PLUM Agenda Item 8

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VIA HAND DELIVERY and EMAIL to Leg. Asst. Zina Cheng at clerk.plumcommittee@lacity.org

Los Angeles City Council
Planning and Land Use Management Committee
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012

RE: CF 17-1031 – VTT-74112-1A, ENV-2013-2994-MND
CF 17-1031-S1 – CPC-2013-2993-GPA-VZC-HD-DB-MCUP-SPR, ENV-2013-2994-MND, ENV-2017-1676-SCEA
Project address: 1525 Industrial Street

Honorable Chairman Huizar and Committee Members:

The following comments are made on behalf of Arts District Community Council Arts District Community Council Los Angeles ("ADCCLA") and ADCCLA Founding Board Member Yuval Bar-Zemer (collectively "Appellants"). ADCCLA and Bar-Zemer filed appeals regarding the above-captioned project (the "Project") objecting to approval of the Vesting Tentative Tract Map ("VTT") by the Deputy Advisory Agency and the denial of that appeal by the City Planning Commission ("CPC"), as well as an appeal of CPC approvals and recommendations and objections to environmental documents ENV-2013-2994-MND (the "MND") and ENV-2017-1676-SCEA (the "SCEA").

This letter supplements Appellants' previous letters, appeals, and public testimony submitted to the City during the administrative process regarding. Earlier communications and testimony provided substantial evidence and argument, and this letter is not intended to cover every point previously raised, only to provide a generalized summary of issues for the convenience of PLUM Committee members as they consider the matter. Appellants' adopt and incorporate by reference all of their prior submissions and testimony, including objections previously raised during the environmental review process, tract map process, and land use entitlement process, including all objections and evidence submitted by other persons. Appellants expressly reserve all due process and notice objections.

Previous Appellant submissions include:[1]

[1] All cited submissions are from the Law Office of John P. Given unless otherwise noted.

- December 14, 2016 – John Given and Elise Cossart-Daly comment letter to Amanda Briones (Deputy Advisory Agency) regarding VTT-74112
- January 17, 2017 – Appeal of VTT-74112 approval to the City Planning Commission
- June 19, 2017 – Comment letter to Darlene Navarette (Dept. of City Planning) regarding ENV-2017-1676-SCEA
- June 29, 2017 – Supplemental comment letter to Michael Sin (Dept. of City Planning) regarding ENV-2017-1676-SCEA
- July 14, 2017 – Yuval Bar-Zemer letter to Michael Sin (Dept. of City Planning) regarding CPC-2013-2993-GPA-VZC-HD-DB-MCUP-SPR and related entitlements
- July 31, 2017 – Additional exhibits for consideration of the City Planning Commission
- August 7, 2017 – Rebuttal letter to City Planning Commission regarding the Dept. of City Planning's Appeal Recommendation Report for VTT-74112
- August 7, 2017 – Rebuttal letter to City Planning Commission regarding the Dept. of City Planning's Staff Recommendation Report for CPC-2013-2993-GPA-VZC-HD-DB-MCUP-SPR
- September 7, 2017 – Appeal to the Los Angeles City Council for VTT-74112-1A (VTT-74112) and ENV-2013-2994-MND
- September 18, 2017 – Appeal to the Los Angeles City Council for CPC-2013-2993-GPA-VZC-HD-DB-MCUP-SPR, ENV-2013-2994-MND, and ENV-2017-1676-SCEA

I. Summary of Arguments Opposing Approval of VTT-74112

A. The Deputy Advisory Agency and City may not approve a subdivision that fails to comply with applicable land use standards.

Approval of subdivisions is "governed by the provisions of [the Subdivision Map Act] and by the additional provisions of local ordinances dealing with subdivisions." (Govt. Code § 66474.60.) The Subdivision Map Act was enacted "[t]o encourage orderly community development by providing for the regulation of the design and improvement of the subdivision, with . . . proper consideration of its relation to adjoining areas." (61 Ops. Cal. Atty. Gen. 299, 301 (1978); Ops. Cal. Atty. Gen. 185 (1994).) "[A]pproval of subdivisions which are inconsistent with a locality's general plan subverts the integrity . . . of the local planning process." (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal. 3d 917, 936 (internal quotation marks omitted); *see* Govt. Code § 66474.61.)

In the case of a vesting tentative tract map approval in Los Angeles, the local regulations include the City's General Plan, Municipal Code, any applicable Specific Plan, and other local regulations. Los Angeles Municipal Code ("LAMC") Article 7 contains local regulations for the subdivision of land, and requires that subdivisions be consistent with applicable general and

specific plans and proposed improvements be consistent with the City's comprehensive zoning plan. (LAMC §§ 17.01.B, 17.03.A.)

The Project site's current zoning and land use designation are intended for industrial uses. The site is zoned M3-1-RIO, with the land use designation Heavy Industrial. This is similar to the vast majority of parcels in the vicinity of the proposed Project (industrially zoned parcels east of Alameda generally have a base zone of M3, and those west of Alameda have a base zone of M2; several parcels are zoned PF for Public Facility). The site's existing industrial zoning and land use designation do not permit residential uses, thus the applicant seeks a Zone Change to C2-2D-RIO and a General Plan Amendment to Regional Commercial.[2]

Longstanding City policy is to preserve industrially zoned land for industrial uses by retaining industrial zoning and industrial land use designations. This is expressed very clearly within the General Plan Framework Element, part of the City's General Plan. "It is the intent of the General Plan Framework Element to preserve industrial lands for the retention and expansion of existing and attraction of new industrial uses that provide job opportunities for the City's residents." (General Plan Framework, Chapter 3, Land Use – Industrial).[3] Policies 7.2.8 and 7.2.9 of the Framework element further explain that City policy is to "[r]etain the current manufacturing and industrial land use designations . . . to provide adequate quantities of land for emerging industrial sectors" and "[l]imit the redesignation of existing industrial land to other land uses."[4]

