

APPEAL APPLICATION

Page 1 of 2

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: Condition 1 and Condition 5

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: 03/06/2019

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>13538⁰⁰</u>	Reviewed & Accepted by (DSC Planner): <u>Diana Jimenez</u>	Date: <u>3.7.19</u>
Receipt No: <u>0104011367</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input checked="" type="checkbox"/> Original receipt and BTC receipt (if original applicant)

8th and Figueroa
Attachment to Appeal Application

MFA 8th and Figueroa LLC (“Applicant”) will transform one of Downtown’s key corners, together with adjacent Figueroa Street frontage, with its \$438 million proposed investment to create high quality and sustainable urban residential living in the Financial District. This 41-story development with ground floor retail is located at 744 South Figueroa Street, 732-756 South Figueroa Street, and 829 West 8th Street (the “Project”). The site has been owned by affiliates of the Applicant for decades and used as a parking lot. While the Applicant appreciates the City Planning Commission’s (“CPC”) approval of the Project’s requested entitlements, this appeal seeks relief from two new substantive requirements imposed by the CPC, including as to affordable housing and as to design issues. At the hearing, the only appellant in attendance, CREED LA, withdrew its objections and praised the Project, which conforms to all City requirements and does not displace any housing.

The first condition imposed by the CPC and appealed by the Applicant requires that five percent (5%) of the proposed 438 dwelling units (22 units) be available to Low Income Households. Although the Applicant protested, pointing out the Project is contributing nearly \$5 million in TFAR public benefit payments that can be used for affordable housing and its application was deemed complete before the City’s linkage fee ordinance was even adopted, the CPC directed staff to include this condition in the project approvals. Condition No. 5 of the Site Plan Review and TFAR decisions and Condition No. 17 of the Tract Map decision require the provision of the 22 on-site affordable units (collectively, the “Inclusionary Housing Condition”).

The second new CPC condition included in this appeal required several design changes focused on the parking podium and tower design (collectively, the “Design Condition”), even though the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. Accordingly, the Applicant is also appealing the Design Condition, although the Applicant does intend to continue working with Planning staff on limited exterior design refinements that do not impose additional costs or time delays.

Given the specific factual circumstances of this Project and applicable legal principles, we respectfully request that both the Inclusionary Housing Condition and the Design Condition be removed from the Project’s approvals. The imposition of these conditions is unwarranted considering the factual circumstances of this Project, including that the Applicant is not seeking a zone change, General Plan amendment, or other legislative approvals to increase its density. The only entitlements are the long-established process in Downtown for Transfer of Floor Area Rights (“TFAR”), together with the customary City entitlements for Site Plan Review and a Vesting Tentative Tract Map (“Tract Map”). Planning did not recommend these conditions and the CPC did not identify any applicable City ordinances or precedent to justify either the Inclusionary Zoning Condition or the Design Condition.

1. The Inclusionary Zoning Condition should not be required of this Project. The Project will provide a nearly \$5 million TFAR payment to fund affordable housing and other public benefits. The City Council, along with the former Community Redevelopment Agency, long ago made a policy decision that the TFAR framework was appropriate Downtown to allow

density above a floor area ratio of 6:1, provided certain public benefits payments were made to the City. Here, an approximately \$4.9 million public benefit payment will be made and the TFAR ordinance expressly provides that the payment may be used for affordable housing. (LAMC Sec. 14.5.9.)

The CPC's mandate for the Project to provide on-site subsidized housing is not justified by any City ordinance, density bonus, or other benefit to the Project. None of the City requirements applicable to certain residential projects seeking a discretionary General Plan amendment or zone change which require affordable housing in connection with such legislative acts (LAMC Sec. 11.5.11) are applicable here, since the Project does not require a zone change or General Plan amendment. While the City has other affordable housing policies that are strictly voluntary with respect to the provision of affordable housing, namely the Transit Oriented Community Guidelines and the Density Bonus Ordinance, such policies would provide benefits to the Applicant such as additional density, unlike the CPC's proposed condition. Where no General Plan amendments and zone changes are requested, no mandate exists to incorporate on-site affordable housing into a project.

Nor is the City's framework under its Linkage Fee Ordinance (LAMC Sec. 19.18), adopted 18 months after the Project application was filed in June 2016, applicable to the Project. In determining whether to invest in the Project, the Applicant reasonably relied on the City ordinances in place when its vesting tentative tract map application was deemed complete in 2016. Consequently, the Project's financial structure was established well before the fee associated with affordable housing was adopted by the City. When the Linkage Fee Ordinance was adopted, the City Council as the City's legislative body determined to specifically exempt projects with applications completed before its adoption. Moreover, because the linkage fee was phased in, the full fee does not apply to current projects until after June 17, 2019.

2. The Design Condition should not be required of this Project. With respect to architecture, the Project's design already reflects extensive consultation with City Planning, the Urban Design Studio, and other stakeholders, including adjacent neighbors. The Design Condition is also subjective and arbitrary because the Project comports with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. The requirements for design changes include the parking podium where the CPC directed changes to the façade. While some CPC members may disapprove of above-ground parking, where compliance has already occurred with the City's guidelines, arbitrary directions in new conditions pose the danger of allowing subjective opinions to override City requirements. Similarly, the top of the tower complies with City requirements; though the City has recently permitted rooftop treatments for high-rise buildings to vary from traditional tower design, such design options are not mandatory and should not be required here.

3. Extensive Justifications are provided for CEQA Certification and no CEQA impacts justify either the Inclusionary Zoning Condition or the Design Condition. No other legal or factual justification exists for imposition of either the Inclusionary Zoning Condition or the Design Condition. None of the Project's CEQA significant impacts have any nexus to affordable housing. The minimal impacts include only one operational significant impact (traffic at the corner of 8th Street and Figueroa Street during PM peak hours) and temporary construction noise impacts that are typical of Downtown projects. The Project's environmental review determined

there are no significant impacts to housing and determined the Project to be consistent with the City's land use plans and policies. Additionally, no housing is being displaced by the Project, which is being built on a parking lot that has been vacant for decades. The Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines.

Additional justifications for CEQA certification include that the Project represents a significant \$438 million economic investment that will provide numerous economic benefits including approximately 4,500 construction-related jobs. (Attachment A, LAEDC Economic Impact Analysis for 8th and Figueroa and Cover Letter, dated January 23, 2019.) Such job creation facilitates the ability of employees to afford housing. Moreover, significant public revenues are provided by the Project to the government agencies that support affordable housing projects. The Project's projected annual property taxes will top \$5 million and annual resident local spending is estimated at approximately \$17.8 million. (*Id.*) Thus, the region including the City will receive very significant annual economic benefit increases. In addition, the Project will result in an approximately \$5.8 million investment in public benefits through the payment of school fees, transportation improvements, and land dedications which total an approximately \$10.7 million public benefit package with the TFAR payments added in. All of these economic and public benefits also provide substantial evidence to support the EIR's Statement of Overriding Considerations for the minimal unmitigated significant impacts.

Given the unique factual circumstances of this Project in the context of the policy directives that form the City's framework for affordable housing, the CPC lacked authority to impose the Inclusionary Housing Condition. Consequently, the CPC abused its discretion by imposing the Inclusionary Housing Condition on this Project; the Condition is not required by City ordinance and lacks a nexus to Project impacts. Moreover, due process principles do not allow for a condition to be imposed that is not grounded in any City ordinance or guideline related to affordable housing. Instead, the Condition represents an ad hoc determination based on opinions of individual CPC members, lacking the consistency that results from deliberate application of the laws as adopted by the Council. It also fails to acknowledge the unique circumstances applicable to the Project, including that it does not displace any housing and that an approximately \$4.9 million payment that can be applied to affordable housing is being provided. The Design Condition is also subjective and arbitrary because the Project comports with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. Consequently, the Applicant is aggrieved by the CPC's decision. As discussed in more detail below, all of the factors outlined above lead to the conclusion that the CPC should not have imposed the Inclusionary Housing Condition or the Design Condition and the approvals should be modified to delete these conditions.

I. PROJECT BACKGROUND AND PROCESS

The Project proposes 438 residential units and approximately 7,493 square feet of ground floor commercial/retail/restaurant uses. The Project would transform a parking lot at the corner of 8th and Figueroa Streets into a vibrant residential community and activate the streetscape along Figueroa Street with an enhanced pedestrian experience. The Project would not displace any existing housing, but instead locate new housing in the heart of the Downtown Financial District conveniently located near transit, job centers, and retail on a site devoid of development for decades. The only entitlements requested to carry out the Project are Site Plan Review,

TFAR, and the Tract Map. These entitlement applications were submitted in June 2016; no legislative actions are requested.

The Draft EIR was circulated for a 45-day public comment period ending on June 11, 2018. On October 12, 2018, the City of Los Angeles (“City”) released the Final EIR and published a Notice of Completion and Availability of the Final EIR. A joint Hearing Officer and Deputy Advisory Agency hearing was conducted on October 24, 2018. On November 16, 2018, the Deputy Advisory Agency approved the Tract Map and certified the Final EIR. Appeals of the Deputy Advisory Agency’s decision were filed by the Southwest Regional Council of Carpenters (“Carpenters”) and the Coalition for Responsible Equitable Economic Development (CREED LA). The appeal filed by CREED LA was formally withdrawn on January 23, 2019.

The CPC heard the appeal and held a public hearing related to the Tract Map (Case No. VTT-74197-1A) and the requested TFAR and Site Plan Review (Case No. CPC-2016-1950-TDR-SPR) on January 24, 2019. CREED LA testified on the record as to its support for the Project and confirmed the withdrawal of its appeal. Though the Carpenters did not appear or testify at the hearing, the CPC denied in part and approved in part the Carpenters’ appeal, while approving both cases subject to Conditions of Approval. The approval of the appeal in part was solely to insert a reference to the Inclusionary Housing Condition into the EIR’s Statement of Overriding Considerations. As noted above, the EIR’s impact analysis does not support such a condition and the Project’s economic and public benefits provide substantial evidence to support the EIR’s Statement of Overriding Considerations.

The CPC also imposed the Design Condition requiring the Applicant to redesign the Project to update the roofline articulation, adjust the screening of the parking podium, and redesign the trunk of the structure, which the Applicant is also appealing. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), Condition 1 (Feb. 25, 2019).) The Project’s proposed design conforms to all applicable development standards and design guidelines, and the CPC subjectively and arbitrarily imposed the Design Condition, so the Applicant asks the Council to eliminate this condition. Because the Applicant is willing to continue to improve the building, however, it is working with Planning on additional limited refinements to the exterior design.

II. REASON FOR APPEAL AND SPECIFIC POINTS AT ISSUE

The Applicant is appealing the CPC’s decision to impose the Inclusionary Housing Condition and the CPC’s partial grant of the Carpenter’s appeal insofar as that partial grant of appeal added the Inclusionary Housing Condition’s reference to the Statement of Overriding Considerations. Considering the unique circumstances and history of the Project application, and the limited scope of the entitlements requested, imposition of the Inclusionary Housing Condition lacks a nexus to any Project impacts. As described above, the Project’s environmental review determined there are no significant impacts to housing and the Project’s impacts are typical for Downtown projects and have no connection to affordable housing.

Additionally, the Applicant is appealing the imposition of the Design Condition. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), Condition 1 (Feb. 25, 2019).) As indicated in the Determination Letter, the Project complies

with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-7-F-10, F-37 (Feb. 25, 2019).) Under these circumstances, the CPC should not be able to impose its own subjective design criteria to override the City's requirements.

In summary, the Applicant respectfully requests that the City Council grant this appeal, remove the Inclusionary Housing Condition and Design Condition, and update the Project's Statement of Overriding Considerations to remove the reference to the Inclusionary Housing Condition.

A. The Inclusionary Housing Condition Lacks a Nexus to Project Impacts and Fails to Consider Unique Project Circumstances and the TFAR Payment.

The CPC's imposition of the Inclusionary Housing Condition violates due process principles because it is not grounded in any City ordinance or guideline related to affordable housing. Rather, as discussed in detail below, the CPC acted in an arbitrary manner by simply creating the five-percent requirement out of whole cloth without regard for the ordinances and policy framework adopted by the City Council after appropriate public review and deliberative process. The CPC failed to consider the unique circumstances applicable to the Project such as the deemed complete date of the application, minimal entitlements requested, nearly \$5 million TFAR payment, and lack of impact on affordable housing. The CPC failed to identify a legitimate nexus between the Inclusionary Housing Condition and any Project impact. When a local government imposes conditions that require a project to provide a public benefit, it must find that such condition is roughly proportional to the burdens created by the proposed project. (*Nollan v. California Coastal Comm'n*, 483 US 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).) There is simply no impact from the Project on affordable housing and instead the Project is part of the housing solution by providing hundreds of new units in walking distance to the Financial District.

The Project is proposing 438 new residential units on a property used as a parking lot for decades. The Project would not displace any existing housing, but rather increase the number of available units within the City, consistent with the City's Housing Goals, Objectives, Policies and Programs as indicated in the Recommendation Report and carried over to the TFAR/Site Plan Review Determination Letter. For example, as indicated in the Project's findings, the approval of the Project would help achieve the General Plan goal of producing and preserving housing in order to meet current and projected needs. (See, Housing Goal 1; Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-4-F-5 (Feb. 25, 2019).) The Project supports Housing Objective 1.1 by providing much needed new housing. (See, Housing Objective 1.1; Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-4-F-5 (Feb. 25, 2019).)

