



**4. JUSTIFICATION/REASON FOR APPEAL**

Is the entire decision, or only parts of it being appealed?  Entire  Part  
 Are specific conditions of approval being appealed?  Yes  No

If Yes, list the condition number(s) here: \_\_\_\_\_

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

**5. APPLICANT'S AFFIDAVIT**

I certify that the statements contained in this application are complete and true:

Appellant Signature: \_\_\_\_\_

Date: 9/19/16

**6. FILING REQUIREMENTS/ADDITIONAL INFORMATION**

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>89.00</u>	Reviewed & Accepted by (DSC Planner): <u>JOHN DACEY</u>	Date: <u>9/19/16</u>
Receipt No: <u>32109</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

# EXHIBIT A



## EXHIBIT A

### APPEAL OF VESTING TENTATIVE TRACT MAP NO. VTT-72914

#### I. INTRODUCTION

On July 6, 2016, the Advisory Agency of the Department of City Planning approved Vesting Tentative Tract Map No. VTT-72914; certified Final Environmental Impact Report No. ENV-2014-1773-EIR (“FEIR”); and adopted the Mitigation Monitoring Program, the required Findings for the adoption of the EIR, and a statement of Overriding Considerations. United Neighbors In Defense Against Displacement (“UNIDAD”) filed a timely appeal of that decision to the Los Angeles City Planning Commission (the “Planning Commission”). On August 11, 2016, the Planning Commission confirmed the Advisory Agency’s certification of the FEIR and adoption of Mitigation Monitoring Program and Statement of Overriding Considerations; denied in part and granted in part the appeals of the Vesting Tentative Tract Map No. VTT-72914; and adopted Findings and Conditions (“Planning Commission action”).<sup>1</sup> UNIDAD herein appeals the Planning Commission action to the Los Angeles City Council, as set forth below.

The project site is located at 1900-1933 Broadway; 104-122, 132-150 Washington Blvd.; 1900-1912 Hill Street; and 1905-2009 Main Street. Vesting Tentative Tract Map No. VTT-72914 (the “VTTM”) would permit the merger and subdivision of the 9.7 acre site into four ground lots and 76 airspace lots, allowing for 1,444 residential apartments and condominiums, 96,670 square feet of retail/commercial use, and a 208 key hotel (the “Project”). Currently, the project site is zoned M1-2-O, and has a General Plan land use designation of “Limited Manufacturing.” The M1 zone does not permit the uses proposed for the Project. As a result, the Applicant seeks to change the zone to (T)(Q)C2-2-O-SN. The “Limited Manufacturing” land use designation does not permit the uses proposed for the Project either. As a result, the Applicant also seeks a General Plan amendment to change the General Plan use designation to “Community Commercial.” However, the “Community Commercial” use designation does not permit the density proposed for the Project. As a result, the Applicant seeks another General Plan amendment to allow the Project to be built at Height District 2. The Applicant is seeking many additional discretionary land use entitlements.

As set forth below, UNIDAD appeals the Planning Commission action because the Findings and conclusions contained therein are not supported by substantial evidence. UNIDAD is a coalition of tenants, homeowners, workers, business owners, students, teachers, healthcare providers and advocates, faith congregations, and community-based organizations who work together to create a healthy and strong South Los Angeles community by ensuring that the interests of low-income communities, especially low-income communities of color, are represented in the decisions and processes that drive development in South Los Angeles. UNIDAD appeals the Planning Commission action because its members will be adversely affected by the Project, as proposed.

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<sup>1</sup> Determination Letter attached as Exhibit B.

## **II. CITY PLANNING COMMISSION AFFORDABLE HOUSING RECOMMENDATIONS**

The Applicant has consistently proposed to construct 549 market rate rental units, 895 market rate condominium units, and *zero* affordable units on a site that is less than a quarter mile from a major transit stop. At its August 11, 2016 hearing, the Planning Commission recommended a new Development Agreement term that would provide for “five (5) percent of the approved number of rental dwelling units to be reserved for Low Income Households.”<sup>2</sup> This is a welcomed improvement from the Applicant’s proposal of zero affordable units and a step in the right direction. But with 549 proposed rental units, the Planning Commission recommendation amounts to just 28 units of affordable housing – or *1.9% of the total units in the project*. Moreover, because the Planning Commission’s recommendation is tethered to the number of rental units, and not a percentage of the total, the number of affordable units could actually decrease even further if the rental-to-condo ratio changes.

## **III. GROUNDS FOR APPEAL**

The Advisory Agency erred and abused its discretion in approving the VTTM. The Planning Commission erred and abused its discretion in denying UNIDAD’s appeal of the Advisory Agency’s approval and approving the VTTM, as set forth below.

### **(a) SUBDIVISION MAP ACT FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE**

#### **i. Consistency with Applicable General and Specific Plans**

The California Subdivision Map Act prohibits a city from approving a tentative tract map unless it is consistent with the city’s general plan.<sup>3</sup> As described below, the Findings regarding consistency with the General Plan are unsupported and inaccurate.

