



October 4, 2021

BY EMAIL & ONLINE PORTAL: <https://cityclerk.lacity.org/publiccomment>

City Council, City of Los Angeles
c/o Holly L. Wolcott, City Clerk
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Hon. Kevin De Leon, Council District 14
City of Los Angeles
c/o Dan Reeves & Emma Howard
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RE: APPEALS OF OLYMPIC TOWER PROJECT (COUNCIL FILE NOS. 20-0813 & 20-0813-S1)

Dear Honorable Councilmembers and Council District 14:

The Sierra Club provides this letter in support of the September 29, 2021 letter to the City Council from UNITE HERE! Local 11 (“Local11”), the Natural Resources Defense Council, and the Sunrise Movement. The Sierra Club supports and adopts the statements and the positions in that letter. The Sierra Club timely commented on the DEIR on the Olympic Tower Project and is concerned about the City’s seemingly unjustified refusal to hear the Local 11 appeal from the EIR certification.

In addition to supporting the Local 11 letter, because of the potential bad precedent from the City’s refusal to proceed with appeal 20-0813 on the merits, the Sierra Club provides this letter to highlight certain issues and to urge the City to proceed on the merits with both appeal 20-0813 (the VTT and EIR appeal) and appeal 20-0813-S1 (the TFAR and other issues appeal).

The City Must Proceed with the Appeals on the Merits as It Decided and Represented It Would:

It appears that the City failed to proceed with appeal 20-0813 because the City’s left hand, the City Clerk, did not know what the City’s right hand, the City Department of Planning, had represented and promised to the Appellants’ and to the public. The City can, and should, correct this mistake by proceeding with the appeal on the merits.

The facts are undisputed – the City decided and represented that appeal 20-0813 (the VTT and EIR appeal) would proceed only after a final determination on the Transfer of Floor Area Rights (“TFAR”) by the Department of Planning. These facts are reflected in the Timeline of Project Approvals contained in the September 29, 2021 Local 11 letter, including that the City

Planning Commission (“CPC”) confirmed this procedure in footnotes 1 and 2 of its May 26, 2020 Letter of Determination, and that both the Deputy Director and the President of the City Planning Commission confirmed these facts during a meeting/hearing on April 23, 2020.

The CPC acted consistent with its statements. After the CPC issued its 5/26/2020 Letter of Decision on TFAR, and after Local 11 filed its appeal of that decision on June 10, 2020, on June 18, 2020, the CPC transmitted two reports to the City Clerk, one on the VTT/EIR appeal (20-0813) and another on the TFAR and related matters appeal (20-0813-S1). However, the transmittal to the City Clerk for appeal 20-0813 did not contain the May 26, 2020 Letter of Decision which confirmed that the VTT/EIR appeal would proceed only after the final decision on TFAR, and it appears the City Clerk did not have this information available when stating that the City had no jurisdiction to proceed. (If the information was available, the City Clerk presumably would not have reached that conclusion.)

The City Clerk now has the facts about the City’s decision that the VTT/EIR appeal would proceed after the final TFAR decision, and knows that the City has jurisdiction to hear both appeals on the merits. The City needs to do what it agreed to do and represented it would do, and hear both appeals on the merits. To do otherwise undermines the integrity of the City Clerk and the City Council.

LAMC Section 17.06.A.4 Does Not Support the City’s Refusal to Proceed with Appeal 20-0813

In its July 24, 2020 Memorandum to File on Council File 20-0813, the City Clerk cites Los Angeles Municipal Code section 17.06.A.4 as the basis for the determination that the City lacks jurisdiction to hear Local 11’s VTT and EIR appeal.

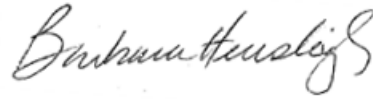
If that Section applies at all, by the language of the statute it would apply to the tentative map issue only. It does not by its language or otherwise apply to EIR/CEQA issues, issues governed by different statutes entirely. Besides, Los Angeles Municipal Code section 17.06.A.5 allows for extensions of the timeframes in that section by agreement – exactly what happened here.

Also, application of the “deemed denial” provision of the tentative map statute to EIR/CEQA would be a horrible precedent undercutting the language and the intent of CEQA. Neither the City CEQA Procedures nor state law contains a ‘deemed denied’ or similar provision. (See LAMC § 11.5.13; see also Pub. Res. Code § 21151(c); CEQA Guidelines §15090(b).) If the City wanted CEQA appeals to be subject to a ‘deemed denied’ proviso, it would and should have codified such language. (See *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925 at 935.)

Conclusion

The Sierra Club requests that the City abide by its representations and agreement to hear the VTT/EIR appeal after the final TFAR decision, and to proceed on the merits with both 20-0813 and 20-0813-S1.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Barbara Hensleigh". The signature is fluid and cursive, with the first name "Barbara" being more prominent than the last name "Hensleigh".

Barbara Hensleigh
Chair, Central Group (Los Angeles)
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