

MAYER • BROWN

Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503

Main Tel +1 213 229 9500
Main Fax +1 213 625 0248
www.mayerbrown.com

Edgar Khalatian
Direct Tel +1 213 229 9548
Direct Fax +1 213 576 8130
ekhalatian@mayerbrown.com

November 18, 2016

Los Angeles City Council
200 North Spring Street
Los Angeles, California 90012

Re: The Reef Project (Council File Nos. 16-1058; 16-1058-S2; 16-1058-S3); Response To Appeal Regarding Case Nos. VTT-72914; CPC-2014-1771-GPA-VZC-SN-VCU-MCUP-CUX-ZV-SPR-MS; CPC-2014-1772-DA; ENV-2014-1773-EIR

Honorable Members of the Los Angeles City Council:

On August 11, 2016, the Los Angeles City Planning Commission (the “**Planning Commission**” or “**CPC**”) voted 7-1 to certify an environmental impact report (the “**EIR**”) and approve a General Plan Amendment, Vesting Zone Change, Supplemental Use Sign District, Master Conditional Use Permit, Special Permission for the Reduction of Off-Street Parking, Variances, Site Plan Review, and Development Agreement (CPC-2014-1771-GPA-VZC-SN-VCU-MCUP-CUX-ZV-SPR-MS; CPC-2014-1772-DA; ENV-2014-1773-EIR, “**CPC Approval**”) for the redevelopment of a 9.7-acre property located at 1900 South Broadway (the “**Property**” or “**Project Site**”) with a mixed-use residential and retail project (the “**Project**”). The Planning Commission also affirmed the June 21, 2016 decision by the Deputy Advisory Agency, including the adoption of the Mitigation Monitoring Program (the “**MMP**”) and the Statement of Overriding Considerations, adoption of the Findings and Conditions for the Project, and approval of a Vesting Tentative Tract Map for the Property (VTT-72914, “**VTTM Approval**”, and together with the CPC Approval, the “**Project Approvals**”).

The Project has been proposed by PHR LA Mart, LLC (the “**Applicant**”) for construction within the Southeast Los Angeles Community Plan (the “**Community Plan**”) Area of the City of Los Angeles (the “**City**”). The Project would consist of 1,680,306 square feet of floor area and includes: (i) 549 residential apartment units, including 21 live/work units; (ii) 895 residential condominium units; (iii) 69,400 square feet of retail uses, including a 29,355 square-foot grocery store; (iv) 35,657 square feet of restaurant/bar square footage; (v) a 208-room hotel; (vi) a 17,507 square-foot gallery; (vii) a 1,622 square-foot community room, and (ix) two fitness/yoga studios totaling 7,879 square feet. The Project also includes 2,512 parking spaces and 1,906 bicycle parking spaces. The Project, including the existing Reef building, will contain 2,541,468 square feet of floor area upon full build out. The Project aims to provide a pedestrian-friendly, transit-oriented development to update the Reef building and replace two surface parking lots. Notwithstanding these laudable goals and significant public benefits, a vocal opposition has

November 18, 2016

Page 2

assembled to challenge the decisions of the Planning Commission and the Deputy Advisory Agency. In response to the arguments lodged by individual and collective opponents, the Applicant has prepared this letter and presents it now to the City Council for reasoned consideration.

I. LEGAL STANDARD

Joe Donlin of United Neighbors in Defense Against Displacement (“**UNIDAD**”) filed an appeal (the “**Appeal**”) of both the Planning Commission’s decisions. The two types of decisions being appealed are governed by different legal standards, which are set forth below.

A. Review of VTT-72914 under the Subdivision Map Act

In cities with a population of more than 2,800,000 people, such as the City, decision makers must deny a tentative map if they find:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the legislative body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public.

(Cal. Gov. Code, § 66474.61) As evidenced by the detailed analysis in the Los Angeles City Planning Commission’s August 17, 2016 Letter of Determination for VTT-72914, the Project does not trigger any of these grounds for rejection.

B. Review of CPC-2014-1771-GPA-VZC-SN-VCU-MCUP-CUX-ZV-SPR-MS; CPC-2014-1772-DA under CEQA

The appeal of the Project Approvals issued by the Planning Commission is founded more generally on allegations that the Planning Commission failed to comply with the California Environmental Quality Act (“**CEQA**”) and as a result prepared a legally inadequate EIR. To