The Planning Commission finds that the Project is consistent with Southeast Los Angeles Community Plan (“SELA CP”) Objective No.1-2, which calls for the reduction of vehicular trips.<sup>4</sup> However, the Project cannot be found to comply with this Objective because it will actually generate hundreds of additional daily vehicle trips.<sup>5</sup> To truly reduce vehicle trips consistent with Objective No. 1-2, the Project should include adequate on-site affordable housing. In California, higher income households own twice as many vehicles and drive twice as many miles as extremely low-income households living near transit. Siting affordable housing near transit is a “powerful and durable GHG reduction strategy.”<sup>6</sup> Without sufficient affordable

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<sup>2</sup> Los Angeles City Planning Commission, Letter of Determination for Case No. CPC-2014-1772-DA, 8.

<sup>3</sup> Government Code § 66474(a)-(b).

<sup>4</sup> Los Angeles City Planning Commission, Letter of Determination for Case No. VTT-72914-1A (hereafter, “VTT Determination”), 106.

<sup>5</sup> See Reef Project DEIR, section IV.N Transportation at IV.N-22, (September 2015).

<sup>6</sup> See California Housing Partnership Strategy & Transform, Why Creating and Preserving Affordable Homes Near Transit Is a Highly Effective Climate Protection Strategy, 3, 2014.

housing, the Project misses a valuable opportunity to reduce vehicle trips and is inconsistent with SELA CP Objective No. 1-2.

The Planning Commission finds the Project is consistent with the General Plan by selectively discussing just six objectives contained in the SELA CP,<sup>7</sup> but fails to acknowledge or evaluate the Project's inconsistency with numerous other relevant and applicable policies and programs in the current SELA CP. The Project is in fact inconsistent with Policy 11-2.3 of the SELA CP ("maximize opportunities for affordable housing and pedestrian access adjacent to rail stations."), Policy 1-5.2 of the SELA CP ("ensure that new housing opportunities minimize displacement of the residents"), and Policy 2-1.4 of the SELA CP ("Ensure the viability of existing neighborhood stores (i.e., mom-and-pop) which support the needs of local residents and are compatible with the neighborhood."). The Findings fail entirely to analyze the Project's consistency with these and many other relevant, specific SELA policies. **Without any such analysis, a finding of consistency with the General Plan cannot be made.**

Specific policies such as SELA CP Policy 11-2.3 are fundamental, mandatory, and clear. Even if the Project is partially consistent with broad General Plan objectives, consistency with broad objectives cannot overcome a project's inconsistency with a general plan's more specific, mandatory and fundamental policies.

Further, the Subdivision Map Act requires consistency with applicable objectives, policies and programs in the *entire* General Plan – not just the land use element.<sup>8</sup> The Planning Commission Findings fail entirely to analyze consistency with, and improperly omit, any findings of consistency with regard to other General Plan policies. In fact, the Project is inconsistent with a number of other important General Plan policies and objectives, including those inconsistencies described below, and those inconsistencies described in the July 15, 2016 UNIDAD Appeal of VTT-72914 to the Planning Commission (Exhibit C); the August 8, 2016 Comment Letter to the Planning Commission; (Exhibit D); the June 20, 2016 UNIDAD Comment Letter (Exhibit E); the November 2, 2015 Public Counsel DEIR Comment Letter (Exhibit F); the November 2, 2015 UNIDAD DEIR Comment Letter (Exhibit G), and the August 10, 2016 UNIDAD FEIR Comment Letter (Exhibit H), each incorporated herein by reference.

Whether the Project includes zero affordable housing as proposed by the Applicant, or 1.9% affordable housing as recommended by the Planning Commission, it is clearly inconsistent with a number of General Plan policies relating to the integrity of existing land use incentives. Well-established state and local General Plan policies dictate that increases in the building footprint should correspond with the provision of certain minimum percentages of on-site affordable housing. The State Density Bonus law, the City's Density Bonus ordinance, the

<sup>7</sup> VTT Determination, 106-108.

<sup>8</sup> See Government Code §66473.5 ("A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan."). See also *Friends of "Bs" St. v. City of Hayward*, 106 Cal. App. 3d 988, 998 (1980) ("City approval of a proposed subdivision, construction of public improvements, and private sale of subdivided lots may be enjoined for lack of consistency of the subdivision map with the general plan. Such consistency is expressly required by Government Code § 66473.5. [City] was required to adopt all mandatory elements specified in Government Code § 65302, and was required to conform [projects] to its general plan.")

