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VIA E-MAIL AND U.S. MAIL

Honorable Ed P. Reyes, Chair
Honorable José Huizar, Vice Chair
Honorable Paul Krekorian, Member
Planning and Land Use Management Committee
City of Los Angeles
Attention: Michael Espinosa, Legislative Assistant
200 N. Spring Street
City Hall, Room 395
Los Angeles, CA 90012

Re: Additional Responses to Comments Provided by the Applicant
Wilshire Grand Redevelopment
ENV-2009-1577-EIR-GB
CPC 2009-3416-TDR-CUB-CU-CUW-ZV-SW-DA-ZAD-SPR-GB
Council File No. 11-0106

Dear Chairman Reyes and Honorable Members of the Planning and Land Use Management Committee ("PLUM"):

As you are aware, this office represents Wilshire Boulevard Property LLC, the owner ("Owner") of the highrise office building located at 1000 Wilshire Boulevard, immediately west of the above-referenced proposed redevelopment project (the "Project"). The Owner reiterates its belief that a sensible redevelopment of the Wilshire Grand site (the "Project") is warranted, but asks that PLUM continue this matter to allow the Department of City Planning ("Planning") and Department of Transportation ("DOT") an adequate opportunity to evaluate reasonable mitigation measures that they have agreed to evaluate. The Owner further reiterates that the above-referenced Environmental Impact Report ("EIR") has failed to fully present and analyze the environmental impacts of the Project in a legally adequate manner. The provision by Thomas Properties Group ("TPG") and its consultants of about 900 pages of additional analysis on the very eve of the PLUM hearing brings the need for a continuance into stark relief.

An initial review of the material reveals that much of this is simply a reiteration of the earlier-provided responses to comments that adds nothing and fails to remedy the fundamental inadequacy of the EIR and the previous responses. However, some of these responses also attempt to provide new information or raise new arguments, and are addressed below. Given the shortness of time provided by the City, the following discussion represents a non-exhaustive response to these latter points.

I. THE DELIVERY OF ABOUT 900 PAGES OF ADDITIONAL TECHNICAL ANALYSIS FOUR DAYS BEFORE THE PLUM HEARING REQUIRES A CONTINUANCE OF THE MATTER.

TPG's latest attempt to lard the record for the Project only further substantiates the Owner's consistent objection that the entitlement process for the Project is simply moving too fast to allow adequate consideration of the adverse effects of the Project and potential mitigation measures. A central and crucial problem with the trajectory of the entitlement process for the Project remains its rapid and unwavering pace, even amidst a deluge of new and relevant information regarding the extent and mitigation of Project impacts, only the latest of which is TPG's provision of an additional 900-page document with technical appendices. The Owner has repeatedly requested that PLUM continue its consideration of the Project to allow Planning and especially DOT to consider additional mitigation measures and project design features that both departments agree have the potential to vastly improve the interaction of Project traffic with that of its neighbors.

II. THE EIR DOES NOT CONTAIN A STABLE, ACCURATE, AND FINITE PROJECT DESCRIPTION, PRECLUDING AN UNDERSTANDING OF WHAT THE PROJECT ACTUALLY CONTAINS.

The Response to Comment 2-34 attempts to paint the amorphous, confusing, and inconsistent analysis throughout the EIR as an unfortunate but necessary by-product of the Land Use Equivalency Program and the associated Design Flexibility Program. Instead, it demonstrates TPG's acknowledgement that the EIR fails to analyze a consistent Project description by analyzing a jumbled amalgam of different Project characteristics, depending on the environmental issue area. A project description that allows anything is a project description that clarifies nothing.

III. THE PROJECT PROPOSES A LEVEL OF DEVELOPMENT THAT IS WHOLLY INAPPROPRIATE ABSENT ADDITIONAL MITIGATION MEASURES.

The Response to Comment 2-31 states that because TFAR would come from a site in the Central City area, the Central City Community Plan has already accounted for the floor area and for the cumulative and growth-inducing impacts associated with that floor area. But this claim ignores the reality that such impacts vary substantially with the location in which development intensification occurs. For example, additional development in the Convention

Center Area would create vastly different cumulative and growth-inducing impacts than at the Project site. The Convention Center area does not have a small street like Francisco Street which provides sole access to an existing high-rise office development and would also provide essentially sole access to 2.5 million square feet of development in that area. As a result, the cumulative traffic and circulation impacts in the Convention Center area would be vastly different. Secondly, as described in our previous letters, the provision of a 65-story structure with two thirds of its surface area as lighted signage would have a different impact were it to be located in the Convention Center area or the L.A. Live Media area than if it were to be located immediately adjacent to a range of office and residential buildings. Thirdly, the cumulative noise impacts from a heliport in the Convention Center area also would not directly affect a large number of adjacent office and residential structures.

