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November 17, 2020

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

Attention: PLUM Committee

Dear Honorable Members:

APPEAL RESPONSE; Council File Nos. 20-0894; 20-0894-S1

On March 25, 2020, the Advisory Agency adopted Mitigated Negative Declaration No. ENV-2016-3693-MND, Errata dated March 2, 2020 and March 10, 2020, and the Mitigation Monitoring Program, and approved Vesting Tentative Tract Map No. 74602 composed of one master ground lot and five airspace lots for a maximum of 640 residential apartment units and 4 commercial condominium units. The proposed Project includes the demolition of an existing three-story parking structure; and the construction of a 23-story residential tower and a 28-story residential tower, on top of a podium that is four stories above grade and two-stories subterranean. The Project includes a total of 1,472,509 square feet, inclusive of the existing 760,456 square feet of commercial floor area, for a total floor area ratio (FAR) of 4.65:1.

On April 3, 2020, the entirety of the Advisory Agency action was appealed by Supporter's Alliance for Environmental Responsibility (SAFER). On April 6, 2020, a second appeal was filed by Katelyn Scanlan, appealing the entire decision of the Advisory Agency. The appeals pertained primarily to the adequacy of the MND and application materials, Project impacts related to vehicular parking, construction impacts, and affordability of the residential units. The Department of City Planning responded to the Tract Appeal in an Appeal Report dated May 14, 2020 (Appeal Report). Subsequent to the preparation of the Appeal Report, the Supporter's Alliance for Environmental Responsibility (SAFER) submitted additional letters to the file in support of the appeal. The letters contain arguments and claims related to adequacy of the MND, Project impacts related to construction, and lack of sufficient affordable housing. The Appeal Report and all associated documents were presented to the City Planning Commission (CPC) at its meeting on May 14, 2020.

On May 14, 2020, the City Planning Commission (CPC), following its consideration of the materials and oral testimony, denied the Tract Appeals, sustained the actions of the Advisory Agency in adopting the MND, Errata dated March 2, 2020 and March 10, 2020, and the Mitigation

Monitoring Program, and approving Vesting Tentative Tract Map No. 74602; and approved the related case for the Project, Case No. CPC-2016-3692-VZC-MCUP-SPR, the environmental clearance, and recommended that the City Council approve the Vesting Zone Change, including the T and Q Conditions; and approved a Master Conditional Use Permit for alcohol sales, and Site Plan Review.

On July 8, 2020, the Supporter's Alliance for Environmental Responsibility (SAFER) filed appeals on both cases related to the Project (VTT-74602-2A and CPC-2016-3692-VZC-MCUP-SPR-1A). On July 10, 2020, Katelyn Scanlan filed an appeal, VTT-74602-2A. On July 20, 2020, Katelyn Scanlan filed an appeal on CPC-2016-3692-VZC-MCUP-SPR.

The appeals filed by SAFER mainly rely on the same arguments and information as presented in the Appellant's previous letters to the City. The appeals filed by Katelyn Scanlan pertains to procedural violations at the May 14, 2020 CPC meeting.

A summary of the appeal points and staff's responses are provided as follows:

Appellant No. 1 - Supporter's Alliance for Environmental Responsibility (SAFER)

A1-1 *Project will have significant health risk impact from its indoor air quality impacts due to formaldehyde.*

The Appellant provides no credible evidence that the Project will be constructed with building materials with significant amounts of formaldehyde. There are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk. The Project will comply with the existing state, regional and local building codes and regulations, which adequately address potential emissions and risks from building materials to ensure safe practices and healthy indoor air. These codes include specific provisions within Title 24 Building Energy Efficiency Standards, California Green Building Standards Code (CALGreen Code), and CARB's ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products). Impacts with respect to formaldehyde would be less than significant.

A1-2 *The IS/MND failed to analyze and mitigate potential Project impacts on biological species, wildlife movement, and adverse impact on bird species from window collisions.*

The Appellant's suggestion that the Project will result in large numbers of avian window collision fatalities is based on personal anecdotal evidence and scientific articles that are not specific to the project. The Project Site is entirely developed and has been operating as an urban use for decades. The Project Site and vicinity are not known to be wildlife or migratory corridors or within a special-status species critical habitat. There is no evidence that an urbanized location with already existing skyscrapers could increase collision fatalities of birds or become an avian migration corridor within the Project Site. To the contrary, the US Fish Wildlife has determined that less than one percent of avian collisions involve high rise buildings. Furthermore, a search of the eBird databases indicates that there are no special-status bird species in the Project vicinity that would be likely to experience window collisions. The nearest identifiable hotspot is at MacArthur Park, 1.2 miles to the east.