Downtown Housing Incentive floor area bonus, the Draft Southeast LA Community Plan and numerous other local programs are all predicated on aligning density increases with on-site affordable housing. The General Plan plainly calls on the City to strengthen affordable housing incentive programs and avoid undermining the density bonus.<sup>9</sup> State law requires the same.<sup>10</sup>

Because current zoning does not allow residential use on the site, the Applicant is seeking a zone change and a General Plan amendment to change the use designation from “Limited Manufacturing” to “Community Commercial.” But the General Plan limits the “Community Commercial” zone to a floor-area-ratio (FAR) of 1.5:1 for this site. So the Applicant seeks *another* amendment to exempt the Project from the density limits of Community Plan Footnote 1 and instead allow Height District 2 and 6:1 FAR on the site. The first part of the General Plan amendment would allow residential use where none was previously allowed. The second part would create a 400% increase in allowable residential density (from 1.5 FAR to 6 FAR). In other words, the Applicant seeks a General Plan amendment to effectuate a site-specific density increase. Under state and local density bonus law, to achieve a density increase of 35% or greater, the Project would need to provide at least 11% Very Low Income units or 20% Low Income units.<sup>11</sup>

Here, the Applicant proposes to bypass these requirements under the guise of a zone change and General Plan amendment.<sup>12</sup> The Applicant proposes zero on-site affordable housing, while the Planning Commission recommends just 1.9% affordable housing. In either case, the Project would enjoy the maximum benefits of the density bonus law without meeting even the minimum requirements to qualify. This is the very definition of undermining the density bonus. It is entirely inconsistent with the General Plan, and further, represents a failure to implement these mandatory Programs of the Housing Element.

Providing zero or 1.9% affordable housing in a project that is located less than ¼ mile from a major transit stop is inconsistent with a number of other General Plan policies and

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<sup>9</sup> See, General Plan Housing Element Program 73 (“When building envelopes are increased, take care not to undermine the density bonus program. Aim to attach community benefits, including affordable housing, to significant bonuses in floor area and density.”); General Plan Housing Element Program 99 (“Explore ways to improve affordable housing production under the [Downtown Affordable Housing Bonus] program...”); General Plan Housing Element Program 101 (“Take care to not undermine the density bonus program by providing significant land-use incentives without an affordable housing provision...”); General Plan Framework Element Policy 4.1.6 (“Create incentives and give priorities in permit processing for low- and very-low income housing developments throughout the City.”); General Plan Framework Element Policy 4.2.1 (“Offer incentives to include housing for very low- and low-income households in mixed-use developments.”).

<sup>10</sup> California Government Code § 65917 (“a locality shall not offer a density bonus or any other incentive that would undermine the intent of [state density bonus law].”).

<sup>11</sup> See Cal. Gov. Code § 55915 (f) (“the amount of density bonus to which the applicant is entitled *shall* vary according to the amount by which the percentage of affordable housing units *exceeds* the percentages established in subdivision (b).” (emphasis added)); Los Angeles Municipal Code § 12.22A25 (c)(1). Under the Downtown Housing Incentive Area floor area bonus, the Reef would need to provide 5% of units for Very Low Income Households, and either 10% for Low Income Households or 15% for Moderate Income Households. LAMC 12.22 A29.

<sup>12</sup> The Planning Department claims that the “project does not propose to use the density bonus.” (Department of City Planning, Appeal Recommendation Report for Case No. VTT-72914-1A, B-4). State law defines a “density bonus” as any “density increase over the otherwise maximum allowable residential density as of the date of the application.” (Cal. Gov. Code § 65915(f)).



programs that highlight the importance of creating meaningful new affordable housing, especially in developments located near transit.<sup>13</sup> In conflict with Housing Element Policy 2.5.1 (and a number of other policies in the Housing Element),<sup>14</sup> the Project would be provided with enormous residential density increases without providing even the minimal percentages of affordable housing required by state density bonus law.

As proposed, the Project threatens to add to the daunting displacement pressures experienced by lower income, rent burdened households. According to the Reef Project Health Impact Study, over 40,000 people have a moderate to very high risk for financial strain and/or displacement as a result of the Project's impacts on housing prices in the surrounding area.<sup>15</sup> Within the South Central community that would be impacted by the Project, thousands of households are already rent burdened, and a large number of subsidized affordable housing units are at risk of converting to market rate in the near future.<sup>16</sup> The Health Impact Study also highlights the potential for this Project to contribute to disruption and destabilization for small local businesses.<sup>17</sup> Unmitigated, these displacement and community destabilization risks cause the Project to conflict with numerous General Plan policies,<sup>18</sup> and clearly implicate the public health considerations outlined in the City's new Plan for a Healthy LA.<sup>19</sup>

Obscuring the fact that the Project needs over a dozen discretionary land use entitlements, the Findings merely state that "[t]he proposed General Plan designation *will be* consistent with the proposed zone *upon approval* of Case No. CPC-2014-1771-GPA-VZC-SN-VCU-MCUP-CUX-ZV-SPR-MS.".<sup>20</sup> This circular logic presumes a laundry list of discretionary approvals and it fails to present evidence that such approvals are permitted by the City Charter or otherwise allowed by law.