November 18, 2016

Page 3

prevail on these claims, the Project opponents must show that the EIR omitted “information that is both required by CEQA and necessary to informed discussion.” (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986 [*“Cal. Native Plant”*].) To the extent that they challenge “the amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology,” they must show that “the determination is not supported by substantial evidence.” (*Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546 (*Baykeeper*); Cal. Pub. Resources Code, § 21168.5.) Substantial evidence consists of “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,” and not merely “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly inaccurate or erroneous” (Cal. Pub. Resources Code, § 21082.2(c).) This deferential standard of review empowers the agency to resolve questions of fact and make policy decisions. (*Cal. Native Plant, supra*, 177 Cal.4th at pp. 984-985.) Furthermore, once certified by the lead agency, an EIR is presumed adequate and project opponents bear the burden to prove otherwise; demonstrating a mere difference of opinion among experts is not sufficient. (Cal. Evid. Code, § 664; Pub. Resources Code, § 21167.3; *Fort Mojave Indian Tribe v. Dept. of Health Servs.* (1995) 38 Cal. App. 4th 1574, 1600.) The Project opponent has not met its burden to justify its appeal.

On November 1, 2016, the City Council’s Planning and Land Use Management (“**PLUM**”) Committee considered the Project, including reduced signage and the appeal, and voted 5 to 0 to deny in part and approve in part the appeal and the Project.

II. RESPONSE TO UNIDAD APPEAL

None of the arguments raised in the Appeal identify significant new information, unexamined significant impacts, or any other circumstances that suggest the Project Approvals or denial of UNIDAD’s appeal was improper. The Appeal simply presents UNIDAD’s disagreement with the conclusions stated in the Project Approvals, and fails to present any legitimate reason to disapprove the Project Approvals or otherwise grant the Appeal.

The Appeal incorrectly contends that the analysis of Project is insufficient under CEQA and that the Findings for both the EIR and the VTTM are deficient; however, none of UNIDAD’s contentions have any merit. Many of the rebuttals to the arguments raised in the Appeal can be found in the very thorough EIR, including the responses to comments contained in the Final EIR (the “**FEIR**”) that the City certified.

The Appeal incorporates UNIDAD and Public Counsel’s same written comments previously made to the Draft EIR (the “**DEIR**”). The FEIR includes detailed responses to those comments. Consequently, this letter does not address every issue and question raised by the Appeal since the responses to the comments have already covered those issues. Instead, the focus of this letter is to primarily dispute the main contentions raised in the Appeal. Accordingly, in response to those contentions, the Applicant asserts the following:

November 18, 2016

Page 4

A. The Subdivision Map Act findings are supported by substantial evidence.

1. The Project is not fatally inconsistent or incompatible with the City's General Plan, Southeast Los Angeles Community Plan, or any other applicable planning documents.

The Appeal restates UNIDAD's contention that the Findings for the approval of the VTTM and the EIR are not supported by substantial evidence because it disagrees with the City's analysis of consistency with applicable land use laws. In support of this argument, UNIDAD makes several factually incorrect statements, misstates the purpose or goal of a policy, and/or fails to differentiate between Citywide goals and goals applicable to individual projects.

UNIDAD's first erroneous contention is that the Project cannot be consistent with Community Plan Objective 1-2 because it will generate trips and, therefore, cannot meet the Objective's goal of reducing trips. This is, simply put, a strange mischaracterization of the Objective which reads as follows: "To locate *new housing* in a manner that reduces vehicular trips and makes it accessible to services and facilities." (emphasis added.) Of course, any new housing will generate new trips. The Objective seeks to encourage new housing near transit to reduce the vehicular trips generated by the new housing. As discussed in the DEIR IV.J-52, the Project is consistent with this Objective because it provides housing units and mixed-use development within close proximity of a regional transportation hub and a multitude of public transit options. Moreover, the Project is centrally located to downtown Los Angeles, the L.A. Live Complex, Staples Center, the Convention Center, USC, and other major employment centers, services and facilities all accessible via public transportation or within walking or bicycling distance.

Rather than read Objective 1-2 as written, UNIDAD attempts to dispute the finding of compliance by alleging that only a project with significant affordable housing can satisfy Objective 1-2 because lower income residents are more likely to use public transit. However, as fully explained in Response to Comment 9-35 (FEIR Page III-129 and III-130), the study relied on by the commenter, Public Counsel, shows that the location of housing in transit areas results in a reduction in vehicle miles traveled, vehicle ownership, and household vehicle trips per day over all income groups. Therefore, UNIDAD is both incorrect in its interpretation of Objective 1-2 and its conclusion that the Project is inconsistent with the Objective.

UNIDAD also fails to understand that many policies do not deal with an individual project but instead are designed to guide policy makers. As such, the policies enumerated in the Appeal, specifically Policy 11-2.3, 1-5.2 and 2-1.4 of the Community Plan, do not create mandatory obligations for the Project and, therefore, cannot be found to be inconsistent with the Project.