Further, the kinds of impacts vary widely with the type of use. TPG cannot seriously attempt to argue—though it appears to do so—that 1.5 million square feet "accounted for" in the Central City planning area equally and simultaneously addresses the cumulative and growth-inducing impacts of commercial, residential, or, for example, industrial uses. Thus, the mere fact that a policy document has somehow assumed a certain amount of undifferentiated buildable square footage over an entire planning area is irrelevant and not helpful in addressing the specific impacts of that development.

IV. THE PROJECT WOULD PROVIDE GROSSLY INADEQUATE PARKING.

The Response to Comment 2-16 states that the provision of additional parking would "tend to undermine the transit service and transportation demand management program proposed by the project." However, the EIR acknowledges on page IV.B-42 that some patrons of the existing Wilshire Grand Hotel likely park at locations other than the Property (for example, at 7th+Fig) and walk. However, the EIR and the responses to comments appear to assume that a new development with vastly insufficient parking would somehow alleviate this problem. This is nothing more than a clumsy attempt to shirk the provision of code-required parking by appealing to potential transit use and free-loading on the parking provided by adjacent properties. Further, this purportedly strategic provision of inadequate parking would also exacerbate circulation problems, as new visitors to the building would, upon encountering "lot full" notices, then cruise in the vicinity of the Property looking for an adjacent structure with available parking.

V. 1000 WILSHIRE REQUESTS REASONABLE CIRCULATION MITIGATIONS.

In its Response to Comment 2-3, TPG again states that "[a]dditional access along the 7th Street frontage is not needed." However, the primary justification it offers for not providing that access is that "the only places where a driveway may physically be located are at the far east and west ends of the block. However, these locations would not comply with City of Los Angeles design standards for driveway locations . . . " Aside from the fact that this claim calls into question the safety of TPG's currently proposed valet entrance, this response completely eludes the solution specifically articulated by the Owner in its previous letters to CPC

and PLUM—to modify the design of the proposed valet entrance to allow self-parking drivers to enter. Just last week this office held a meeting with DOT in which DOT traffic engineers indicated a willingness to further study access options for self parkers at the 7th Street frontage. This is critical to alleviating the access pressures on Francisco Street which under TPG's proposal would carry 95% of all new car trips.

VI. THE REQUESTED SIGN DISTRICT IS UNPRECEDENTED AND WAS CORRECTLY MODIFIED BY THE CITY PLANNING COMMISSION.

The responses regarding the Owner's and others' objections to the analysis of the signage program simply avoid addressing the comments and instead describe the length of the analysis and number of exhibits provided. The avoidance of the substance of the comments is particularly puzzling, given that several responses parrot portions of the comments.

Particularly disingenuous is the Response to Comment 1-5, which states that the recommendation of Planning and adoption by CPC of reduced signage in Level 2 of the proposed Supplemental Use District ("SUD") and elsewhere would "further reduc[e] the impact of the signage facing [the Adjacent Property]." Of course, the response neglected to mention that TPG's appeal of the CPC Determination includes, among other things, a request to reinstate the almost the full extent of signage originally requested. Simply put, the responses to comments at least partially rely on a Project design feature that TPG seeks to remove through this very appeal.

The Response to Comment 2-21 acknowledges the comment's objection that turning off the lighted signage at 2:00 a.m. would not alleviate impacts on nearby residents. However, the response provides no discussion as to why a 2:00 a.m. cut-off is appropriate, rather than an earlier hour in the evening when people typically go to bed. Although "last call" for alcohol in Los Angeles is 2:00 a.m., simply assuming that all nearby residents will actually stay until bar closing likely goes too far. A far more appropriate cut-off time is 10:00 p.m., the point at which community noise equivalent level ("CNEL") calculations apply analytical penalties to noise sources to account for lower tolerances of nighttime disturbances.

Further, the EIR's acknowledgement of a significant unavoidable impact with respect to the signage program does not absolve the document of the requirement to provide an accurate description of the nature and severity of the impact. The responses to comments regarding the signage program rely heavily on the EIR's conclusion, but the fact remains that the proposed signage has not been installed on any other building in the City. Consequently, no basis for comparison exists and accurate visual simulations assume paramount importance. The fact that the EIR includes several simulations and "three pages of discussion" is irrelevant to their accuracy or thoroughness.

VII. THE EIR FAILS TO COMPLY WITH RECENT CEQA COURT DECISIONS.

A. The EIR Did Not Analyze the Impacts of the Project on Existing Conditions.

As we previously described in our February 17, 2011 letter to PLUM, the EIR for the Project does not evaluate the impacts of the project based on the conditions that existed at the time of issuance of the Notice of Preparation ("NOP") for the EIR. Specifically, the traffic analysis evaluates Project impacts on hypothetical baselines of years 2020 and 2035, neither of which the EIR supports as legitimate with substantial evidence. As recently stated in *Sunnyvale West Neighborhood Assn v. City of Sunnyvale* (*Sunnyvale*), 10 Cal. Daily Op. Serv. 15,635, 2010 Daily Journal D.A.R. 18,843, that choice fatally flaws the EIR.