The Project will provide a nearly \$5 million TFAR payment to fund affordable housing and other public benefits. As noted above, the City Council, along with the former Community Redevelopment Agency, long ago made a policy decision that the TFAR framework was appropriate Downtown to allow density above a floor area ratio of 6:1 provided certain public benefits payments were made to the City. Here, an approximately \$4.9 million public benefit

payment will be made and the TFAR ordinance explicitly provides that the payment may be used for affordable housing. (LAMC Sec. 14.5.9.)

The Project's environmental review determined there are no significant impacts to housing and scoped out the Population/Housing analysis during the Initial Study phase. (Draft EIR, Appendix A.1, p. B-33-B-36; Initial Study, unnumbered p. 4, Attachment B.) The EIR determined the Project to be consistent with the City's land use plans and policies. (Draft EIR, Vol. I, p. IV.D-77.) The Project's significant impacts are limited to traffic at the corner of 8th Street and Figueroa Street during PM peak hours and temporary construction noise impacts all of which are typical for Downtown projects. Importantly, these significant impacts have no connection to affordable housing. Additionally, as indicated in the Determination Letter, the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-7-F-10, F-37 (Feb. 25, 2019).) There is simply no connection between Project impacts and affordable housing needs.

Moreover, the City has adopted a number of ordinances in its framework to address project impacts on affordable housing, including the Linkage Fee Ordinance. Prior to adopting the Linkage Fee Ordinance, the City conducted a nexus study to determine the appropriate fee level to apply to various types of development subject to the Ordinance. (Attachment B, excerpts from City of Los Angeles Affordable Housing Linkage Fee Nexus Study (September 2016) and Los Angeles Affordable Housing Linkage Fee Nexus Study: Supplemental Report (October 2017).) These reports, all published after the Project's applications had been completed in June 2016, include detailed analyses of the types of developments that would be subject to the linkage fee, the fee level to be imposed on each type of development, and an economic analysis of the impacts that could result from the Linkage Fee Ordinance. These studies served as the basis for the City's adoption of the Linkage Fee Ordinance and clearly detail the findings required to impose such fees upon new development.

When adopting the Linkage Fee Ordinance, the City Council also determined that projects already in the pipeline with complete applications, such as the Project, would be exempt. The Project was filed on June 3, 2016, approximately 18 months before the City Council's December 2017 adoption of the Linkage Fee Ordinance. The Project was clearly vested when the Linkage Fee Ordinance was adopted. Because the linkage fee is being phased-in, it was not until after June 18, 2018, two years after the Project application was filed, that the Linkage Fee Ordinance even required a fee to be paid at one-third of the final fee rate. The full linkage fee rate will not go into effect until June 17, 2019. Consequently, the Project's financial structure was established well before this affordable housing related fee was adopted by the City.

Additionally, in contrast to the studies conducted for the Linkage Fee Ordinance, the CPC's arbitrary imposition of the Inclusionary Housing Condition did not include any analysis or deliberation regarding the Project's impacts on affordable housing in the City, nor did the CPC consider whether there was rough proportionality to any of the Project's impacts. Rather, the CPC appeared to pick numbers out of thin air. Commissioner Ambroz stated that he "would suggest 5%" and noted that the Commission could "debate and discuss what allocation that is between very low, low, workforce, etcetera." (Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).) That "debate" appears to be

based solely on the individual opinion of the Commissioners, untethered to any proportional impact created by the Project.

B. The CPC's Arbitrary Imposition of the Inclusionary Housing Condition Violated Principles of Due Process by Ignoring Established City Ordinances and Policies Regarding Affordable Housing.

By ignoring the City's established affordable housing framework, the CPC violated principles of due process. The Applicant should be able to expect that the CPC will follow established City ordinances and guidelines. The CPC's ad hoc affordable housing condition imposed on the Project should be corrected by the City Council.

As noted above, the Applicant is required to make the TFAR payment which the City can use for affordable housing. The City's inclusionary zoning ordinance for residential projects applies only to those seeking a discretionary General Plan amendment or zone change, and permits compliance either through on-site affordability provisions described therein, *or* an alternative compliance option, which includes off-site construction, off-site acquisition, or an in-lieu fee ("Affordable Housing Ordinance"). (LAMC Sec. 11.5.11.) The Project is not requesting a General Plan amendment or zone change and is therefore not subject to the Affordable Housing Ordinance. Nonetheless, the CPC imposed the Inclusionary Housing Condition as though the Project were in the same class of projects subject to the Affordable Housing Ordinance.

The City has also adopted the Linkage Fee Ordinance, which requires new residential and commercial development to pay a fee to help support the construction of new affordable housing. As described in Section II.A above, the City Council determined that the linkage fee was the desired approach to address affordable housing needs created by development projects to help increase the number of affordable units within the City. In the Linkage Fee Ordinance, the City Council decided to exempt projects that had already submitted complete development applications prior to its adoption. The Project is one such exempt development. The Linkage Fee Ordinance represents the policy directive of the City Council with respect to imposing costs on development to address impacts of projects on the need for affordable housing. (Attachment C, Ord. No. 185,342, Resolution Preamble.) The CPC explicitly acknowledged that the Project was not subject to the Linkage Fee Ordinance.¹ While the CPC may disagree with the policy decision by the Council that projects filed before the Linkage Fee Ordinance was adopted are exempt from the Linkage Fee Ordinance, it is not authorized to substitute its own judgment for that of the City Council by imposing the Inclusionary Housing Condition.

The City has not chosen to adopt an ordinance requiring all residential developments to include a certain percentage of affordable housing units. As indicated above, the City has adopted the Affordable Housing Ordinance and Linkage Fee Ordinance, which do not apply to the Project. Other City affordable housing ordinances and guidelines make the provision of

¹ Commissioner Perlman noted that the Project was not subject to the Linkage Fee Ordinance because it was "filed under the wire." The Project application was filed approximately 18 months before the ordinance was adopted. (Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

affordable housing voluntary. Both the City's Density Bonus Ordinance² and Transit Oriented Communities Guidelines³ provide a voluntary mechanism for developments to provide affordable housing and obtain benefits from doing so.

Without justification from the established City affordable housing framework, the CPC should not have imposed the Inclusionary Housing Condition. Some CPC comments acknowledged that it would be acting outside of its authority to impose an on-site requirement, because there was no legislative mechanism to impose such a condition on the Project.⁴ Likewise, City Planning Staff acknowledged that "we don't have a mechanism" to impose affordable housing.⁵ The Council should delete this condition.

The Design Condition ignores the fact that the Project complies with established City design guidelines and framework. Where compliance has already occurred with the City's guidelines, arbitrary directions in new conditions pose the danger of allowing subjective opinions to override City requirements. The Council should delete this condition.

² Ord. No. 179,681, LAMC Sec. 12.22.

³ Transit Oriented Communities Affordable Housing Incentive Program Guidelines (Sep. 22, 2017, revised Feb. 26, 2018).

⁴ Commissioner Millman stated:

I too, would like to see affordable housing, but here's where I'm getting caught. We've a linkage fee in the city which we passed to address affordable housing. I'm not sure if this building came in before that went into place. I'm guessing it did, 2016. But we do have a policy on the books. What we don't have is a policy on the books is inclusionary zoning. And what's before us today, is TFAR which has direct provision of funds, 50% to the TFAR committee, 50% we'll discuss. And I'm supportive of the rest of the funds going to the city's Affordable Housing Trust Fund to address affordable housing but the onsite affordable, otherwise we just have site plan review. They're not asking for a density bonus. They're not asking for a general plan amendment or a zone change. It's not a legislative action, so it does need to be voluntary from the developer.

(Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

⁵ Heather Bleemers stated:

[A]t this time, there's no affordability requirement with any of the tract cases. You can build a condo without having affordable units. We don't have a mechanism unless the applicant will do a volunteer condition or a density bonus through that way. But we don't have a mechanism at this point.

(Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

C. The City Planning Commission's Imposition of the Inclusionary Housing Condition and Design Condition Create Bad Precedent for the City.

The CPC's action to impose the Inclusionary Housing Condition sets bad precedent and infringes on the City Council's policy-making authority. By imposing the Inclusionary Housing Condition on the Project, the CPC is asserting new authority to impose conditions requiring on-site affordable housing on a project that does not fall within any of the City Council's adopted ordinances aimed at providing affordable housing. If this decision is upheld, it would encourage potential future disregard for the City Council's policies adopted through ordinance and encourage the imposition of conditions in an ad hoc manner. Given these circumstances, no applicant could obtain any certainty with respect to its project and project conditions. Under such a regime, the fairness and procedural requirements that are critical to encouraging investment in the City would be eroded. This concern also holds true with respect to the Design Condition. Because the City already has established the Downtown Design Guide and Citywide Design Guidelines, the CPC's authority for site plan review is not intended to encourage the imposition of subjective design preferences.

When the City Council adopts ordinances that apply generally, it sets the standard that the CPC must follow. The CPC is not a legislative body and should implement the City's orderly regulatory structure. The unpredictable nature of the CPC's approach could be used to impose a host of other conditions on development projects that are wholly unrelated to the impacts associated with the proposed project. Ordinances provide investors and developers with a level of certainty in understanding what requirements will be needed and the law sets limits, including nexus principles, on the discretion of the CPC. The Project complies with the City's adopted procedures, as set forth in the staff report, and the City Council should confirm that its rules should be followed by granting the requested relief on these two conditions.

III. THE APPELLANT IS AGGRIEVED BY THE CITY PLANNING COMMISSION'S DECISION

As demonstrated above, the Applicant is aggrieved by the CPC's decision to impose the Inclusionary Housing Condition on the Project, because the imposition violates principles of due process and there is no nexus to any Project impacts. The Design Condition is also arbitrary and not justified by project impacts since the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. When making a decision regarding the Project, the CPC is required to provide a fair hearing on the matter. In this instance, the CPC failed to fulfill this requirement.

The ad hoc nature of the CPC's decision, which ignores the unique factual circumstances and history of the Project, indicates that there was a lack of thoughtful assessment or a fair consideration of how the added conditions would impact the Project's feasibility. The arbitrary nature of the Commission's decision-making as applied to this Project is further demonstrated by the fact that it has not imposed similar requirements on all other projects. For example, at the City Planning Commission's February 14, 2019 hearing, it approved a development similar to the Project that includes a downtown mixed-use project including residential without requiring the provision of on-site affordable units. (City Planning Commission Hearing, February 14,

2019.) This uneven application of conditions further evidences the arbitrary nature of these two conditions imposed by the CPC in its decision on the Project.

IV. APPLICANT RESPECTFULLY REQUESTS THAT THE COUNCIL GRANT THIS APPEAL BY DELETING THE INCLUSIONARY HOUSING AND DESIGN CONDITIONS

As demonstrated above, the CPC's imposition of both the Inclusionary Housing Condition and Design Condition on the Project reflected ad hoc, subjective, and arbitrary actions inconsistent with City requirements and lacking adequate factual or regulatory justifications.

The Applicant respectfully requests that the City Council grant this appeal and remove the Affordable Housing Condition and Design Condition from the Project's approvals.



bae urban economics

In association with PlaceWorks

Los Angeles Affordable Housing Linkage Fee Nexus Study

Prepared for City of Los Angeles
September 21, 2016

bae urban economics

September 21, 2016

Vincent P. Bertoni, Director of Planning
200 N. Spring Street, Room 525
Los Angeles, CA 90012

Rushmore D. Cervantes, General Manager
Los Angeles Housing + Community Investment Department
1200 West 7th Street, 9th Floor
Los Angeles, CA 90017

Dear Mr. Bertoni and Mr. Cervantes:

We are pleased to submit the Los Angeles Affordable Housing Linkage Fee Nexus Study. The Study analyzes the relationship between new development and affordable housing impacts for two kinds of fees: those that could be charged to new commercial development, and those that could be charged to new market-rate residential development. We have also profiled how these fees are structured and implemented in numerous other "case study" cities, provided feasibility testing across common land uses in Los Angeles segmented by market condition, and suggested methods for structuring a fee program to implement both kinds of fees over the next few years in the City of Los Angeles.

We have enjoyed working with your staff and members of the development and affordable housing communities. Please let us know if you have any comments or questions regarding this report.

Sincerely,



Janet Smith-Heimer, MBA
President, BAE

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Introduction

The City of Los Angeles faces an extraordinary housing crisis. In recent years, economic growth and strong demand for housing in Los Angeles have created substantial price and rent increases, causing more and more middle and lower income households to be priced out of the marketplace. The result has been an ever-widening gap for many households, between the cost of their housing and their incomes. This cycle has led to the need to produce more affordable housing units, at the same time that funding to subsidize affordable housing, has fallen.

A few key statistics tell the story:

- Over 61 percent of renter households in the City of Los Angeles pay more than 30 percent of their income on housing (rent and utilities), per the 2010-2014 American Community Survey. These approximately 490,000 households are considered cost-burdened and in need of affordable housing to lower this cost to an affordable level.¹
- Between 2006 and 2013, the median renter household income decreased by nearly four percent after adjusting for inflation. This means that on average, the median renter household in Los Angeles received a pay cut of nearly \$200 every year between 2006 and 2013. At the same time, LA median rents went the opposite direction, rising by almost 11 percent for the period after inflation. This mismatch between incomes and rents in LA grew more rapidly than any other major US city in the 2006 – 2013 period.²
- In 2014, the median LA household income (\$54,440) could afford a \$179,000 house, compared to the median home sale price in that same year of \$560,000.³
- The 2016 Homeless Count found 28,464 homeless persons in the City of Los Angeles, and increase of almost 11 percent over 2015.⁴

These statistics are exacerbated by the fact that the City of Los Angeles has also lost much of its affordable housing funding in recent years, shrinking from \$100 million in 2010 to \$26 million in 2014. The decline in funding was primarily due to the demise of redevelopment (CRA/LA), as well as a drop in federal housing funds. Notably, Los Angeles is also the only large California city without a permanent source of local funding for production of affordable housing, which means that funding declines and the growing housing crisis have impacted Los Angeles dramatically.