Additionally, in alleging inconsistency with specific Community Plan policies, the Appeal fails to accurately describe the policy or its purpose through selectively citing clauses of a policy without putting the policy in context with the goal it seeks to achieve. For example, Policy 11-2.3 is part of the circulation element of the Community Plan and is located under the heading of

November 18, 2016

Page 5

Public Transportation. To further the use of public transportation, Objective 11-2 seeks to increase the work trips and non-work trips made on public transit. The City is striving to achieve this objective through various policies, including Policy 11-2.3, which seeks to have the City maximize opportunities for affordable housing and pedestrian access adjacent to rail stations by establishing Transit Oriented Districts (“TODs”), and through incentives and guidelines encouraging mixed-use and pedestrian oriented development within TODs. Policy 11-2.3 does not mandate affordable housing in every residential project located within a TOD. Moreover, the Project is consistent with this City Objective and Policy since the Project proposes to build a mixed-use and pedestrian oriented development within a designated TOD. Similarly, Policy 1-5.2 seeks to further Objective 1-5, which is part of the group of objectives and policies under Goal 1 that strives for a “safe, secure and high quality residential environment for *all economic, age and ethnic segments* of the community” (emphasis added). Objective 1-5 seeks to achieve this goal by ensuring the provision of adequate housing for all persons regardless of income, age, or ethnic background. In furtherance of Goal 1 and Objective 1-5, Policy 1-5.2 seeks to ensure that new housing opportunities minimize displacement of the residents. As is fully discussed in the EIR (*see e.g.*, DEIR pages IV-A-9, IV.L-9 and IV.L-10), there are no residents on the Project Site. The Project will not remove residential development, it will create new housing and will add residentially-oriented amenities to the Property and the neighborhood. Thus, the Project will not cause the displacement of any residents and, therefore, the Project is consistent with Policy 1-5.2, as well as the Objective and Goal leading to that Policy. (See Section I.F below regarding the Appeal’s contention that the Project will create indirect displacement in all of South Los Angeles.)

Finally, Policy 2-1.4 seeks to further Objective 2-1 which states that the City’s objective is to conserve and strengthen viable commercial development. Policy 2-1.4 accordingly strives to ensure the viability of existing neighborhood stores, which support the needs of local residents and are compatible with the neighborhood through re-designating to a Neighborhood District land use category, some properties which were previously zoned and planned highway commercial and which include the type of uses identified in the policy. Even though the Project is not within a Neighborhood District, the Project is consistent with Policy 2-1.4, and Objective 2-1 underlying the Policy, in that it does not remove any existing neighborhood stores. In fact, the Project includes commercial space to accommodate small community stores and businesses. In addition to retaining the existing commercial operations in the Reef, the Project will provide new commercial, retail and restaurant space thereby increasing the employment and business opportunities in the area. The Project would include a pharmacy, grocery store and other community-serving uses, in addition to restaurant and specialty retail uses, available to the public and new residents. Therefore, the Project will not only provide opportunities for new and existing local businesses, it will increase the economic activity in the area, which will benefit all businesses in the area, old and new.

In addition, CEQA does not require that a project be completely consistent with all relevant General Plan policies (*Sequoyah Hills Homowners Assn. v. City of Oakland* (1993) 23

November 18, 2016

Page 6

Cal.App.4th 704, 717). Nonetheless, the Appeal asserts that there are other General Plan policies¹ dealing with affordable housing that the Project fails to address. However, these are policies that apply to the City's agencies, policy makers and decision makers, and generally to the provision of affordable housing throughout the City. These policies promote development of affordable housing throughout the City, but do not mandate the inclusion of affordable housing units in any individual development project. If affordable housing were a mandate, there would be no need for the various incentive programs the City provides to encourage developers to include such non-mandatory components in their residential projects. Thus, alleging that a failure to provide affordable housing makes the Project *per se* inconsistent with the General Plan, or Community Plan, is an incorrect statement bolstered only by the UNIDAD's selective and misleading citations to various General Plan and Community Plan policies.

2. The Project is not inconsistent with the General Plan or other Land Use Policies for failure to request a Density Bonus.

UNIDAD incorrectly contends that the Project is somehow inconsistent with the General Plan and other land use policies because the Applicant has failed to take advantage of *voluntary* incentives offered by the City for the provision of affordable housing. It is unclear how UNIDAD conflates a voluntary program of *incentives* into a mandatory program providing the only means to increase density on private property. Nor does the Appeal provide any clarity on this issue; instead it continues to argue that the use of existing laws violate the spirit of the City's attempts to promote the construction of additional affordable housing by providing a series of incentives to make this completely voluntary activity more financially attractive to developers. Clearly, if the City had intended that certain land use approvals would only be available with an application for a Density Bonus incentive, it would have amended its laws to reflect such a desire. That is not what the City has done, and no amount of bewildering contortion of the precise wording of the laws, goals, and policies negate a developers right to apply for existing land use entitlements.

