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OUR FILE NO. 390083-1

Chairman Huizar and Honorable Members Cedillo and Englander  
Planning and Land Use Management Committee  
City Council, City of Los Angeles  
200 N. Spring Street, Room 272  
Los Angeles, CA 90012

**RE: The City Planning Commission (the "CPC") Did Not Err or Abuse Its Discretion in CPC-2013-4134-TDR-MCUP-ZV-SPR Relating to 820 and 826 S. Olive Street and 817, 819 and 825 S. Hill Street/The Appeal Should be Denied in Full/CF-14-1547**

Dear Councilmember Huizar and Honorable Members of the Committee:

On behalf of Onni South Hill Limited Partnership (the "Applicant" or "Onni"), this letter is in response to the appeal of CPC-2013-4134-TDR-MCUP-ZV-SPR filed on November 3, 2014 by the Coalition for Responsible Equitable Economic Development ("CREED LA") in relation to the mixed-use project (the "Project") located at 820 and 826 S. Olive Street and 817, 819 and 825 S. Hill Street (the "Project site") in Downtown Los Angeles.

#### **Executive Summary**

CREED LA purports to encourage sustainable development and a high quality of life for City of Los Angeles ("City") residents, yet it attacks Onni's well-designed in-fill development in close proximity to transit that would provide millions of dollars' worth of public benefits, as well as high-paying employment opportunities, many of which can only be filled by highly skilled union employees. Even though Onni and its affiliates have a track record of working with union subcontractors, CREED LA appears to argue that not committing to local hire and the payment of prevailing wages is tantamount to a failure to provide public benefits consistent with the City's TFAR Ordinance. CREED LA's contention, however, has little merit. As City Attorney Michael Bostrom advised at the October 9, 2014 CPC Project hearing for CPC-2013-4125-TDR-MCUP-ZV-SPR:

"The issue in front of you is whether to grant or to recommend the City Council grant a transfer of floor area rights. **The Municipal Code does restrict your discretion as to a TFAR and does not give you the purview to decide whether public labor is part of that.** Your discretion is bound by the findings in the Municipal Code and the findings are whether the increase in floor area is



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appropriate with respect to location and access to public transit; whether the transfer serves the public interest; whether the transfer is in conformance with the community plan and other relevant policy documents previously adopted. So I just wanted to make sure everyone understood the scope of the discretion here...**With respect to this approval, the City Council would similarly be limited with the TFAR.”**

In the absence of any generally applicable City policies regarding a Project Labor Agreement, prevailing wages, or local hire, it would be outside the City's power to impose such a requirement on a developer as a directly provided public benefit. As any Project Labor Agreement would greatly exceed the cash value of the required Public Benefit Payment, there is no legal authority for the City to require direct public benefits that exceed the amount of Public Benefit Payment that the TFAR Ordinance (Los Angeles Municipal Code (“LAMC”) Section 14.5 et seq.) requires.

The Appellant recommends that the City break with precedent and for the first time in this City's history to require TFAR-required direct public benefits to be allocated to local hire and prevailing wages.

Unlike a hotel receiving a tax subsidy or a development project **receiving** direct financial assistance from the City, where those entities receive financial help from the City that is conditioned on the provision of prevailing wages, here the situation is the reverse: the Applicant would be paying public benefits to the City or directly for the benefit of the City without any tax incentive or financial assistance on which to condition the receipt of public funds. As such, the Project's proposed public benefits satisfy the requirements of the TFAR Ordinance and the City cannot mandate local hire and/or the payment of prevailing wages for the Project either in addition to Applicant's proposed Public Benefits Payment or instead of Applicant's proposed public benefits set forth in the Transfer Plan.

As to the Appellant's contentions regarding vehicular parking, bike parking, trees, and open space, they are all without merit for the reasons outlined in this letter.<sup>1</sup> The variances requested by the Applicant are, on the whole, smaller than the deviations for many other Downtown projects that the City has approved (see the attached variance comparison). The

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<sup>1</sup> For ease of reference, the responses in this letter track the November 14, 2014 CREED LA letter.



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Greater Downtown Housing Incentive Ordinance makes some allowances from the LAMC for Downtown projects. However, most Downtown projects rely on variances in order to bring the type of density that is consistent with the goals of the Central City Community Plan.

A. The Appellant Has Not Demonstrated Standing

The Appellant fails to make the most basic demonstration how it would be adversely affected by the City's approval of the Project. First, the Appellant does not provide any explanation how the Project would adversely affect its members when it claims that its "association of individuals and labor organizations may be adversely affected" by the Project. Merely concluding that members "may be adversely affected" does not provide any indication how CREED LA's members would be "directly affected" by the Project, as asserted. If anything, the Appellant's members would benefit by: the many union jobs that would be created by this high-rise project where skilled trades would be necessary; the increased tax revenues generated by the Project which would flow to local governmental entities; the provision of public benefits to the City and other entities; and the general investment in South Park which would likely produce even more uplifting social and economic benefits for the surrounding community. Second, CREED LA does not assert that any of its members lives, works, recreates or raises families within close geographic proximity to the Project site to actually be directly affected by the Project. Third, as shown later in this response, the Project would provide public benefits consistent with the TFAR Ordinance. The Appellant does not explain how providing public benefits pursuant to the TFAR Ordinance, as proposed, harms or directly affects CREED LA. The lack of a requirement for local hire or prevailing wages is the absence of a potential benefit, but the Project's mere lack of a potential benefit to CREED LA should not be confused with directly harming or affecting the Appellant or its members.