¹ US Census, American Community Survey, 2010-2014

² *Renting in America's Largest Cities: NYU Furman Center/Capital One National Affordable Rental Housing Landscape* (NYU Furman Center, 2015)

³ *Housing Element 2013 – 2021* (City of Los Angeles, Adopted December 3, 2013)

⁴ *2016 Greater Los Angeles Homeless Count* (Los Angeles Homeless Services Authority, 2016)

As part of addressing the affordable housing crisis, Mayor Garcetti proposed that this study be prepared so that both a commercial affordable housing fee and a residential affordable housing fee can be fully considered.

Purpose of Nexus Study

The purpose of the Nexus Study is to conduct a legally defensible analysis of the relationships between commercial and market-rate housing development projects, the new employment generated, the new worker households, their income distributions, and an estimate of those households that will need affordable housing. The analysis also evaluates the cost to provide this housing for households earning up to 120 percent of Area Median Income, and analyzes the maximum fee per square foot of new development necessary to provide this housing.

The Study also evaluates these “maximum legal” fees in terms of their feasibility by land use prototype across three market conditions to reflect the range and diversity of real estate economics in the City of Los Angeles. This analysis also accommodates current and proposed other impact fees and their effects on project feasibility. Finally, the Study estimates potential revenues if fees were adopted, and analyzes considerations for implementation.

Three additional issues are also considered in this report: the effects of the planned increase in Los Angeles's minimum wage by 2021, the option to provide affordable units on-site within market rate projects instead of a fee payment, and how the affordable housing fee might interact with the provision of units on-site in the case of density bonus projects.

Study Process and Approach

Process

This study was commissioned in late spring 2016 by the City of Los Angeles. The consultant team of BAE Urban Economics, specialists in urban economics, along with PlaceWorks, specialists in public engagement, were engaged to conduct a nexus study for both commercial and residential fees along with outreach to the development and advocacy communities in Los Angeles.

For each step in the study process, BAE conducted extensive research and analysis, as cited and documented in this report. Wherever possible, BAE developed data to support assumptions, as identified herein. In addition, BAE used a blend of standard methodologies to analyze nexus for employment generating uses, culled from court-tested and related analysis conducted across California during the past 20 years. In addition, wherever possible, this study's methodologies have sought to expand and more comprehensively document many of the foundational variables utilized by other cities, to tailor this study specifically to the Los Angeles real estate, employment, and housing markets.

To obtain input and preview preliminary findings from the study, a series of three workshops were held. Over 60 development companies, industry representatives, and policy advocates were invited. A list of attendees is included in the preface to this report.

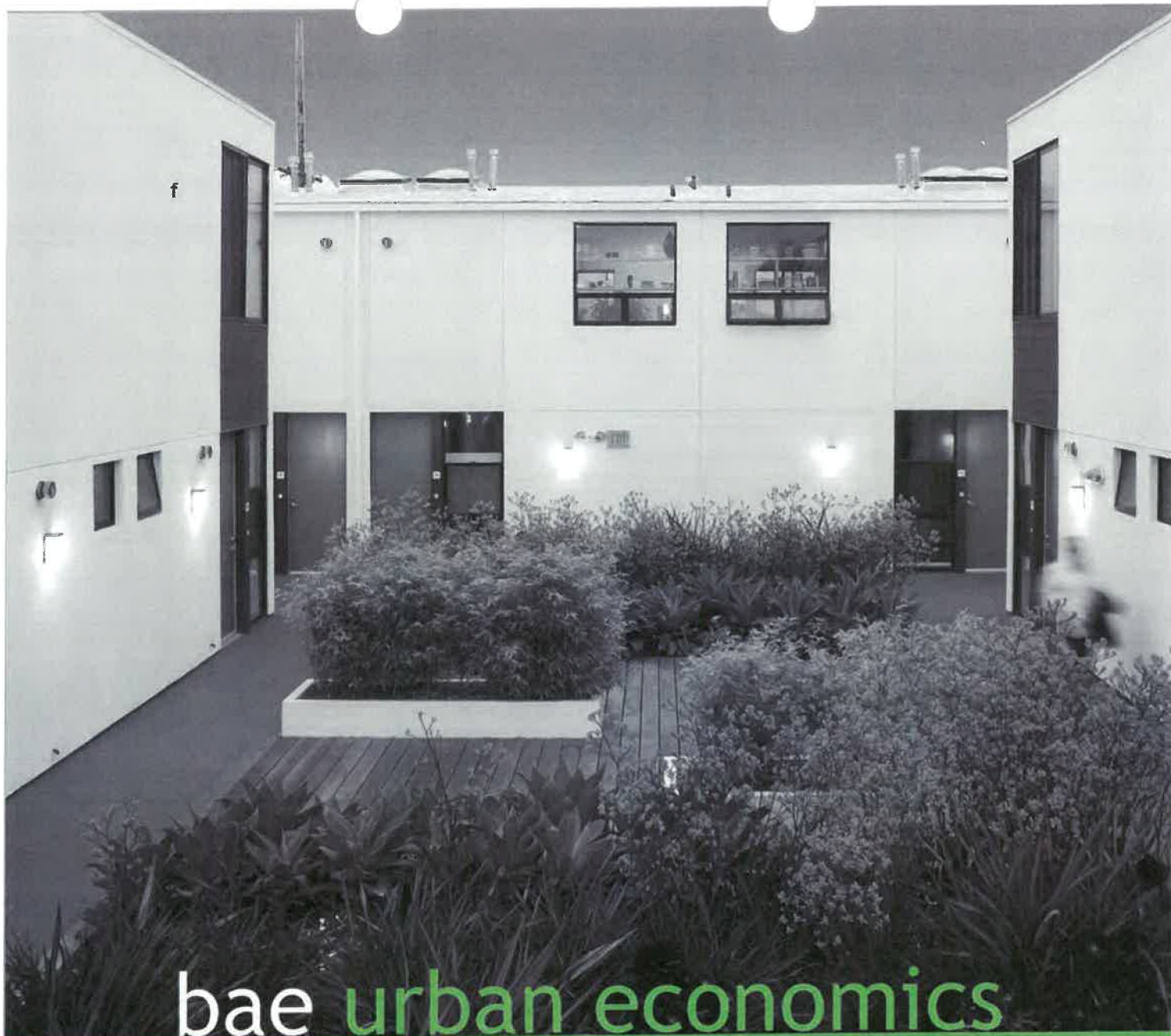
Approach

This study includes extensive analysis of real estate project feasibility, to ensure that fees are set at levels that do not unduly constrain market rate projects. The feasibility analysis was prepared in an intentionally conservative manner, to accommodate the wide variation in project economics across Los Angeles. Wherever possible, the lower end of the range of revenue-related variables, and the higher end of the range of cost-related variables, was used. This approach was taken for two reasons: arguably, Los Angeles is at the peak of the real estate cycle in 2016, and also, deeming a fee amount as feasible without a conservative approach would mean the fee could create downward pressure on market rate development.

It is also important to note that Los Angeles, a major city without a permanent mechanism to fund affordable housing, will be essentially “starting from scratch.” Real estate economic theory suggests that over the long term, external costs such as impact fees, are absorbed by lower-than-otherwise land values (i.e., “land residual”), so imposing an affordable housing fee, over time, will likely have this effect. For many markets, this is experienced as a slower than otherwise land value appreciation trend, and is often offset by the land residual derived from rising rents/sale prices. Nevertheless, that change of moving from no fee to a fee, will strike some as an undue burden, especially in the short run. This report highlights how this situation has been addressed in other cities, including strategies such as exempting all projects already in the entitlement pipeline (which would have been organized and initiated without knowledge of the fee), phasing in the fee over several years so that the market can adjust, and providing for targeted waivers and exemptions to accommodate cases where the fee may have unintended negative consequences.

Overview of Report

The following report is divided into two halves: a commercial fee study and a residential fee study. For each development type, the report follows a similar outline. First, case studies of other California cities as well as selected major cities elsewhere in the US with these fees, are summarized. Next, the “nexus” or relationship between new development in employment-generating uses, the resulting affordable housing need, and the translation of these findings to a maximum legal fee, are presented. Maximum fees are then tested for financial feasibility across three levels of market conditions affecting Los Angeles. Several potential fee structures and corresponding estimates of potential annual fee revenues are provided. The report also analyzes several additional considerations for fee structuring and implementation.



bae urban economics

Los Angeles Affordable Housing Linkage Fee Nexus Study:
Supplemental Report
Prepared for City of Los Angeles
October 5, 2017

bae urban economics

October 5, 2017

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200 N. Spring Street, Room 525
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Rushmore D. Cervantes, General Manager
Los Angeles Housing + Community Investment Department
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Dear Mr. Bertoni and Mr. Cervantes:

We are pleased to submit this Supplemental Report to the Los Angeles Affordable Housing Linkage Fee Nexus Study (September, 2016). As you know, the 2016 Study analyzed the relationship between new development and affordable housing impacts for two kinds of fees: those that could be charged to new commercial development, and those that could be charged to new market-rate residential development.

Since publication of the 2016 Study, the City of Los Angeles has circulated a draft Linkage Fee Ordinance; the most recent draft of the ordinance, dated March 9, 2017, is included in this report as Appendix C.

This Supplemental Report analyzes the nexus (relationship) between several additional categories of land use proposed to be charged a linkage fee but not considered in the original 2016 Study. Details regarding the proposed fee structure for these categories of land use are described herein.

Please let us know if you have any comments or questions regarding this Supplemental Report.

Sincerely,



Janet Smith-Heimer, MBA
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Introduction

In September 2016, the City of Los Angeles published the *City of Los Angeles Affordable Housing Linkage Fee Nexus Study*, which provided in-depth analysis of the relationship between new market rate residential and new commercial development projects and affordable housing impacts. Upon publication of the Study, the City also released a Draft Ordinance for the Affordable Housing Linkage Fee.

Since that time, the Planning, Land Use, and Management (PLUM) Committee of the Los Angeles City Council has convened several hearings and taken public testimony from hundreds of residents and organization representatives.

On March 9, 2017, a revised Draft Ordinance was published, which incorporated several modifications to the initial draft ordinance, as directed by the PLUM on February 23, 2017. Among these changes, Section 21.18.2(b) outlined several revised exemptions to the proposed law, including Item 4a, 4b, and 4c, which pertain to single family homes.

Purpose of Supplemental Report

This Supplemental Report was commissioned by the City of Los Angeles to analyze the nexus between the categories of non-exempt residential development which were not specifically analyzed in the September 2016 Study.¹ These non-exempt types of development were not previously analyzed in terms of their nexus to a linkage fee because at the time the September 2016 Study was commissioned (in Spring 2016), the ordinance was not complete and the focus of the Study was on the nexus to a linkage fee anticipated to be charged on the net increase in housing units, not on net increases in square footage.

Subsequently, the Draft Linkage Fee Ordinance was revised to apply to all “development projects” with a few specific exceptions, thereby including demolition/replacement of single family homes with a net increase in square footage over a certain size as well as single family home additions over a certain size. These categories of previously un-analyzed residential development are analyzed in this Supplemental Report. It should be noted that other than the categories of land use analyzed in this Report, the previous September 2016 Study encompasses all necessary nexus analysis for the Draft Ordinance (e.g., new single family detached, new single family attached, new for-sale condominiums, and new multifamily rental housing).

¹ The categories not specifically analyzed from a nexus standpoint in the September 2016 Study include net new house additions of 1,501 square feet or more (Item 4a in the Draft Ordinance) and net square footage of replacement housing of 1,501 square feet or more (Item 4c). Item 4b, newly constructed single family homes, was analyzed for their nexus to affordable housing in the September 2016 Study.

Specifically, this Report analyzes the nexus between new market-rate development projects and affordable housing impacts, for those development projects that are not excepted in the Draft Ordinance and also were not previously analyzed, including:

- a. **Single family home additions** of 1,501 square feet or more of new construction (the inverse of the exception cited in Item 4a of the Draft Ordinance)
- b. **Replacement of an existing single family home with new construction** resulting in a net increase of 1,501 or more square feet compared to the home that was previously on the property (the inverse of the exception cited in Item 4c of the Draft Ordinance)

It should be noted that Draft Ordinance Item 4b, regarding new construction of single family homes of 1,501 square feet or more (the inverse of the exception cited in Item 4b of the Draft Ordinance), was analyzed previously in the September 2016 Study with regard to its nexus and impacts; the revised Draft Ordinance size threshold for fee application would impact future potential revenue estimates but not the underlying previously prepared nexus analysis.

About Residential Fees

Overview of Residential Fees

Residential linkage fees for affordable housing apply to market rate units, and are based on the "nexus" or relationship between the occupants of a market-rate unit, these occupants' spending in the economy, the portion of this spending that generates workers living in low income households needing new affordable units, and the cost to provide these units, as translated into a fee per unit or per square foot of new market rate housing.

This nexus analysis is important, because the California Mitigation Fee Act prohibits charging impact fees that exceed the nexus, or relationship, of the new development to the cost to mitigate its impact. The nexus analysis establishes the maximum amount of fee that is attributable to the development being charged.

