

June 10, 2020

APPEAL JUSTIFICATION

Project: Olympic Tower
Address: 813–815 West Olympic Boulevard; 947–951 South Figueroa Street
Case Nos.: CPC-2015-4557-MCUP-CUX-TDR-SPR-DD, ENV-2015-4558-EIR
Applicant: Olymfig 26, LLC
Appellant: LA Fig Property Owner, LLC

I. INTRODUCTION

This firm represents LA Fig Property Owner, LLC and Capital Hall Partners, LLC, (collectively, “Capital Hall”), the owner of the Hotel Figueroa at 939 South Figueroa Street in Los Angeles. Capital Hall appeals the approvals and determinations granted by the City Planning Commission (“CPC”) to the proposed Olympic Tower (“Project”), including the Master Conditional Use Permit, Conditional Use Permit, Director’s Decisions, Site Plan Review, Conditions of Approval, Findings, and Environmental Impact Report (“EIR”). Capital Hall also urges the City Council to reject the CPC’s recommendations that it approve the Transfer of Floor Area Rights, certify the EIR, and adopt related findings and determinations for the Project. The CPC’s approvals and recommendations are reflected in the May 26, 2020 Letter of Determination, copies of which are enclosed with this appeal.

This statement describes the reasons and justifications for Capital Hall’s appeal, including how Capital Hall is aggrieved, the specific points at issue, and the reasons the CPC abused its discretion in approving the Project. Capital Hall incorporates by reference its earlier Appeal Justification for the Project’s Vesting Tentative Tract Map (“VTTM”) and EIR, dated October 25, 2019, and its written and verbal submissions to the CPC, dated February 10, March 10, April 21, and April 23, 2020. Capital Hall further adopts and incorporates by reference all objections raised by other parties, including the L.A. Conservancy, YWCA Greater Los Angeles, and other property owners, during the environmental review and land use entitlement process for the Project.

II. CAPITAL HALL’S INTERESTS AND GENERAL CONCERNS

Capital Hall is a real estate investment and development firm based in Los Angeles. The firm is a longtime business owner and investor in Downtown, and is a proud supporter and participant in the ongoing redevelopment of the L.A. Live/Staples Center Sports and Entertainment District.

In 2014, Capital Hall acquired the Hotel Figueroa—a 100-year-old, 287-room historic hotel, which is located immediately north of the Project site. Over the next three years, the firm

completely renovated the hotel, updating and restoring the rooms, the restaurant and bars, and the outdoor patio and pool areas. The renovations honored the hotel's original design and rich history, including its important role in the women's movement in Los Angeles. After reopening in 2018, the newly-restored property won numerous awards and was named one of the best hotels in the world.

Capital Hall supports responsible and appropriate redevelopment of the Downtown Car Wash site, but is concerned about the Project's serious design flaws and environmental impacts. Capital Hall has repeatedly raised its concerns to the City and the Applicant, both publicly and privately. Capital Hall began by attending the Advisory Agency hearing in August 2019. A number of commenters raised concerns shared by Capital Hall, and Capital Hall assumed that the City and the Applicant would properly address them. That did not happen. Moreover, the City failed to provide adequate notice of the subsequent CPC hearing on October 10, 2019, thereby precluding Capital Hall from attending and presenting its concerns. Under these circumstances, Capital Hall was forced to appeal the CPC's approval of the VTTM and EIR, in order to preserve its rights to participate and be heard. That first appeal, filed October 25, 2019, is still pending. Thereafter, Capital Hall attempted to directly engage the Applicant and took an active role in the remaining CPC proceedings. Capital Hall submitted multiple comment letters, commissioned independent technical reports, provided a list of proposed Project modifications and solutions, and submitted verbal testimony at the CPC's April 23, 2020 hearing.