The Project does not propose to use the Density Bonus program in its land use entitlements. The Applicant has applied for land use approvals consistent with existing Los Angeles Municipal Code ("LAMC") provisions, including the Greater Downtown Housing Incentive Area Ordinance, which do not require the use of the voluntary Density Bonus program. These LAMC provisions specifically allow for changes in land use designation to permit residential uses and changes to height district designations to permit higher density development. Nonetheless, the Applicant has negotiated a Development Agreement with the City that includes an affordable housing component as one of the community benefits offered as consideration for the Development Agreement. In fact, the Planning Commission recommended that the Project's apartments include 5 percent for Low Income Households (the Applicant agreed that these units should be set aside for Very-Low Incomes Households).

¹ The Appeal contains a footnote with a list of General Plan policies and programs which Appellants claim are not addressed properly in the EIR. See Response to Comments 9-22, FEIR pages III-119-120.

November 18, 2016

Page 7

However, UNIDAD argues that the amount of affordable housing which is now part of the Project, is not sufficient to meet the City's goals of promoting development of more affordable housing through incentive programs. However, as in UNIDAD's prior appeal and comments to the DEIR, the Appeal fails to provide a legal nexus for requiring, rather than encouraging, the construction of affordable housing units in any particular development.

3. The Project Site is physically suitable for the proposed type of development.

UNIDAD continues to incorrectly contend that the VTTM should be denied because the Project Site is not physically suitable for the type of development being proposed. UNIDAD erroneously states that the City had no basis for making the finding that the Project Site is suitable because of an alleged failure to consider the Project Site's zoning history, the proposed Reef Transit-Oriented Sign District (the "**Sign District**") in close proximity to major freeways, and the impacts of luxury housing on neighboring rental housing stock. As analyzed in the EIR, and discussed below, the City did consider all of these factors. The only basis for UNIDAD's contentions is that they disagree with the City's considered opinion.

The Subdivision Map Act's requirement that the City make a finding that a project site is physically suitable for the type of development proposed refers to the physical characteristics of the site. As is clear from the extensive analysis in the EIR, including the Initial Study, Appendix I-1, the Project site is relatively flat and located within an urbanized area and is not located on a slope or in an area with stability or erosion issues or in a fault/rupture study zone. Also, the zoning history, the proposed Sign District, and alleged impacts to the neighboring housing stock do not reflect any physical condition which would prohibit the City's finding of physical suitability. The EIR provides a detailed analysis of the Project's compatibility with its location which includes the existing the Reef building, which will be retained, and the existing commercial, institutional, and residential uses in the immediate vicinity. (See DEIR page IV.J-34.) The Appellant's concern about the Project's impact on the neighboring rental housing stock is not a physical aspect of the Project Site. Nonetheless, the Appellant makes a baseless assertion that the Project is providing "luxury housing" without defining what constitutes luxury housing. Rents for the Project's residential component are purely speculative at this point and do not account for the Project's mix of housing units.

4. The Project Site is physically suitable for the proposed density of development.

There is substantial evidence to support the City's finding that the Project Site is physically suitable for the proposed density of development. Again, as in the case of the inconsistency arguments, the Appeal selectively cites from the City's Project Approvals to claim that the City was only considering the nearby educational institutions and apartments. Contrary to that assertion, the Findings of Fact include a discussion of the entirety of the vicinity surrounding the

November 18, 2016

Page 8

Project Site, including the nearby office, institutional, commercial, and residential uses and the developments in South Park (Planning Staff Report pages 115-116).

As fully set forth in the EIR, the Project is surrounded by a mix of commercial, institutional, and residential uses. The Project Site vicinity is highly urbanized and not just compatible with the immediately adjacent uses, but with the area northwest of the Project Site in the South Park neighborhood. This neighborhood features mixed-use housing and office projects similar in density to that proposed for the Project. Moreover, as noted in the DEIR (pages IV.J-34 and IV.J-35), urban growth associated with downtown Los Angeles is moving from the downtown core to the south, towards the Project Site and surrounding areas. Of the 82 related projects discussed in the EIR, 24, approximately 30 percent, are residential or mixed-use projects located south of Olympic Boulevard within 0.8 miles from the Project Site, with eight of those 24 located south of Pico Boulevard within one-half mile of the Project Site. Accordingly, the Project represents an appropriate project in an appropriate location with appropriate density that reflects its proximity to public transit. The City's Findings of Fact are, therefore, supported by substantial evidence as set forth in the EIR.