The March 9, 2017 Draft Linkage Fee Ordinance envisioned a single fee of \$12 per square foot of new residential development; the September 2016 Study established maximum legal fees far greater than this proposed fee, for each type of land use that was analyzed. Subsequent discussions by the PLUM have considered alternative fee structures for new residential development (and single family home additions), including a fee schedule based on the project's location. PLUM discussions have considered a proposed fee schedule with up to a \$15 per square foot fee in some very strong market locations. Thus, for this Supplemental Report, which analyzes the nexus for single family home additions and replacement units over a certain size, the maximum legal fee is calculated for these two previously un-analyzed categories of housing, and can be compared to any fee under consideration.

The following provides an outline of the methodology used for this Supplemental Report (which is similar to the September 2016 Study). It should be noted that all analysis contained in this Supplemental Report is based on the same data as previously used, meaning that home values are for the period spanning July 2015 through June 2016 (which was current at the time that the September 2016 Study was underway). This maintains consistency across the 2016 Study and this Supplemental Report, as well as providing for a conservative analysis, due to continuous home price increases since that time.

It is also important to note that even though the PLUM has considered (and City Council may adopt) a fee structure that would vary by the geographic location of the market rate project, the prior Nexus Study and this Supplemental Report both consider nexus from a citywide standpoint. Again, the law requires establishing a maximum legal fee per the nexus analysis; as long as any of the actual fees charged fall below this maximum legal fee amount, the "reasonableness" test has been met.

Finally, it should be noted that the September 2016 Study included additional analysis related to the financial feasibility of new housing projects, which is not required by law, but as a practical matter, is key to ensuring that linkage fees do not affect market rate housing production. Because the categories of land use analyzed in this Supplemental Report cover individual single family home additions or individual projects providing net new replacement space, and focus on the impacts of this increment of new construction only, a feasibility test is not conducted (nor is required by law). Individual house projects (additions or demolition/replacement activities) reflect a wide range of considerations echoing individual owner circumstances, ranging from no profit motivation to profit motivation in a specific way, and therefore the factors that affect feasibility will vary considerably on a project-by-project basis for the categories of land use analyzed in this Report.

Overview of Methodology

The maximum residential fee calculation is based on the premise that new households in Los Angeles spend money within the local economy, thereby supporting employment for new workers, a portion of which will need affordable housing. The intent of the market-rate residential fee is to generate revenue that will support the construction of affordable housing that will be affordable to these new lower-income worker households.

This section provides an overview of the steps used to determine the maximum legal fee for market-rate residential units. Each step is discussed in more detail in the following sections.

Step 1: Define Housing Types

For this Supplemental Report, the market rate housing subject to the Linkage Fee consists of the following:

- Single family additions of 1,501 square feet or more
- Replacement single family homes of 1,501 net new square feet or more

Step 2: Identify Value Difference Between Existing and Expanded Single Family House (New Construction Component Only)

This step is slightly different than the prior Nexus Study, which focused on entirely new units. For the non-excepted single family home expansions/replacements, the only portion of the change that can be attributed to an affordable housing impact is the newly-constructed component. Thus, this step analyzes recent home sales by size of house for the City of Los Angeles, in order to estimate the incremental increase in house value from a specific size of addition or net new replacement space (e.g., 1,501 square feet or more, in both cases).

Step 3: Estimate the Household Income Difference to Purchase the Existing vs. Expanded House

Based on the sale prices by size identified in Step 2, this Supplemental Report estimates the household incomes of occupants needed to buy the existing and the expanded house, and identifies the difference in income needed, assuming that households spend 30 percent of gross household income on housing costs.

Step 4: Analyze Net Increased Spending by the "Expanded House Buyer"

Based on the household income figures from Step 3, this Supplemental Report (similar to the prior Study) uses IMPLAN to estimate spending associated with the household with incomes supporting purchase of the expanded house's value. The IMPLAN output estimates the number of new workers by industry.

Step 5: Estimate New Worker Households by Household Income

The analysis uses a data set published by the U.S. Census (the Public Use Microdata Sample or PUMS) to estimate the household income distribution among the worker households derived from Step 4.

Step 6: Calculate Financing Gap per Affordable Unit

The next step is to determine the per unit "financing gap" that affordable housing developers encounter when securing a permanent loan for their projects. The "financing gap" is the difference between the cost to develop an affordable unit and the amount the developer can borrow to build the unit, based on Net Operating Income flowing from rent paid by tenants per AMI income limits. Using cost data for recent affordable housing developments in the City of Los Angeles, the Nexus Study determined the average cost to build an affordable rental unit in the City. The supportable permanent loan amounts identified in Step 6 were deducted from the average per-unit development cost to determine the financing gap for units serving

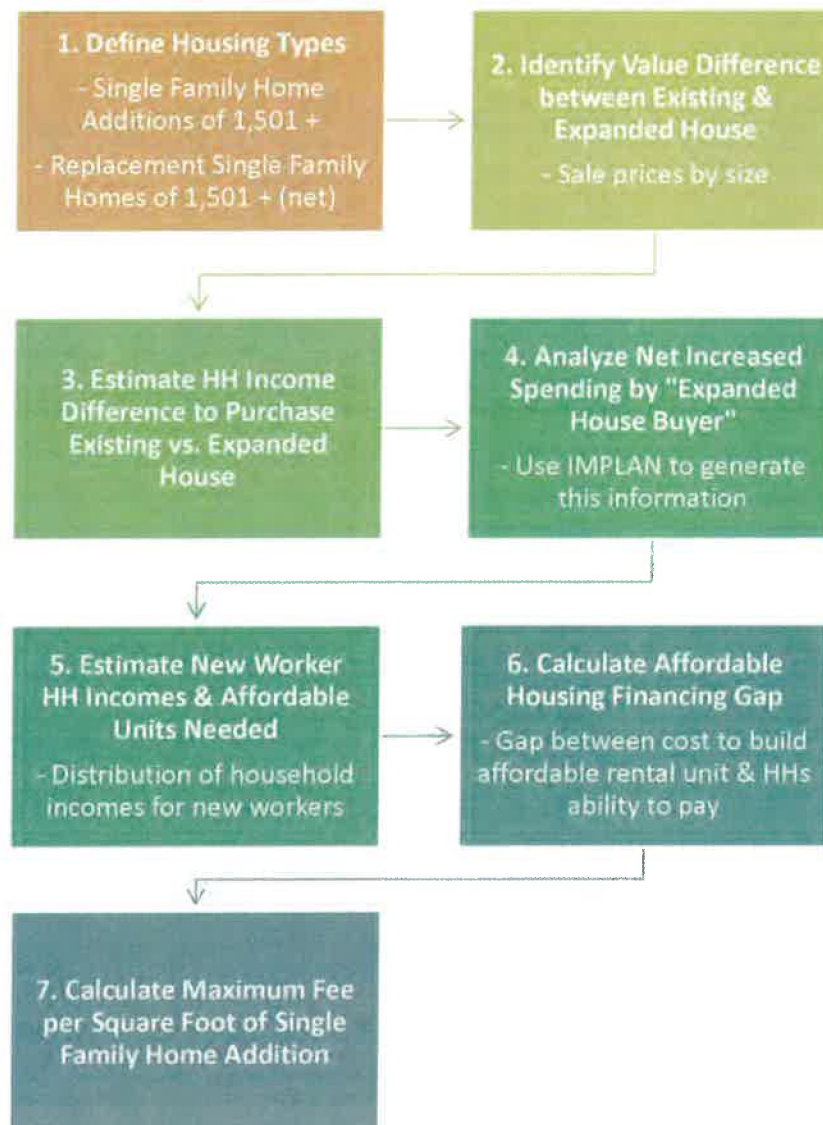
households at each income level up to 120 percent of AMI. The data and assumptions for this step are the same as those used in the prior September 2016 Study to remain consistent.

Step 7: Calculate the Maximum Legal Fee Per Square Foot

The final step in calculating the maximum fee is to apply the financing gap per unit for each income level (from Step 6) to the total housing need by income level (from Step 5).

The process outlined above is illustrated in the flow chart below.

FIGURE 1: SUMMARY OF MARKET-RATE HOUSING FEE METHODOLOGY (FOR SUPPLEMENTAL REPORT)



ORDINANCE NO. 185342

An ordinance adding Section 19.18 and amending Section 16.02 of the Los Angeles Municipal Code to establish an Affordable Housing Linkage Fee.

WHEREAS, the City Council of the City of Los Angeles ("Council") recognizes that the City of Los Angeles ("City") is facing a housing crisis, and further acknowledges the need to facilitate the availability of housing products at different levels of affordability in order to address the housing needs of the entire community;

WHEREAS, the Council desires to adopt a fee to help address the increased need for affordable housing connected with new nonresidential development and the development of new market rate residential units ("Affordable Housing Linkage Fee");

WHEREAS, the Council has caused a study to be prepared that analyzes whether there is a reasonable relationship between the development of nonresidential projects and new market rate residential units and the need to increase the supply of new affordable housing;

WHEREAS, that study, prepared by BAE Urban Economics, entitled "Los Angeles Affordable Housing Linkage Fee Nexus Study" dated September 2016 ("Nexus Study"), demonstrates that such a nexus exists, and that the use of an Affordable Housing Linkage Fee for the purpose of increasing the supply of affordable housing in the City is justified;

WHEREAS, the Council has determined that the Affordable Housing Linkage Fee should be established consistent with the requirements applicable to fees for public facilities in California Government Code Section 66000 *et seq.*, commonly referred to as the Mitigation Fee Act, without determining that it is required to do so;

WHEREAS, the Council has published advance notice of the public hearing concerning the Affordable Housing Linkage Fee in a manner consistent with the Mitigation Fee Act, and during that period made available for public review and comment data indicating the estimated cost required to provide affordable housing and the potential revenue sources;

WHEREAS, the Council has determined that the Affordable Housing Linkage Fee is consistent with and implements the goals and objectives of the City's General Plan;

WHEREAS, the Affordable Housing Linkage Fee is intended to create a funding mechanism to increase the supply of affordable housing in the City without reference to a specific development or property;

WHEREAS, the City will not expend funds from the Affordable Housing Linkage Fee on any specific development prior to the completion of any required environmental

review for such specific development, thus the adoption of this Ordinance is not a project under the California Environmental Quality Act guidelines found in Title 14 of the California Code of Regulations at Section 15378(b)(4);

WHEREAS, the Affordable Housing Linkage Fee is authorized pursuant to Section 240 of the City Charter and Section 7, Article XI of the California Constitution as a police powers measure to improve the public welfare of the City; and

WHEREAS, consistent with the Mitigation Fee Act and the City Charter, the Affordable Housing Linkage Fee may be established by ordinance and resolution.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Section 19.18 is added to Article 9 of Chapter I of the Los Angeles Municipal Code to read as follows:

SEC. 19.18. AFFORDABLE HOUSING LINKAGE FEE.

A. Definitions.

Terms shall have the meaning ascribed to them in Sections 12.03 or 12.22 of this Code. For the purposes of this section only, certain terms and words are defined as follows:

1. **"Additional Housing Units"** means a net increase in the number of dwelling units or guest rooms to be added on a parcel or parcels of land by issuance of a building permit, after subtracting the number of dwelling units or guest rooms legally removed from the same parcel of real property during the year preceding the issuance of the building permit.

2. **"Additional Nonresidential Floor Area"** means the net increase in the amount of nonresidential Floor Area, as defined in Section 12.03 of this Code, to be added on a parcel or parcels of land by issuance of a building permit, less the amount of nonresidential Floor Area legally removed from the same parcel of real property during the year preceding the issuance of the building permit.

3. **"Applicant"** means any individual, person, firm, partnership, association, joint venture, corporation, limited liability company, entity, combination of entities or authorized representative thereof, who undertakes, proposes or applies to the City for a Planning or zoning entitlement approval or building permit related to a Development Project.

4. **"Building Permit Application"** means plans submitted to the Department of Building and Safety pursuant to Section 12.26 A.3. of this Code.

5. **"Development Project"** means any activity involving or requiring the issuance of a building permit that results in Additional Housing Units, Additional Nonresidential Floor Area, additional single-family residential Floor Area, or a change of use from nonresidential to residential.

6. **"Grocery Store"** means a project that is for a retail use of which greater than one half of the Floor Area is devoted to the sale of food items intended for consumption or use off the premises, excluding alcoholic beverages.

7. **"Linkage Fee"** means the fee assessed, pursuant to this section, on certain Development Projects in order to mitigate the impact of the additional demand for affordable housing caused by such activity.

B. Applicability.

The regulations, requirements and provisions of this section shall apply to any Development Project. Unless a Development Project is exempt from this section, an Applicant must pay to the City the required Linkage Fee as a condition of the building permit for which a Building Permit Application has been submitted in order to mitigate the need for affordable housing that is generated by or attributable to such projects. The provisions of this section are subject to the requirements set forth in California Government Code Section 66000, *et seq.*

1. Phased Implementation.

a. For the first 120 days following the effective date of this ordinance, no Linkage Fee shall be imposed on any project for which a Building Permit Application or complete planning or zoning entitlement application is submitted. For purposes of this Section, a complete planning or zoning entitlement application is an application that has been accepted by the Department of City Planning and for which the application fees have been paid. If an Applicant submitted a Building Permit Application or a complete planning or zoning entitlement application for a Development Project prior to the effective date of this ordinance, that Development Project shall not be subject to a Linkage Fee.

b. An Applicant for a Development Project who submits a Building Permit Application or a complete Planning or zoning entitlement application (whichever is first) 121 days following the effective date of this ordinance shall pay one-third of the total Linkage Fee amount due, based on the fee schedule and market area maps in effect at the time of the submittal of the Building Permit Application or complete Planning or zoning entitlement application.

c. An Applicant for a Development Project who submits a Building Permit Application or a complete Planning or zoning entitlement application (whichever is first) 306 days after the effective date of this ordinance shall pay two-thirds of the total Linkage Fee amount due, based on the fee schedule and market area maps in effect at the time of the submittal of the Building Permit Application or complete Planning or zoning entitlement application.

d. An Applicant for a Development Project who submits a Building Permit Application or a complete planning or zoning entitlement application (whichever is first) 485 days or more after the effective date of this ordinance shall pay the total Linkage Fee amount due, based on the fee schedule and market area maps in effect at the time of the submittal of the Building Permit Application or complete Planning or zoning entitlement application.