In sum, because the Findings fail to adequately evaluate consistency with the Community Plan, fail entirely to evaluate consistency with other General Plan policies and programs, and

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<sup>13</sup> See, General Plan Housing Element Policy 1.1.2 ("Expand affordable rental housing for all income groups that need assistance."); General Plan Housing Element Policy 2.5.1 ("Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers."); General Plan Housing Element Policy 2.5.2 ("Foster the development of new affordable housing units citywide and within each Community Plan Area."); General Plan Housing Element Program 8 ("Explore the feasibility and appropriateness of creating affordable housing requirements for projects that receive benefits from the City, including projects that receive City subsidies or City land, projects receiving zone changes that result in significantly more units than otherwise permitted, as well as projects that obtain a Development Agreement.").

<sup>14</sup> See, e.g., *supra* note 13.

<sup>15</sup> Human Impact Partners, *Assessing Health and Equity Impacts of the Proposed Reef Development Project in South Central Los Angeles*, 19-20 (October, 2015) (hereafter, "Reef Project Health Impact Study"). Available at <http://www.humanimpact.org/news/reefdevelopmentproject/>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., Southeast LA Community Plan Policy 1-5.2; Southeast LA Community Plan Policy 2-1.4; General Plan Housing Element Objective 1.2; General Plan Housing Element Policy 1.2.2; General Plan Housing Element Policy 1.2.8.

<sup>19</sup> See, General Plan Health Element Policy 1.7 Displacement and Health ("major revitalization efforts that have the potential to cause displacement should be evaluated and mitigated."); General Plan Health Element Program 86 Displacement.

<sup>20</sup> VTT Determination, 105.

because the Project is in fact inconsistent with many other General Plan policies and programs, the Findings are unsupported, and the decision to approve the VTTM constitutes an abuse of discretion.

**ii. Physical Suitability of the Site for the Proposed Type and Density of Development**

The Subdivision Map Act requires a city to deny approval of a tentative map where the site is not physically suitable for the type or density of development.<sup>21</sup> As described below, the Findings and conclusions regarding the Project site's suitability for the proposed type and density of development are entirely unsupported.

The Planning Commission finds that the site is physically suitable for the proposed type of development based on a short description of the site's current and proposed uses.<sup>22</sup> This unsupported conclusion is entirely insufficient to justify approval of the VTTM. The Findings neglect to acknowledge or adequately evaluate the site's history of being zoned for industrial uses, the proposal to erect large signage next to major freeways, the impacts of luxury housing on neighboring rental housing stock, and other important considerations regarding such a substantial change of use on the site.

The Findings state that "the project site's density is suitable because it is compatible with the high density campuses of the Los Angeles Trade Technical College and the Santee Education Complex."<sup>23</sup> Such a comparison might be laughable, were it not such an egregious affront to informed decision-making. It goes without saying, but high schools and commuter colleges with no residential uses are clearly inappropriate and non-instructive examples when considering impacts of adding 1,444 housing units on an industrially zoned site. Incredibly, the Findings then state that the Project is compatible with the Rutland apartment building directly north of the Project site.<sup>24</sup> The Rutland building contains 127 residential units. In contrast, the Project would create 1,444 residential units among 10 low and mid-rise buildings, a 35-story residential tower, a 32-story residential tower, and another 19-story hotel tower. Based on a comparison to a building that contains *less than one-tenth* the number of units as the Project, the Planning Commission's finding that the Project site is suitable for the proposed density is unsupported.

**iii. Likelihood of the Design of the Subdivision and Improvements to Cause Substantial Environmental Damage**

The Planning Commission's finding regarding the environmental impact of the Project also is unsupported by substantial evidence. The Project will have significant and unavoidable impacts relative to Aesthetics, Air Quality, and Transportation, as acknowledged in the FEIR, indicating that the subdivision design and improvements may cause substantial environmental damage. UNIDAD hereby adopts and incorporates by reference the comments regarding the Project's environmental impacts contained in the July 15, 2016 UNIDAD Appeal of VTT-72914

<sup>21</sup> Government Code § 66474(c)-(d).

<sup>22</sup> VTT Determination, 110-111

<sup>23</sup> VTT Determination, 112.

<sup>24</sup> *Id.*

to the Planning Commission (Exhibit C); the August 8, 2016 UNIDAD Comment Letter (Exhibit D); the June 20, 2016 UNIDAD Comment Letter (Exhibit E); the November 2, 2015 Public Counsel DEIR Comment Letter (Exhibit F); the November 2, 2015 UNIDAD DEIR Comment Letter (Exhibit G); and the August 10, 2016 UNIDAD FEIR Comment Letter (Exhibit H).