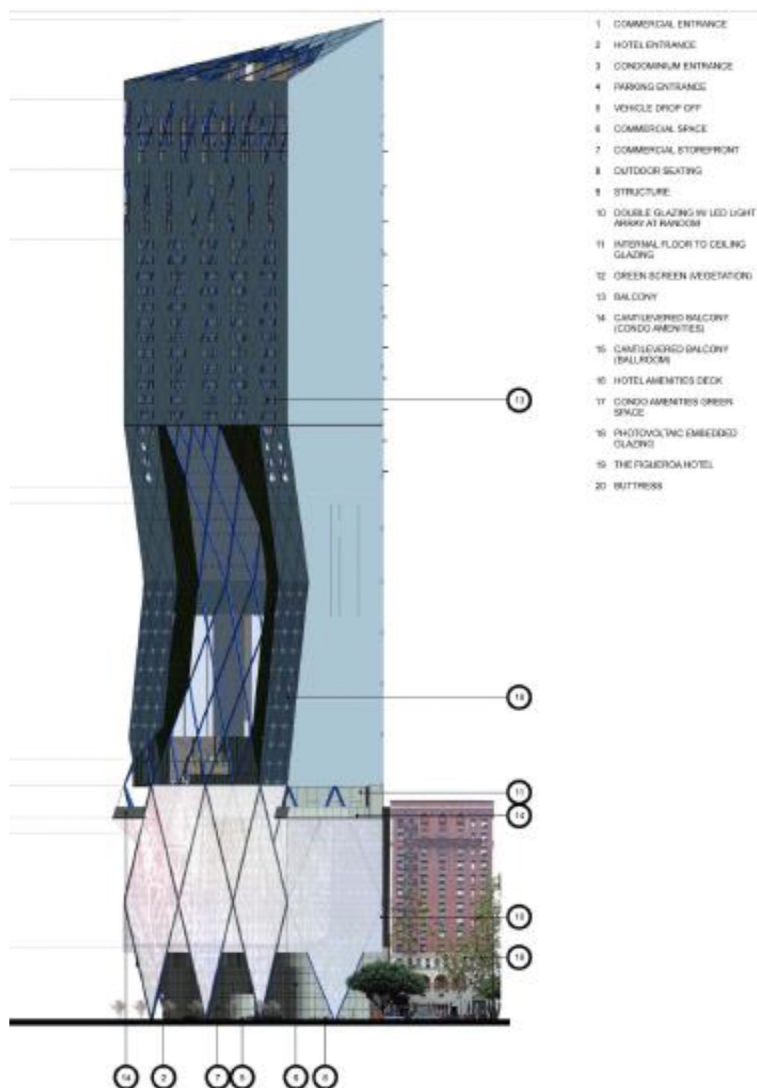
Having reviewed the CPC's latest decision, Capital Hall remains concerned that the Project's significant design flaws and environmental impacts have not been adequately addressed. Capital Hall is especially concerned about the Project's impacts on Hotel Figueroa and the significant investment that has been made in this historic property. As detailed below, the Project design is not respectful of Hotel Figueroa, and Project implementation threatens significant physical damage to the 1920s-era building, significant impairment of the building's historic character and setting, significant shadow impacts on the newly renovated outdoor pool and bar areas. The EIR does not fully evaluate these impacts and others, and does not impose sufficient mitigation measures to address them, as required by CEQA. Most concerning, neither the City nor the Applicant has provided meaningful responses to Capital Hall's concerns, nor shown any willingness to update the EIR to disclose the Project's true impacts or to impose legally adequate mitigation measures. For all of these reasons, Capital Hall was compelled to file this additional appeal.

III. THE PROJECT DESIGN IS INAPPROPRIATE FOR THE SITE AND MUST BE REVISED

The Project's height, massing, and density are not considerate of historic resources in the Project vicinity. The proposal includes a 58-story high-rise tower reaching 742 feet, and about 800,000 square feet of new development, resulting in an *unprecedented* 13:1 floor area ratio ("FAR"). The new development will include 374 condominium units (435,000 square feet); 373 hotel rooms (216,000 square feet); 65,000 square feet of retail/commercial uses; 33,000 square

feet of office uses; 42,000 square feet of conference center, ballroom, lobby, penthouse amenities, and other ancillary uses; and 838 parking spaces in a six-level subterranean garage and eight-level above-ground garage.