2. Exemptions.

The Department of Building and Safety shall determine whether any of the following exemptions apply to a Development Project based on documentation submitted by the Applicant prior to the issuance of the building permit. The fee imposed by this section shall not apply to construction that includes any the following:

a. Less than 15,000 square feet of Additional Nonresidential Floor Area in any nonresidential building, other than parking garages and parking facilities, as determined by the Department of Building and Safety.

b. Any for-sale or rental housing development containing restricted affordable units where at least 40% of the total units or guest rooms are dedicated for moderate income households, or at least 20% of the total units or guest rooms are dedicated for low income households, or at least 11% of the total units or guest rooms are dedicated for very low income households, or at least 8% of the total units or guest rooms are dedicated for extremely low income households, for at least 55 years, where a covenant has been made with the Housing and Community Investment Department (HCIDLA) and required covenant and monitoring fees have been paid. Such a covenant shall also subject projects using this exemption to the replacement policies in Government Code Section 65915(c)(3), as that section may be amended from time to time, and to HCIDLA fees related to housing replacement determinations pursuant to state law, as set forth in this Code. For the purposes of this section, total units includes any units added by a density bonus or other land use incentive, consistent with the affordability levels defined in Government Code Section 65915, as that section may be amended from time to time.

c. Any Development Project being constructed by, or on behalf of: 1) a government or public institution such as a school, museum, homeless shelter or other similar projects that are intended for community use; or 2) any private Elementary and/or High School.

d. Any hospital. For purposes of this section, "hospital" means a facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer.

e. A single-family detached home meeting one or more of the following conditions:

(1) Any addition of 1,500 square feet or less of Floor Area to an existing single-family detached home located in a single-family or multiple-family zone.

(2) New construction of any single-family detached home located in a single-family zone that is 1,500 square feet or less of Floor Area.

(3) Any replacement of a single-family detached home resulting in a net increase of 1,500 square feet or less of Floor Area from the prior home that existed on the property.

f. Either (1) an addition of 1,501 square feet or more of Floor Area to an existing single-family detached home located in a single-family zone, or (2) a replacement of a single-family detached home resulting in a larger single-family detached home with a net increase of 1,501 square feet or more of Floor Area from the prior home that existed on the property; provided, however, in either event, a covenant shall be recorded against the property prior to the issuance of a building permit for such addition or replacement requiring the owner of the property to pay the Linkage Fee if the home is sold within three years of the issuance of such building permit. The covenant shall automatically expire at the end of such three-year period, if no sale of the property has occurred during such three-year period. However, in the event of a sale of the property within such three-year period, the covenant shall not expire until a notice of covenant termination is recorded. A notice of covenant termination shall be provided by the City upon full payment of Linkage Fee due, based on the fee schedule in effect at the time of payment. The covenant shall run

with the land and bind all successive owners of the property until the Linkage Fee is fully paid.

g. An Accessory Dwelling Unit as defined by California Government Code Section 65852.2.

h. Any project located within the boundaries of the Central City West Specific Plan Area, as defined in Ordinance No. 163,094, if the Applicant agrees by covenant and agreement with the City or by development agreement to abide by the linkage fee and replacement housing obligations set forth in the Specific Plan for the Central City West Area.

i. A residential project that is subject to a greater affordable housing fee requirement or is required to provide one or more physical housing units pursuant to the Mello Act in order to satisfy its inclusionary housing obligations. In that case, the residential component of the project shall be exempt from the Linkage Fee requirements of this Section. Nonresidential portions of mixed-use Coastal Zone projects shall be analyzed separately from residential portions of mixed-use projects for the purposes of the Linkage Fee requirements of this section. Nonresidential portions of such projects shall be subject to this section. The provision of housing units or in-lieu fees to satisfy replacement housing obligations under the Mello Act (as opposed to inclusionary housing obligations) shall not exempt a project from the Linkage Fee requirements of this section.

j. A residential Development Project that is subject to affordable housing requirements pursuant to any land use policy or ordinance or development agreement that exceeds the Linkage Fee requirements of this section in either fee amount or on-site affordable housing percentages provided in paragraph 19.18.B.2.b.

k. A residential Development Project that is subject to affordable housing and labor requirements pursuant to LAMC 11.5.11.

l. Any Grocery Store, provided there is no existing Grocery Store within a one-third (1/3) mile radius of the Development Project site.

m. Any Adaptive Reuse Project that is a designated Historic-Cultural Monument and is being converted to a residential use.

n. Any nonresidential Floor Area within a Development Project that is located in the South Los Angeles Transit Empowerment Zone, also referred to as the "Slate-Z" Promise Zone Area, located in Low Market Areas according to the nonresidential area map. This exemption shall

only apply to Development Projects for which a Building Permit Application or complete planning or zoning entitlement application is submitted within three years of the effective date of this ordinance. This exemption will no longer be valid three years after the effective date of this ordinance.

3. Protests, Adjustments and Waivers.

a. An Applicant may protest the imposition of the Linkage Fee and request that the requirements of this section be adjusted or waived pursuant to Government Code Section 66020, *et seq.*, based on a showing that the application of the requirements of this section would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the Development Project. Protests shall be filed with the Director.

b. On or before the date on which payment of the Linkage Fee is due, the Applicant shall pay the amount required by this section and serve a written notice to the Director with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the Director of the factual elements of the dispute and the legal theory forming the basis for the protest or request for adjustment or waiver, along with the substantial evidence that supports the protest or request, including any supporting documentation. The protest must be filed at the time of approval or conditional approval of the Development Project or within 90 days after the imposition of the Linkage Fee. The City shall provide the Applicant with written notice as required by Government Code Section 66010(d)(1), as that section may be amended from time to time.

c. If the Director determines that application of the requirements of this section would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to a Development Project, the fee requirements shall be adjusted or waived to reduce the obligations under this section to the extent necessary to avoid an unconstitutional result. The Director shall render a decision within 75 days from the date the protest was received.

d. If an adjustment or waiver is granted, any change in the Development Project shall invalidate the adjustment or waiver. If the Director determines that no violation of the federal or state constitution would occur through application of this section, the requirements of this section shall remain fully applicable.

e. Failure of an Applicant to comply with the protest requirements of this Section or Government Code Section 66020, *et seq.*,

shall bar that Applicant from any action or proceeding or any defense of invalidity or unreasonableness of the imposition of the Linkage Fee.

C. Fee Calculation.

1. The City Council shall adopt, by resolution, a Linkage Fee schedule based on an analysis of the cost of mitigating the impact of the additional demand for affordable housing caused by Development Projects, and on the varying levels of economic feasibility in different geographic areas of the City based on current market conditions. The City Council shall also adopt, by resolution, a map or maps establishing the respective market areas throughout the City that inform the amount of the Linkage Fee to be assessed for a given Development Project.

2. For each Development Project, the Linkage Fee shall be calculated as the amount of new or added Floor Area in the Development Project devoted to the uses described in the Linkage Fee schedule, as determined by the Department of Building and Safety, multiplied by the amount of the applicable fee, as found in the most recent Linkage Fee schedule adopted by City Council, at the time the building permit for the Development Project is issued, minus any deductions or credits.

3. Fee Adjustments and Reports.

a. **Annual Inflation Adjustment.** The Linkage Fee shall be adjusted annually for inflation beginning on July 1, 2018, by the Director in accordance with the latest change in year-over-year Consumer Price Index for Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County area, or if such index ceases to be published, by an equivalent index chosen by the Director. An updated Linkage Fee schedule shall be maintained by the Department of City Planning, which shall provide a copy of the adjusted schedule to the Mayor and City Council each year.

b. **Five-Year Market Area Adjustment.** Every five years, beginning on July 1, 2018, the Director, in association with HCIDLA shall undertake a new market area analysis and adjust market areas and geographies, where necessary, to reflect the most up to date rental and sales price information for each of the market areas. Any change to the Linkage Fee schedule other than the Annual Inflation Adjustment described in Paragraph (a) above shall be adopted by resolution of the City Council.

4. **Deductions or Credits.**

a. **Change of Use.** If the Development Project is the result of a change of use from nonresidential to residential, the Linkage Fee to be paid is the result of subtracting the equivalent fee amount that either was paid or would have been paid, based on the pre-existing use, from the fee amount required to be paid for the new use based on the most recent Linkage Fee schedule approved by the City Council. Deductions or credits shall not be applied to any portion of a Development Project comprised of additional Floor Area resulting from new construction. The calculation of a deduction or credit shall not result in a refund to an Applicant or be applied as a credit to another Development Project in a different location.

b. **Affordable Housing Units.** Any Restricted Affordable Units as defined in Section 12.22 A.25 of this Code may be subtracted from the total number of dwelling units or guest rooms in a building in determining the required Linkage Fee.

c. **Mixed Use.** The first 15,000 square feet of nonresidential use in a mixed-use building shall be excluded from the calculation of Floor Area for the purposes of determining the required Linkage Fee.

d. **Transfer of Floor Area Rights.** Any additional Floor Area that is obtained by a Development Project through the provision of public benefit payments pursuant to LAMC 14.5.9 shall be excluded from the calculation of Floor Area for purposes of determining the Linkage Fee for the Development Project.

e. **Other Affordable Housing Requirements.** In calculating Floor Area for purposes of determining the Linkage Fee for a Development Project, the following shall be excluded from that calculation:

(1) the Floor Area of the residential portion of a mixed-use Development Project that is subject to affordable housing requirements pursuant to any land use policy or ordinance or development agreement that exceeds the Linkage Fee requirements of this section in either fee amount or on-site affordable housing percentages provided in paragraph 19.18.B.2.b.

(2) the Floor Area of the residential portion of a mixed-use Development Project that is subject to affordable housing and labor requirements pursuant to LAMC 11.5.11.

f. **Land Dedication.** If the Housing and Community Investment Department accepts, on behalf of the City, an offer by an

Applicant to dedicate land offsite from the proposed location of the Development Project for the purpose of building affordable housing, the value of the land to be dedicated, to be determined as the average of two independent appraisals funded by the applicant, may be deducted from the Linkage Fee amount owed for the Applicant's Development Project. If the value of the dedicated land is more than the Linkage Fee owed for the Applicant's Development Project, the City shall bear no responsibility for the difference in value, nor shall that overage be applied as a credit to any future Development Project.

5. **Payment of Linkage Fee.** The Linkage Fee is due and payable by the Applicant prior to the issuance of a building permit for a Development Project. No additional fee shall be required for a project seeking an extension of an expired building permit.

6. **Refunds of Linkage Fee.** Any fee paid under the provisions of this section may be refunded to an Applicant if the application for the building permit has expired and was not utilized to begin construction of a Development Project.

D. **Severability.** If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance, which can be implemented without the invalid provisions and, to this end, the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted each and every provision and portion thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would subsequently be declared invalid or unconstitutional.

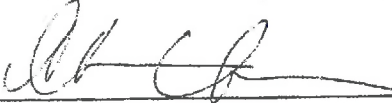
Sec. 2. Paragraph C is added to Section 16.02 of Article 6 of Chapter 1 of the Los Angeles Municipal Code to read as follows:

C. **Payment of the Linkage Fee pursuant to Section 19.18 of this Code.**

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By 
ADRIENNE KHORASANEE
Deputy City Attorney

Date December 13, 2017

File No. CF 17-0274

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I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR



Ordinance Passed DEC 13 2017



Approved 12/13/17

THIRD READING

Bill No: AB 1505
Author: Bloom (D), Chiu (D) and Gloria (D), et al.
Amended: 9/8/17 in Senate
Vote: 21

SENATE TRANS. & HOUSING COMMITTEE: 7-4, 6/6/17
AYES: Beall, Allen, Atkins, McGuire, Skinner, Wieckowski, Wiener
NOES: Cannella, Bates, Gaines, Morrell
NO VOTE RECORDED: Mendoza, Roth

ASSEMBLY FLOOR: 47-24, 5/4/17 - See last page for vote

SUBJECT: Land use: zoning regulations

SOURCE: California Housing Consortium
California Rural Legal Assistance Foundation
Housing California
Non-Profit Housing Association of Northern California
Western Center on Law and Poverty

DIGEST: This bill authorizes the legislative body of a city or county to establish inclusionary housing requirements as a condition of development.

Senate Floor Amendments of 9/8/17 provide the Department of Housing and Community Development with the authority to review an ordinance adopted or amended after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in a development be affordable to, and occupied by, households at 80% of the area median income, if specified conditions apply.

Senate Floor Amendments of 7/10/17 clarify that the Legislature's intent is to supersede the holding and dicta in the *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* decision to the extent that the decision conflicts with a local

jurisdiction's authority to impose inclusionary housing ordinances. Additionally, the amendments state that it is not the Legislature's intent to enlarge, diminish, or modify the existing rights of a residential property owner.