**iv. Likelihood of the Design of the Subdivision and Proposed Improvements to Cause Public Health Problems**

The Subdivision Map Act requires a city to deny approval of a tentative tract map where the design of the subdivision or type of improvements is likely to cause serious public health problems.<sup>25</sup> As proposed, the Project threatens to add to the daunting displacement pressures experienced by lower income, rent burdened households. According to the Reef Project Health Impact Study (included in Exhibit G), over 40,000 people have a moderate to very high risk for financial strain and/or displacement as a result of the Project's impacts on housing prices in the surrounding area.<sup>26</sup> Within the South Central community that would be impacted by the Project, thousands of households are already rent burdened, and a large number of subsidized affordable housing units are at risk of converting to market rate in the near future.<sup>27</sup>

There are severe negative public health consequences associated with the Project's displacement threat. For example, the Reef Project Health Impact Study found:

“Housing instability, living in substandard housing, overcrowding, and homelessness are all determinants of poor health that can be caused by the financial strain of gentrification. These health determinants can have negative impacts on mental and physical health for adults, and can also specifically impact children... There are significant associations between high housing costs and hunger, inadequate childhood nutrition, and poor childhood growth.”<sup>28</sup>

The Reef Project Health Impact Study also notes:

“Disruption of social networks through forced serial displacement and root shock can lead to additional health challenges including exposure to fragmented social environments that have higher rates of violence and sexually transmitted diseases. Multi-generational traumas of this nature can potentially influence the genetic makeup of future generations, leaving them more physiologically susceptible to the impacts of stress.”<sup>29</sup>

In a letter to the City Council (“DPH Letter”), the Los Angeles County Department of Public Health further advises that “[m]oving frequently leads to housing instability and has negative impacts on children including increased absenteeism and poor performance in school,

<sup>25</sup> Government Code § 66474(f).

<sup>26</sup> Reef Project Health Impact Report, 19-20.

<sup>27</sup> *Id.* at 20.

<sup>28</sup> *Id.* at 25.

<sup>29</sup> *Id.* at 4.

which is linked with negative health and social outcomes.”<sup>30</sup> And the City of Los Angeles’ own General Plan Health Element explicitly acknowledges the many negative public health consequences of displacement.<sup>31</sup>

Given the demonstrated displacement threats posed by the Project and the corresponding public health risks, the Planning Commission’s finding that “there appear to be no potential public health problems caused by the design or improvement of the proposed subdivision”<sup>32</sup> is tone deaf, without merit, and not supported by the evidence.

**(b) THE FEIR’S CONCLUSIONS AND THE PLANNING COMMISSION’S CEQA FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.**

UNIDAD hereby adopts and incorporates by reference the comments regarding the Project’s environmental impacts contained in the July 15, 2016 UNIDAD Appeal of VTT-72914 to the City Planning Commission (Exhibit C); the August 8, 2016 Comment Letter to the City Planning Commission; (Exhibit D); the June 20, 2016 UNIDAD Comment Letter (Exhibit E); the November 2, 2015 Public Counsel DEIR Comment Letter (Exhibit F); the November 2, 2015 UNIDAD DEIR Comment Letter (Exhibit G); and the August 10, 2016 UNIDAD FEIR Comment letter (Exhibit H).

**i. The Project Aesthetics are Entirely Different from the Current Aesthetic of the Neighborhood in which the Project would be Located, and Changes Should be Made to the Project Including Fewer Signs, Smaller and Fewer Billboards, and Less Lighting**

The proposed Project’s height, size and the number and types of buildings it will contain will be significantly greater than other projects in South Los Angeles. The neighborhood in which the Project is proposed to be built is comprised of small businesses, older residential and commercial buildings, and longtime residents who have established a close-knit and unique community. The Reef Project, as proposed, would stand in stark contrast to the current aesthetic of the area in all aspects of the development, including its size, design, height, and character. The sheer size, and buildings to be included in the Project (a hotel, high-end stores and a supermarket) will effectively transform the aesthetics and character of the neighborhood by virtue of their appearance and the clientele they will attract.

In addition, the Applicant proposes a Sign District that would total 234,067 square feet, some of which would be animated and in operation from dawn until 2 a.m. South Los Angeles does not currently contain many high rise buildings, and those that are located in the area are not outfitted with large, animated signs and billboards. As we pointed out in our comments on the DEIR, this quantity and type of signage is more characteristic of Downtown Los Angeles, where the demographics and aesthetics are significantly different than those of South Los Angeles. As

<sup>30</sup> The County of Los Angeles, Department of Public Health May 23, 2016 Project letter to PLUM (hereafter “DPH Letter”).

<sup>31</sup> See Plan for a Healthy Los Angeles, A Health and Wellness Element of the General Plan, at 32 (March 2015). Available at <http://planning.lacity.org/cwd/gnlpln/PlanforHealthyLA.pdf>

<sup>32</sup> VTT Determination, 113.

stated in the DEIR, the Project, as proposed, “would establish a new visual identity for the otherwise non-descript Project Site and surrounding area, and would serve as a visual focal point in the area.”<sup>33</sup> The current neighborhood surrounding the Project site has a distinct, unique and historically robust identity and character, made up of dedicated and connected residents. The City clearly admits that the Reef Project, as proposed, would completely alter this identity. The FEIR should not be approved until measures are implemented to mitigate these impacts and preserve the neighborhood’s important character and culture.