5. The design of the subdivision and the Project are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

Again, the Appeal is based on an erroneous interpretation, and selective citation, of required Subdivision Map Act findings. The Subdivision Map Act requires that the City make a finding that the design of the subdivision and improvements are not likely to harm fish or wildlife or their habitat. (California Government Code Section 66474(e).) There is no requirement, as alleged in the Appeal, that the City must deny approval of any tentative map if the project has significant and unavoidable impacts in other environmental areas, such as aesthetics, air quality, or transportation. In fact, CEQA recognizes that some projects may cause significant and unavoidable environmental impacts in these study categories, and provides for the procedures to mitigate those impacts to the extent possible and, if not mitigated to a less than significant level, to require a statement of overriding considerations if the project will nonetheless be approved. (14 Cal. Code Regs. §§ 15043, 15093) By failing to include the entire sentence regarding the finding that the City must make, UNIDAD reaches the unsustainable position that no project with any significant impacts can be approved rather than the required finding regarding fish and wildlife. UNIDAD attempts to substantiate this argument by reference to the comments to the DEIR they submitted as well as those submitted by Public Counsel. However, each of those comments was addressed in the FEIR, pages III-107 through III-137, and none of those comments allege that the Project would have a significant and unavoidable impact on fish or wildlife or their habitat. Accordingly, UNIDAD has presented no evidence that the City's findings are unsubstantiated or incorrect.

November 18, 2016

Page 9

6. The design of the subdivision and the Project are not likely to cause serious public health problems.

The Appeal once again incorrectly contends that the City's findings were deficient as to the likelihood to cause serious health problems because the City failed to consider the alleged health impacts of displacement. The Appeal presents no new evidence not already submitted in its comments to the DEIR. This issue is thoroughly discussed in the FEIR in the response to comments (see, Response to Comment 10-8, commencing on page III-237.) The City's finding appropriately found that the design of the Project would not be likely to cause serious public health problems because the development is required to be connected to the City's sanitary sewer system where it will be appropriately treated. There is nothing else inherent about the Project or the use of the Project site that would result in a serious public health problem.

However, UNIDAD attempts to expand the clear meaning of this required finding to include a potential indirect harm to public health due to the alleged displacement of residents and businesses that allegedly would occur because the Project might result in improving the neighborhood and raising property values in the process. This potential, speculative, indirect impact is not sufficient to justify a finding that the design of the Project would cause serious public health problems. In fact, the FEIR (Response to Comment 10-8, pages III-237 through III-241) thoroughly reviewed the claims made by UNIDAD, and appropriately concluded that the Project will not result in any direct displacement of residents or businesses because there are no residences on site now and the Project will provide continuing and new space for local businesses and new employment opportunities for local residents.

There is also no evidence that the Project will result in the indirect displacement of any residents, let alone the over 40,000 people the Appeal claims will be subject to moderate to very high risk for financial strain and/or displacement from the Project's impacts on neighborhood housing prices. These assertions are based on assumptions and generalizations that overstate the already speculative conclusions of the November 2, 2015 UNIDAD DEIR Comment Letter, including the Reef Project Health Impact Study (the "**UNIDAD Study**"). The UNIDAD Study encompasses an area far larger than the Project vicinity, much of which contain neighborhoods which are sufficiently remote or different from the Project Site to stretch credulity that they would suffer any impact at all from this development. (See FEIR, Response to Comment 9-23, pages III-120 and 121, and Response to Comment 10-8, pages III-238 through III-240 and discussion in Section B.2 below.) The issue of disruption of social networks is also addressed in the FEIR. As analyzed in the EIR, there are no residences on the Project Site which is composed of the Reef building, which was constructed in 1958, empty warehouses, and surface parking lots. Therefore, the potential disruption of social networks and environment and economic stress on nearby residents are speculative and not physical impacts upon the environment as a result of the Project which could lead to serious public health issues. (Id, page III-240.) Thus, rather than being tone deaf, without merit, and not supported by the evidence, as claimed in the Appeal, the City thoroughly analyzed the UNIDAD Study submitted to the City and thoughtfully responded

November 18, 2016

Page 10

to UNIDAD's comments. The conclusion reached in the City's Finding of Fact is, therefore, fully supported by substantial evidence.

B. The EIR and CEQA Findings are Supported By Substantial Evidence.

1. The EIR's conclusions regarding Project aesthetics, including signage, are supported by substantial evidence.

Contrary to UNIDAD's contention, the Project's height, size, and the number and types of buildings it will contain are compatible with the neighborhood. The Appeal argues that the Project is not compatible because the Project is larger than any other project proposed for South Los Angeles. However, that is not the appropriate basis for determining if a project impacts the visual quality of the immediate area or is incompatible with respect to surrounding development. The appropriate thresholds of significance for aesthetic impacts are thoroughly discussed in Section IV.B.1 of the DEIR commencing on page IV.B.1-15. This analysis includes looking at the immediate area of the Project, not the over 51 square miles and 28 neighborhoods that comprise South Los Angeles. Height and massing, as well as architectural and urban design, are discussed in detail at pages IV.B.1-22 through 27 of the DEIR. This analysis appropriately concludes that even with an increased visual prominence, the Project would not be out of character with nearby downtown Los Angeles, or with other development surrounding the Project Site. Instead, the Project would replace the existing underutilized surface parking lots with an urban-scale, transit-oriented project that is reflective of the expected visual character of the area as it develops in the future in accordance with adopted land use plans, including regional plans, the General Plan Framework, the current Community Plan, the Draft/Proposed Southeast Los Angeles Community Plan, and the Council 9 Redevelopment Plan, among others, all of which envision further development concentration in transit station areas in general, and in this area of the City in particular, in the future.