ANALYSIS:

Existing law:

- 1) Grants cities and counties the power to make and enforce within their limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
- 2) Declares the Legislature's intent to provide only a minimum of limitation with respect to zoning in order that counties and cities may exercise the maximum degree of control over local zoning matters.
- 3) Authorizes, specifically, the legislative body of any county or city to adopt ordinances that do any of the following:
 - a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes;
 - b) Regulate signs and billboards;
 - c) Regulate all of the following:
 - i) The location, height, bulk, number of stories, and size of buildings and structures;
 - ii) The size and use of lots, yards, courts, and other open spaces;
 - iii) The percentage of a lot that may be occupied by a building or structure; and,
 - iv) The intensity of land use.
 - d) Establish requirements for off-street parking and loading;
 - e) Establish and maintain building setback lines; and,
 - f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.
- 4) Limits, pursuant to the Costa-Hawkins Rental Housing Act (Costa-Hawkins Act), the permissible scope of local rent control ordinances and generally gives the owner of residential real property the right to establish the initial rental rate for a dwelling or unit.

This bill:

- 1) Permits a locality to require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate income, lower income, very low income, or extremely low income households. Requires that the ordinance provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.
- 2) Declares the intent of this bill is to supersede any holding or dicta in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, to the extent that the decision or opinion conflicts with the authority of localities to adopt inclusionary housing requirements and that it is not the intent to enlarge, diminish, or modify any existing authority of a locality to establish inclusionary housing requirements as a condition of development beyond reaffirming their applicability to rental units.
- 3) Provides the Department of Housing and Community Development (HCD) with the authority to review an ordinance adopted or amended after September 15, 2017, that requires as a condition of the development of residential rental units that more than 15% of the total number of units rented in a development be affordable to, and occupied by, households at 80% area median income (AMI), if either of the following conditions apply:
 - a) If the locality has failed to meet at least 75% of its share of the regional housing need allocated under Housing Element Law for above-moderate income category over at least a five year period; or
 - b) HCD finds that the locality has not submitted its annual housing element report for two consecutive years.
- 4) Provides that HCD may request a locality to provide evidence that the ordinance does not unduly constrain the production of housing by submitting an economic feasibility study, based upon a finding pursuant to (3) above. HCD's review of the study shall be limited to determining whether the study meets the following standards:
 - a) A qualified entity with demonstrated expertise prepared the study.
 - b) If the study is prepared after September 15, 2017, the locality shall make sure the study is available to review for at least 30 days on their Web site.

- c) The study methodology followed best practices and was sufficiently rigorous to allow an assessment of whether the rental inclusionary requirement, in combination with other factors that influence feasibility, is economically feasible.
- 5) Provides that, if the study required under (3) has not been submitted to HCD within 180 days, the locality shall limit any requirement to provide rental units in a development affordable to households at 80% AMI no more than 15% of the total number of units in a development until an economic feasibility study has been submitted to HCD and HCD makes a finding that the study meets the standards described in (4) above.
- 6) Requires HCD to make a finding within 90 days of submission as to whether the study meets the requirements in (4) above. If HCD finds the locality's study does not meet the required standards, the locality has the right to appeal the decision to the HCD director.
- 7) Prohibits HCD from requesting to review an economic feasibility study for an ordinance more than 10 years from the adoption or amendment of the ordinance, whichever is later.

Background

Article XI, Section 7 of the California Constitution grants each city and county the power "to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws." This is generally referred to as the police power of local governments. The Planning and Zoning Law is a general law that sets forth minimum standards for cities and counties to follow in land use regulation, but the law also establishes the Legislature's intent to "provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters."

Using this police power, many cities and counties have adopted ordinances, commonly called "inclusionary zoning" or "inclusionary housing" ordinances, that require developers to ensure that a certain percentage of housing units in a new development be affordable to lower-income households. These ordinances vary widely in the percentage of affordable units required, the depth of affordability required, and the options through which a developer may choose to comply. Most, if not all, of such ordinances apply to both rental and ownership housing.

In 2009, in the case of *Palmer v. City of Los Angeles*, the Second District California Court of Appeal opined that the City's affordable housing requirements

associated with a particular specific plan (which was similar to an inclusionary zoning ordinance), as it applied to rental housing, conflicted with and was preempted by a state law known as the Costa-Hawkins Rental Housing Act. The Costa-Hawkins Act limits the permissible scope of local rent control ordinances. Among its various provisions is the right for a rental housing owner generally to set the initial rent level at the start of a tenancy, even if the local rent control ordinance would otherwise limit rent levels across tenancies. This provision is known as vacancy decontrol because the rent level is temporarily decontrolled after a voluntary vacancy. The Costa-Hawkins Act also gives rental housing owners the right to set the initial and all subsequent rental rates for a unit built after February 1, 1995. The court opined that “forcing Palmer to provide affordable housing units at regulated rents in order to obtain project approval is clearly hostile to the right afforded under the Costa-Hawkins Act to establish the initial rental rate for a dwelling or unit.”

The Legislature enacted the Costa-Hawkins Act in 1995 with the passage of AB 1164 (Hawkins, Chapter 331). The various analyses for the bill exclusively discuss rent control ordinances and do not once mention inclusionary zoning ordinances, of which approximately 64 existed in the state at that time. The Assembly concurrence analysis of AB 1164, which is very similar to the other analyses, states that the bill “establishes a comprehensive scheme to regulate local residential rent control.” The analysis includes a table of jurisdictions that would be affected by the bill, and the table exclusively includes cities with rent control ordinances and does not include any cities that had inclusionary zoning ordinances affecting rental housing. The analysis also states, “Proponents view this bill as a moderate approach to overturn extreme vacancy control ordinances which unduly and unfairly interfere into the free market.” The analysis further describes strict rent control ordinances as those that impose vacancy control and states, “Proponents contend that a statewide new construction exemption is necessary to encourage construction of much needed housing units, which is discouraged by strict local rent controls.” This legislative history provides no indication that the Legislature intended to affect inclusionary zoning with the passage of AB 1164.

California Building Industry Association (CBIA) v. City of San Jose. The City of San Jose’s inclusionary housing ordinance passed in 2010 and required all new residential development projects of 20 or more units to sell at least 15% of the for-sale units at a price that is affordable to low- or moderate-income households. The ordinance allowed developers to opt out of the 15% requirements by dedicating land elsewhere or by paying “in-lieu” fees to the city. Shortly before the ordinance took effect, CBIA filed a lawsuit in superior court, maintaining that the ordinance was invalid on its face on the ground that the city, in enacting the ordinance, failed

to provide a sufficient evidentiary basis “to demonstrate a reasonable relationship between any adverse public impacts or needs for additional subsidized housing units in the City ostensibly caused by or reasonably attributed to the development of new residential developments of 20 units or more and the new affordable housing exactions and conditions imposed on residential development by the Ordinance.”

The superior court agreed with CBIA’s contention and issued a judgment enjoining the city from enforcing the challenged ordinance. The Court of Appeal then reversed the superior court judgment, and concluded that the matter should be remanded to the trial court. CBIA then sought review of the Court of Appeal decision in the Supreme Court which granted review.

The Supreme Court in June of 2015 concluded that the Court of Appeal decision should be upheld, and that “contrary to CBIA’s contention, the conditions the San Jose ordinance imposes upon future development do not impose ‘exactions’ upon the developers’ property so as to bring into play the unconstitutional conditions doctrine under the takings clause of the federal or state Constitution.” The ruling also noted that enforcing these limits to address a growing housing problem is “constitutionally legitimate” and cited the severe scarcity of affordable housing in California in its decision.

This bill authorizes the legislative body of any city or county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements and makes a number of legislative findings and declarations to supersede any holding or dicta in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009). The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

Comments

- 1) *Purpose.* According to the author, “This bill restores the ability of local governments to apply locally adopted inclusionary policies to rental housing. Given our state’s severe housing crisis, it is critical that we give local governments every possible tool to address affordable housing needs. Inclusionary zoning is one of those tools. Local governments have successfully adopted and implemented inclusionary policies at the local level for decades in California. Some 170 cities and counties have policies on the books. Unfortunately, a 2009 appellate court decision – *Palmer v. City of Los Angeles* – for the first time called these policies into question as applied to rental housing. In the end, we aren’t going to just build our way out of this housing

crisis alone. We need every tool we can to solve this problem. Inclusionary policies help ensure that when new housing is built, deed-restricted housing is also built.”

- 2) *HCD economic feasibility study.* This bill gives HCD authority in limited cases to review a feasibility study for a newly adopted or amended inclusionary ordinance to determine whether the study meets certain requirements. HCD is limited to reviewing a feasibility study within 10 years of the date of adoption or amendment of the inclusionary ordinance. After 10 years, there can be no review regardless of the percentage of lower-income rental units required. Review is limited to cases in which all the following apply:

- a) The ordinance is adopted or amended after September 15, 2017;
- b) The ordinance requires more than 15% of rental units to be for low-income households or below; and
- c) The jurisdiction has failed to meet at least 75% of its above-moderate income pursuant to the regional housing needs share over a five-year period, or if it failed to submit an annual report to HCD for two straight years.

If all three of those requirements do not apply, HCD has no authority to review a feasibility study. If all three of those requirements apply, HCD may request to see a feasibility study and the following apply:

- a) HCD review is limited to determining whether or not the jurisdiction submits a feasibility study that meets two specified standards: the study was prepared by someone qualified and the study followed best professional practices. HCD is not making a judgement on the question of feasibility itself.
 - b) The study can be an existing study or a newly prepared study. If the jurisdiction prepares a new feasibility study in response to HCD's request for review, the study must be posted online for 30 days before being considered at a regular hearing of the legislative body.
 - c) If HCD finds that the study doesn't meet the specified standards, it does not have the power to invalidate the ordinance. The jurisdiction can still implement a rental inclusionary requirement, but it must drop the requirement for 80% AMI and below to 15% or less until it submits a study that HCD finds meets the standards.
- 3) *Opposition.* Writing in opposition to a prior version of the bill, several regional apartment associations contend that this bill brings back “vacancy decontrol.” They state that this bill provides no reasonable limitations on the power of local governments to “price restrict rental housing.” The opposition goes on to assert

that cities and counties must be required to offer developers and rental property owners “cost offsets and/or financial contributions” to build below market rate rental units.

Related/Prior Legislation

SB 277 (Bradford, 2017) authorizes the legislative body of a city or county to establish inclusionary housing requirements as a condition of development.

AB 2502 (Mullin, 2016) would have authorized the legislative body of a city or county to establish inclusionary housing requirements as a condition of development. The bill did not pass off the Assembly Floor.

AB 1229 (Atkins, 2013) would have authorized the legislative body of a city or county to establish inclusionary housing requirements as a condition of development. The bill was vetoed by the Governor, and was issued the following veto message:

This bill would supersede the holding of *Palmer v. City of Los Angeles* and allow local governments to require inclusionary housing in new residential development projects. As Mayor of Oakland, I saw how difficult it can be to attract development to low and middle income communities. Requiring developers to include below-market units in their projects can exacerbate these challenges, even while not meaningfully increasing the amount of affordable housing in a given community. The California Supreme Court is currently considering when a city may insist on inclusionary housing in new developments. I would like the benefit of the Supreme Court's thinking before we make legislative adjustments in this area.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 9/8/17)

California Housing Consortium (co-source)
California Rural Legal Assistance Foundation (co-source)
Housing California (co-source)
Non-Profit Housing Association of Northern California (co-source)
Western Center on Law and Poverty (co-source)
American Planning Association
BRIDGE Housing
California Coalition for Rural Housing
California Housing Partnership Corporation
California League of Conservation Voters

California State Association of Counties
City of East Palo Alto
City of Emeryville
City of Glendale
City of Los Angeles
City of Mountain View
City of Napa
City of Oakland
City of San Mateo
City of Santa Barbara
City of Santa Monica
City of Thousand Oaks
City of West Hollywood
Coalition for Economic Survival
Community Housing Partnership
Community Legal Services in East Palo Alto
Corporation for Supportive Housing
Council of Community Housing Organizations
Council of Infill Builders
County of Los Angeles, Board of Supervisors
County of Santa Clara, Board of Supervisors
County of Yolo, Board of Supervisors
Disability Rights California
EAH Housing
East Bay Housing Organizations
Eden Housing
Enterprise Community Partners
Greenbelt Alliance
Housing California
Irvine Community Land Trust
John Stewart Company
Law Foundation of Silicon Valley
LeadingAge California
League of California Cities
Legal Aid Foundation of Los Angeles
Legal Aid of Marin
Legal Aid San Mateo
Legal Services of Northern California
Los Angeles Homeless Services Authority
Marin County Council of Mayors and Councilmembers

MidPen Housing Corporation
Natural Resources Defense Council
Peace and Freedom Party of California
Planning and Conservation League
Public Advocates
Public Interest Law Project
Resources of Community Development
Sacramento Housing Alliance
San Diego Housing Federation
SEIU California
Siefel Consulting
Sierra Business Council
Silicon Valley Community Foundation
State Building & Construction Trades Council
SV@Home
Tenants Together
The Kennedy Commission
Western Center on Law and Poverty
YWCA of San Francisco & Marin
One Individual

OPPOSITION: (Verified 9/8/17)

Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
East Bay Rental Housing Association
GH Palmer and Associates
North Valley Property Owner Association
San Diego County Apartment Association
Santa Barbara Rental Property Association

ASSEMBLY FLOOR: 47-24, 5/4/17

AYES: Aguiar-Curry, Berman, Bloom, Bocanegra, Bonta, Burke, Caballero, Calderon, Chau, Chiu, Chu, Cooley, Cooper, Dababneh, Daly, Eggman, Friedman, Eduardo Garcia, Gipson, Gloria, Gomez, Gonzalez Fletcher, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Limón, Low, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Reyes, Ridley-Thomas, Rubio, Salas, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Arambula, Baker, Brough, Chávez, Chen, Choi, Cunningham,
Dahle, Flora, Fong, Gallagher, Harper, Kiley, Lackey, Maienschein, Mathis,
Mayes, Melendez, Obernolte, Quirk-Silva, Steinorth, Voepel, Waldron
NO VOTE RECORDED: Travis Allen, Bigelow, Cervantes, Frazier, Cristina
Garcia, Gray, Patterson, Quirk, Rodriguez

Prepared by: Alison Hughes / T. & H. / (916) 651-4121
9/11/17 9:09:27

**** **END** ****

8th and Figueroa
Attachment to Appeal Application

MFA 8th and Figueroa LLC (“Applicant”) will transform one of Downtown’s key corners, together with adjacent Figueroa Street frontage, with its \$438 million proposed investment to create high quality and sustainable urban residential living in the Financial District. This 41-story development with ground floor retail is located at 744 South Figueroa Street, 732-756 South Figueroa Street, and 829 West 8th Street (the “Project”). The site has been owned by affiliates of the Applicant for decades and used as a parking lot. While the Applicant appreciates the City Planning Commission’s (“CPC”) approval of the Project’s requested entitlements, this appeal seeks relief from two new substantive requirements imposed by the CPC, including as to affordable housing and as to design issues. At the hearing, the only appellant in attendance, CREED LA, withdrew its objections and praised the Project, which conforms to all City requirements and does not displace any housing.