B. A Condition Should be Added for Conduit for Future Electric Vehicle Supply Equipment ("EVSE")

The Appellant contends that the CPC failed to include a Condition of Approval that the Applicant would run conduit to 20 percent of the parking spaces for future electric vehicle charging stations and that the Applicant had agreed to this condition at the hearing.



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At the CPC hearing, the Applicant volunteered to be consistent with the City Building Code (the “Building Code”) to provide for future EVSE charging locations and volunteered to provide conduit for 20 percent of the parking spaces for future electric vehicle charging stations. As a result, a condition for EVSE conduit for 20 percent should be added to the conditions of approval. The Applicant supports the addition of new condition 10 d to read: **“Electric Vehicle Parking. Twenty percent of the total parking spaces shall be pre-wired for electric vehicles.”**

C. No Error or Abuse of Discretion Relating to the Project’s Parking

The Appellant contends that the Project does not comply with the City of Los Angeles (the “City”) parking standards. This contention is without merit.

1. The Amount of Parking Satisfies City Parking Requirements

Once the Los Angeles Municipal Code (“LAMC”) standards for parking in the Central City Area Parking Exception, the bicycle parking ordinance, and the Downtown Parking Business District are taken into account, it is clear that the Project satisfies City parking requirements, as outlined below:

(a) Central City Area Parking Exception

The Central City Area Parking Exception<sup>2</sup> requires “one space for each dwelling, except where there are more than six dwelling units of more than three habitable rooms per unit on any lot, the ratio of parking spaces required for all of such units shall be at least one and one-quarter parking spaces for each dwelling unit of more than three habitable rooms.” The Project consists of 522 residential units, of which 263 units are three or less habitable rooms and 259 units are more than three habitable rooms. The 263 units with three or less habitable rooms require 263 parking spaces and the 259 units with more than three habitable rooms require 324 parking spaces, for a total of 587 parking spaces. This is prior to any further allowed reductions, as described below.

(b) Bike Parking Ordinance

The LAMC permits an automobile parking reduction with the provision of bicycle parking. The Project provides the LAMC-required total of 581 bicycle parking spaces.

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<sup>2</sup> LAMC Sec. 12.21.A(4)(p)



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The LAMC permits residential buildings to replace 10 percent of required automobile parking with bicycle parking. The total required residential parking of 587 spaces, reduced by 10 percent results in 528 required residential parking spaces ( $587 - 59 = 528$  spaces). Therefore, there is no error or abuse of discretion for the provision of 528 residential parking spaces.

(c) Downtown Business District Parking Exception

The Downtown Business District Parking Exception does not require commercial parking spaces for less than 7,500 square feet of commercial floor area. As a result, no commercial parking is required for the Project's 4,500 square feet of commercial space. Nevertheless, the Project proposes to dedicate five parking spaces for commercial use. Accordingly, the approval by the CPC specifies that the Project shall provide a maximum of 533 parking spaces and that no parking shall be required for the commercial uses.

The parking maximum is also consistent with the Downtown Design Guide, which discourages projects from providing more than the minimum required amount of parking in Downtown Los Angeles. Section 5 A 7 of the Downtown Design Guide states that "no more than the minimum required parking may be provided unless provided for adjacent buildings that lack adequate parking."

Taken together, there is no error or abuse of discretion relating to the condition limiting the amount of parking to a maximum of 533 parking spaces.

2. There is No Error or Abuse of Discretion Relating to 40 Percent Compact Vehicle Parking

The findings to support the variance for 40 percent of the residential parking to be compact are supported by substantial evidence, despite the Appellant's contention to the contrary.

(a) Practical Difficulties and Unnecessary Hardships Would Exist If the Variance is Not Approved

The Appellant contends "... that the Applicant is perfectly capable of redesigning the Project to meet City standards," while it completely dismisses the practical difficulties and unnecessary hardships listed that would be created if full-size parking spaces were required for all of the parking. Practical difficulties and unnecessary hardships include the following:



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- The Downtown Design Guide limits parking garage height to no more than three levels above grade unless it is lined with habitable space. Providing full size parking would necessitate an increase in height to accommodate the full size parking spaces, and this would result in nonconformance with the Downtown Design Guide. As an alternative to Downtown Design Guide nonconformance, additional level(s) of very costly subterranean parking could be necessary, thereby adding a significant new amount of excavation, hauling, construction and expense with unanalyzed environmental impacts. Construction of a deeper garage would have new noise, air quality and traffic impacts that were not analyzed. This would create unnecessary hardships and practical difficulties.
- The LAMC-required ten-inch clear space at all walls and columns, large drive aisle widths, large turning radii and associated clear dimensions take up much of the area of each parking level, leaving a limited amount of space for the parking stalls. When required bicycle parking, elevators, stair shafts, as well as equipment rooms are taken into account, adherence to the provisions of the LAMC regarding compact parking would result in practical difficulties and unnecessary hardships.
- City policy supports the notion that developments located near transit do not have the same need for parking spaces based upon suburban standards. The CPC found that the “location of the Project near these numerous transit options reduces the need for on-site parking facilities and standard parking spaces.” Providing full-size parking spaces on a narrow lot adjacent to abundant transit would create unnecessary hardships and practical difficulties.
- The Project’s long and narrow configuration combined with the need to provide ingress and egress from each street while at the same time



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meeting the Building Code requirements for parking layout create an unnecessary hardship.