While the Framework element contemplates that industrially zoned land may sometimes be converted, it requires that before such conversion is undertaken the City engage in appropriate study of future land use. "Where such lands are to be converted, their appropriate use *shall be* the subject of future planning studies." (General Plan Framework, Chapter 3, fn. 3, *supra* (emphasis added).) Conversion to non-industrial uses my be considered "[w]here it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts." (General Plan Framework Policy 3.14.6(g).) The City may consider conversion only where "it will not create a fragmented pattern of development and reduce the integrity and viability of existing industrial areas." (General Plan Framework Policy 3.14.6(e).)

In 2007 the City engaged in a policy study for industrial land which further underlines the need to "actively ensure that the City has sufficient quantities of land suitable to accommodate . . . industrial firms." (Los Angeles Department of City Planning and Community Redevelopment Agency, *Los Angeles' Industrial Land: Sustaining a Dynamic City Economy* (Dec. 2007), p. 3.) Only eight percent of Los Angeles land is designated for industrial uses, and by 2007 a quarter of

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[2] Appellants note the applicant first sought a General Plan Amendment to Community Commercial. Only after the Deputy Advisory Agency had approved the VTT entitlement with a Community Commercial designation did the applicant change its General Plan Amendment request to Regional Commercial, which purportedly allows twice the residential dwelling unit density than the C2 zone with a land use designation of Community Commercial.

[3] Available online at: http://cityplanning.lacity.org/cwd/framwk/chapters/03/03209.htm.

[4] Los Angeles General Plan Framework is available online at: http://cityplanning.lacity.org/cwd/framwk/chapters/07/07.htm

that land had already been converted to non-industrial uses. (*Id.*, p. 10.) Even before the 2007 policy study was undertaken, the policy expressed in the Framework Element was that the City should, where possible, consider *increasing* land available for industrial uses. (General Plan Framework policy 3.14.7.) Following the 2007 study, former Director of Planning Gail Goldberg stated emphatically that the study "***underscores the City's adopted policy is to retain industrial land for job producing uses***, as established in the adopted General Plan Framework and Community Plans . . . ***We expect staff to implement the City's adopted industrial land use policies using the directions and guidance contained herein.***" (Memorandum from S. Gail Goldberg, *Staff Direction Regarding Industrial Land Use and Potential Conversion to Residential or Other Uses*, January 3, 2008, p. 1 [all emphasis in original].)[5]

The City's General Plan divides the City into 35 community plan areas. The community plan in the project area is the Central City North Community Plan. The Project site is located within the "South Industrial" subarea of the community plan, an area "dominated by industrial uses" with a land use designation of Heavy Manufacturing. (Central City North Community Plan, pp. I-2, I-3; MND pp. 1, IV-61.)

The Central City North Community Plan includes goals and policies consistent with the General Plan Framework and 2007 policy study. For example, the Central City North Community Plan identifies the "[i]ntrusion of commercial and residential uses into previously industrial areas" as one of the primary issues related to industrially zoned and designated land. (Central City North Comm. Plan, p. I-7.) Objective 3-3 of the community plan is "[t]o retain industrial plan designations to maintain the industrial employment base for community residents and to increase it whenever possible." (*Id.*, p. III-9.) The policy and program in support of this community plan objective states:

> The numerous large rail yards and *other industrially planned parcels located in predominantly industrial areas* should be protected from development by other uses which do not support the industrial base of the City and the community. Program: The Plan *retains the existing industrial designations*, including large industrially planned parcels. (*Id.* (emphasis added).)

Approval of the VTT is inconsistent with the policies and goals of the General Plan Framework element, the Central City North Community Plan, and the 2007 land use study, which "underscores" that City policy is to preserve industrial land and not convert the land to non-industrial uses. In approving the VTT the Deputy Advisory Agency abused its discretion by creating a fragmented pattern of development inconsistent with the Los Angeles general plan. Approval of the VTT "subverts the integrity . . . of the local planning process" and undermines the purpose of the Subdivision Map Act. (*Woodland Hills Residents Assn.*, 23 Cal. 3d at 936.)

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[5] The January 3, 2008 memorandum from the former Director of Planning is a City of Los Angeles document already in the administrative record, provided to the City Planning Commission on July 31, 2017. Importantly, the memorandum notes that neither the industrial land use policy study nor the directions to staff "changes current land use designations or alters the City's existing policy with respect to industrial land." (*Id.*, p.2, (original emphasis removed).)

B. The Requested General Plan Amendment and Zone Change are Impermissible.

A General Plan Amendment ("GPA") is not an available entitlement for the Project, because as discussed above, the particular request for Regional Commercial is a designation in direct conflict with Framework Element and Community Plan policies to preserve industrial land, approval of a GPA in this case also violates Los Angeles City Charter section 555.

A Charter City must comply with all provisions of its City Charter. The Charter serves as the City's Constitution. "[T]he charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state constitutions and to preemptive state law." (*San Diego City Firefighters, Local 145, AFL-CIO v. Board of Admin. of San Diego City Employees' Retirement System* (2012) 206 Cal.App.4th 594, 608 ["*San Diego*"] (internal quotation marks omitted).) A "charter city may not act in conflict with its charter . . . any act that is violative of or not in compliance with the charter is void." (*Ibid.*, citing *Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.)