In addition, the EIR adequately and thoroughly addressed the Project impacts related to the proposed Sign District. Moreover, the signage analyzed in the EIR was substantially more than would be permitted in the proposed Sign District ordinance. Since the EIR was circulated, the Project's signage has been substantially reduced (the "**Reduced Signage Program**"). These changes would not result in new significant environmental effects, or substantial increases in the severity of environmental effects that were previously disclosed in the EIR. The total proposed signage has been reduced by 164,789 square feet in size, from 234,067 square feet to 69,278 square feet.

Other changes have also been included to decrease the impacts of the Project's signage program compared to the original proposal. The number of large signs permitted by the Reduced Signage Program would be reduced from six to three, and all three signs would be located on the Reef building. The previously proposed signs on the north and east facades of the North Tower, and the north façade of the South Tower would not be permitted under the Reduced Signage

November 18, 2016

Page 11

Program. No Vertical Sign Zone 3 signage would be permitted on the Project Site, except on the Reef building and the hotel building.

Under the Reduced Signage Program, the large signs that would be permitted on the Reef would be modified as follows:

- Reef Building
 - North Elevation – 24,202 sq.ft. to 13,887 sq.ft. (43% reduction)
 - East Elevation – 23,050 sq.ft. to 13,665 sq.ft. (41% reduction)
 - West Elevation – 23,050 sq.ft. to 13,665 sq.ft. (41% reduction)

In addition, Vertical Sign Zone 3 signage on the hotel building would be reduced from 14,520 square feet to a maximum of 8,580 square feet, a 41 percent reduction compared to the DEIR analysis.

The Appeal provides no new evidence showing that the signage analysis in the EIR was incorrect. It merely disagrees with its conclusion, a conclusion that is supported by detailed analysis. UNIDAD objects to the EIR's response to comments submitted by Public Counsel. Specifically, they object to responding to a repetitive comment by cross-referencing previous responses to the same issue. While this might represent a disagreement as to the format of the responses, it does not present new evidence (or any evidence for that matter) that the conclusions of the EIR are incorrect.

As for the argument that the Project either violates or undermines City signage ordinances, including prohibitions against freeway facing signs, UNIDAD once again inaccurately interprets the relevant ordinances. As to freeway facing signs, the full citation of the applicable LAMC provision shows that not all signs within 2,000 feet of a freeway are prohibited. LAMC Section 14.4.6 prohibits the construction of signs within 2,000 feet of a freeway, "unless the Department of Building and Safety has first determined that the sign will not be viewed primarily from a main travelled roadway of a freeway, or an on-ramp/off-ramp." As discussed in Response to Comment 9-5, the proposed signage would not be viewed primarily from the adjacent freeways, and would not pose a hazard to driver safety as defined by state law. Nonetheless, the Appeal incorrectly claims that the EIR determined that the signs would be "primarily viewable" from the nearby freeways. The EIR determined exactly the opposite after careful analysis of the views from the relevant freeways in both directions and discussion of State guidelines contained in the California Motor Vehicle Code Section 21466.5. (See DEIR page IV-B.2-17, FEIR and pages III-108 through III-110.) Accordingly, the EIR provides substantial evidence to support its conclusions and findings while the Appeal provides no additional evidence to dispute the findings.

The Appeal also seeks to challenge the EIR's findings by making the completely speculative claim that approval of the Project's proposed Sign District will jeopardize the City's position in

November 18, 2016

Page 12

future litigation challenging the City's signage ordinances. Not only is this contention based on pure speculation, it does not address an adverse environmental impact of the Project and, therefore, it fails to provide substantial evidence contradicting the analysis in the EIR.

Additionally, the Appeal takes issue with the response provided to a comment submitted by Public Counsel, asserting that the response does not adequately address public health issues associated with excessive artificial light. However, Response to Comment 9-6 does not dismiss the concerns raised by the comment, rather it provides a detailed analysis of one of the studies cited by the commenter and cites to the study's own language that "any related health effects [to nighttime light] are unknown." (FEIR, Response to Comment 9-6, page III-112.) The response goes much further analyzing the commenter's concerns and concluding that the DEIR evaluates the specific characteristics of the Sign District and, based upon the established standards related to lighting in the City, the Project would not have the negative impacts expressed by the commenter. Specifically, as discussed in the DEIR, the Project has been designed to result in lighting levels that do not exceed 2.0 footcandles at adjacent offsite light sensitive receptors (DEIR page IV.B.2-12). Therefore, the EIR adequately analyzes the light and glare impacts of the proposed Project signage.