(b) There are Special Circumstances on the Project Site, such as Lot Size, Topography, Location or Surroundings, Which are Not Present on Other Sites

- Due to the relatively small building footprint and narrow lot that is limited to 120 feet in width, as stated on page F-28 of the CPC determination letter, the parking levels are not large enough to accommodate the minimum circulation requirements while not exceeding the maximum number of compact parking spaces permitted. This very narrow lot width limits the ability to configure the Project to allow the required parking spaces and aisle widths for proper internal circulation.
- The core size of the parking levels is dictated by the Building Code requirements for interior exit stairways to have a separation of 30 feet, resulting in core sizes ranging in size from 32 feet wide to 52 feet long. Depending on the stall size dimensions, the drive aisle width requirements vary from 20 to 28 feet. In addition, each parking level is constrained by the electrical rooms, mechanical rooms, fire pump rooms, loading areas, regular storage and bicycle storage that must be provided. High-rise column sizes will vary in the parking levels, but these columns can be as large as 30 inches by 72 inches, which will also require 10-inch clearance on either side. Taken together, these special circumstances result in the further reduction of space available for parking and drive aisles. These are special circumstances limiting the available area for parking.
- As the Downtown Design Guide limits the number of above-grade parking levels not lined with active uses to no more than three, this limits the ability to provide large parking areas for all the parking required. This is a special circumstance.



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- The first level of the mixed-use building, outside of the 4,500 square feet reserved for retail commercial space, is dedicated to a variety of uses that are not commercial floor area. The first level includes a residential lobby area and the elevator lobby, elevator shafts, a refuse/recycling room, a fire control room, a mail room for the residential units, bicycle storage parking areas, handicapped parking spaces, and access driveways to the subterranean and above ground parking levels as well as pedestrian access through the ground floor. The limited ground floor level of the building that precludes parking on the ground level is a special circumstance.
- (c) The Variance is Needed for the “Preservation and Enjoyment” of a Substantial Property Right Possessed by Other Similar Sites
- The CPC approved a much larger zone variance at the nearby Onyx project (1308 S. Flower and 1306 S. Hope Street). **98 percent of the residential parking stalls for building one of Onyx were approved as compact stalls and for building two, 69 percent of the residential stalls were approved as compact stalls, much higher percentages of compact stalls compared to the 40 percent that the Applicant requested. Additionally, the Onyx was approved for 0.6 stalls dedicated per residential unit; a much lower ratio than the 1.0 stalls dedicated per residential unit that the Applicant requested.**
  - The CPC approved a zone variance at the nearby Glass Tower project (11<sup>th</sup> and Grand) to allow 39 of the proposed 151 dwelling units to have one compact space per unit in lieu of the minimum one standard parking space per unit.<sup>3</sup> The zone variance findings observed that practical difficulties would result from the Citywide requirement for a minimum of one standard parking space per unit.

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<sup>3</sup> ZA Case No. 2008-4718-ZV-SPR, approved by the Zoning Administrator on August 12, 2011.





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Similar to the Applicant's Project, the CPC found that the 22-story project was located on a relatively small site and that the "area of the driving aisles and ramps used for circulation account for more than half of each floor plate. In addition to the vehicular circulation, each parking level contains 2 elevator and stair shafts, a 3<sup>rd</sup> staircase and other equipment rooms." The CPC also found that the LAMC's "10-inch clear space at all walls and columns and the generous drive aisle widths as well as the LAMC's required turning radii and associated clear dimensions take up much of the areas of each parking level, leaving a limited amount of space for the parking stalls." The findings in the Glass Tower case are nearly similar to those in the Applicant's approval; the physical limitations in both cases underscore the practical difficulties and unnecessary hardships that would be imposed but for the relief provided with compact spaces. It is interesting to note that the Glass Tower project site is 155 feet by 148 feet in size. This is notable for the instant case in that the width of the Glass Tower's project site is approximately 28 feet wider than the Applicant's site, thereby allowing for easier internal circulation and vehicle maneuvering than is possible with the Applicant's even narrower project site. Even with a wider building footprint, the Glass Tower project was **afforded 26 percent of its residential parking spaces to be compact spaces.**

- Other high-rise mixed-use developments in Downtown have received similar variances. These include the **Evo building**, located at the northwest corner of 12<sup>th</sup> Street and Grand Avenue. It is a 24-story, high-rise mixed-use development that includes a total of 311 joint live work condominium units and 6,620 square feet of retail uses. On July 13, 2005, a variance request to reduce the required one standard parking space per unit was approved under Case No. ZA-2005-1867-ZV-CU-YV. Of the **311 units, a total of 26 units** were allowed to



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have one compact space per unit in lieu of the required minimum one standard parking space per unit. Another similar project is the **Fashion Institute of Design and Merchandising (“FIDM”)** residential project, a proposed 21-story high-rise mixed-use development located at the northwest corner of Flower Street and Olympic Boulevard, a case also cited in the Project’s Letter of Determination. The FIDM residential building includes a total of 112 apartment units for students and 90,000 square feet of non-residential education space. On June 27, 2008, a variance request to reduce the required one standard space per unit was approved under Case No. ZA-2005-2948-ZV-ZAA-SPR. Of the **112 residential units, a total of 63 units (more than 50 percent)** were allowed to have a compact space per unit in lieu of the minimum one standard space per unit.