City Charter section 555(a) provides that the General Plan may only be amended "in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has *significant social, economic, or physical identity*." This charter provision provides for consistent, comprehensive land use planning for the City. The Applicant has not requested a GPA that amends the General Plan in its entirety or by one of its subject elements. Nor has the applicant requested a GPA for a specific geographic area with significant social, economic, or physical identity. (*Ibid.*) The Project site cannot be said to possess its own significant social, economic, or physical identity – it is merely comprised of two parcels within a broader neighborhood that shares geographic, social, economic, and physical qualities, qualities that approval of the Project would, in fact, disrupt. The requested GPA, which applies only to the Project site, would thus violate City Charter Section 555(a).

As discussed above, the requested General Plan Amendment to change the Project site's land use designation from Heavy Manufacturing to Regional Commercial and the requested Zone Change to change the site's zone from M3-1-RIO to C2-2D-RIO both conflict with the General Plan Framework element, Community Plan, and the City's 2007 industrial land use study, which all call for retention of the City's scarce industrially zoned and designated land, due to the importance of preserving such land in the City. Rather than disrupting the community plan area with an action that creates an ad hoc spot zone through improper approval of an inconsistent GPA and Zone Change, the City should instead complete its long-planned and in-progress update of the Central City North Community Plan area.[6]

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[6] The community plan update for the Central City North Community Plan is part of the City's *DTLA 2040* project, which will also update the Central City Community Plan. (*See* http://www.dtla2040.org.) Appellants note that the proposed GPA and Zone Change entitlements are not only inconsistent with the current community plan *but also* are inconsistent with the current draft proposed community plan update. According to the *DTLA 2040* website, the draft community plan was completed in 2016 and the environmental analysis of the community plan is presently under way. (*Id.*, hover above the "About" web

Neither the requested General Plan Amendment nor the requested Zone Change are permissible for the Project. The Deputy Advisory Agency abused its discretion in approving a VTT for a project that does not comply with all applicable land use regulations.

C. The Applicant improperly modified its project following approval of the VTT by the Deputy Advisory Agency.

Appellants' objected to and appealed the VTT approval by the Deputy Advisory Agency, in part, on the basis that a requested Zoning Administrator's Adjustment ("ZAA") to permit a variable width side yard setback in lieu of the ordinarily permitted 10 feet violated City Charter section 562. Citing Los Angeles Superior Court case *Kottler v. City of Los Angeles* (BS 154184), Appellants asserted that a ZAA pursuant to LAMC section 12.28 is actually another form of variance, and the Charter-enumerated findings for a variance were not, and could not, be made. Thus, the ZAA could not be approved as part of the Project.

Apparently in response to this argument, the applicant abandoned its ZAA request and requested a change in its entitlements to utilize density bonus incentives to be substituted in place of the ZAA. In addition, the applicant converted its original request for a 7% reduction in open space based on LAMC section 12.21.G(3) to a second density bonus incentive.

Finally, and perhaps most important, the applicant changed its General Plan Amendment entitlement to request a Regional Commercial land use designation rather than a Community Commercial land use designation. The applicant and City assert that the Regional Commercial land use designation permits a doubling of the dwelling unit density ordinarily associated with the C2 zone from R4 density (400 square feet of lot required per dwelling unit) to R5 density (200 square feet of lot required per dwelling unit). Appellants disagree. The municipal code section cited to support this assertion relates only to permitted uses:

> 18. Developments Combining Residential and Commercial ***Uses.*** Except where the provisions of Section 12.24.1 of this Code apply, notwithstanding any other provision of this chapter to the contrary, the following ***uses*** shall be permitted in the following zones subject to the following limitations:
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> (a) Any ***use*** permitted in the R5 Zone on any lot in the CR, C1, C1.5, C2, C4 or C5 Zones provided that such lot is located within the Central City Community Plan Area or within an area designated on an adopted community plan as "Regional Center" or "Regional Commercial". Any combination of R5 ***uses*** and

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page tab and select "Timeline.") Note especially that the draft Central City North Community Plan update does not show a Regional Commercial land use designation. (*See* DTLA 2040: Proposed General Plan Designations, available at: http://www.dtla2040.org/uploads/7/2/2/6/72260371/draft_concepts_from_the_downtown_community_plans_eir_scoping_meeting_-_general_plan_designation_binder.pdf. Nonetheless, the Project staff report asserts "the proposed project is in substantial conformance with the purposes, intent, and provisions of the General Plan, *including the Community Plan update in process . . .*" (Staff Report for CPC-2013-2993-GPA-etc. (dated Aug. 10, 2017, published Aug. 2, 2017), p. A-6 ("Staff Report").) This assertion is false.

> the ***uses*** permitted in the underlying commercial zone shall also be permitted on such lot.

(LAMC § 12.22.A.18(a) (emphasis added).)

LAMC section 12.22.A.18(a) does not relate to *area* regulations, only to *use* regulations. As applied to the proposed zoning and land use designation, that code provision means only that the *uses* permitted on a C2 lot include any *use* of the R5 zone when the land use designation is Regional Commercial. The improper late modification of the General Plan Amendment request to Regional Commercial cannot help the Project double its residential density, because the City's unreasonable interpretation is contrary to the plain meaning of the municipal code, which does not allow application of R5 *area* regulations such as density, only R5 *uses*.