At the October CPC hearing, Planning staff reported that the “proposed development would fit within the range of other existing building heights surrounding the Project,” and the “Project’s podium is designed to be comparable with the Figueroa Hotel.” To the contrary, the 58-story Project will dwarf nearby development, including the Variety Arts Building, Apex, L.A. Live, and Marriott Courtyard, and it will especially dwarf the adjoining 13-story Hotel Figueroa. This size disparity is illustrated by EIR Figure III-3 (North & East Elevation):



Even worse, the Project will be built to the Hotel Figueroa property line, *with no setback*. The Hotel Figueroa will be completely blocked on the southern frontage, and will lose air and sunlight. This will result in significant adverse effects on the hotel's guests and recently renovated hotel rooms, pool and outdoor areas, including the Veranda restaurant. Additionally, Project construction is projected to last almost three years, with no identified construction site staging area, which will result in significant disruption to Hotel Figueroa and the businesses and residents in the surrounding area over an extended period.

Capital Hall has proposed concrete design solutions for the Project, including lowering its height and reducing its massing and density; incorporating appropriate building setbacks from the Hotel Figueroa; and preserving air and sunlight for Hotel Figueroa's pool and outdoor areas. The City and the Applicant have not responded to Capital Hall's concerns or its proposed solutions.

IV. THE ENVIRONMENTAL ANALYSIS FOR THE PROJECT IS INADEQUATE AND MUST BE REVISED AND RECIRCULATED

The EIR prepared for the Project fails to adequately disclose, analyze, and mitigate the Project's significant environmental impacts, particularly those affecting the Hotel Figueroa and the people who live and work around the Project site.

A. Noise Impacts

Ganddini Group, an independent noise consultant, prepared an 87-page peer review of the EIR's noise analysis and its own 317-page noise impact analysis of the Project, both of which have been submitted into the administrative record. Together, these two reports demonstrate that the EIR fails to adequately disclose, analyze, and mitigate the Project's significant noise and vibration impacts, and that the EIR's analysis is so flawed that it must be completely redone and recirculated. Ganddini's key findings are briefly summarized below.

First, the EIR fails to adequately analyze the Project's construction noise impacts. The EIR's analysis is flawed because it fails to evaluate sensitive receptors; it relies on erroneous construction equipment assumptions; it fails to correctly model all phases of construction; and it incorrectly applies the City's CEQA thresholds. Ganddini's analysis shows that the Project will cause significant construction noise impacts, including on the Hotel Figueroa, which is a sensitive receptor due to guests sleeping immediately adjacent to the construction site. The construction period is expected to last almost three years, resulting in lengthy and ongoing disturbances to the Hotel Figueroa and other nearby residential and commercial properties.

Second, the EIR's proposed mitigation measures for construction noise are woefully inadequate. The mitigations are limited to equipment mufflers and temporary sound barriers, which are unlikely to reduce the impacts to less-than-significant levels. Further highlighting this problem, the EIR fails to include sufficient quantitative analysis demonstrating how it would be

possible for these mitigations to reduce impacts to an acceptable level. Ganddini has identified numerous additional mitigation measures that must be incorporated into the EIR to reduce construction noise impacts. These include but are not limited to:

- During all project site excavation and grading on-site, construction contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers, consistent with manufacturer standards.
- The contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise/vibration sources and sensitive receptors nearest the project site during all project construction.
- Jackhammers, pneumatic equipment and all other portable stationary noise sources shall be shielded and noise shall be directed away from sensitive receptors.
- Construction noise monitoring is required in order ensure that construction equipment is adequately muffled and/or tented with sound blankets in order to achieve a 15 dB reduction and noise thresholds are not exceeded.
- Due to the age and proximity of Hotel Figueroa, a noise test shall be conducted to determine the sound reduction provided by the adjacent Hotel Figueroa wall in order to determine if sleeping areas in Hotel Figueroa would be affected by Project operational noise. If it is determined that noise would be disruptive in sleeping areas, outdoor activities should be limited accordingly.
- A sound engineer or otherwise qualified individual shall review the proposed architectural plans and elevations to determine if the proposed exterior wall assemblies would achieve acceptable interior noise levels.