- Had the Project been a commercial building, 40 percent of the spaces could be compact spaces. There is no rational reason why a residential tower and a commercial tower, similarly located and situated, should have different stall size requirements relating to standard and compact parking. As such, there is a deprivation of a substantial property right as it relates to the application of the compact parking space requirement for this Project.
- As noted by the CPC, recognizing that parking stall design requirements are the same for suburban areas as they are for South Park and other Downtown locations, there are currently “more small car vehicle owners than when the parking ratio requirements were adopted in 1982 and the parking stall design requirements were adopted in 1972,” both of which are now more than three and four decades old, respectively. A variance to rectify this outdated LAMC requirement is necessary to preserve and enjoy a substantial property right possessed by other similar sites.



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(d) The Appellant's Windfall Argument is Irrelevant to the Variance and Has No Relationship to Demonstrating an Error or Abuse of Discretion by the CPC.

- The Appellant ignores the fact that previously, properties in the Downtown area were permitted a Floor Area Ratio ("FAR") of 13 to 1, and that the City effectively downzoned such properties to the current 6 to 1 FAR. The City created a formula to sell back FAR to developers of Downtown properties, establishing a purchase price for public benefits. As a result of the Applicant's Project approval, the Applicant will make an approximately \$2.5 million Public Benefit Payment. The Applicant will be effectively contributing to numerous public improvements, including funding for the Los Angeles Streetcar, the build-out of the Broadway Streetscape Master Plan Phase 2, the Pershing Square Renew and the Los Angeles Neighborhood Initiative. It could hardly be said that the imposition of the required Public Benefit Payment, Transfer Payment, Downtown Design Guide, Bike Parking requirements, and all of the other LAMC requirements could be construed as a "windfall."

D. There is No Error or Abuse of Discretion Relating to Dispersed Bicycle Parking

The sole apparent argument of the Appellant against the bicycle parking dispersion variance is that "because an Applicant chooses not to provide easy bicycle parking access is contrary to the City's policies encouraging increased bicycle transit." The Appellant is factually incorrect for a number of reasons:

- Bicycle parking would be easy for the Project.
- Bicycle parking would be a short walking distance from the elevators.
- Encouragement of bicycle transit would occur, as the full number of required bicycle parking stalls is proposed.



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1. There is Practical Difficulty

As for the bicycle parking distribution variance findings, the CPC correctly observed that there is a practical difficulty in locating all 581 bicycle parking spaces on the ground floor of a 50-story building with only 120-feet of street frontage on Hill Street and Olive Street. When space is required for the Americans with Disability Act (“ADA”)/pedestrian access, commercial floor area, access ramps to the subterranean and above-ground parking, the shared access driveway, the elevator shafts and elevator lobby, the residential lobby, mail room, fire control room, refuse/recycling room and stairwells, it is impossible to situate the bicycle parking in the manner that the LAMC appears to mandate. The required ground floor uses on a relatively small and narrow site indeed leave little space to accommodate the 525 long-term, secured bicycle parking spaces. Nevertheless, the Applicant proposes to maximize the ground floor bicycle storages to the greatest extent possible, allowing for some long-term bicycle parking spaces. Moreover, the short- and long-term commercial bicycle parking spaces are provided in one ground floor location. The strict application of the siting requirements for long-term bicycle parking would result in practical difficulties and unnecessary hardships.

2. There are Special Circumstances

There are special circumstances that do not apply to other property in the same zone and vicinity that necessitate locating the preponderance of the long-term bicycle parking spaces on all levels of the subterranean and above-ground parking levels. As explained above, the Project site is relatively small and narrow and much of the ground floor is devoted to the elevator shafts and lobby, the residential lobby, fire control room, short-term bicycle parking, retail space, and an access driveway that acts as a shared space for pedestrians, bicycles and vehicles.<sup>4</sup> The CPC found that this “access driveway would improve the circulation for pedestrians and bicyclists; however it results in less space available for long-term bicycle parking at the ground level.” Arguably, even if the entire access driveway was made available for long-term bicycle parking, it may not be sufficient given the large number of bicycle parking spaces required.

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<sup>4</sup> Downtown Design Guide, Page 17, A-1 through 12 establishes the Ground Floor Treatment standards along Retail Streets.