In any event, modification of the project entitlements in this way, only after the VTT has been approved, violates LAMC section 12.36 (the City's Multiple Approval Ordinance) and LAMC section 17.15 (the multiple approval ordinance equivalent specific to the City's municipal code subdivision regulations), which both require applicants to include all entitlements reasonably necessary to their projects at the time they submit their land use applications to the City. Modification only after approval does not provide Appellants or other community members a fair opportunity to make their record before the Deputy Advisory Agency.[7] Moreover, in denying Appellants' appeal and upholding the decision of the Deputy Advisory Agency, the CPC approved a VTT different than the one approved by the Deputy Advisory Agency. As discussed at length in Appellants' second-level appeal of the VTT approval to the City Council, this the CPC could not do, because a modification to change the land use designation of the tentative map after it had already been approved by the Advisory Agency violates the Subdivision Map Act. (Appeal of VTT-74112-1A (Sept. 7, 2017), pp. 5-7; *see* Govt. Code § 66474.2.)

D. The California Environmental Quality Act requires that the City complete an Environmental Impact Report before it may approve the VTT.

The California Environmental Quality Act ("CEQA") "requires the preparation of an Environmental Impact Report ("EIR") whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, supplemented (1975) 13 Cal.3d 486; Cal. Code Regs., tit. 14, ["CEQA Guidelines"] § 15064.) The "fair argument" standard sets "a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review." (*Sierra Club v. County of Sonoma* (1992) 6 Cal. App. 4th 1307, 1316–17.)

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[7] This is particularly relevant here given that the modified land use designation purports to allow a doubling of the dwelling unit density. While Appellants' argue that the City grossly misinterprets its municipal code to justify the increased density, even if the City's interpretation were correct the modified General Plan Amendment request would double the underlying density applicable to the Project only *after* the Deputy Advisory Agency considered and approved the VTT application, a change the Project MND did not analyze.

The Los Angeles CEQA Thresholds Guide ("CEQA Thresholds Guide") explains that a Project may have a potentially significant impact if the Project "is inconsistent with the General Plan or adopted…goals and policies contained in other applicable plans." (CEQA Thresholds Guide, H.1-2; *see* CEQA Guidelines, § 15064.7.) An important factor in determining whether a project has a significant impact is whether the project impacts land use in a particular area or disrupts existing land uses. (*Id.* at H.2-3.) As discussed above, the Proposed Project is inconsistent with the industrial land use policy found in the Central City North Community Plan and the General Plan Framework, as well as the City's 2007 industrial land use policy study.

The proposed GPA and Zone Change cannot mitigate the land use conflicts that arise from allowing a residential use on industrially zoned land because approval would be inconsistent with the applicable community plan and the Framework Element. In addition, approval of the GPA and Zone Change would create a spot zone of commercially zoned land and designated land within an area that is almost exclusively industrially zoned and designated. As defined by the City, "[a] 'spot' zone occurs when the zoning or land use designation for only a portion of a block changes, or a single zone or land use designation becomes surrounded by more or less intensive land uses." (CEQA Thresholds Guide, H.2-2.) Where a spot zone would result, the environmental review for a project requires further study. (*Ibid.*)

Further, the project description for the proposed Project changed from the time the recirculated MND was stamped as filed by the City Clerk in July 2016 and the project was recommended for approval by the City Planning Commission in August 2017, after the Deputy Advisory Agency had already approved the VTT. As discussed above, the General Plan Amendment request was changed from Community Commercial to Regional Commercial (in order to allow a higher residential density than was originally proposed), and the Project altered its density bonus requests to jettison the requested Zoning Administrator Adjustment challenged during the VTT appeal. "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (*McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1143.) Failure to maintain a stable and accurate project description is contrary to CEQA.

The MND is inadequate for its failure to recognize these significant environmental impacts. It therefore does not provide mitigations to address them (nor, realistically, are any mitigations available). Further, the City's failure to thoroughly analyze these potentially significant impacts does not shield it from "its own failure to gather relevant data . . . . If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record." (*Sundstrom v. County of Medocino* (1988) 202 Cal. App. 3d 296, 311.) Finally, it was improper for the City to allow a shifting of the project description between the time the MND was recirculated and the other project entitlements were recommended for approval by the City Planning Commission only after the Project VTT was approved.

E. The VTT findings are incorrect and inadequate.

Appellants provide a more detailed discussion of the VTT findings in their second-level appeal of the VTT approval. (Appeal of VTT-74112-1A (Sept. 7, 2017), pp. 9-10.) Appellants argue, in particular, VTT findings *a*, *b*, and *d* are inadequate because they are based on incorrect

conclusions regarding the Project. Finding *d* is inconsistent with a Department of Building and Safety condition 7.f found in the same approval document, which states the submitted map does not comply with maximum density available for the proposed C2 zone.[8]

Finally, neither the City nor applicant have provided a copy of PMEX-4036 associated with the Project site, but Building and Safety condition 7.c requires the applicant to comply with all of the applicable conditions or requirements of that previous approval. Thus, both the Deputy Advisory Agency and CPC approved the VTT entitlement before they knew what the conditions imposed were, or whether they could be met. As discussed above, the Subdivision Map Act requires that the Project be consistent with all applicable land use standards. Appellants and other community members have no way to determine whether any PMEX-4036 conditions are applicable or if they can be met unless the City or applicant provides a copy of the previous approval during the administrative process. City approval before this information is known is improper, and depending on the particular conditions could constitute deferred mitigation under CEQA.

Because the VTT findings are based on incorrect assumptions and are incomplete, they are inadequate and do not satisfy the basic requirements of Code of Civil Procedure section 1094.5, in that they do not "bridge the analytic gap between the raw evidence and ultimate decision." (Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal. 3d 506, 515.)

II. Summary of Arguments Opposing Approval of Site Plan Review

A. The MND and SCEA environmental review documents are grossly inadequate and an Environmental Impact Report is required.

