

UNITEHERE! Local 11

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October 14, 2019

Kevin Golden
Los Angeles City Planning Department
200 N. Spring Street, Room 621
Los Angeles, CA 90012
kevin.golden@lacity.org

**RE: Comments on Recirculated Mitigated Negative Declaration;
Infinitely Hotel Project (CPC-2017-712; ENV-2017-713; CF-18-1242)**

Dear Mr. Golden:

UNITE HERE Local 11 and its members (collectively “Local 11”) respectfully provides the City of Los Angeles (“City”) the following comments¹ regarding the recirculated Mitigated Negative Declaration (“RMND”)² for the proposed 6-story, 100-room hotel (“Hotel Development”) on the north-west corner of Westlake Avenue (“Hotel Site”) and the General Plan Amendment (“GPA”) approval for the 22,500 square-foot (“SF”) Hotel Site and another approximately 253,100 SF of properties along both sides of Alvarado Street between James Wood Boulevard and just north of 8th Street (“Add Area”) (collectively “Project”).

These comments supplement our previous comments made in our appeal (the “Appeal”) (see attached Exhibit A) of the Project and the Project’s previously circulated Mitigated Negative Declaration (“MND”),³ which Local 11 appealed on grounds of noncompliance with the Los Angeles Municipal Code (“LAMC” or “Code”) and the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, (“CEQA”). In short, the Appeal raised concerns with the Project’s lack of any affordable housing commitment in apparent conflict with the City’s Measure JJJ and Transit Oriented Communities Affordable Housing Incentives Program Guidelines (“TOC Guidelines”). Additionally, as pointed out by the previously submitted expert comments attached to the Appeal comment, the MND failed to consider the traffic and greenhouse (“GHG”) impacts associated with the Add Area GPA, constituting improper project piecemealing under CEQA. So too, Local 11 was concerned over various issues specific to the Hotel Development, such as noise impacts to nearby residents.

Here, while the RMND includes new mitigation measures to reduce the Hotel Development’s construction and operational noise impacts—*which would not have occurred absent Local 11’s Appeal*—the RMND fails to address the issue of the Project’s noncompliance with Measure JJJ or analyze the GPA’s traffic and GHG impacts inextricably linked to the requested GPA for the Add Area. The RMND

¹ Please note that pages cited herein are either to the page’s stated pagination (referenced herein as “p. ##”) or the page’s location in the referenced PDF document (referenced herein as “PDF p. ##”).

² Inclusive of the all appendices (“APP-##”). Unless otherwise specified, all documents are retrieved from City website (https://planning.lacity.org/odocument/3617788c-c9f8-4018-8d29-aa8c5987b766/Pub_091219.htm#713).

³ 2005 James M. Wood Blvd. Hotel Project (Dec. 2017) IS/MND, http://clkrep.lacity.org/online/docs/2018/18-1242_misc_1_12-20-2018.0002.pdf.

fails to disclose, analyze, or mitigate the potential impact of the GPA's increased development capacity—as much as four-times existing levels. The failure to analyze the GPA Add Area is not only inconsistent with the City's past practices, but also comes at the expense of affordable housing goals adopted by the voters in 2016 with passage of Measure JJJ—which forbids changes to community plans that “[r]educe the capacity for creation and preservation of affordable housing and access to local jobs” or that undermine the State’s Density Bonus laws or any other affordable housing incentive program (LAMC § 11.5.8.A).

Furthermore, despite the applicant and the City Planning Commission treating the Project as a ‘residential’ project, the City fails to subject the Project to compliance with Measure JJJ’s requirements for affordable housing or in-lieu fees. By refusing to do so, the City continues a pattern-and-practice of undermining the voter’s will and the Code by granting hotel projects all the privileges of a residential project but forgoing any of the residential obligations. Quite simply, the applicant cannot have its cake and eat it too.

Local 11 works to stem this rising tide of inequality, and to make our City a place of opportunity for all—a place where its members can work and afford to live. So too, Local 11’s members have a direct interest in seeing that the State’s environmental laws and the City’s land-use laws are being followed, and that new development does not contribute to the climate-change crisis that threatens a livable future. For this reasons, Local 11 is deeply concerned with the City’s dereliction of duty to apply Measure JJJ and affordable housing requirements, and its improper project piecemealing of traffic and GHG impacts associated with the Add Area GPA.