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3. There is a Substantial Property Right

The Project provides all short-term and some long-term bicycle parking on the ground floor. Those who are patronizing the retail uses or are visiting residents of the condominium units would utilize short-term bicycle parking. Residents of the Project would utilize long-term bicycle parking. Long-term bicycle parking users would not be inconvenienced by accessing the ground floor from a nearby elevator.<sup>5</sup> While the bike parking ordinance is new, several high-density residential projects in Downtown have recently sought and received variances for the bike parking location, such as **Metropolis (1,560 condominiums, 350 hotel rooms and approximately 75,000 square feet of retail/ZA-2014-2221-ZA-SPR), and 1133 S. Hope Street (208 condominiums and 5,000 square feet of retail/ZA-2013-4157-ZV-TDR-SPR)**. Similar to other projects in Downtown, where high-density residential development has been incentivized by the City pursuant to the Greater Downtown Housing Incentive Ordinance (LAMC Section 12.22 C 3), the CPC properly found that the Downtown location, ground level retail space and ground level access driveway with improved pedestrian and bicycle circulation create hardships that would not apply to other properties.

E. No Error or Abuse of Discretion Relating to Allowing Reduction in On-Site Trees

As with many other high-density, high-rise mixed-use developments in Downtown, the requirement of providing one on-site tree for every four units creates practical difficulties and unnecessary hardships. One of the benefits of trees is the shade they produce, but in an environment surrounded by high-rise development that may already be shaded, additional trees may not appreciably increase shade, may not thrive due to existing and future shade and shadow conditions, and may not be as critical to creating usable well-designed open space. While the required number of trees would be provided, just not all on-site, the Project's proposed open space maximizes the area available to the residents to enjoy passive recreation such as sunbathing by the pool, as well as more active recreational uses such as swimming or utilizing other amenities. The CPC, in its approval, conditioned the project (Condition 12 c.) to pay an in lieu fee for each tree that cannot be planted on-site. The fee would allow City Plants, a public private partnership with the City of Los Angeles, to plant more trees in the Central City

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<sup>5</sup> Further, it would be expected that regardless of how convenient bicycle parking becomes, many residents would choose to store bicycles securely in individual dwelling units.



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Community Plan Area and will cover the cost of the trees, concrete cutting, planting, and five years of watering and maintenance for each tree.

The Appellant claims that the CPC does not indicate that other high-rise projects have been granted so-called “similar special treatment.” On October 7, 2014, prior to the CPC’s hearing of October 9, 2014, Craig Lawson & Co, LLC, submitted a letter to the CPC to request some edits and deletions to the proposed conditions of approval noted in the Staff Report/Recommendation Report. The Applicant’s request for **47 on-site trees in lieu of 131 trees results in a 64 percent decrease** in the number of on-site trees. Other similar on-site tree reductions have occurred in several developments located in Downtown. The **Thermo Grand Avenue project**, located at 710-798 S. Grand Avenue, achieved a variance to reduce on-site trees by **59 percent, from 218 to 89 on-site trees**. The **717 Olympic project, located at Olympic and Figueroa**, achieved a variance to reduce on-site trees by **64 percent, from 39 to 14 on-site trees**. The **FIDM project, at Flower and Olympic**, achieved a variance to reduce on-site trees by **71 percent, from 28 to 8 on-site trees**. The **Concerto project, at 900 S. Figueroa Street**, achieved a variance to reduce on-site trees by **87 percent, from 157 to 20 on-site trees**. Please see the attached table that lists the variances and adjustments to reduce open space and trees in Downtown Los Angeles.

Though the CPC does not specifically cite these approved variances noted above, it does find that like other Downtown projects, past and present, “meeting the strict interpretation of the LAMC’s requirement would be impractical and make the project infeasible.” The Downtown Design Guide states that “required trees may be planted off-site if the Reviewing Agency determines that they cannot be accommodated on-site.” The Downtown Design Guide proposes that off-site trees should be planted in nearby streets, public parks and private projects in the Central City area. As a result of this understanding of the Downtown Design Guide’s requirements and in recognition of the difficulty for high density projects to achieve consistency with the LAMC provision that was not designed for high-rise projects, the CPC found that the “project still achieves the intent of the LAMC tree requirements in that the trees will be planted in the vicinity of the project, and will contribute to the Central City.” The CPC also found that the LAMC tree requirement creates “an unnecessary hardship by requiring the



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Project to reduce units, thereby diminishing the contribution to Community Plan goals in order to achieve a standard design for a different building type.”

F. No Error or Abuse of Discretion Relating to the Determination Allowing a Reduction in Open Space

The Appellant recognizes that the Director of Planning is allowed to grant a reduction in total required usable open space of up to ten percent without a variance. LAMC Sec. 12.21 G 3 grants this authority to the Director, and thus, the grant of a nine percent reduction in the total required open space of 59,325 square feet is permissible. To incentivize housing in Downtown, the Greater Downtown Housing Incentive Area Ordinance eliminates a distinction between common open space and/or private open space. This Project may satisfy open space in any combination of common and private open space, except that only up to 50 square feet of private open space per dwelling unit may be credited. The Appellant’s claim that the Director erred in granting a nine percent reduction in the open space requirements is without merit.