The Project vicinity is highly urbanized and developed with a mix of commercial, residential, and institutional uses. There are no City or County significant ecological areas

on or around the Project Site, nor is the Project Site and vicinity known to be wildlife or migratory corridors or within a special-status species critical habitat. Furthermore, no water bodies that could serve as a habitat for fish or wildlife exist on the Project Site. There are 30 trees located in the public right-of-way, of which one is a protected species and will not be removed. Of the 29 non-protected street trees, 19 trees will be removed and replaced. There are 29 trees located on the Project Site, none of which are protected species. Of these, 24 trees on site would be removed and replaced. The Project will provide 160 trees, which is a net increase of trees.

- A1-3 *The IS/MND's traffic analysis is not supported by substantial evidence and greatly underestimates Project-generated traffic.*

The transportation impact analysis in the MND was conducted in accordance with the methodology and criteria specified in the Los Angeles Department of Transportation's (LADOT's) Transportation Impact Study Guidelines in effect at the time of the analysis. The analysis was confirmed and accepted by LADOT in their traffic study assessment letter dated October 25, 2018. An addendum to the traffic study was prepared in August 2019 to account for a reduction in the residential units and commercial space. In a memo dated October 22, 2019, LADOT concurred with the addendum to the traffic study and agreed with the analysis that the Project's impact would be less than significant.

- A1-4 *The IS/MND fails to establish a baseline for hazardous substances.*

As noted in the MND, there is no evidence that the Project Site has toxic soil contamination. Based on a site reconnaissance, there was no evidence of significant soil staining, stained pavement, or stressed vegetation observed on site. The Applicant prepared a Phase I Environmental Site Assessment (ESA) which investigated the Project Site regarding any on-site hazards, including the potential for historic underground storage tank (UST). The Phase I ESA considered the potential for historic USTs and concluded that "no further action is recommended at this time regarding the Subject's historical on-site USTs". Furthermore, the Phase I conducted a "Tier I" (non-intrusive) Vapor Encroachment Screening on the Project Site with respect to chemicals of concern that may migrate as vapors into the subsurface of the Site as a result of contaminated soil and groundwater on or near the property. The report concluded that based upon hydrogeology, groundwater flow direction and the furthest known extents of the contamination, a vapor encroachment condition can be ruled out.

- A1-5 *The IS/MND failed to adequately analyze the Project's air quality impacts and the Project will have a significant GHG impact.*

The MND included Appendix C – Air Quality and Greenhouse Gases Appendices, prepared by DKA Planning, which provided data on estimated emissions for both construction and operation of the proposed Project using the California Emissions Estimator Model (CalEEMod) program, as recommended by the South Coast Air Quality Management District (SCAQMD). As shown in Tables B.3-6 Estimated Daily Construction Daily Emissions (pounds/day) and B.3-7 Estimated Daily Operations Emissions (pounds/day) in Section III Air Quality of the MND, neither of the construction or operational emissions generated by the proposed Project would exceed the regional thresholds of significance set by the SCAQMD. As such, the Project would have less than significant air quality impacts during construction and operation. Additionally, emissions from construction activities could have the potential to generate localized emissions that

may expose sensitive receptors to harmful pollutant concentrations. However, as shown in Table B.3-6 and B.3-7 in the MND, the Project would not produce emissions that exceed the SCAQMD's recommended localized standards of significance. Therefore, localized air quality impacts from construction activities to the off-site sensitive receptors would be less than significant.

As noted in Section VII. Greenhouse Gas Emissions of the MND, an analysis was conducted to determine whether the Project's impact would be cumulatively considerable using a plan-based approach to examine the Project's contributing effect on global warming. As concluded in the MND, the Project's generation of Greenhouse Gas (GHG) emissions would represent a 35% reduction in GHG emissions resulting from consistency with applicable plans and policies. Furthermore, the Project would be consistent with all applicable local ordinances, regulations, and policies that have been adopted in furtherance of the state's and City's goals of reducing GHG emissions. Thus, the Project would not make a cumulatively considerable contribution to GHG emissions and impacts would be less than significant.

A1-6 *The IS/MND failed to adequately evaluate health risks from diesel particulate matter emissions.*

SCAQMD recommends that health risk assessments (HRAs) be conducted for substantial individual 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). Operation of the Project would not generate or attract heavy-duty diesel fueled vehicle trips (i.e. no warehouse, distribution or truck stop uses are proposed), which would require the preparation of an operational health risk assessment.

There is no evidence to suggest that the Project would generate diesel fuel emissions that are excessive or above acceptable levels that already occur within the environment. As such, the Project is not considered to be a substantial source of diesel particulate matter warranting a Health Risk Assessment (HRA) because daily truck trips to the Project site in connection with the proposed commercial and residential uses would not generate substantial sources of diesel particulate matter. Additionally, the proposed uses are not subject to the Air Toxics Hot Spots Information and Assessment Act (Health and Safety Code Section 44360 et. seq.), and as such, a detailed HRA is not required.