The first condition imposed by the CPC and appealed by the Applicant requires that five percent (5%) of the proposed 438 dwelling units (22 units) be available to Low Income Households. Although the Applicant protested, pointing out the Project is contributing nearly \$5 million in TFAR public benefit payments that can be used for affordable housing and its application was deemed complete before the City’s linkage fee ordinance was even adopted, the CPC directed staff to include this condition in the project approvals. Condition No. 5 of the Site Plan Review and TFAR decisions and Condition No. 17 of the Tract Map decision require the provision of the 22 on-site affordable units (collectively, the “Inclusionary Housing Condition”).

The second new CPC condition included in this appeal required several design changes focused on the parking podium and tower design (collectively, the “Design Condition”), even though the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. Accordingly, the Applicant is also appealing the Design Condition, although the Applicant does intend to continue working with Planning staff on limited exterior design refinements that do not impose additional costs or time delays.

Given the specific factual circumstances of this Project and applicable legal principles, we respectfully request that both the Inclusionary Housing Condition and the Design Condition be removed from the Project’s approvals. The imposition of these conditions is unwarranted considering the factual circumstances of this Project, including that the Applicant is not seeking a zone change, General Plan amendment, or other legislative approvals to increase its density. The only entitlements are the long-established process in Downtown for Transfer of Floor Area Rights (“TFAR”), together with the customary City entitlements for Site Plan Review and a Vesting Tentative Tract Map (“Tract Map”). Planning did not recommend these conditions and the CPC did not identify any applicable City ordinances or precedent to justify either the Inclusionary Zoning Condition or the Design Condition.

1. The Inclusionary Zoning Condition should not be required of this Project. The Project will provide a nearly \$5 million TFAR payment to fund affordable housing and other public benefits. The City Council, along with the former Community Redevelopment Agency, long ago made a policy decision that the TFAR framework was appropriate Downtown to allow

density above a floor area ratio of 6:1, provided certain public benefits payments were made to the City. Here, an approximately \$4.9 million public benefit payment will be made and the TFAR ordinance expressly provides that the payment may be used for affordable housing. (LAMC Sec. 14.5.9.)

The CPC's mandate for the Project to provide on-site subsidized housing is not justified by any City ordinance, density bonus, or other benefit to the Project. None of the City requirements applicable to certain residential projects seeking a discretionary General Plan amendment or zone change which require affordable housing in connection with such legislative acts (LAMC Sec. 11.5.11) are applicable here, since the Project does not require a zone change or General Plan amendment. While the City has other affordable housing policies that are strictly voluntary with respect to the provision of affordable housing, namely the Transit Oriented Community Guidelines and the Density Bonus Ordinance, such policies would provide benefits to the Applicant such as additional density, unlike the CPC's proposed condition. Where no General Plan amendments and zone changes are requested, no mandate exists to incorporate on-site affordable housing into a project.

Nor is the City's framework under its Linkage Fee Ordinance (LAMC Sec. 19.18), adopted 18 months after the Project application was filed in June 2016, applicable to the Project. In determining whether to invest in the Project, the Applicant reasonably relied on the City ordinances in place when its vesting tentative tract map application was deemed complete in 2016. Consequently, the Project's financial structure was established well before the fee associated with affordable housing was adopted by the City. When the Linkage Fee Ordinance was adopted, the City Council as the City's legislative body determined to specifically exempt projects with applications completed before its adoption. Moreover, because the linkage fee was phased in, the full fee does not apply to current projects until after June 17, 2019.

2. The Design Condition should not be required of this Project. With respect to architecture, the Project's design already reflects extensive consultation with City Planning, the Urban Design Studio, and other stakeholders, including adjacent neighbors. The Design Condition is also subjective and arbitrary because the Project comports with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. The requirements for design changes include the parking podium where the CPC directed changes to the façade. While some CPC members may disapprove of above-ground parking, where compliance has already occurred with the City's guidelines, arbitrary directions in new conditions pose the danger of allowing subjective opinions to override City requirements. Similarly, the top of the tower complies with City requirements; though the City has recently permitted rooftop treatments for high-rise buildings to vary from traditional tower design, such design options are not mandatory and should not be required here.

3. Extensive Justifications are provided for CEQA Certification and no CEQA impacts justify either the Inclusionary Zoning Condition or the Design Condition. No other legal or factual justification exists for imposition of either the Inclusionary Zoning Condition or the Design Condition. None of the Project's CEQA significant impacts have any nexus to affordable housing. The minimal impacts include only one operational significant impact (traffic at the corner of 8th Street and Figueroa Street during PM peak hours) and temporary construction noise impacts that are typical of Downtown projects. The Project's environmental review determined

there are no significant impacts to housing and determined the Project to be consistent with the City's land use plans and policies. Additionally, no housing is being displaced by the Project, which is being built on a parking lot that has been vacant for decades. The Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines.

Additional justifications for CEQA certification include that the Project represents a significant \$438 million economic investment that will provide numerous economic benefits including approximately 4,500 construction-related jobs. (Attachment A, LAEDC Economic Impact Analysis for 8th and Figueroa and Cover Letter, dated January 23, 2019.) Such job creation facilitates the ability of employees to afford housing. Moreover, significant public revenues are provided by the Project to the government agencies that support affordable housing projects. The Project's projected annual property taxes will top \$5 million and annual resident local spending is estimated at approximately \$17.8 million. (*Id.*) Thus, the region including the City will receive very significant annual economic benefit increases. In addition, the Project will result in an approximately \$5.8 million investment in public benefits through the payment of school fees, transportation improvements, and land dedications which total an approximately \$10.7 million public benefit package with the TFAR payments added in. All of these economic and public benefits also provide substantial evidence to support the EIR's Statement of Overriding Considerations for the minimal unmitigated significant impacts.

Given the unique factual circumstances of this Project in the context of the policy directives that form the City's framework for affordable housing, the CPC lacked authority to impose the Inclusionary Housing Condition. Consequently, the CPC abused its discretion by imposing the Inclusionary Housing Condition on this Project; the Condition is not required by City ordinance and lacks a nexus to Project impacts. Moreover, due process principles do not allow for a condition to be imposed that is not grounded in any City ordinance or guideline related to affordable housing. Instead, the Condition represents an ad hoc determination based on opinions of individual CPC members, lacking the consistency that results from deliberate application of the laws as adopted by the Council. It also fails to acknowledge the unique circumstances applicable to the Project, including that it does not displace any housing and that an approximately \$4.9 million payment that can be applied to affordable housing is being provided. The Design Condition is also subjective and arbitrary because the Project comports with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. Consequently, the Applicant is aggrieved by the CPC's decision. As discussed in more detail below, all of the factors outlined above lead to the conclusion that the CPC should not have imposed the Inclusionary Housing Condition or the Design Condition and the approvals should be modified to delete these conditions.

I. PROJECT BACKGROUND AND PROCESS

The Project proposes 438 residential units and approximately 7,493 square feet of ground floor commercial/retail/restaurant uses. The Project would transform a parking lot at the corner of 8th and Figueroa Streets into a vibrant residential community and activate the streetscape along Figueroa Street with an enhanced pedestrian experience. The Project would not displace any existing housing, but instead locate new housing in the heart of the Downtown Financial District conveniently located near transit, job centers, and retail on a site devoid of development for decades. The only entitlements requested to carry out the Project are Site Plan Review,

TFAR, and the Tract Map. These entitlement applications were submitted in June 2016; no legislative actions are requested.

The Draft EIR was circulated for a 45-day public comment period ending on June 11, 2018. On October 12, 2018, the City of Los Angeles (“City”) released the Final EIR and published a Notice of Completion and Availability of the Final EIR. A joint Hearing Officer and Deputy Advisory Agency hearing was conducted on October 24, 2018. On November 16, 2018, the Deputy Advisory Agency approved the Tract Map and certified the Final EIR. Appeals of the Deputy Advisory Agency’s decision were filed by the Southwest Regional Council of Carpenters (“Carpenters”) and the Coalition for Responsible Equitable Economic Development (CREED LA). The appeal filed by CREED LA was formally withdrawn on January 23, 2019.

The CPC heard the appeal and held a public hearing related to the Tract Map (Case No. VTT-74197-1A) and the requested TFAR and Site Plan Review (Case No. CPC-2016-1950-TDR-SPR) on January 24, 2019. CREED LA testified on the record as to its support for the Project and confirmed the withdrawal of its appeal. Though the Carpenters did not appear or testify at the hearing, the CPC denied in part and approved in part the Carpenters’ appeal, while approving both cases subject to Conditions of Approval. The approval of the appeal in part was solely to insert a reference to the Inclusionary Housing Condition into the EIR’s Statement of Overriding Considerations. As noted above, the EIR’s impact analysis does not support such a condition and the Project’s economic and public benefits provide substantial evidence to support the EIR’s Statement of Overriding Considerations.

The CPC also imposed the Design Condition requiring the Applicant to redesign the Project to update the roofline articulation, adjust the screening of the parking podium, and redesign the trunk of the structure, which the Applicant is also appealing. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), Condition 1 (Feb. 25, 2019).) The Project’s proposed design conforms to all applicable development standards and design guidelines, and the CPC subjectively and arbitrarily imposed the Design Condition, so the Applicant asks the Council to eliminate this condition. Because the Applicant is willing to continue to improve the building, however, it is working with Planning on additional limited refinements to the exterior design.

II. REASON FOR APPEAL AND SPECIFIC POINTS AT ISSUE

The Applicant is appealing the CPC’s decision to impose the Inclusionary Housing Condition and the CPC’s partial grant of the Carpenter’s appeal insofar as that partial grant of appeal added the Inclusionary Housing Condition’s reference to the Statement of Overriding Considerations. Considering the unique circumstances and history of the Project application, and the limited scope of the entitlements requested, imposition of the Inclusionary Housing Condition lacks a nexus to any Project impacts. As described above, the Project’s environmental review determined there are no significant impacts to housing and the Project’s impacts are typical for Downtown projects and have no connection to affordable housing.

Additionally, the Applicant is appealing the imposition of the Design Condition. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), Condition 1 (Feb. 25, 2019).) As indicated in the Determination Letter, the Project complies

with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-7-F-10, F-37 (Feb. 25, 2019).) Under these circumstances, the CPC should not be able to impose its own subjective design criteria to override the City's requirements.

In summary, the Applicant respectfully requests that the City Council grant this appeal, remove the Inclusionary Housing Condition and Design Condition, and update the Project's Statement of Overriding Considerations to remove the reference to the Inclusionary Housing Condition.

A. The Inclusionary Housing Condition Lacks a Nexus to Project Impacts and Fails to Consider Unique Project Circumstances and the TFAR Payment.

The CPC's imposition of the Inclusionary Housing Condition violates due process principles because it is not grounded in any City ordinance or guideline related to affordable housing. Rather, as discussed in detail below, the CPC acted in an arbitrary manner by simply creating the five-percent requirement out of whole cloth without regard for the ordinances and policy framework adopted by the City Council after appropriate public review and deliberative process. The CPC failed to consider the unique circumstances applicable to the Project such as the deemed complete date of the application, minimal entitlements requested, nearly \$5 million TFAR payment, and lack of impact on affordable housing. The CPC failed to identify a legitimate nexus between the Inclusionary Housing Condition and any Project impact. When a local government imposes conditions that require a project to provide a public benefit, it must find that such condition is roughly proportional to the burdens created by the proposed project. (*Nollan v. California Coastal Comm'n*, 483 US 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).) There is simply no impact from the Project on affordable housing and instead the Project is part of the housing solution by providing hundreds of new units in walking distance to the Financial District.

The Project is proposing 438 new residential units on a property used as a parking lot for decades. The Project would not displace any existing housing, but rather increase the number of available units within the City, consistent with the City's Housing Goals, Objectives, Policies and Programs as indicated in the Recommendation Report and carried over to the TFAR/Site Plan Review Determination Letter. For example, as indicated in the Project's findings, the approval of the Project would help achieve the General Plan goal of producing and preserving housing in order to meet current and projected needs. (See, Housing Goal 1; Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-4-F-5 (Feb. 25, 2019).) The Project supports Housing Objective 1.1 by providing much needed new housing. (See, Housing Objective 1.1; Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-4-F-5 (Feb. 25, 2019).)