Third, the EIR completely fails to disclose, analyze, and mitigate the Project's traffic noise impacts. This analysis is warranted because the Project is adjacent to two roadways identified as Avenue I or Boulevard II roadways in the City of Los Angeles Mobility Plan 2035. Future traffic noise along these roadways has the potential to generate noise levels in excess of City standards.

Fourth, the EIR fails to adequately analyze and mitigate operational noise impacts, including amplified music and noise from outdoor areas, which will interfere with Hotel Figueroa's operations. The EIR lists possible sources of operational noise, but fails to provide any noise reference levels or calculations showing noise levels at nearby sensitive receptors. In doing so, the EIR fails to comply with the methodology required by the LA CEQA Thresholds Guide. Ganddini's independent noise impact analysis shows that the Project could result in significant operational noise impacts. Ganddini has also identified numerous additional

mitigation measures that must be incorporated into the EIR to reduce these operational noise impacts to less-than-significant levels.

Despite Ganddini's submission of 400 pages of detailed technical study, pointing out the significant flaws in the EIR's noise analysis, the City and the Applicant have not provided any meaningful response. The Applicant submitted only a 6-page memorandum that simply refers back to the EIR's deficient analysis and fails to substantively respond to Ganddini's points. The EIR must be revised and recirculated to correctly disclose, analyze, and mitigate the Project's noise impacts.

B. Structural Damage and Vibration Impacts to Hotel Figueroa

The EIR also fails to adequately analyze and mitigate the Project's vibration impacts and potential structural damage to the Hotel Figueroa. The hotel is particularly sensitive to vibration damage given that it is a historic structure originally built in 1926.

The EIR correctly admits that Project construction will result in significant vibration impacts on the Hotel Figueroa. But the EIR's analysis understates the Project's true impacts because it relies on an incomplete and inaccurate list of construction equipment. Ganddini's modeling shows that the Project has the potential to cause even more significant vibration impacts, which will result in physical and structural damage to the Hotel Figueroa if not properly mitigated. The EIR's proposed mitigation measures, however, are woefully inadequate to protect the Hotel Figueroa from physical damage, and they violate CEQA's requirements because they lack performance standards and are unenforceable.

Mitigation Measure I-3, for example, prohibits vibration sources within 10 feet of the Hotel Figueroa from operating simultaneously. However, the EIR does not explain how this limitation will be enforced or how it will avoid the potential for vibration damage. There is no evidence or analysis to support the conclusion that construction of this major development on the property line can be accomplished using only one piece of equipment at a time. To the contrary, as explained in Ganddini's noise reports, this assumption is unrealistic and unjustified. Moreover, even if it were feasible to restrict construction in this way, there is no evidence to support the conclusion that using only one piece of equipment at a time would avoid damage to Hotel Figueroa.

Mitigation I-5 is even more problematic. It requires the Project sponsor to conduct pre-construction surveys and to prepare and implement a structural monitoring plan for the Hotel Figueroa. The mitigation measure violates CEQA in two key respects. First, it does not include adequate performance standards for the structural monitoring plan, which are necessary to ensure that vibration impacts will not occur. Second, the measure is unenforceable by the City because it cannot be implemented without Hotel Figueroa's consent and cooperation, which has not been asked for or given. Despite repeatedly raising this issue, Capital Hall still has not been consulted about the proposed mitigation measure, and it remains concerned that the work called for in the

structural monitoring plan may actually further physically and structurally damage the historic Hotel Figueroa.