Local 11 is also concerned that the City intends to hold a Planning Land Use Management (“PLUM”) Committee hearing to consider the merits of Local 11’s Appeal and the adequacy of the RMND on November 5, 2019—a mere three weeks after the close of the public comment period of October 15, 2019.⁴ The clear impression is that the City has made its determination on the Project and Local 11’s Appeal regardless of the comments received or addressing the issues discussed herein and elsewhere in the administrative record for the Project.

Local 11 therefore respectfully requests that the PLUM Committee to:

- Deny the GPA for the Add Area until an adequate CEQA review is prepared to analyze the potential traffic, climate change, and other CEQA impacts that are inextricably linked to the entire GPA, and subject any GPA approval to strict compliance with Measure JJJ’s affordable housing requirements;
- Deny the GPA for the Hotel Site until the applicant commits to either on-site affordable housing or in-lieu fees in accordance with the requirements of Measure JJJ;
- Deny the requested land use entitlements until imposing a condition of approval requiring the applicant to record a restrictive covenant preventing the sale or serving of liquor at the hotel or restaurant for not less than five years (*see e.g.*, LAMC § 91.106.4.1(12)).

The remainder of this document highlights the RMND’s failure to address the issues previously raised in our Appeal comments, which is attached hereto for your convenience as Exhibit A.

⁴ DCP (10/11/19) Revised Notice, http://clkrep.lacity.org/onlinedocs/2018/18-1242_misc_10-11-19.pdf.

I. THE RMND FAILS TO ANALYZE THE ADD-AREA GPA'S INCONSISTENCY WITH MEASURE JJJ

As fully discussed in our Appeal, properties within the 253,100-SF Add Area are designated under the General Plan as "Highway Oriented Commercial" subject to 1.5:1 floor-area-ratio ("FAR"). The GPA would re-designate the properties to the "Community Commercial" designation allowing up 6:1 FAR— a 400 percent increase in FAR density, which dwarfs the benefits provided under any of the TOC incentives,⁵ and jeopardizes the continued success of the TOC program that has resulted in the proposal of 3,863 affordable units since 2017.⁶ This conflicts with Measure JJJ' bar on any GPAs resulting in a "material change ... until the completion of a comprehensive assessment" is completed to ensure such changes do not "[r]educe the capacity for creation and preservation of affordable housing and access to local jobs;" or "[u]ndermine California Government Code Section 65915 [i.e., State Density Bonus law] or any other affordable housing incentive program [i.e., TOC Guidelines]...." LAMC § 11.5.8, emphasis added.

Here, the RMND fails to even mention Measure JJJ, much less discuss the Add-Area GPA's consistency with Measure JJJ and TOC Guidelines. Nor is there any "comprehensive assessment" provided as explicitly required under LAMC § 11.5.8. Because the RMND fails to address this issue, Local 11 renews its Appeal comments in their entirety.

II. THE RMND FAILS TO ANALYZE THE HOTEL DEVELOPMENT'S INCONSISTENCY WITH MEASURE JJJ

As fully discussed in our Appeal, the Hotel Development (which includes extended-stay rooms with kitchens) is considered a 'residential' project based upon (1) the statements made by staff, the applicant, and City Planning Commission ("CPC"); (2) the plain meaning of and the City's interpretation of the Code; and (3) the plain language of Measure JJJ.

Here, although it is clear to any reasonable person that the Hotel Development is subject to Measure JJJ, the RMND fails to mentioned, much less discuss, the Hotel Development's consistency with the mandates under Measure JJJ, including requirements for local hiring and prevailing wages for the Project's construction, or providing either on/off-site affordable housing units or in lieu fees paid into the the City's Affordable Housing Trust Fund (see LAMC § 11.5.11(a)). The RMND's silence and the City's failure to impose these mandatory requirements appears to be a pattern-and-practice of the City's dereliction of duty to apply Measure JJJ's requirements on all residential project, including hotel developments clearly considered residential under the Code and City interpretations.

It is arbitrary and capricious for the City to ignore its clear duty under Measure JJJ. The City must enforce Measure JJJ, not only for this Project but also for the hotel developments currently pending City action. Because the RMND fails to address this issue, Local 11 renews its Appeal comments in their entirety.