Without any evidentiary support, the Appellant claims that the City cannot invoke the incentive permitted for Downtown housing projects, and that variance findings should be required for this Project. While only the first 50 square feet of private open space per dwelling unit may count toward the total open space amount, the CPC calculated that the proposed amount of 53,896 square feet of open space amounts to a nine percent reduction of the required 59,325 square feet of open space. The CPC found that LAMC Sec. 12.21 G 3 allows for a ten percent reduction in required open space through a Director’s Decision, “as long as the provided open space conforms to the objectives of the LAMC and that the proposed project complies with the total usable open space requirements in the terms of size, area and design.” **The Project provides an additional 45,802 square feet of private open space amenities for the residents in patios, larger balconies and roof decks which are not permitted to be counted towards the LAMC-required amount of open space.** Including the 53,986 square feet of open space provided according to the LAMC Sec. 12.21 G, the Project’s total amount of open space is 99,788 square feet. Even without taking into account the total amount of uncredited open space, there is no error or abuse of discretion relating to the Determination relating to the less than ten percent reduction in credited open space.



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G. The Appellant's TFAR Arguments are Without Merit

Prevailing wages and/or local hire are not requirements which the City can legally require to approve TFAR. Further, prevailing wages and/or local hire are not necessary to make the required TFAR findings. As stated by City Attorney Michael Bostrom at the October 9, 2014 hearing of the CPC regarding TFAR (transcript page 16) for CPC-2013-4125-TDR-MCUP-ZV-SPR:

"The issue in front of you is whether to grant or to recommend the City Council grant a transfer of floor area rights. **The Municipal Code does restrict your discretion as to a TFAR and does not give you the purview to decide whether public labor is part of that.** Your discretion is bound by the findings in the Municipal Code and the findings are whether the increase in floor area is appropriate with respect to location and access to public transit; whether the transfer serves the public interest; whether the transfer is in conformance with the community plan and other relevant policy documents previously adopted. So I just wanted to make sure everyone understood the scope of the discretion here...**With respect to this approval, the City Council would similarly be limited with the TFAR.**"

In the absence of any generally applicable City policies regarding prevailing wages, or local hire, it is outside the City's power to require either. Moreover, there is nothing about a TFAR transaction where the type of labor and the type of pay would be relevant to making the required findings under the TFAR Ordinance.

1. The TFAR Proposal Does Not Result in a Windfall to the Applicant Because the Project Satisfies the Requirements of the LAMC Section 14.5.3 Definition of a "Transit Area Mixed Use Project"

A Transit Area Mixed Use Project is different from other TFAR projects in that a Transit Area Mixed Use Project includes a more expansive definition of Buildable Area that may increase the maximum TFAR that may be requested. The practical impact of this difference as it relates to this Project, is that instead of a maximum allowable floor area of 518,978 square





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feet for a non-Transit Area Mixed Use Project, with application of the Transit Area Mixed Use Project definition, the Project has requested a floor area of 529,083 square feet. A formula based Transfer Payment and Public Benefit Payment are still each required for all the TFAR square footage whether or not considered a Transit Area Mixed Use Project or a non-Transit Area Mixed Use Project pursuant to the TFAR Ordinance (Article 14.5 of the LAMC). It could hardly be said that with the utilization of the Transit Area Mixed Use Project definition, which, as applied, would allow just over 10,000 square feet in floor area above the non-Transit Area Mixed Use Project, that this would result in a “windfall,” as asserted by the Appellants.

Notwithstanding the arguments of the Appellants, the Project meets the definition of “Transit Area Mixed Use Project” with respect to the three elements in LAMC Section 14.5.3: (1) the Project provides floor area for commercial and residential uses, which are two different land uses; (2) the Project is located within 1,500 feet of the 7<sup>th</sup> Street/Metro Center Station, which is served by the Metro Red, Purple, Blue and Expo Lines; and (3) the Project meets all standards in the Downtown Design Guide.

In response to the Appellant’s contentions that the Downtown Design Guide standards have not been met, the following demonstrates compliance:

- Both Hill and Olive Streets are “Retail Streets” where the percent of the Project’s street frontage, excluding access to parking, along which ground floor space must be designed to accommodate retail, professional office, or live work uses must be at least 75 percent of the street frontage. The Project site is constrained by its narrow width, resulting in less street frontage than other nearby sites with similar “Retail Street” frontage. Along Hill Street, the approximately 120 feet of street frontage is reduced by the nearly 45 feet of access to vehicle parking and bicycle parking. Prior to the CPC approval, the remaining approximately 75 feet of street frontage consisted of approximately 29 feet of retail frontage, with the balance distributed between the residential lobby and additional access to bicycle parking. The CPC’s Condition of Approval No. 4 c requires the reduction in size of the 1,975 square foot common room/lobby, with at least 50 percent of the frontage of the common room/lobby to be redesigned as retail square footage



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such that the new area of retail space shall be built to a depth not less than 25 feet an average 14-foot floor-to-ceiling height. Therefore, of the 120-foot Hill Street frontage, 75-feet are non-vehicular access areas. When the 29-feet of retail frontage, plus 50 percent of the remaining 46 feet of frontage are taken into account, this totals approximately 52 feet of retail frontage in substantial compliance with 56.25 feet of retail frontage. Nevertheless, the Applicant is amenable to increasing the retail frontage by 4.25 feet so that there is 56.25 feet of retail frontage on this street. As a result, the Applicant is amenable to changing condition 4 c as follows: **“The common room / lobby located on the ground floor shall be reduced in size. At least 27.25 feet of the Hill Street frontage of the common room / lobby shall be redesigned as retail square footage. This new area of retail space shall be built with a depth not less than 25 feet and an average 14’-0” floor-to-ceiling height.”** The Project can and would comply with these revisions.