Ganddini has identified numerous additional mitigation measures that must be incorporated into the EIR to adequately reduce the Project's vibration impacts. These include but are not limited to:

- Prior to the commencement of any demolition or construction activities on the Project site, the Project proponent shall consult with the owners of vibration sensitive buildings, the development team and reviewing agencies, such as SHPO and local planning departments, to identify potential risks, negotiate changes, agree on protective measures, to be incorporated into a vibration monitoring plan (VMP). Specifically, the Project proponent, the construction manager, a representative from the City of Los Angeles Building Department, an acoustical/vibration engineer, and a specialist in historical building structural damage avoidance/repair should be in attendance at this meeting.
- Prior to the commencement of any demolition or construction activities, a VMP shall be prepared by an acoustical/vibration engineer or an experienced professional who specializes in the assessment of groundborne vibration related impacts. At the discretion of the vibration professional, the VMP shall include, but may not be limited to, the following:
 - An inventory of the existing conditions of potentially affected vibration sensitive buildings. The inventory shall include a detailed photo survey of existing general conditions as well as any existing damage. A written description shall accompany the photo/video survey. The written description shall also document any vibration sensitive land uses.
 - Revised groundborne vibration calculations and subsequent assessment of potential impacts in light of vibration specific geotechnical data and specific details regarding proposed construction methods and equipment (to be provided by the construction manager); as well as modified mitigation measures, as necessary.
- Groundborne vibration monitoring for the duration of demolition and excavation activities to ensure that thresholds are not exceeded. Duration and frequency shall be modified by the acoustic/vibration professional, as they deem necessary. Notification of exceedance events [i.e., measurements that are recorded that exceed the established vibration threshold(s)] shall be transmitted to the designated engineer or designee immediately, to allow for immediate response

and for discontinuation of vibratory construction activities until alternative equipment and/or construction methods can be implemented.

- Submittal of weekly reports summarizing any vibration and structural monitoring activities and data to designated City staff personnel. Monitoring reports shall include daily histogram plots with the maximum peak vector sum PPV vs. frequency, a list of the equipment being utilized during the monitoring period, and an exhibit showing the location of the equipment with distances shown to vibration sensitive locations. The weekly reports should also include findings of structural visual inspections, and include photographs taken documenting the status of existing cracks and damage and documenting any new damage or worsening damage. Persons notified and remedies conducted in response to vibration threshold exceedances and/or new or worsening structural damage shall also be included in the weekly report.

Without appropriate vibration mitigation measures, the Project will cause significant structural damage to Hotel Figueroa, threatening its continued viability. John Labib + Associates (“JLA”), an independent structural engineer, prepared a report analyzing the Project’s structural impacts on Hotel Figueroa, which is included in the administrative record. JLA’s structural report further confirms significant deficiencies in the EIR, which must be corrected prior to Project approval.

First, the JLA report confirms that the EIR is missing significant information that is necessary for a complete analysis of the Project’s structural impacts. Among other things, the EIR does not include specific shoring or vibration mitigation plans, which are critical to analyzing and mitigating the impact of new construction on the historic Hotel Figueroa. The EIR’s analysis is vague and the proposed mitigation measures lack specific performance standards—including standards for shoring deflection, proximity of the shoring system to the property line and building foundations, and vibration limitation. And while the EIR’s accompanying soils report provides general guidelines for excavation and monitoring during construction, it fails to include specific plans detailing how these measures will be feasibly accomplished.

Second, the JLA report confirms that without adequate shoring and excavation mitigation measures, Project construction will cause significant damage to the Hotel Figueroa. This damage will include, but is not limited to, cracking of the concrete floor slabs, cracking of the walls, and damages to the finishes. This degree of structural damage will threaten the continued viability of this important historic building.

Third, the JLA report identifies additional mitigation measures that must be included in the EIR to address the Project’s potential structural damage to Hotel Figueroa. In addition to adding appropriate building setbacks, these mitigations should include but are not limited to:

- Prepare appropriate shoring plans and calculations; account for all existing hotel building surcharges on the excavation; and implement conservative loading to limit impacts on the hotel building.
- Pot hole adjacent to the Hotel Figueroa and provide the location of the hotel foundation in relation to the new shoring system. Provide graphical sections indicating the relationship of the hotel foundations and how they will not be impacted by the proposed shoring system and excavations.
- Underpin the Hotel Figueroa foundations adjacent to the excavation with piles that derive support below the proposed excavation. This must be sufficient to ensure that the foundations of the hotel do not settle which in turn will minimize settlement and therefore damage.
- Limit deflection of the proposed shoring system so that it does not result in damage to the existing Hotel Figueroa building. Limit deflection at the top of the shoring beams to $\frac{1}{4}$ ".
- Prepare specific plans detailing measures for limiting vibration during construction.
- Prohibit pile driving during construction.
- Prepare pre-construction surveys of the existing Hotel Figueroa conditions.