⁵ See City (rev. 2/26/18) TOC Guidelines, p. 10 (under Tier 4 base incentive, 55 percentage max-increase for residential is allowed, or a FAR increase resulting in 4.25:1 FAR in commercial zones, whichever is greater), <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

⁶ See City (Jun. 2019) Housing Progress Report, PDF p. 3 (noting 2,945 and 918 affordable units via discretionary cases and by-right permits, respectively, since the inception of the TOC program in October 2017), <https://planning.lacity.org/odocument/c795255d-9367-4fdf-9568-0a3407720ef>.

III. THE RMND FAILS TO ANALYZE IMPACTS FROM REASONABLY FORESEEABLE DEVELOPMENT SERVED BY THE ADD AREA GPA

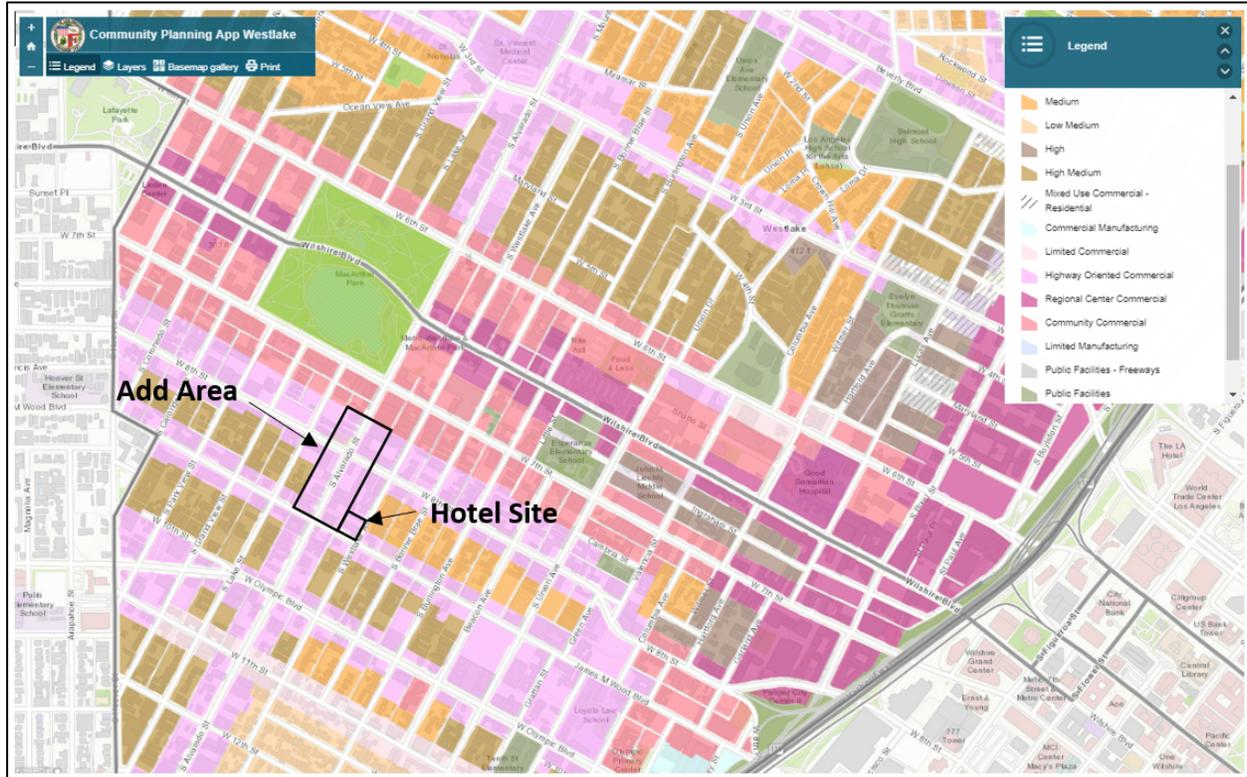
As previously mentioned, the GPA will re-designate properties in the 253,100-SF Add Area from “Highway Oriented Commercial” (allowed 1.5:1 FAR) to “Community Commercial” (allowing up 6:1 FAR)— a 400 percent increase in FAR density. As fully discussed in our Appeal, the GPA is admittedly an attempt by the City to encourage, facilitate, and focus efforts to increase mixed-use and high density development in the area. This is echoed in the RMND, which states the Add-Area GPA “would allow for additional uses and could increase the development potential of the parcels within the Project site ... would allow denser development than the existing zoning.” RMND, pp. 4.0-53 – 4.0-54.⁷ As reflected in Figure 1 on the following page, the proposed GPA (outlined in black) would significantly expand the City’s Commercial Area generally restricted to areas between Sixth and Seventh streets (highlighted in light and dark pink). The City’s proposed Add Area GPA also coincides with recent project applications seeking FAR in excess of existing 1.5:1 FAR permitted under the existing Highway Oriented Commercial.⁸ Hence, the Add Area GPA constitutes a “major policy shift” that will guide future growth and development in excess of the otherwise permitted 1.5:1 FAR, which could have a potential physical change in the environment, particularly traffic and GHG impacts as pointed out in the expert comments attached to our Appeal comments.⁹