B. The CPC Could Not Have Considered the Updated Analysis in Deciding Whether to Certify the EIR, and Therefore Adopted a Defective EIR.

As stated in our February 17, 2011 letter and as Brookfield stated in their appeal of the CPC Determination, the EIR failed to comply with CEQA by failing to analyze the Project impacts of traffic and other environmental impacts on existing conditions. The City, in its Response to Comment 3-60, attempts to salvage the defective EIR by providing the missing analysis in another portion of the administrative record after the fact. Although the response claims that the "analysis is provided for informational purposes only," that statement reveals that the City misses the significance of *Sunnyvale* and its predecessors—in fact, the analysis provided in the response should have formed the basis of the analysis in the EIR, and the fact that it did not is precisely what renders the EIR hopelessly inadequate. Indeed, "a straightforward assessment of the impacts produced by the project alone on the exiting environment is the foundational information of [the] EIR." *Sunnyvale* at 34.

As the City itself states in its Responses to Comments 3-58 and 3-59, the CPC certified the EIR and adopted the necessary findings for doing so on December 16, 2010. The City subsequently issued over 900 pages of additional information, within which the City buried the updated traffic analysis, on February 18, 2011. Consequently, the CPC could not have considered an analysis provided two months after it certified the EIR, and it therefore adopted a defective EIR.

C. The City Must Recirculate the EIR to Allow Decisionmakers and the Public An Adequate Opportunity to Consider and Comment on the New Analysis.

The City "[must] set forth any analysis of alternative methodologies early enough in the environmental review process to allow for public comment and response." *Save Our Peninsula v. Monterey County Board of Supervisors*, 87 Cal. App. 4th 99, 120 (2001) (emphasis added). The City has not done so. As discussed above and in our February 17, 2011 letter, no substantial evidence in the EIR or anywhere else in the record supported the baseline actually used in the EIR when the CPC considered the EIR during the December 16, 2010 hearing. Consequently, the public has not had an opportunity to comment on any such evidence. Thus,

the City must revise the EIR to include the new analysis, rather than simply slipping it into the record after certification of the EIR. The City must also recirculate the EIR to provide an opportunity for the public to comment on any evidence provided and for the Applicant to provide substantive responses to those comments.

Even if the City had revised the EIR to include this new analysis (it has not), the City could not possibly have provided the public with adequate time to consider and comment on it or the overwhelming volume of other information provided. Four calendar days—three of which constitute a federal holiday weekend—cannot possibly suffice to allow members of the public to read and consider any significant portion of a 900-page technical document. As neither the public nor the CPC had an opportunity to consider information provided in an after-the-fact attempt to cure a major substantive defect of the EIR, the City must recirculate the affected portions of the EIR to allow for adequate consideration and comment by the public and decision makers.

The absence of new significant impacts in the updated analysis is irrelevant. *See Sunnyvale*, *supra*, at 39. The *Sunnyvale* court expressly rejected the argument that the presence of new impacts was or should be determinative as to whether the EIR was procedurally or substantively defective.

D. The Assumptions of the Air Quality and Noise Analysis Differed Substantially from Those of the Traffic Analysis.

Comment 3-60 states that the baseline for both the air quality and noise analyses was 2009. However, even assuming the truth of that statement, it represents an acknowledgement that the analysis did not provide the information it claimed. That is, if the traffic baselines are years 2020 and 2035, and the noise and air quality analyses purport to evaluate, among other things, the effects that flow from Project and cumulative traffic, the use of the 2009 baseline decouples both of those analyses from traffic, provides the public with less information than it believes it has received, and therefore robs the public of its ability to understand the relationships among the various technical analyses in the EIR. Consequently, the air quality and noise analyses should be revised to reflect their quantitative relationship to the revised traffic analysis and to provide the public an adequate opportunity to consider and respond to the conclusions of the studies in that light.

VIII. CONCLUSION

As noted above, the Owner believes the proposed Project could benefit 1000 Wilshire as well as the overall economy of downtown Los Angeles. However, the Project will have material impacts on 1000 Wilshire and the surrounding area that require further analysis. Further, the EIR certified by CPC contains significant inconsistencies and deficiencies that render it invalid. The Owner urges PLUM simply to continue this matter to allow DOT and the Department of City Planning adequate time to consider specific mitigation proposals to address the significant but as-yet unmitigated impacts created by the Project.

Sincerely,

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