Given these material deficiencies, the EIR must be re-drafted and recirculated, with correct vibration and structural analysis and effective and enforceable mitigation measures. Capital Hall remains willing to work with the City and the Applicant on these items. To date, the City and the Applicant have not substantively responded to Capital Hall's concerns or proposed solutions.

C. Impacts to Historic Resources

The EIR fails to correctly disclose, analyze, and mitigate the Project's impacts on cultural and historic resources, particularly the Hotel Figueroa. Historic Resources Group ("HRG"), an independent historic and planning firm, has prepared a peer review of the Project's Historic Resources Report, which is available in the administrative record. HRG's report confirms that the EIR's analysis of historic impacts is flawed, and that the Project will result in significant historic impacts.

It is undisputed that the Hotel Figueroa is an important historic resource. The building was designed by notable Los Angeles architect Lester H. Hibbard. It was constructed in 1926 by the YWCA, and over the subsequent decades, it played a key role in the women's movement in

Los Angeles. The property is listed on the California Register and is eligible for listing on the National Register.

The Project is incompatible with the Hotel Figueroa and threatens its historic integrity. The Project site is located immediately south of the Hotel Figueroa. As currently designed, the Project will be built to the property line, with no setbacks, and it will tower dozens of stories and hundreds of feet above the Hotel Figueroa, completely blocking views of the property and eliminating its access to sunlight. As detailed above, Project construction will cause structural damage to the building, and the EIR's proposed mitigation measures to reduce this impact are ineffective and unenforceable. Thus, contrary to the EIR, the Project will directly harm the physical integrity and historic significance of the Hotel Figueroa, resulting in a significant and unmitigated impact. The Project's design and the EIR must be revised to appropriately acknowledge and mitigate this impact.

The Project also violates the Secretary of the Interior's Standards for the Treatment of Historic Properties. As the EIR acknowledges, the Project would have a significant impact if it would result in a significant adverse change in the significance of a historic resource. A substantial adverse change occurs, among other things, if the project does not conform to the Secretary of the Interior Standards. As the EIR puts it, "projects that may affect historical resources are considered to be mitigated to a level of less than significant if they are consistent with the Secretary of the Interior Standards . . ." In contrast, projects that are inconsistent with the Standards are not mitigated to less than significant. The EIR concludes that Project impacts are less than significant because the Project fully complies with the Secretary of the Interior Standards. This conclusion is erroneous and not supported by the evidence.

The HRG report demonstrates that the Project is inconsistent with Standard 9 regarding "related new construction." Standard 9 provides:

New additions, exterior alterations, or *related new construction* will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and *will be compatible with the historic materials, features, size, scale and proportion, and massing* to protect the integrity of the property and its environment.

The Project does not meet this standard for several reasons. First, the Project will rise to a height of 57 stories (742 feet), nearly five times higher than the Hotel Figueroa, which is only 13 stories (159 feet). Moreover, the buildings will have less than five feet of horizontal separation. As a result, the Project is fundamentally inconsistent with the Hotel Figueroa's size, scale and proportion, and massing. Second, the Project's proposed materials consist of a glass curtain wall system, with exposed metal beams and perforated metal screens. This is likewise inconsistent with the Hotel Figueroa, which features traditional surface materials such as brick and cement plaster. Because the Project is inconsistent with Standard 9, it will have a significant historic impact with respect to the Hotel Figueroa. As noted in the LA CEQA Thresholds Guide, an

appropriate mitigation measure for this impact would be to require the Applicant to redesign the Project to be compatible with historical resources in the vicinity, including as to mass, height, materials, and setbacks.

Finally, the EIR admits that the Project will have significant historic impacts due the area's "high sensitivity for containing historic archaeological resources." It imposes a mitigation measure for this impact, but like many other mitigations in the EIR, it is also ineffective. It merely requires the Project sponsor to study and monitor for these resources during construction. It fails to address what should happen if these resources are actually discovered, and it fails to impose adequate protections or treatments for any discovered resources.