**ii. The Project Will Likely Result in Indirect Displacement, and the Findings of the Health Impact Report Should have Been Taken Into Account and the Corresponding Impacts Mitigated.**

The Reef Project Health Impact Study was prepared by Human Impact Partners, an independent, well respected, science and research-based organization, which reached its conclusions based on data, facts, direct resident engagement, and peer reviewed articles. Based on this research and studies conducted in other cities in similar communities and areas, the Reef Project Health Impact Study predicted that the effects of the Project could reach up to 43,000 residents in South Los Angeles, and result in their displacement. In the response to comments, the City repeatedly tries to discredit the study through a variety of assertions including that the Study lacks evidence or its conclusions are speculative. In fact, the Study provides ample sources, studies and appendices on which the Study’s results were based, and supplements the City’s failure to examine indirect displacement impacts of the Project. In addition, because the Project has not yet been built, all predictions, assumptions and assertions made in the FEIR are, in effect, speculative. Therefore, the results of the Reef Project Health Impact Study should be seriously considered, and the anticipated impacts mitigated. It is troubling that the City has elected to dedicate significant staff time and resources to discrediting a robust, community-driven study, as opposed to utilizing those resources to consider its findings and incorporate measures to mitigate the impacts

Residents of the community surrounding the Project site and in the nearby neighborhood are low-income people of color, who are already overburdened with health issues and rising rents. These individuals and families are already struggling to remain in South Los Angeles, where rent is lower than most other parts of Los Angeles, including Downtown. The charts presented in the response to comments clearly demonstrate that in Downtown Los Angeles, there are substantially more large, multi-unit buildings with significantly fewer persons residing in each unit.<sup>34</sup> The Project, which will contain units similar to those in Downtown Los Angeles, both in cost and in design, will not be affordable for current South Los Angeles residents. Further, the City claims that the area surrounding the Project Site is not conducive to development similar to the Project because of current zoning designations.<sup>35</sup> It is precisely for this reason that the Project, and its potential for displacement of existing residents and businesses, should be carefully considered; construction of the Project hinges on numerous zone changes requested by the developers. There is a real possibility that the Project will lead to additional developments and changes in the local economy to cater to the higher-income

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<sup>33</sup> DEIR at IV.B.1-22.

<sup>34</sup> FEIR at III-239.

<sup>35</sup> FEIR at III-240.

population, which the Project hopes to attract. Such changes are not merely speculative, but have been experienced and documented in other areas, and could drive up the costs of goods, services, and housing, which would displace current residents. The potential for this is well-documented in the Reef Project Health Impact Study.

In the response to comments, the City states that “the Project will operate as an extension of downtown, and that potential future residents will exhibit the characteristics in common with current residents of downtown Los Angeles.”<sup>36</sup> Because of the distinct socioeconomic characteristics of current South Los Angeles residents as compared to residents of Downtown Los Angeles, this confirms that the project intends to serve a higher-income population than the population that currently resides in the Project area, at the possible expense of these residents. It is critical to the health, survival and integrity of the South Los Angeles community that the Project’s potential for displacement is addressed, analyzed and taken into account.

**iii. The Project’s True Growth-Inducing Impacts and Cumulative Impacts Should Have Been Analyzed and Mitigated in the FEIR**

The Reef Project has been described as a “catalytic” and “transformative” project, yet the effects of this transformation on the current South Los Angeles population are ignored through the EIR’s failure to examine the Project’s true growth-inducing and cumulative impacts. There is a concrete potential for the Project to attract a different population than that which currently resides in the Project area by virtue of the luxury housing it intends to provide; this may lead to a shift in the types of services provided in the area, the construction of new retail and other commercial developments to serve new area residents, and economic challenges for existing area businesses serving current residents. Similarly, the FEIR’s response to comments repeatedly states that the trend of development in Downtown Los Angeles is moving southward into the Project area, but fails to truly account for the cumulative indirect displacement which may result from this Project, taken in concert with this new development trend.

**iv. The City Should Address the Project’s Potential to Exacerbate Los Angeles’ Current Affordable Housing Crisis By Requiring the Inclusion of Affordable Housing**

As mentioned above and in our DEIR comments, the community surrounding the Project site is comprised mainly of low- and very low-income people of color who already live in overcrowded housing, and experience housing insecurity despite an average rent that is significantly lower than average in Los Angeles. Because the Project’s impacts will disproportionately affect this community, affordable housing units should be included to ensure that community members are given the opportunity to be included in the development. The DEIR claims that current residents will benefit from the supermarket and other amenities that will be built on site. They should not be excluded from also living on site, and accommodating the local community in the Project will help mitigate a number of impacts identified in the FEIR including displacement impacts, and Air Quality and Climate Change impacts by, for example, increasing transit ridership. The speculation in the response to comments that affordable units

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<sup>36</sup> FEIR at III-246.

may be required in the Project's Development Agreement (and the eventual Planning Commission recommendation for 28 units, or 1.9%) does not remedy the failure to include them as mitigation in the EIR.