2. The Project will not result in indirect displacement and the findings of the UNIDAD Study were taken into consideration.

As discussed in Section I.F, above, the FEIR thoroughly reviewed the information provided in the UNIDAD Study and the comments to the DEIR regarding displacement, and appropriately concluded that the Project would not result in any direct or indirect displacement or health impacts related to any such displacement. The Appeal merely disagrees with this conclusion including the detailed analysis of why the UNIDAD Study included a study area that is removed from the Project Site and, therefore, is not applicable to any analysis of the area surrounding the Project Site; the area which would be the most likely to be effected by indirect impacts of development. In fact, as explained in the FEIR, page III-238, the Project Site is not the same as the nearly 75 percent of the study area analyzed in the UNIDAD Study. Contrary to the assertion in the UNIDAD Study and the Appeal, the Project Site and surrounding area have characteristics in common with downtown Los Angeles with higher percentage of housing units per building than the housing in the majority of the census tracts within the Study Area (see Tables III-1 and III-2). Furthermore, the extension of possible effects from the Project to a two mile radius, crossing two freeways, as was done in the UNIDAD Study and relied upon by the Appeal, is speculative at best.

Finally, contrary to the assertion in the Appeal that the Project has a "potential for displacement of existing residents and businesses", there are no existing residents on the Project Site and no existing businesses which will be displaced. Therefore, the Appeal's argument must be limited to indirect, potential displacement, based on a UNIDAD Study which includes disparate neighborhoods and speculative conclusions. CEQA does not require the analysis of purely

November 18, 2016

Page 13

speculative potential impacts. Accordingly, the EIR properly analyzed the potential displacement impacts of the Project and the FEIR fully analyzed and responded to the comments presented to the City and appropriately concluded that the Project would not displace residents or local businesses. The Appeal presents no new evidence to dispute that conclusion.

C. The Project's potential growth-inducing impacts and cumulative impacts are fully analyzed in the EIR.

Contrary to the assertion in the Appeal, the EIR thoroughly analyzed both the cumulative impacts and the growth-inducing impacts of the Project. Each individual section on the EIR includes an analysis of cumulative impacts of the Project on that particular discussion topic; that is, aesthetics, (including visual quality, light and glare and shade and shadow), air quality, biological resources, cultural responses, (including historic resources, archaeological resources and paleontological resources), geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, population, housing and employment, public services, (including fire protection, police protection, schools, parks and recreation and libraries), transportation, and utilities, (including sewer, water, solid waste, electricity and natural gas). Moreover, the EIR includes a section on the growth inducing impacts of the Project in section V, beginning at page V-2. This section does discuss the increase in both employees and residents over existing conditions and explains why this increase will result in a less than significant impact. The Appeal contains no evidence to dispute any of these analyses.

D. The Project includes affordable housing.

The Appeal also requests that the Project address the Citywide affordable housing crises. However, the City may not impose conditions on a project that are not caused or contributed to by the Project. As has been discussed, the Project Site contains no housing units and construction of the Project would not displace any existing residents. Therefore, there is no nexus to impose a requirement to construct affordable housing as part of the entitlement process.

However, the Applicant and the City have negotiated a Development Agreement that will require 5 percent of the Project's apartment units be set aside for Very-Low Income Households. In addition, the Applicant must contribute \$15 million to the City's Affordable Housing Trust Fund. Nonetheless, the request for inclusion of additional affordable housing is not a grounds for appeal of the entitlements approved by the Planning Commission and, accordingly, not a proper ground of appeal at this time.

E. CEQA does not require an environmental justice analysis.

CEQA, unlike the National Environmental Policy Act, does not require an EIR to include an environmental justice section. CEQA Guidelines Section 15131 specifically states that "economic or social changes need not be analyzed in any detail greater than necessary to trace

November 18, 2016

Page 14

the chain of cause and effect. The focus of the analysis shall be on the physical changes” caused by a proposed project’s impact on economic or social issues. That is, an analysis of economic or social changes is relevant only to show that a proposed project would cause economic or social changes and that such project-induced changes would in turn result in physical damage to the environment. Further, CEQA Guidelines Section 15382 defines a significant effect on the environment to mean: “...a substantial, or potentially substantial adverse change in any physical conditions within the area affected by the project including air, water, mineral, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.” Nonetheless, the EIR does discuss potential for displacement and the Responses to Comments do discuss the potential for indirect displacement raised by UNIDAD. (See e.g., FEIR, Response to Comment 10-8, pages III-237 through III-214.)