A1-7 *Insufficient affordable housing in conflict with Measure JJJ.*

On November 8, 2016, voters in the City of Los Angeles approved and passed Measure JJJ, the "Build Better LA Initiative". Among other provisions, the ballot initiative imposed minimum affordable housing requirements and labor regulations on any development Project that results in 10 or more residential dwelling units, and requires a General Plan Amendment, Zone Change, and/or Height District Change that results in increased allowable residential floor area, density, height, or allows a residential use where previously not allowed. Measure JJJ became effective on December 13, 2016, following the Council's action to certify the election results. Additionally, pursuant to LAMC Section 11.5.11, developers seeking density incentives are no longer eligible for Zone Change, Height District Change or General Plan Amendments as part of their entitlement requests.

It should be noted that the proposed Project includes a Vesting Zone Change, and that the Vesting Zone Change and the Vesting Tentative Tract Map applications were deemed

complete by the Department of City Planning on October 28, 2016, prior to the effective date of Measure JJJ regulations. Therefore, Measure JJJ is not applicable to this Project. However, the applicant has volunteered to set aside 10% of the total number of units proposed as affordable units. Therefore, as stated in the Letter of Determination dated June 30, 2020 for CPC-2016-3692-VZC-MCUP-SPR, the Project shall make 32 units available to Moderate Income Households and 32 units for Low Income Households, for a total of 64 affordable units, for a period of 55 years.

Appellant No. 2 – Katelyn Scanlan

A2-1 *The May 14, 2020 CPC meeting violated the Ralph M. Brown Act, as the meeting was not truly publicly accessible, and no Spanish translation service was provided. Individuals without reliable internet connection or blocked phone numbers could not participate. Requirements set forth for accessing the May 14, 2020 CPC meeting discriminated constituents based on Title IV of the Civil Rights Act, Title VI of the Civil Rights Act per Executive Order 13166, and Americans with Disabilities Act (ADA).*

A public meeting was held by the City Planning Commission on May 14, 2020, in accordance with the requirements of the Brown Act (beginning at Government Code Section 54950). The Appellant contends the meeting was not truly accessible to the public and that the public was not able to participate or provide public comment. As required by the Brown Act, a meeting agenda noting the date and time of the meeting was made available to the public more than 72 hours in advance of the meeting.

The May 14, 2020 CPC meeting was held in accordance with the requirements of the Brown Act and the Governor's Executive Order N-25-20 regarding Public Meetings during the COVID-19 Pandemic. In response to the coronavirus pandemic, on March 12, 2020, California Governor Gavin Newsom issued Executive Order N-25-20, which allows local and state legislative bodies to hold meetings via teleconference and to make meetings accessible electronically. This order was modified by Executive Order N-29-20, adopted on March 17, 2020. The Executive Order suspends otherwise-applicable provisions of state and local open meeting laws, including portions of the Brown Act, while statewide social distancing measures are in place. Paragraph 3 of the Executive Order expressly waives Brown Act provisions regarding in-person attendance at public meetings and authorizes local legislative bodies to make public meetings accessible telephonically. The Executive Order authorizes public meetings to be broadcast electronically, but does not require visual access.

Members of the public were provided several options to listen and participate in the May 14, 2020 CPC meeting. The agenda provided instructions to dial (213) 621-2489 or (818) 904-9450 to listen to the meeting, or call 1 (669) 900-6833 and use Meeting ID No. 988 1728 6308 to listen and provide public comment. The Appellant states that members of the public calling with blocked numbers would be excluded from giving public testimony. There is no evidence in the record, as demonstrated in the recorded proceedings of the City Planning Commission meeting for the Project, that any person calling in to provide public testimony was excluded or not called upon due to their calling from a blocked number.

In regards to public participation, Government Code Section 54954.3(b)(1) provides that "The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each

individual speaker.” Members of the public were also given the opportunity to submit comment letters, for consideration by the Commission.

In regards to Spanish translation services, the Commission President stated during the public meeting on May 14, 2020 that Spanish translation services would be provided and Kora McNaughton, Planning Staff, served as the translator for Item Nos. 11 and 12 on the agenda, associated with the Tract Appeal and CPC entitlements.

Supplemental Information

Responses to the appeals have also been provided by the Applicant in a document dated September 24, 2020, and is available for reference in Council Files 20-0894; 20-0894-S1.

Conclusion

Planning Staff recommends that the PLUM Committee and City Council deny the appeals and sustain the Determination of the City Planning Commission to approve the requested actions for the proposed Project. Upon in-depth review and analysis of the issues raised by the appellants, no substantial evidence exists of errors or abuse of discretion committed by the City Planning Commission in regards to the appeal points raised. The appeals cannot be substantiated and therefore should be denied.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in cursive script that reads "Iris Wan".

Iris Wan
City Planner

VPB:JC:DK:iw