CEQA's "fair argument" test sets a low threshold favoring preparation of an Environmental Impact Report ("EIR"). (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316–17.) Substantial evidence to support a fair argument that an EIR is required can include "[t]he opinions and objections of neighbors." (*Kutzke v. City of San Diego* (2017) 11 Cal. App. 5th 1034, 1041.)

As discussed above, the Project cannot be undertaken unless the General Plan Amendment and Zone Change entitlements are approved, but those entitlements are not permissible because they are both in direct conflict with requirements of the Central City North Community Plan and General Plan Framework Element. (*See* discussion, *supra*, pp. 3-6.) The City's 2007 industrial land use study concludes the scarcity of industrial land in the City makes these policies more important than ever.[9]

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[8] Condition 7.f strongly undercuts any argument that R5 density is permissible at the Project site.

[9] "Currently, 26 percent of Los Angeles' industrial land is already used for non-industrial purposes, leaving just six (6) percent of the City's total land area available for active industrial uses. In Downtown Los Angeles, West Los Angeles and increasingly in Hollywood, residential developers have purchased industrial properties to convert them to high-end housing, creating speculative markets that result in increasing land prices and uncertainty about future land use decisions, making it difficult for our most

These direct conflicts between the Project and the community plan and Framework element constitute significant and unavoidable environmental impacts. Nonetheless, neither the MND nor the Sustainable Communities Environmental Assessment disclose or analyze them.

Approval of the Site Plan Review also ignores that the Project would create a "spot" zone. (*See* discussion, *supra*, p. 8.) Appellants' have repeatedly raised this issue throughout the approval process for the Project, noting that introduction of a spot zone undermines the ongoing Central City North Community Plan update process. The City's response has been to ignore the issue by using a different definition of "spot zone" than City's own definition found in its CEQA Threshold Guide. (*See*, *e.g*, Appeal Recommendation Report for VTT-74112-1A (dated Aug. 10, 2017, published Aug. 2, 2017), p. 5 ("Appeal Report").) Unsurprisingly, analyzing the question using the incorrect definition results in a conclusion that the Project would not create a spot zone.

Appellants have also repeatedly asserted that the Project uses a long out-of-date related project list. "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal. App. 3d 421, 431 [citations omitted].)

The applicant asserts the Project may use its existing related project list because that is what was used when the project was first submitted. But the original project submission was made in 2013. The project was considered as part of the City's proposed Arts District Live/Work Interim Zone ordinance presented in 2014. When the City decided not to move forward with that interim ordinance, the applicant delayed re-submitting its revised Project until mid-2016, but still used the original and now out-of-date related project list. The downtown Los Angeles area has seen a tremendous amount of development and new entitlement applications for very large, primarily residential projects, a sufficient number that the applicant updated its transportation and traffic analysis to reflect the "number of entitlement applications filed in the surrounding area between the proposed project's application in 2013 and now." (Staff Report, p. F-32.) The choice to update the traffic analysis based on the many new projects in the pipeline while ignoring other potentially significant cumulative impacts makes no sense. If the transportation and traffic analysis is appropriately updated to consider newer related projects, then the entire cumulative impact analysis should be based on a more up-to-date related project list as well. The stale related project list is inadequate, and "understates information concerning the severity and significance of cumulative impacts [which] impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project." (*Citizens to Preserve the Ojai*, 176 Cal. App. 3d at 431.)

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important industries to do business in Los Angeles and for new industries to have the confidence to invest. (*Los Angeles' Industrial Land: Sustaining a Dynamic City Economy* (Dec. 2007), p. 4.)

Both the MND and SCEA are inadequate with respect to the Site Plan Review approval, and substantial evidence supports a fair argument that there may be a significant environmental impact. Therefore, an EIR is required.

B. Site Plan Review findings are inaccurate, incomplete, and based on speculation.

As discussed in more detail in the appeal of project entitlements, approval of a Site Plan Review entitlement requires three mandatory findings to be made. (Appeal of CPC-2013-2993-GPA-etc. (Sept. 18, 2017), pp. 10-16.) First, the project must be "in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan." Second, the project must "consist[ ] of an arrangement of buildings and structures . . . that is or will be compatible with existing and future development on adjacent properties and neighboring properties." Finally, a residential project must provide "recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties." (LAMC § 16.05.F(1)-(3).)

The proposed Project's Site Plan Review findings are inadequate because they focus only on the General Plan and community plan goals, objectives, and policies that appear to support Project approval, while generally ignoring the goals, objectives, and policies that strongly weigh against Project approval. The analysis is, at best, inadequate for being incomplete.

As discussed above and in the entitlement appeal, the proposed General Plan Amendment would change the land use designation to Regional Commercial from Heavy Industrial, and the proposed Zone Change would change the base zone from M3 to C2. Both changes are inconsistent with the Framework Element and community plan, which both make clear that the City's scarce industrially zoned and designated land should be retained as part of the City's industrial land stock. Thus, the first finding, requiring substantial conformance with the purposes, intent, and provisions of the general plan and community plan, cannot be met. More detailed analysis is provided in the entitlement appeal, cited above.

Further, the CPC Determination asserts that live/work units are permitted in the C2 Zone, which is not accurate. From the very outset of the Project's revival, community members have objected that live/work units are not permitted in new construction except for a project site with a land use designation of Hybrid Industrial and base zone of Hybrid Industrial. The entire purpose of adopting the so-called HI Zone was to permit live/work units in new construction. The City Planning Department's materials regarding the proposed (but not adopted) Arts District Live/Work Interim Zone ordinance and the Hybrid Industrial Zone ordinance (adopted in early 2016) make clear that the municipal code did not permit live/work units in new construction. Appellants submitted City documents to the Project's administrative record that show this.