⁷ See also RMND, p. 4.0-75 (“This could facilitate rezoning of other parcels and would allow for additional density since the Community Commercial Land Use Designation allows Height District 2.”).

⁸ See e.g., DIR-2019-1663-TOC (6/13/19) Categorical Exemption Justification, PDF p. 10 (proposed 7-story, 44,566-SF structure seeking 3.63:1 FAR per Tier 3 incentives under the TOC Guidelines at 2101 W. Eighth Street within the Add Area), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/NTYxYzY1M2YtMmI3OC00YjVklTKxZTYtMzRINGFiNWNhMjE50>; DIR-2019-2893-TOC (proposed 5-story, apartment on R4-1 zoned lot [allowed 3:1 base FAR] at 831 S. Westlake Avenue north of the Hotel Site and immediately adjacent to Add Area. Per Tier 3 incentives under the TOC Guidelines, project may seek up to 4.5 FAR [i.e., 50 percent increase over base FAR].), <http://planning.lacity.org/pdiscaseinfo/search/encoded/MjI5NTAy0> and <https://planning.lacity.org/ordinances/docs/toc/TOCGuidelines.pdf>.

⁹ *City of Livermore v. Local Agency Formation Com* (1986) 184 Cal.App.3d 531, 540; see also *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 793-794 (“General plan amendments are indeed generally subject to environmental review under [CEQA] ... ‘embody fundamental land use decisions that guide the future growth and development of cities and counties,’ and amendments of these plans ‘have a potential for resulting in ultimate physical changes in the environment.’”) (quoting *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532); *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409 (“Even if a general plan amendment is treated merely as a ‘first phase’ with later developments having separate approvals and environmental assessments, it is apparent that an evaluation of a ‘first phase-general plan amendment’ must necessarily include a consideration of the larger project, i.e., the future development permitted by the amendment.”) (quoting *Christward Ministry v. Superior Court* (1986) 184 Cal. App. 3d 180, 194).

FIGURE 1: WESTLAKE COMMUNITY PLAN



Here, however, the RMND fails to consider the impacts from this increased density, such as traffic and GHG impacts (*as raised in expert comments attached to our Appeal comments*). Instead, the RMND claims that properties would require additional rezoning efforts to access this higher FAR, which would be subject to future piecemeal project-specific environmental review on a case by case basis (RDMD, p. 2.0-8). This response was repeated in serial fashion to avoid analysis of the Add Area GPA impacts.¹⁰ This argument, however, has been repeatedly rejected by the courts,¹¹ which recognize that “in cases involving general plan amendments, the local agency has either prepared an EIR or was required to do

¹⁰ See e.g., RMND, pp. 4.0-9 – 4.0-14 (air quality impacts not analyzed), pp. 4.0-24 – 4.0-25 (energy impacts not analyzed), pp. 4.0-34 & -37 (GHG impacts not analyzed), pp. 4.0-84 – 4.0-86 (traffic impacts not analyzed).

