonia Majas
City Planning Associate

VPB:MZ:MN:JM:PM

c: Gerald Gubatan, Planning Director, Council District 14

Attachments: none