The City asserts that an action by the Chief Zoning Administrator in October 2016 taken pursuant to LAMC section 12.21.A.2 authorizes live/work units in new construction. (ZA 2015-2348-ZAI.) This authorization did not exist at the time the revised project was submitted to the City in May 2016, which causes one to wonder why the City even accepted the application.

Appellants contend that the Chief Zoning Administrator's action purporting to update the City's "Use List" to allow live/work units in the C2 zone exceeds the authority granted to the Chief Zoning Administrator. The Chief Zoning Administrator's authority is limited by the City Charter and by the plain meaning of the applicable ordinance's own terms. LAMC section 12.21.A.2 states that the Chief Zoning Administator:

> shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgment, the other uses are similar to and no more objectionable to the public welfare than those listed. (LAMC § 12.21.A.2.)

By its plain terms, the authority of the Chief ZA does not allow him or her to expand the zones to which uses found within "this article" (meaning, those uses found within Article 2 of the City's municipal code, which is the City's comprehensive zoning code) may be permitted. Article 2 already explains the zones where existing uses are permitted. It is only "other uses," meaning uses *other than* "those specifically listed in this article", that the Chief ZA has authority to add to the use list. Since Article 2 already included the live/work use at the time the ZA Interpretation was issued, it was not an "other use" the Chief ZA could designate for use in zones other than where already permitted.

This is consonant with the Los Angeles City Charter. If the Chief ZA could take an existing use already found within the zoning code and, through the authority of section 12.21.A.2, permit the use in other zones, the Chief ZA would be, in effect, adopting (or perhaps repealing) a zoning ordinance. Such an action by the Chief ZA is not authorized by the City Charter. Only the City Council, City Planning Commission, or Director of Planning may initiate adoption or repeal of a zoning ordinance, and a zoning ordinance may only be adopted or repealed by following the Charter-mandated process. (LA City Charter § 558.) "A charter city may not act in conflict with its charter. [Citations.] Any act that is violative of or not in compliance with the charter is void." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.) Thus, the Chief ZA's Interpretation amending the use list to purportedly permit live/work units in the C2 zone in a manner other than that contemplated by the City Charter is void, and pursuant to the zoning code, live/work units are not permitted in new construction projects.

The second and third required findings are inadequate because they rest on the false assumption that C2 zoning and Regional Commercial land use designation are appropriate at the Project site. Because, as discussed above, they are not, these findings mistakenly assume that the project will be consistent with existing and future development on adjacent and neighboring properties. The Project as proposed is inconsistent with the adjacent and neighboring properties unless the City completes its community plan update by re-designating the area around the Project to be compatible with it. Such an approach would stand the community planning process on its head. The City must not conform the community plan to individual projects, it must instead conform those projects to the current community plan. "The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." (*Lesher Communications v. City of Walnut Creek* (1990) 52 Cal. 3d 535, 541.)

The second finding's discussion of height and massing also inaccurately portrays comparison projects as being similar to the proposed Project, without noting that those comparison projects actually retain their industrial zoning and land use designations because they were developed through the Artists-in-Residence ordinance or as adaptive reuse projects, not as ground-up predominantly residential construction projects like the proposed Project. Further, the height and massing finding vaguely compares the Project with "projects of similar height" that are "being proposed or have been entitled in the vicinity" without identifying the particular projects being compared. (CPC Determination (Aug. 28, 2017), p. F-24.) A comparison with unidentified projects that may be similarly out of conformance with the General Plan and community plan is speculative, and does not provide sufficient evidence to conclude that the Project is or will be compatible with existing and future development.[10]

Because the Site Plan Review findings are vague, speculative, and inaccurate and there is substantial evidence that the proposed Project is not actually consistent with adjacent and neighboring properties (whether under the current community plan or the currently proposed draft community plan update), the Site Plan Review findings cannot be made and Site Plan Review must be denied.

III. Due Process and Fair Hearing Issues

As discussed in earlier submissions, Appellants and other community members have struggled through an unusually complicated and opaque administrative process for the proposed Project. (*See esp.*, Appeal of CPC-2013-2993-GPA-etc. (Sept. 18, 2017), pp. 2-5.) Among other issues, Appellants' appeal was delayed beyond reason, the applicant changed its project following the VTT approval, the City added an environmental review document perhaps hoping to change the standard of review only after its MND had already been approved by the Deputy Advisory Agency and appealed to the City Planning Commission, and the City had to be reminded numerous times to provide adequate hearing notices during its administrative process. Collectively these numerous issues denied Appellants the due process rights to which they were entitled. (*Mohlief v. Janovici* (1996) 51 Cal. App. 4th 267, 302.)

A. The Project's relationship to the Arts District Live/Work Interim Zone and Hybrid Industrial Zone.

The Project was first submitted to the City in 2013. In 2014, it was presented along with a second companion project, as part of the Arts District Live/Work Interim Zone, with a slightly different

[10] Ironically, the appearance is that the Project is favorably compared with other proposed projects that are likely also inconsistent with the general and community plans, and these projects are not considered in the out-of-date cumulative impact related project list.

entitlement package. The interim live/work zone ordinance would have added the Project site to an expanded Arts District study area intended to allow a limited number (1500) of live/work residential units in new construction in the study area, which was not otherwise allowed by the municipal code. (Previously permitted live/work units were either built under the City's Artists-in-Residence ordinance or the Adaptive Re-use ordinance as explained in the interim live/work zone's informational materials.) The City decided not to proceed with the Arts District-specific interim live/work ordinance and instead, without expanding the Arts District or creating a study zone area, eventually rolled the interim ordinance concepts into a very similar citywide Hybrid Industrial Zone ordinance, which the City adopted in early 2016.