¹¹ See e.g., *City of Redlands*, 96 Cal.App.4th at 409 (rejecting county’s argument that future projects will be evaluated on their own merits when each individual project occurs where the county, on the one hand acknowledge that “*amendments may result in greater development*” under the County’s jurisdiction ... yet, on the other hand, the County insists that the amendments would have little or no significant effect on the environment ... [and the record] clearly indicates the existence of not only potential future development, but *at least one existing project undergoing separate environmental review*.” Emphasis added); *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1334, 1338 (CEQA review required where planning department recognized proposed action would “opening the way for future development” and the “*sole* reason” of the proposed action was “to provide a *catalyst* for further development in the immediate area.” Emphasis added); *Christward Ministry*, 184 Cal.App.3d at 195 (CEQA review required where general plan amendment was “a *necessary first step* to approval of these ‘unknown,’ uncertain-to-occur future projects.” Emphasis added); *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 (“The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from preparation of an EIR.”).

so.”¹² Additionally, no explanation is given why the RMND departs from past City practices, which as pointed out in Local 11’s Appeal comments, routinely analyze ‘add area’ impacts despite (a) no actual developments being proposed within the ‘add area;’ (b) the applicants not owning or controlling any of the properties within the ‘add area;’ or (c) that a further entitlement would be necessary before properties within the ‘add area’ could fully access the additional FAR allowed under the GPA.^{13, 14, 15, 16} Also, notwithstanding the need for further rezoning efforts to access this higher FAR density (e.g., zone change), the GPA is a necessary first step to achieve that end, which again is the sole reason for the City to initiated the Add Area GPA—to serve as a catalyst for higher more dense development than otherwise allowed in the area. Furthermore, according to ZIMAS, the vast majority of the structures currently within the Add Area are more than 50 years old and ripe for redevelopment, as well as within

¹² *Christward Ministry*, 184 Cal.App.3d at 193 (citing numerous cases).

¹³ See e.g., 915 N. La Brea Avenue project (CPC-2005-6163, ENV-2005-6164) involving GPA to amend the Hollywood Community Plan for a 2.27-acre mixed-use project site and a 5.69-acre add area. There, while no actual development was proposed in the add area and the applicant did not own or control the parcels within the add area, the City recognized that the approval of the project “*could encourage similar discretionary development* requests for one or more of the other parcels [within the add area],” and, therefore, evaluated the potential environmental impacts associated with the theoretical development of the remaining parcels in the add area—assuming “maximum density permitted” for the zone. Draft EIR (May 2008) Add Area Analysis, pp. VII:1-2 (emphasis added), <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/VII.%20Add%20Area%20Analysis.pdf>; see also LOD (2/27/07) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/ZmY3NjhmNTYtMjk4NS00MGVhLWEzZjYtNWRmZjFINDI4Y2U20>; Draft EIR (May 2008) Project Description, pp. III:15-16, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/III.%20Project%20Description.pdf>; Draft EIR (May 2008) Environmental Setting, p. II:1, <https://planning.lacity.org/eir/LaBreaGateway/DEIR/DEIR%20Sections/II.%20Environmental%20Setting.pdf>.