Both the L.A. Conservancy and YWCA Greater Los Angeles have submitted comment letters expressing deep concerns about the Project's undisclosed and unmitigated historic impacts. So far, neither the City nor the Developer have substantively responded to the historic concerns. The City must revise and recirculate the EIR to disclose, analyze, and mitigate the Project's significant historic impacts on the Hotel Figueroa and other historic resources.

D. Aesthetic and Shadow Impacts

The EIR's analysis and mitigation of aesthetic impacts violates CEQA and is not supported by substantial evidence. Contrary to the EIR, the Project will cause significant and unmitigated aesthetic impacts. First, the Project will substantially degrade the existing visual character of the site and its surroundings because, as detailed above, the Project is dramatically out of scale with nearby development. Second, the Project will cause significant aesthetic impacts on surrounding historic resources, such as the Hotel Figueroa, Variety Arts Center Building, and Petroleum Building. The EIR fails to disclose or analyze these aesthetic-historic impacts, despite recent case law requiring it to do so. (*See Protect Niles v. City of Fremont* (2018) 25 Cal.App.5th 1129.) Third, the Project will cause significant shade and shadow impacts on sensitive receptors, particularly Hotel Figueroa and its recently renovated pool and outdoor areas.

As to shade and shadow impacts, Arquitectonica International Corporation, an independent architecture and planning consultant, has prepared a Shadow Analysis Report for the Project, which is included in the Project's administrative record. The report applied the shading criteria set forth in the Los Angeles CEQA Thresholds Guide, and modeled and diagrammed the shadows that the Project would generate at the winter and summer solstice. Arquitectonica's analysis shows that during the summer, the Project will cast shadows on Hotel Figueroa's pool and building light wells for five hours per day (11:00 a.m. to 3:00 p.m.), which exceeds the four-hour threshold set forth in LA CEQA Thresholds Guide. Likewise, during the winter, the Project will cast shadows on Hotel Figueroa for a full eight hours per day (9:00 a.m. to 5:00 p.m.), far in excess of the three-hour threshold set forth in the LA CEQA Thresholds Guide. Accordingly, the Project will have a significant and unmitigated shading impact, and will severely interfere with light sensitive uses at the Hotel Figueroa. In particular, the Project will

shade the outdoor pool area throughout the day during the winter and during peak midday hours during the summer. The EIR fails to disclose, analyze, or mitigate this significant impact.

Instead of conducting a full analysis of aesthetic impacts, the EIR improperly relies on SB 743 to summarily conclude that the Project will have no aesthetic impacts. SB 743 deems aesthetic impacts not significant for mixed-use projects on urban infill sites within transit priority areas. (Pub. Res. Code § 21099(d)(1).) However, this exemption *does not apply* to aesthetic impacts on historic or cultural resources like the Hotel Figueroa. (Pub. Res. Code § 21099(d)(2)(B).) Thus, by law, the City may not rely on SB 743 to completely avoid analyzing and mitigating the Project's aesthetic impacts. The City and Applicant have never responded to, and continue to ignore, this controlling statutory language.

The City must revise and recirculate the EIR to fully disclose and analyze, and mitigate the Project's significant aesthetic impacts on the Hotel Figueroa and other historic resources; and its significant shade and shadow impacts, including to Hotel Figueroa's pool and outdoor areas.

E. Air Quality/Greenhouse Gas

As explained by other commenters and their technical experts, the EIR fails to adequately analyze and mitigate the Project's significant impacts related to air quality and greenhouse gas ("GHG") emissions.

Capital Hall is particularly concerned that Project construction will result in significant pollutant emissions (NO_x, NO₂, PM₁₀, PM_{2.5}), which will threaten the health and safety of nearby sensitive receptors, including hotel workers. The EIR fails to include legally-required information and analysis about the Project's health risks, including cancer risk from toxic air contaminants. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511–521.) The EIR should be revised to include a legally adequate health risk assessment. Additionally, as noted by SCAQMD and other commenters, the EIR's modeling assumptions are inaccurate and unsupported, and impacts may be even worse than projected.