As the Project MND admits, the proposed Project was designed to comply with the Hybrid Industrial zone, even though it was filed as a C2 project with a Community Commercial land use designation rather than an HI project with a Hybrid Industrial land use designation.[11] The choice to file a C2/Community Commercial was explained by the applicant's representative at the Project's VTT hearing. The representative noted the HI Zone had been challenged in Los Angeles Superior Court (by Appellants and others), and the City Planning Department suggested filing the project as a C2/Community Commercial project instead due to the uncertainty associated with filing an HI Zone project while the HI Zone was being challenged. At the time the Project was filed with its revised entitlements and re-circulated MND, there was no basis in the zoning code to permit live/work units in new construction. As discussed above, it was not until the October 2016 Chief Zoning Administrator action to update the City's "Use List" that live/work units were purportedly allowed in new construction in the C2 zone.

Make no mistake; although described as a C2/Regional Commercial mixed-used commercial development, the Project is unabashedly a Hybrid Industrial Zone project, as the Project MND admits. It was introduced as a project along with the Arts District Live/Work Interim Zone that later became the Citywide HI Zone ordinance, and as the applicant's representative noted at the VTT hearing, but for the lawsuit challenging the environmental review for the HI Zone ordinance, the Project would have been submitted as an HI Zone project.

B. The Deputy Advisory Agency improperly deferred consideration of legitimate VTT objections to the appellate body, thus violating Appellants due process and fair hearing rights.

At the December 14, 2016 VTT hearing before the Deputy Advisory Agency ("DAA"), comments were made both by the Applicant and by a member of the DAA panel suggesting that

[11] "Although the Proposed Project is seeking a zoning change to the C2-2D-RIO Zone, it should be noted that the Proposed Project was designed to comply with the provisions of the newly adopted HI Zone Ordinance . . ." (MND, p. IV-58.)

DAA review during the VTT approval process is merely technical, and consideration of many of Appellants objections regarding the VTT application raised by members of the public could and should be deferred to the City Planning Commission to be heard on appeal when the CPC considers the related development application.

Basic due process rights in the administrative land use process minimally include reasonable notice and an opportunity to be heard. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267.) Holding a properly noticed public hearing is, by itself, insufficient to satisfy due process requirements. The opportunity to be heard must be meaningful, and requires that "whenever due process requires a hearing, the adjudicator must be impartial." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212 (quoting *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025)(internal quotation marks omitted).)

The DAA panel member's comment that because there is a separate and later legislative process in place to consider land use issues and that the Subdivision Map Act approval hearing is merely for technical map considerations is in error, and indicates that the panel members did not provide an impartial hearing to the community. The DAA's failure to consider all legitimately raised community member objections required the appellate body to consider those issues for the first time on appeal, which is procedurally unfair to Appellants, requiring them to file an administrative appeal before the City considered their objections in the first instance.

C. Indefinite delay of Appellants' VTT appeal allowed the applicant time to modify its Project and prepare a supplemental environmental review document intended only to change a later standard of review.

As discussed above and in earlier submissions, Appellants timely filed an appeal of the DAA's VTT approval on January 17, 2017. Ordinarily, such appeals must be heard within 30 days after expiration of the appeal period. (LAMC § 17.54.) The VTT appeal filed by Appellants on January 17, 2017, was not heard by the City Planning Commission until August 10, 2017, nearly six months beyond the date mandated by the municipal code. The municipal code allows the VTT appeal period to be extended at the mutual consent of the applicant and Advisory Agency or Appeal Board (*see* LAMC Section 17.54.B), but when the time extension is used to re-fashion the VTT's related planning case project entitlements and introduce a new environmental document in the very middle of the land use approval process, it can only be seen as procedurally unfair and an abuse of discretion.

The Sustainable Communities Environmental Assessment asserts that the "City of Los Angeles Department of City Planning *required* preparation of [the SCEA]." (SCEA p. II-1, emphasis added.) The SCEA acknowledged it "includes the *same substantive environmental analysis* as in the IS/MND," and that the SCEA was prepared "[i]n order to provide for a more streamlined CEQA process consistent with SB 375." (*Ibid.* (emphasis added).) Thus, the reason the City "required" the applicant to utilize the SCEA was not to supplement the environmental analysis that had already been performed and approved in the VTT approval, but to lower the standard of review should the Project be later challenged.

The SCEA notes that "[t]he City as lead agency *could have* prepared a sustainable communities environmental assessment for the Proposed Project instead of the IS/MND. However, the City did not begin processing sustainable communities environmental assessments until very recently." (SCEA, p. II-1 (emphasis added).) SB 375 is intended to streamline environmental analysis, but since the SCEA did not add substantive environmental analysis there was no reason to delay consideration of Appellants' VTT appeal for six months in order to provide time for an SCEA published approximately a year after the revised project was resubmitted. The City could have prepared an SCEA at the time the MND was re-circulated, but chose not to do so. The City's moving of the goalposts during the administrative process was procedurally unfair.

Nonetheless, since the SCEA includes the same substantive environmental analysis as the MND, its obvious inadequacies are generally identical to those of the MND, and the same substantial evidence submitted by Appellants regarding the Project's conflicts with the Community Plan and Framework Element, introduction of a spot zone, inadequate findings, inadequate related project list, etc., all support Appellants' contention that the Project must utilize an EIR instead of the inadequate MND and SCEA.