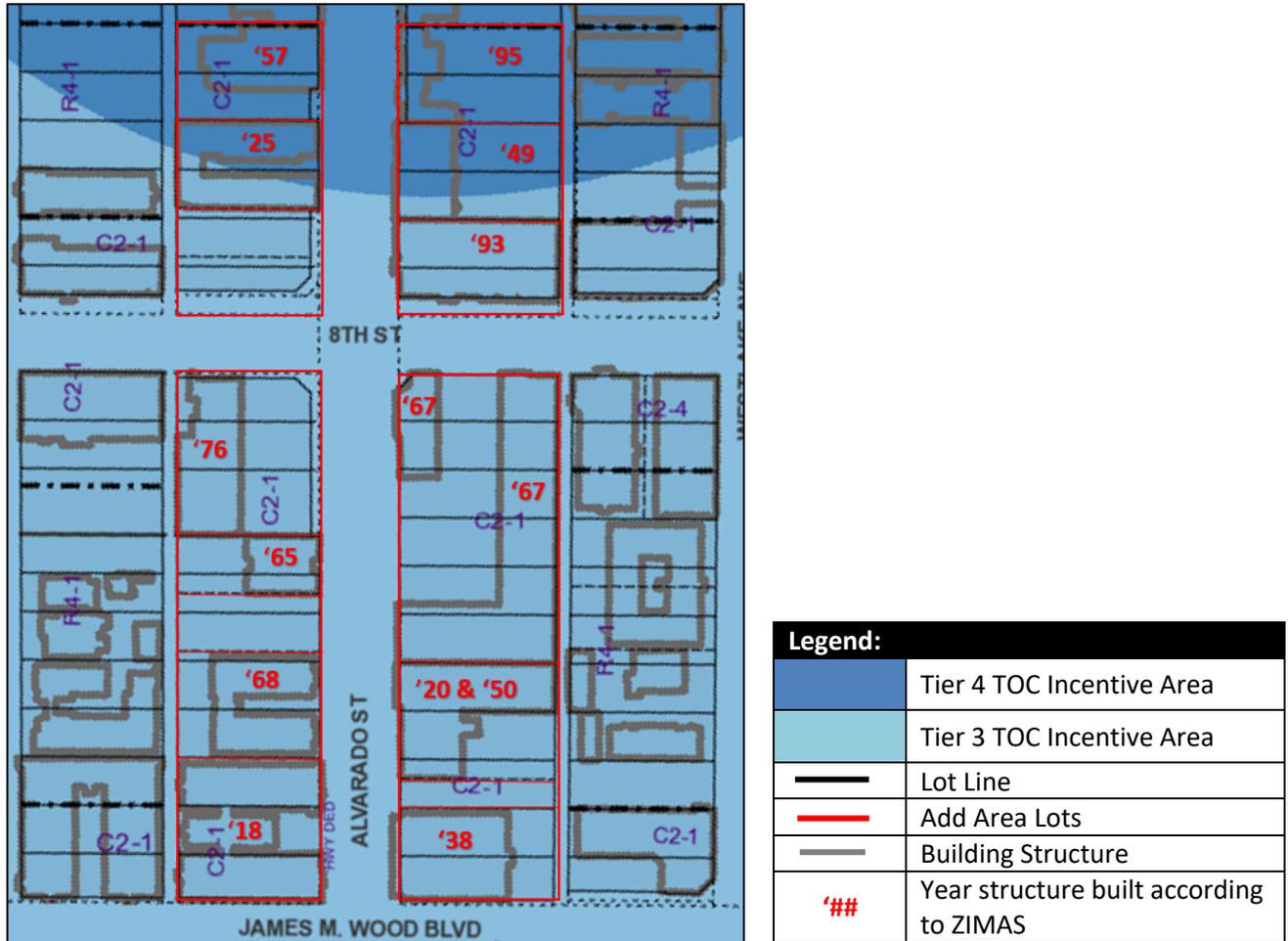
¹⁴ See e.g., LA Lofts Chinatown project (CPC-2005-1843, ENV-2005-0881) involving GPA to amend the Central City North Community Plan for a 3.4-acre condo project site and a 5.4 add area. There, despite the ZC applying only to the project site, the City still analyzed several theoretical development scenarios for the add area. See Final EIR (Apr. 2007) Introduction, pp. I:1-5, <https://planning.lacity.org/eir/LoftsChinaTown/FEIR/LA%20Lofts%20Chinatown%20FEIR%20April%202007.pdf>; see also LOD (10/23/07), pp. 1, F:3, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjI2NDIzZGQzZGEyNy00NzZmLThlZmUtOWI2NWJiZTBkYzNm0>.

¹⁵ See e.g., Plaza at the Glen Mixed Use project (CPC-2008-2932, ENV-2007-4063) involving GPA to amend the North Hollywood-Valley Village Community Plan for a 12.53-acre mixed-use project site and a 9.23-acre add area. There, while no actual development was proposed in the add area and the add area was not subject to the ZC, the City nevertheless analyzed the redevelopment of the add area “consistent with the proposed Community Commercial designation at a development intensity similar to that proposed for the project site.” Draft EIR (Mar. 2009) Project Description, p. II:26, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/II. Project Description.pdf>; see also DEIR (Mar. 2009) Project Description, Fig. II:18, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/LargeGraphics/II18 Add Area.pdf>; DEIR (Mar. 2009) Environmental Setting, p. III:2, <https://planning.lacity.org/eir/GlenMixedUseProj/DEIR/Chapters/III. Environmental Setting.pdf>; LOD (8/6/09) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjEyNjdhOWYtNDE0MS00MDdmlTk2ZDUtNjQ4Y2QxY2ZiNDh0>.