Capital Hall is also concerned that the EIR does not sufficiently mitigate construction emissions impacts. The EIR includes *only* two standard mitigation measures—use of Tier 4 equipment and 2010 or newer haul trucks—both of which are unenforceable and ineffective. The EIR also fails to provide sufficient quantitative analysis demonstrating that these mitigations would be able to reduce emissions to less than significant levels.

Finally, as explained by others, the EIR's analysis of GHG impacts uses an improper methodology and fails to meet current CEQA requirements, including by relying on legally inadequate emissions reduction plans. (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204.) The Project's impacts from GHG emissions will be significant, yet the EIR fails to impose *any* relevant mitigation measures. The EIR must be revised to properly address this important statewide issue.

F. Hazardous Materials

The Project site was historically operated as a gas station with underground fuel storage tanks, and it has resulting soil contamination. Project construction will disturb the contaminated soil and lead to potential health and water quality impacts on neighboring residents and workers, including at the Hotel Figueroa. The EIR fails to adequately disclose, analyze, and mitigate these impacts.

G. Land Use

As explained by others, the EIR fails to adequately disclose, analyze, and mitigate the Project's potential land use impacts. The Project is inconsistent with the City's mandatory land use policies related to affordable housing, density, and land use compatibility. Contrary to Planning staff's position, these policies are designed to mitigate environmental impacts, and therefore the Project's inconsistency with them is a CEQA issue, as well as a planning and zoning issue.

H. Population and Housing

As explained by others, the EIR relies on an erroneous and artificially low employee generation estimate. As a result, it fails to adequately disclose, analyze, and mitigate the Project's potentially significant impacts with respect to population and housing. This is a critical issue given the City's severe housing shortage and the Project's failure to include affordable housing.

I. Transportation

The EIR discloses that the Project will cause significant and unavoidable traffic impacts during both construction and operation. These impacts are unacceptable and must be further mitigated to avoid disruption to the L.A. Live/Staples Center Sports and Entertainment District.

As disclosed by the EIR, Project operations will generate a large volume of traffic (4,423 daily trips) in an already congested area. This new traffic will cause significant level of service (LOS) impacts to two intersections (Fig/9th & Fig/Olympic). Project construction will also generate significant cumulative impacts, when combined with other nearby projects. Traffic impacts will be even more significant than projected because the EIR relies on incorrect trip generation, baseline, and cumulative development assumptions. These impacts will interfere with the operations of surrounding businesses, including Hotel Figueroa.

The EIR further violates CEQA by failing to impose all feasible mitigation measures to reduce these traffic impacts. For operational impacts, the EIR imposes only token mitigation measures, limited to a TDM program and new traffic signal controllers. The City must evaluate and require the Applicant to make the traffic improvements necessary to reduce the Project's impacts. As noted by Caltrans, the necessary improvements include the SR-110 Freeway

offramp. For construction impacts, the EIR similarly imposes only token mitigation measures, limited to a construction traffic management plan. The City must impose effective mitigation measures, including sequencing the Project with other nearby developments to avoid cumulative impacts.

J. Alternatives

CEQA requires the EIR to analyze a reasonable range of alternatives that would reduce the Project's significant environmental impacts. The Project's EIR considers only three alternatives: (1) the no project alternative; (2) no transfer of FAR and no hotel; and (3) no office and reduced retail. This range of alternatives is inadequate. At a minimum, the EIR should analyze an alternative with reduced height and density and an alternative design, with adequate protective setbacks, which would avoid or reduce the significant aesthetic, cultural, noise and vibration impacts on the Hotel Figueroa.

V. CONCLUSION

Capital Hall supports appropriate redevelopment of the Downtown Car Wash site that is respectful and protective of the surrounding residents and businesses, including the Hotel Figueroa. As currently designed, however, the Project fails to do so. The Applicant and the City must correct the significant flaws in the Project's design and environmental review before final approval. Capital Hall looks forward to working with the Applicant and the City to address these issues.

Very truly yours,



Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4811-5211-1551.5