D. The Appeal Recommendation Report ignored and mischaracterized Appellants' arguments.

In addition to having their objections and arguments ignored at the VTT hearing, Appellants' arguments were also ignored or mischaracterized by the Planning Department in its Appeal Report to the CPC. (*See* Appellants' rebuttal to Appeal Report (Aug. 7, 2017), pp. 6-7, 9-10.) Because the CPC relies on the staff report's analysis in making its determination and recommendations, when the Appeal Report unfairly mischaracterized and ignored Appellants' arguments, it impeded Appellants' right to a fair and impartial appeal hearing before the CPC.

IV. The October 2016 Chief ZA Interpretation is a De Facto Zoning Ordinance to Replace the HI Zone Ordinance That Has Been Ordered Set Aside for Its Failure to Comply with the California Environmental Quality Act.

As mentioned above and in previous submissions, the Chief Zoning Administrator issued a ZA Interpretation in October 2016 purporting to authorize live/work units in new construction in the C2 zone. Before that, the only authorizations permitting live/work units was found within the Artists-in-Residence ordinance, the Adaptive Reuse ordinance, and the Hybrid Industrial Zone ordinance, which the City adopted in early 2016.

As reported in earlier submissions, Appellants and others challenged the City's adoption of the HI Zone ordinance, asserting that the ordinance was not exempt from CEQA and the City had not undertaken the appropriate level of environmental review. (*See* Los Angeles Superior Court case *Bar-Zemer, et al. v. City of Los Angeles* (BS 161448).) Following a hearing on the merits, Judge Strobel issued her ruling agreeing with Appellants' contentions, and ordered the City to set aside its adoption of the HI Zone ordinance. The City filed an appeal of the Court's judgment, but later withdrew its appeal, making the Court's decision on the merits final. The City has not

yet set aside its adoption of the HI Zone, but is anticipated to do so in December or January, depending on the ability of the City Council to schedule the matter for consideration. Appellants assert above and in earlier submissions that the Chief Zoning Administrator's ZA Interpretation (ZA 2015-2348-ZAI) exceeds the authority granted to the Chief ZA by the City Charter and by the limitations in the municipal code language itself, at least with respect to the portions of the action that relate to permitting live/work units in the C2 zone, if not more.

The Hybrid Industrial Zone ordinance represented a massive expansion of the proposed but not adopted Arts District Interim Live/Work Zone, in that it was not limited to only one community but would be effective citywide, and the HI Zone was not limited to a hard cap of 1,500 dwelling units, but had no cap on dwelling units. The primary limitation in the HI Zone was that it could only be utilized where a community plan map permitted the Hybrid Industrial land use designation. Even though the City argued that adoption of the ordinance would not necessarily result in any particular development or change of use and future projects would have to individually undergo environmental review, the Court determined that at the time the ordinance was adopted it was not speculative to conclude that some development might occur and therefore some level of environmental review was necessary.

In issuing a ZA Interpretation purporting to allow live/work uses in the C2 and other commercial zones while the HI Zone matter was still pending in LA Superior Court, the City quietly made an even more massive expansion of its live/work program, one that could be applied virtually anywhere in the City where commercial zones are permitted, and in a manner that should have, but apparently did not, undertake any level of environmental review.[12] When the Superior Court ordered the HI Zone to be set aside, the ZA Interpretation became the sole avenue to develop live/work units in new construction projects.

It is important to note that live/work units of the kind proposed come with certain potentially significant impacts that are different than ordinary dwelling units. Most obvious is that, regardless of the number of persons dwelling therein, each live/work dwelling unit must provide "the capacity to accommodate up to 5 employees." (MND, p. I-1.) In other words, in addition to the one or more people who live in each live/work unit, there could be as many as four other persons coming and going from the dwelling unit each day, perhaps multiple times. Thus, environmental impacts in air quality, greenhouse gas emissions, land use and planning, noise, population and housing, public services (police, fire, schools), recreation, traffic and transportation, and cumulative impact analysis categories are likely to be considerably greater for live/work dwelling units than for ordinary dwelling units. Some level of environmental analysis that takes into consideration these additional persons is obviously needed on a case-by-case basis. But as the Court considering the HI Zone environmental review issues determined, even when no particular project is under consideration and no land is re-designated or zone changed,

[12] Appellants reviewed the entire file for ZA 2015-2348-ZAI, the contents of which included only a 2-page memorandum and an attached 165-page "use list" document. Neither the memorandum nor anything else in the file included any analysis or explanation as to the findings the municipal code requires the Chief ZA to make, any consideration of environmental issues, or even a summary of the amendments made to the old use list.

before the City may enact a project to permit live/work development throughout the City, some level of overarching environmental review of the potentially significant environmental impacts of the entire program must be undertaken before the City puts it into action.

The entire context makes apparent that what the City could not do with its adoption of the HI Zone, it has now attempted to do through its Chief Zoning Administrator's authority to expand the so-called "Use List." The City has adopted a de facto zoning ordinance through ZA 2015-2348-ZAI to create a new program to replace the HI Zone ordinance to permit live/work unit development in new construction in commercial zones (instead of HI zones) throughout the City without first engaging in any environmental review of the citywide project.

As discussed above, the action grossly exceeded the authority granted to the Chief Zoning Administrator by the City Charter and by the statutory language of LAMC section 12.21.A.2. Zoning Administrator Interpretation ZA 2015-2348 ZAI is void and cannot be relied on to authorize live/work dwelling units in new construction. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 171.)

Sincerely,

John P. Given

Cc (by email only):
Honorable Jose Huizar (CD14)
Members of the PLUM Committee
Clients