¹⁶ See e.g., Corbin & Nordhoff Redevelopment project (CPC-2002-7295, ENV-2002-1230) involving GPA to amend the Chatsworth-Porter Ranch Community Plan for a 35.5-acre project site and a 15-acre add area. There, while no actual development was proposed in the add area and the applicant not owning/controlling the parcels within the add area, the City nevertheless analyzed several development scenarios for the add area. See Draft Master EIR (Sep. 2003) Summary Project Description, pp. 1-5, https://planning.lacity.org/eir/Corbin_Nordhoff/MEIR/PDF/1a&b Project%20Location&Description.pdf; see also LOD (4/29/04) p. 1, <http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/Yjg2ZmU4ZTEtYWZjMi00ODFmLWJiNmYtN2YzNmEzZWRhOWVh0>.

the highest TOC priority areas targeted for increase development (as shown in Figure 2 below), as further evidenced by at least two recent TOC project applications.¹⁷

FIGURE 2: ADD AREA STRUCTURES RIPE FOR REDEVELOPMENT



In short, no reasonable person could conclude that future development of the Add Area is not, at least, a reasonably foreseeable indirect impact by the City's action here and, thus, must be analyzed under CEQA (e.g., increase density resulting in greater impacts in traffic, air quality, GHG, noise, growth inducing effects, etc.). *This GPA with no CEQA review constitutes improper piecemealing.*

IV. THE RMND FAILS TO ADEQUATELY CONSIDER HOTEL DEVELOPMENT IMPACTS

As fully discussed in our Appeal, Local 11 is concerned with the Hotel Development's potential piecemealing of future alcohol uses and potential public safety impacts stemming from natural gas leaks. The RMND, however, fails to include any project design features or proposed conditions of approval restricting the sale/service of liquor at the Hotel Site. Nor was the RMND revised to consider the risk of natural gas leak explosions like the two gas explosions occurring on January 5, 2019 at the

¹⁷ *Supra* fn. 8.

700 block of Westlake Avenue. Because the RMND fails to address these issues, Local 11 renews its Appeal comments on these points in their entirety.

Also discussed in our Appeal, Local 11 was concerned about construction and operational noise impacts suffered by residents and religious congregates at nearby apartments and places of worship adjacent to the Hotel Site. Local 11 also requested that the City deny the Project’s requested land use approvals until adequate mitigations measures were included based on a good-faith noise analysis. Here, the RMND has been meaningfully revised to seemingly address the Hotel Development’s noise impacts as reflected in the significantly revised mitigation measure NOI-1 and inclusion of mitigation measures NOI-2 and NOI-3. While the RMND still fails to adequately consider cumulative construction noise impacts to adjacent neighbors due to overlapping construction of the Hotel Development and the proposed 5-story, apartment TOC project (see figure below), and notwithstanding the fatal housing, JJJ and Projects piecemealing defects discussed above, Local 11 commends the applicant and City for its inclusion of additional performance-based mitigation measures—which would not have been adopted absent our efforts here.

FIGURE 3: SENSITIVE NOISE RECEPTORS SUBJECT TO CUMULATIVE CONSTRUCTION IMPACTS



Legend:	
	Hotel Site
	Proposed 5-story, apartment TOC project site [a]
	Sensitive Residential Receptors
	Sensitive Place of Worship Receptor
Notes	
a:	DCP Case No. DIR-2019-2893-TOC, http://planning.lacity.org/pdiscaseinfo/search/encoded/MjI5NTAy0

V. CONCLUSION

In summary, while Local 11 appreciates the RMND's inclusion of additional noise mitigation measures, the RMND still refuses to address the Project's land use inconsistency with Measure JJJ, the Code, and CEQA. For the reasons discussed herein and elsewhere in the record, Local 11 respectfully requests PLUM grant the Appeal and reject all requested land use entitlements until an adequate EIR is prepared to address Local 11's concerns, requiring the Hotel Development to comply with Measure JJJ, and in no circumstance granting the GPA for the Add Area until CEQA is performed for the whole thing. This project is not a by-right, we urge you to use your discretion to reject the Project and demand more for the residents of Council District 1.

Sincerely,



Charles Du
Staff Attorney
UNITE HERE Local 11

Enclosure:

Exhibit A: Local 11 (2/22/19) Appeal Supplemental Comments inclusive of expert comments