**v. The FEIR Should Have Included an Environmental Justice Section to Account for the Impacts that will be Felt by the Low-Income Community of Color Surrounding the Project**

Lead agencies are encouraged to include Environmental Justice analyses in EIRs for Projects that are likely to have a significant and disproportionate effect on surrounding communities or communities of color.<sup>37</sup> Although CEQA does not explicitly define the term "environment," it is commonly accepted that people make up an important part of the environment. As Attorney General Kamala Harris noted, because "human beings are an integral part of the environment[, in a CEQA analysis,] 'an agency is required to find that a 'project may have a significant effect on the environment' if, among other things, '[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.'" An Environmental Justice analysis is not limited to, as the response to comments states, identification of "situations where a project would result in disproportionate impacts on a low income community, as compared to similar impacts that are experienced from projects located in higher income communities."<sup>38</sup> Rather, the analysis extends to identifying whether the affected community will be disproportionately impacted by the Project because it is a low-income community of color, or disadvantaged in another way. Whether or not the impacts are typical for a development is not at issue. The analysis aims to determine whether these "typical" impacts will have a greater significance or exaggerated effect on a protected class, and in this case on a community that is already struggling with health, financial and other concerns, as compared with communities that are not burdened in these ways.

As expressed in our DEIR comments, and emphasized in the attached Reef Project Health Impact Study, the community surrounding the Project site is an environmental justice community. Its members are overburdened with mental and physical health issues, financial struggles, and overcrowded and unaffordable housing. As a result, the impacts of the Project, particularly those that have been found to be significant and unavoidable will likely disproportionately affect the community. In order to properly analyze and mitigate these impacts and to ensure a fair, just and equitable Los Angeles, an Environmental Justice analysis should have been included in the FEIR. Without this analysis, the Project should not be approved.

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<sup>37</sup> It is important to note that the response to comments only mentions low-income communities as those necessitating an Environmental Justice analysis. Environmental Justice communities include those that are comprised of members of any protected class including race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color or disability. The FEIR should have taken each of these classes into account in determining whether to include an Environmental Justice analysis, as opposed to focusing exclusively on income. This is especially true considering that our DEIR comments referred repeatedly to the demographics and racial makeup of this community and the disadvantages that they encounter daily.

<sup>38</sup> FEIR, pg. III-249.

**vi. The DEIR Contained Numerous Inaccuracies and Improper Deferral of Impact Analyses and Mitigation, Which Were Not Resolved in the FEIR**

The DEIR contained an inaccurate project description, inaccurate characterization of impacts, and improper deferral of mitigation measures, none of which were resolved in the FEIR. These deficiencies were laid out in detail in comments on the DEIR. For example, at numerous times throughout the EIR, the City concludes that based on the specific features of the project, impacts will be less than significant or fully mitigated. Elsewhere, the City provides flexibility to the project under the Design Guidelines and Land Use Equivalency Program. These programs allow the specific locations of buildings, uses, and other project features to be modified after the FEIR is certified. This inconsistency was identified in comments on the DEIR. However, the FEIR does not resolve it, but merely states that if the project is changed through the Design Guidelines or Land Use Equivalency Program, new impacts will be analyzed through additional environmental review. This, arguably, represents improper deferral under CEQA, and implies that the DEIR provides no more than an approximation as to the specific impacts of the proposed Project. Similarly, reliance on the negotiation of a development agreement between the City and Project developers to defer inclusion of feasible mitigation measures such as incorporating affordable housing into the Project is improper under CEQA. The FEIR should have included a full and accurate description of all features and requirements of Project development, including incorporation of all feasible mitigation measures, a clear and accurate description of the location and layout of Project design features, and the conditions under which the Project will be constructed.

**vii. The Sign District Approved By the City Planning Commission on August 11, 2016 Is Not Analyzed in the June, 2016 FEIR.**

On August 11, 2016, the City Planning Commission approved the creation of a Supplemental Use Sign District that, while not including all of the Applicant's outlandish requests, still allows over 50,000 square feet of signage and includes digital signs and off-site advertising.<sup>39</sup> The FEIR for the Reef project was completed months earlier, in June 2016. The FEIR does not evaluate the new Sign District recommended by the City Planning Commission.

**viii. Per the November 2, 2015 DEIR Comment Letter and July 15, 2016 UNIDAD Appeal of VTT-72914, the FEIR's Conclusions Regarding the Impacts of the Original Sign District Proposed By the Applicant Are Inadequate and Unsupported by Substantial Evidence.**

The Applicant has requested, and the FEIR evaluated, the creation of a Supplemental Use District - Sign District allowing the Project to erect nearly a *quarter million* square feet of signage, including animated digital signs and off-site advertising.<sup>40</sup> The FEIR's analysis of this proposed Sign District is inadequate.