- Along Olive Street, the approximately 120 feet of street frontage is reduced by the approximately 60 feet of access to vehicle parking and bicycle parking. The remaining approximately 60 feet of street frontage consists of approximately 54 feet of retail frontage, thereby achieving the 75 percent of street frontage that excludes the access to parking.
- The Project satisfies the Downtown Design Guide 80 foot tower spacing requirement. The Project site’s approximately 120-foot width results in a tower design where the footprint of the tower is setback approximately 7 feet 7-1/4 inches from the southern boundary and 8 feet 9-3/4 inches from the northern boundary. Adjacent to the project site to the south is a 3-story single room occupancy (“SRO”) building and surface parking. Further to the south is a new 34-story tower under construction which is setback approximately 80 feet from the 3-story SRO building, or approximately 108 feet removed from the Project’s proposed 50-story building. To the north of the Project site is an existing 7-story parkade. Future potential towers are considered for the property to the north of the parkade, fronting on 8<sup>th</sup> Street. The future potential towers would be located



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approximately 95 feet from the Applicant's property line, or approximately 109 feet from the Applicant's residential tower. Thus, contrary to the Appellant's allegation, the Applicant's Project satisfies the standard set forth in the Downtown Design Guide requiring the 80-foot separation. Moreover, the privacy, natural light and air are preserved by the Project's adherence to the tower spacing requirement of the Downtown Design Guide standards.

As such, the Project meets the design standards and thus remains a Transit Area Mixed Use Project.

2. The Variance and Other Entitlements are Irrelevant to the Price of TFAR.

The price of the Public Benefit Payment and TFAR Transfer Payment is determined by LAMC Sections 14.5.9 and 14.5.10, respectively. Despite Appellant's contentions, "variances, deviations and allowances" are not relevant to a TFAR transfer or its price. Simply put, the City adheres to a formula found in the LAMC to determine the value of TFAR, and is not contingent upon or related to variances or other entitlements.

H. The City Has Authority to Negotiate the Project's Public Benefits

As noted in the CPC's approval, the Applicant will provide \$2,538,638 in Public Benefit Payments and \$1,334,640 for a TFAR Transfer Payment. The Appellant takes exception to the direct payment of one-half of the Public Benefit Payment (\$1,269,319) for four projects identified in the approval:

- \$445,848 for the Downtown Street Car Project.
- \$445,848 for the Broadway Streetscape Plan.
- \$297,338 for the Pershing Square Park Improvements.
- \$80,284 to Los Angeles Neighborhood Initiative to promote downtown way finding signage.

LAMC Sec. 14.5.9 A defines Public Benefit Payment as being "provided as part of an approved Transfer Plan and shall serve a public purpose, such as providing for affordable housing; public open space; historic preservation; recreational; cultural; community and public facilities; job training and outreach programs; affordable child care; streetscape improvements; public arts programs; homeless services programs; or public transportation improvements.



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**Prior to approving or recommending approval of a Transfer Plan, the Agency Board, Commission or the City Council shall make a finding that the Public Benefit Payment proposed by the Applicant in the Transfer Plan, or by the Agency Board, Commission or the City Council in its conditional approval, will result in Public Benefits with an economic value consistent with the sum of the Public Benefit Payment set forth in Subsection C. of this Section 14.5.9.**” In consideration of the definition in LAMC Sec. 14.5.9 A, the CPC appropriately determined that public benefits paid for by the Applicant were consistent with the LAMC requirements and would, in fact, result in necessary improvements that benefit the Central City.

The Appellant recommends breaking with City precedent and for the first time in this City’s history allowing TFAR-required direct public benefits to be allocated to local hire and prevailing wages. The Appellant’s recommendation for “authorizing the Applicant [sic] of hire locally and pay prevailing wages” would eliminate CPC’s recommendation to allocate public benefit payment funds to concrete public benefit projects and initiatives within the City of Los Angeles, and instead allocate direct public benefits to construction workers who may not live anywhere within the boundaries of the City, and who would not have any obligation to spend required public benefit funds anywhere in the City. Based on the Applicant’s extensive experience, the additional cost of prevailing wages/Project Labor Agreement would greatly exceed the entire Public Benefit Payment and Transfer Payment, and there is no legal authority to mandate that a project provide a direct Public Benefit Payment that would exceed the amount allowed pursuant to the formula in the TFAR Ordinance. **As the true cost of local hire and prevailing wages is greater than the amount of required Public Benefit Payment, it is not feasible to commit to a local hire and prevailing wage program for up to the value only of the Public Benefit Payment because it would be impossible for the Project to administer and perform.**

The City Council must find that the Project would “... result in Public Benefits with an economic value consistent with the sum of the Public Benefit Payment set forth in Subsection C. of this Section 14.5.9.” See LAMC Section 14.5.9A. In fact, if the City Council requires local hire and prevailing wages that are inconsistent with the economic value of the Public Benefit



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Payment required pursuant to LAMC Section 14.5.9.C, it would not be able to make a required finding pursuant to LAMC Section 14.5.9.A.