Thus, the FEIR thoroughly analyzed the UNIDAD Study and UNIDAD’s comments and concluded that it would be speculative to infer that the Project would result in indirect displacement of housing units or people. The provision of affordable housing within the Project is, therefore, not required to mitigate an environmental impact of the Project. Nor is the Project responsible for causing or addressing the affordable housing shortfalls in the City. The Project Site does not now have, and to our knowledge, has never had, residences and, consequently, the Project is not responsible for displacing anyone from the site nor for the general need for more affordable housing in the City. Nonetheless, as noted above, the Applicant is negotiating a Development Agreement which will include community benefits including provisions related to affordable housing.²

Moreover, an environmental justice analysis is utilized to consider whether a low income community would suffer from disproportionate impacts as compared to a similar impact experienced from projects in higher income communities. As discussed in the FEIR (Response to Comment 10-31, page III-249), the impacts of this Project are typical of those associated with urban development, regardless of income. The Project impacts regarding aesthetics, including light and shade or shadow, traffic, traffic noise and air quality, are associated with new development in residential areas throughout the City, or experienced by all residents in the South Coast Air Basin. Accordingly, the impacts of the Project would not be disproportionately experienced by a low income community, and no environmental justice effects would be associated with the Project.

² UNIDAD also contends that the EIR is fatally flawed because it disagrees with the conclusions reached in the EIR that the Project is compatible with the surrounding community and because they generally disagree with the signage district provisions. These issues are fully analyzed in the EIR, Section IV.B. Thus, while the Appeal asserts a difference of opinion, it does not present evidence disputing the adequacy of the EIR or the City’s findings.

November 18, 2016

Page 15

F. The EIR does not contain inaccuracies or improper deferral of of impact analysis or mitigation measures.

The Appeal alleges that the Project description and characterizations are not supported by substantial evidence because the Project includes a Design Guideline and Land Use Equivalency Program (the “**Program**”). However, all of the known impacts of utilization of this Program are addressed in the EIR (see, DEIR, page II-36 and II-37.) The Project described in the EIR is the Project the Applicant wishes to develop. No changes are contemplated and would not be requested unless market fluctuations or site conditions dictate the need for modification. However, to protect against changes that might be contrary to the detailed analysis in the EIR, the Program is structured so that any changes would require independent environmental review. Rather than an attempt to impermissibly defer review, this protection ensures that no new environment impacts can occur without review and approval by the City. There are no changes to the Project which could be analyzed now since there is no current intention to development anything other than what has been proposed. The sole purpose of this Program is to provide flexibility, if needed, for future events, if any, which are unknown at this time. This does not change the description of the Project nor allow the Project to be changed without a full environmental review should there be a desire in the future to make adjustments. The Program not only complies with prior City practices, it exceeds the requirements of those prior approvals by providing for additional environmental review if the Applicant wishes to make changes after the Project is approved. The Program is, therefore, in full compliance with the letter and the spirit of CEQA.³

G. The Sign District approved by the Planning Commission, and modified by PLUM, is encompassed within the Sign District analyzed in the EIR.

The Sign District, as modified and approved by the Planning Commission and further modified at PLUM, is adequately covered by the analysis of the proposed Sign District in the EIR since the newly approved parameters of the Sign District reduce the permitted signage analyzed in the EIR.

Since the EIR was prepared, changes have been incorporated into the Project’s signage program in the form of the Reduced Signage Program. These changes would not result in new significant environmental effects, or substantial increases in the severity of environmental effects that were previously disclosed in the EIR. The total proposed signage has been reduced by 164,789 square feet in size, from 234,067 square feet to 69,278 square feet.

Other changes have also been included, which are designed to decrease the impacts of the Project’s signage program compared to the original proposal. The number of large signs permitted by the Reduced Signage Program would be reduced from six to three, and all three

November 18, 2016

Page 16

signs would be located on the Reef building. The previously proposed signs on the north and east facades of the North Tower, and the north façade of the South Tower would not be permitted under the Reduced Signage Program. No Vertical Sign Zone 3 signage would be permitted on the Project Site, except on the Reef building and the hotel building.

Modifications to signage as contained in the Reduced Signage Program would not result in any new significant impacts, or substantial increase in the severity of previously identified impacts. As discussed above, the Reduced Signage Program would lessen the impacts. Accordingly, recirculation of the EIR to address the changes in the Project's signage program is not required.

III. CONCLUSION

For all the foregoing reasons, and due to the detailed analysis of these issues in the EIR, and the substantial evidence in the EIR that supports the City's Findings of Fact, and Statement of Overriding Consideration, the Applicant respectfully requests that the Appeal be denied.

Sincerely,



Edgar Khalatian