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<sup>39</sup> See, The Reef Transit-Oriented Sign District Ordinance, Section 3(B) (allowing off-site advertising) and Section 8(D)(b)(allowing digital displays in Vertical Level 2 of Sign Zone A).

<sup>40</sup> DEIR at II-30.



On November 2, 2015, Public Counsel submitted comments to the DEIR, incorporated by reference herein. In this letter, Public Counsel registered numerous serious concerns about the DEIR's perfunctory, inaccurate and conclusory assessment of the Project's proposed Sign District. Unfortunately, the FEIR fails to adequately address these concerns in its responses to the comments. On the contrary, the responses double down on the DEIR's original inadequacies by advancing conclusions unsupported by their own analyses. Although UNIDAD disputes as inaccurate all of the responses to these comments, several starkly highlight the inadequacy of the environmental review and the unsupported, false conclusions reached in the FEIR with respect to the proposed signage.

No response captures the dangers contained in the FEIR with respect to inadequate signage analysis more accurately than the response to comment 9-19. Comment 9-19 addressed the DEIR's failure to consider the significance of allowing the Project to erect signs which would otherwise violate the City's ban in both the current sign ordinance and draft sign ordinance prohibiting signage within 2000 feet of a freeway that would be viewed primarily from a main traveled roadway of a freeway or an on-ramp/off-ramp.<sup>41</sup> The DEIR failed to acknowledge the impact of exempting the Project from this central rule of the City's sign policy and the attendant effects on aesthetics and public safety.

Furthermore, the DEIR failed to account for how allowing the Project's signage threatens to invalidate the City's hard fought ban on freeway facing signs and the significant environmental impacts that would follow. The Staples Center and the Fifteenth Street SUD exemptions to the freeway ban survived a legal challenge in *World Wide Rush LLC et al v. City of Los Angeles* only because those districts furthered the City's objectives in "traffic and aesthetics."<sup>42</sup> Here, those arguments are absent. Thus, the Project threatens the City's continued ability to ban freeway facing signs, and opens up the entire length of every freeway to signage the City has fought so hard to ban.

The FEIR response to comment 9-19 does not address any of the concerns raised and simply cross references to responses to other comments. Tellingly, the cross referenced responses acknowledge that the signage will be "viewed primarily from"<sup>43</sup> the nearby freeways. Despite the Project's obvious violation of the signage ordinance entitled "Hazard to Traffic," the FEIR erroneously and dangerously concludes that the signage would not impair road safety. Equally troubling is the fact that the response entirely fails to address the fact that the proposed signage stands to eviscerate the City's ban on freeway facing billboards.

The FEIR's response to Public Counsel's comment 9-6 is similarly inadequate. Public Counsel's DEIR Comment Letter cited to studies showing the negative impact on human health from exposure to excessive artificial nighttime lighting. Here, the FEIR acknowledges that this nighttime signage would have a significant impact on the residents of the Rutland Apartment

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<sup>41</sup> Article 4.4, Section 14.4.6 and Section 14.4.5 of draft Signage Ordinance under CPC consideration.

<sup>42</sup> *Word Wide Rush LLC et al., vs. City of Los Angeles*, 606 F.3d 676 (9th Cir. 2010).

<sup>43</sup> The phrase "viewed primarily from" shall mean that the message may be seen with reasonable clarity for the greater distance by a person traveling on the main traveled roadway of a freeway or on-ramp/off ramp than by a person traveling on the street adjacent to the sign. Sign Ordinance, Los Angeles Building Code, Chapter 62 § 91.6205.5

(Response to Comment 9-13). And it acknowledges that scientific studies show that human health is placed at risk when exposed to excessive artificial nighttime lighting. Despite these acknowledgements, the FEIR seeks to minimize these acknowledged impacts by attempting to distinguish the cited literature as “primarily focusing” on indoor lighting. The falsity of this distinction is self-evident given that the signage from the proposed Project will illuminate the insides of the Rutland Apartment residents’ bedrooms during sleeping hours. Rather than seriously confront this impact, the FEIR cavalierly asserts these residents can simply draw their blinds to shield themselves from the Project’s electronic signage. This suggestion not only requires affected individuals to alter their environment to protect themselves from the Project’s impacts, it requires every occupant to have and use window coverings sufficient to block out the proposed electronic signage. Clearly, the FEIR fails to account for the impacts the Project’s nighttime lightshow would have on Rutland Apartment residents.

In sum, whether the Project goes forward with the new Sign District approved by the City Planning Commission (but not analyzed in the FEIR), or the original proposed Sign District, the FEIR’s conclusions regarding a Sign District are unsupported.

#### **IV. CONCLUSION**

For the reasons stated above and those presented during the public hearing for this appeal, the City Council should grant this appeal and overturn the Planning Commission’s approval.