Unless local hiring and prevailing wages are required to address impacts of the Project (there is no nexus study indicating that projects cause a need for local hire or prevailing wages), constitutional law would appear to limit the ability to require local hire and prevailing wages above and beyond the Public Benefit Payment. Unlike a hotel receiving a tax subsidy or a development project **receiving** direct financial assistance from the City, where those entities receive financial help from the City that is conditioned on the provision of prevailing wages, here the situation is the reverse: the Applicant would be paying public benefits to the City or directly for the benefit of the City without any tax incentive or financial assistance on which to condition the receipt of public funds.

For these reasons, any TFAR Transfer Plan that would require the Applicant to spend Public Benefit funds on prevailing wages in the manner advocated by the Appellant does not have adequate legal support; the Applicant strongly urges the City Council to retain the Public Benefit Plan and TFAR Transfer Plan approved by the CPC.

1. The Planning Commission's Authority

To approve a project involving a transfer of floor area on a receiver site within the City Center Redevelopment Project Area, the CPC must make findings pursuant to LAMC Sec. 14.5.6 B (2) (a). The Appellant has not made any argument that there was a failure to make any of these required findings, or any abuse or error by the CPC. The Appellant concludes without any evidence that the Applicant has not considered public benefits through the use of local hire and prevailing wages. The Applicant has considered local hire and prevailing wages and there is no support for this assertion.

2. The City Council's Authority

Notwithstanding the Appellant's request for Councilmember Huizar to exercise his authority and request further consultation with the Applicant regarding the Project's provision of direct public benefits, the City Council's authority is described within LAMC Sec. 14.5.6 B (4) (e). The Project proposes a Public Benefit Plan consistent with the TFAR Ordinance.



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**Conclusion**

The Applicant requests that the City Council uphold the decision of the CPC to apportion the public benefit payments and TFAR transfer payment as approved by the CPC in Case No. CPC-2013-4134-TDR-MCUP-ZV-SPR. The CPC gave careful consideration to the formula for the purchase of TFAR rights so that maximum benefits are provided to several projects within a two-mile radius of the Receiver Site, and which would involve eventual construction that results in more jobs being created.

On behalf of Onni, except for the two minor modifications to the conditions of approval, I urge you to deny the appeal and uphold the decision of the CPC for the reasons listed above.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in blue ink, appearing to read 'John W. Whitaker', written over the typed name.

John W. Whitaker

Admitted to practice in California

JWW:eeb

cc: Michael LoGrande, Director of City Planning  
Michael Bostrom, Esq., City Attorney  
Mark Spector, Onni  
Jim Ries, Craig Lawson  
Ryan Leaderman, DLA Piper



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Attachment A

Table of Recent Variances and Adjustments Approved in Downtown Los Angeles for Reductions in Open Space and Tree Requirements									
Project Name	Project Address	Type of Approval	Open Space Req'd (SF)	Open Space Approved (SF)	Trees Req'd	Trees Approved	Percent Change Open Space	Percent Change Trees	
Eleven & Luma	1111 S. Grand Avenue, 1100 S Hope Street	Adjustment	45,175	20,036	105	50	-56%	-52%	
The Glass Tower	317-331 West 11th Street, 1046-1060 South Grand Avenue	Variance	17,000	12,500	N/A	N/A	-26%	N/A	
FIDM	939 South Flower Street, 709 West Olympic Boulevard	Variance	N/A	N/A	1/4 DU, 2	1/14 DU, 8	N/A	-71%	
717 Olympic	948-950 S. Figueroa Street, 717 W. Olympic Boulevard	Variance	16,450	14,342	39	14	-13%	-64%	
Evo	1155 South Grand Avenue	Variance	36,275	23,874	N/A	N/A	-34%	N/A	
Metropolis	811, 899 S. Francisco Street and 1000,1004, 1010, 1018, 1020, 1026, 1028,1030 and 1032 E. 8th Street	Variance	165,625	156,764	391	344	-5%	-12%	
Concerto	900 S. Figueroa Street	Variance	62,900	39,208	157	20	-38%	-87%	
Thermo Grand Avenue	710-798 S. Grand Avenue, 701-799 S. Olive Avenue	Variance	101,450	61,162	218	89	-40%	-59%	
Park Fifth	401-433 West 5th Street, 432-440 South Olive Street, and 429-441 South Hill Street	Variance	N/A	N/A	198	88	N/A	-56%	
8th & Olive	801-825 South Olive Street, 50-512 West 8th Street	Variance	N/A	N/A	1/4 DU, 9	1/8.4 DU, 43	N/A	-53%	
Onyx Site 1	1308 S. Flower	Variance	21,548	26,800	N/A	N/A	-20%	N/A	
Onyx Site 2	1306 S. Hope	Variance	14,432	17,600	N/A	N/A	-18%	N/A	
						<b>Mean Percent Change</b>	<b>-28%</b>	<b>-57%</b>	
1212 S. Flower -Onni	1212 S. Flower Street Los Angeles	Directors Determination / Variance	81,950	73,755	183	89	-10%	-51%	* In lieu fee has been conditioned by CPC for trees not planted on-site
820 S. Olive- Onni	820 S. Olive Street Los Angeles	Directors Determination / Variance	59,325	53,986	131	41	-9%	-69%	*In lieu fee has been conditioned by CPC for trees not planted on-site