The Project will provide a nearly \$5 million TFAR payment to fund affordable housing and other public benefits. As noted above, the City Council, along with the former Community Redevelopment Agency, long ago made a policy decision that the TFAR framework was appropriate Downtown to allow density above a floor area ratio of 6:1 provided certain public benefits payments were made to the City. Here, an approximately \$4.9 million public benefit

payment will be made and the TFAR ordinance explicitly provides that the payment may be used for affordable housing. (LAMC Sec. 14.5.9.)

The Project's environmental review determined there are no significant impacts to housing and scoped out the Population/Housing analysis during the Initial Study phase. (Draft EIR, Appendix A.1, p. B-33-B-36; Initial Study, unnumbered p. 4, Attachment B.) The EIR determined the Project to be consistent with the City's land use plans and policies. (Draft EIR, Vol. I, p. IV.D-77.) The Project's significant impacts are limited to traffic at the corner of 8th Street and Figueroa Street during PM peak hours and temporary construction noise impacts all of which are typical for Downtown projects. Importantly, these significant impacts have no connection to affordable housing. Additionally, as indicated in the Determination Letter, the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. (Los Angeles City Planning Commission - Letter of Determination (CPC-2016-1950-TDR-SPR), p. F-7-F-10, F-37 (Feb. 25, 2019).) There is simply no connection between Project impacts and affordable housing needs.

Moreover, the City has adopted a number of ordinances in its framework to address project impacts on affordable housing, including the Linkage Fee Ordinance. Prior to adopting the Linkage Fee Ordinance, the City conducted a nexus study to determine the appropriate fee level to apply to various types of development subject to the Ordinance. (Attachment B, excerpts from City of Los Angeles Affordable Housing Linkage Fee Nexus Study (September 2016) and Los Angeles Affordable Housing Linkage Fee Nexus Study: Supplemental Report (October 2017).) These reports, all published after the Project's applications had been completed in June 2016, include detailed analyses of the types of developments that would be subject to the linkage fee, the fee level to be imposed on each type of development, and an economic analysis of the impacts that could result from the Linkage Fee Ordinance. These studies served as the basis for the City's adoption of the Linkage Fee Ordinance and clearly detail the findings required to impose such fees upon new development.

When adopting the Linkage Fee Ordinance, the City Council also determined that projects already in the pipeline with complete applications, such as the Project, would be exempt. The Project was filed on June 3, 2016, approximately 18 months before the City Council's December 2017 adoption of the Linkage Fee Ordinance. The Project was clearly vested when the Linkage Fee Ordinance was adopted. Because the linkage fee is being phased-in, it was not until after June 18, 2018, two years after the Project application was filed, that the Linkage Fee Ordinance even required a fee to be paid at one-third of the final fee rate. The full linkage fee rate will not go into effect until June 17, 2019. Consequently, the Project's financial structure was established well before this affordable housing related fee was adopted by the City.

Additionally, in contrast to the studies conducted for the Linkage Fee Ordinance, the CPC's arbitrary imposition of the Inclusionary Housing Condition did not include any analysis or deliberation regarding the Project's impacts on affordable housing in the City, nor did the CPC consider whether there was rough proportionality to any of the Project's impacts. Rather, the CPC appeared to pick numbers out of thin air. Commissioner Ambroz stated that he "would suggest 5%" and noted that the Commission could "debate and discuss what allocation that is between very low, low, workforce, etcetera." (Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).) That "debate" appears to be

based solely on the individual opinion of the Commissioners, untethered to any proportional impact created by the Project.

B. The CPC's Arbitrary Imposition of the Inclusionary Housing Condition Violated Principles of Due Process by Ignoring Established City Ordinances and Policies Regarding Affordable Housing.

By ignoring the City's established affordable housing framework, the CPC violated principles of due process. The Applicant should be able to expect that the CPC will follow established City ordinances and guidelines. The CPC's ad hoc affordable housing condition imposed on the Project should be corrected by the City Council.

As noted above, the Applicant is required to make the TFAR payment which the City can use for affordable housing. The City's inclusionary zoning ordinance for residential projects applies only to those seeking a discretionary General Plan amendment or zone change, and permits compliance either through on-site affordability provisions described therein, *or* an alternative compliance option, which includes off-site construction, off-site acquisition, or an in-lieu fee ("Affordable Housing Ordinance"). (LAMC Sec. 11.5.11.) The Project is not requesting a General Plan amendment or zone change and is therefore not subject to the Affordable Housing Ordinance. Nonetheless, the CPC imposed the Inclusionary Housing Condition as though the Project were in the same class of projects subject to the Affordable Housing Ordinance.

The City has also adopted the Linkage Fee Ordinance, which requires new residential and commercial development to pay a fee to help support the construction of new affordable housing. As described in Section II.A above, the City Council determined that the linkage fee was the desired approach to address affordable housing needs created by development projects to help increase the number of affordable units within the City. In the Linkage Fee Ordinance, the City Council decided to exempt projects that had already submitted complete development applications prior to its adoption. The Project is one such exempt development. The Linkage Fee Ordinance represents the policy directive of the City Council with respect to imposing costs on development to address impacts of projects on the need for affordable housing. (Attachment C, Ord. No. 185,342, Resolution Preamble.) The CPC explicitly acknowledged that the Project was not subject to the Linkage Fee Ordinance.¹ While the CPC may disagree with the policy decision by the Council that projects filed before the Linkage Fee Ordinance was adopted are exempt from the Linkage Fee Ordinance, it is not authorized to substitute its own judgment for that of the City Council by imposing the Inclusionary Housing Condition.

The City has not chosen to adopt an ordinance requiring all residential developments to include a certain percentage of affordable housing units. As indicated above, the City has adopted the Affordable Housing Ordinance and Linkage Fee Ordinance, which do not apply to the Project. Other City affordable housing ordinances and guidelines make the provision of

¹ Commissioner Perlman noted that the Project was not subject to the Linkage Fee Ordinance because it was "filed under the wire." The Project application was filed approximately 18 months before the ordinance was adopted. (Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

affordable housing voluntary. Both the City's Density Bonus Ordinance² and Transit Oriented Communities Guidelines³ provide a voluntary mechanism for developments to provide affordable housing and obtain benefits from doing so.

Without justification from the established City affordable housing framework, the CPC should not have imposed the Inclusionary Housing Condition. Some CPC comments acknowledged that it would be acting outside of its authority to impose an on-site requirement, because there was no legislative mechanism to impose such a condition on the Project.⁴ Likewise, City Planning Staff acknowledged that "we don't have a mechanism" to impose affordable housing.⁵ The Council should delete this condition.

The Design Condition ignores the fact that the Project complies with established City design guidelines and framework. Where compliance has already occurred with the City's guidelines, arbitrary directions in new conditions pose the danger of allowing subjective opinions to override City requirements. The Council should delete this condition.

² Ord. No. 179,681, LAMC Sec. 12.22.

³ Transit Oriented Communities Affordable Housing Incentive Program Guidelines (Sep. 22, 2017, revised Feb. 26, 2018).

⁴ Commissioner Millman stated:

I too, would like to see affordable housing, but here's where I'm getting caught. We've a linkage fee in the city which we passed to address affordable housing. I'm not sure if this building came in before that went into place. I'm guessing it did, 2016. But we do have a policy on the books. What we don't have is a policy on the books is inclusionary zoning. And what's before us today, is TFAR which has direct provision of funds, 50% to the TFAR committee, 50% we'll discuss. And I'm supportive of the rest of the funds going to the city's Affordable Housing Trust Fund to address affordable housing but the onsite affordable, otherwise we just have site plan review. They're not asking for a density bonus. They're not asking for a general plan amendment or a zone change. It's not a legislative action, so it does need to be voluntary from the developer.

(Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

⁵ Heather Bleemers stated:

[A]t this time, there's no affordability requirement with any of the tract cases. You can build a condo without having affordable units. We don't have a mechanism unless the applicant will do a volunteer condition or a density bonus through that way. But we don't have a mechanism at this point.

(Los Angeles City Planning Commission – Public Hearing (CPC-2016-1950-TDR-SPR, VTT-71497) (Jan. 24, 2019).)

C. The City Planning Commission's Imposition of the Inclusionary Housing Condition and Design Condition Create Bad Precedent for the City.

The CPC's action to impose the Inclusionary Housing Condition sets bad precedent and infringes on the City Council's policy-making authority. By imposing the Inclusionary Housing Condition on the Project, the CPC is asserting new authority to impose conditions requiring on-site affordable housing on a project that does not fall within any of the City Council's adopted ordinances aimed at providing affordable housing. If this decision is upheld, it would encourage potential future disregard for the City Council's policies adopted through ordinance and encourage the imposition of conditions in an ad hoc manner. Given these circumstances, no applicant could obtain any certainty with respect to its project and project conditions. Under such a regime, the fairness and procedural requirements that are critical to encouraging investment in the City would be eroded. This concern also holds true with respect to the Design Condition. Because the City already has established the Downtown Design Guide and Citywide Design Guidelines, the CPC's authority for site plan review is not intended to encourage the imposition of subjective design preferences.

When the City Council adopts ordinances that apply generally, it sets the standard that the CPC must follow. The CPC is not a legislative body and should implement the City's orderly regulatory structure. The unpredictable nature of the CPC's approach could be used to impose a host of other conditions on development projects that are wholly unrelated to the impacts associated with the proposed project. Ordinances provide investors and developers with a level of certainty in understanding what requirements will be needed and the law sets limits, including nexus principles, on the discretion of the CPC. The Project complies with the City's adopted procedures, as set forth in the staff report, and the City Council should confirm that its rules should be followed by granting the requested relief on these two conditions.

III. THE APPELLANT IS AGGRIEVED BY THE CITY PLANNING COMMISSION'S DECISION

As demonstrated above, the Applicant is aggrieved by the CPC's decision to impose the Inclusionary Housing Condition on the Project, because the imposition violates principles of due process and there is no nexus to any Project impacts. The Design Condition is also arbitrary and not justified by project impacts since the Project complies with the standards and guidelines of the Downtown Design Guide and Citywide Design Guidelines. When making a decision regarding the Project, the CPC is required to provide a fair hearing on the matter. In this instance, the CPC failed to fulfill this requirement.

The ad hoc nature of the CPC's decision, which ignores the unique factual circumstances and history of the Project, indicates that there was a lack of thoughtful assessment or a fair consideration of how the added conditions would impact the Project's feasibility. The arbitrary nature of the Commission's decision-making as applied to this Project is further demonstrated by the fact that it has not imposed similar requirements on all other projects. For example, at the City Planning Commission's February 14, 2019 hearing, it approved a development similar to the Project that includes a downtown mixed-use project including residential without requiring the provision of on-site affordable units. (City Planning Commission Hearing, February 14,

2019.) This uneven application of conditions further evidences the arbitrary nature of these two conditions imposed by the CPC in its decision on the Project.

IV. APPLICANT RESPECTFULLY REQUESTS THAT THE COUNCIL GRANT THIS APPEAL BY DELETING THE INCLUSIONARY HOUSING AND DESIGN CONDITIONS

As demonstrated above, the CPC's imposition of both the Inclusionary Housing Condition and Design Condition on the Project reflected ad hoc, subjective, and arbitrary actions inconsistent with City requirements and lacking adequate factual or regulatory justifications.

The Applicant respectfully requests that the City Council grant this appeal and remove the Affordable Housing Condition and Design Condition from the Project's approvals.

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LATHAM & WATKINS LLP

January 23, 2019

VIA EMAIL

Samantha Millman, President
Honorable Commissioners
Los Angeles Department of City Planning
200 North Spring Street
Los Angeles, CA 90012-2601

Re: Figueroa & 8th Project – CPC-2016-1950-TDR-SPR; ENV-2016-1951-EIR; VTT-74197

Dear Honorable President Millman & Members of the City Planning Commission:

On behalf of Mitsui Fudosan America (“Mitsui”), we submit this letter and attached Economic Impact Analysis (“Report”) prepared by the LAEDC Institute for Applied Economics in support of the residential project with ground floor retail proposed at Figueroa and 8th Street (the “Project”). The Project is an infill development that would transform the corner of Figueroa Street and 8th Street in the Financial District (the “Project Site”) by replacing a surface parking lot with a high-rise development that will become a prestigious downtown address. With a classic tower design and articulated podium, together with the streetscape improvements and a new mid-block pedestrian crossing, the Project creates an inviting pedestrian experience to complement the vision of Figueroa Street as a grand Los Angeles boulevard. The Project’s new housing and commercial space in the heart of the Financial District in Downtown Los Angeles is conveniently located near transit and jobs making the site ideal for the proposed Project.

Project Economic Impacts. As detailed in the Report, the Project will have a tremendous beneficial economic impact by providing jobs and economic investment at a prominent intersection in the Financial District. The high-density Project will provide 438 housing units and approximately 7,493 square feet of retail/restaurant space representing an investment of over \$438 million. Construction activity alone is estimated to directly generate 2,593 construction jobs and indirectly create another 2,000 jobs supported by suppliers and the household spending of direct and indirect construction employees. (Report, pg. 5.) Job and labor income is estimated at approximately \$268 million. (Report, pg. 5.)

This economic activity is projected to generate approximately \$32.6 million in state and local taxes. (Report, pg. 5.) Upon completion of the Project, new residents will spend money locally with annual household spending estimated at \$17.8 million. (Report, pg. 9.) The increase of the Project Site’s property value is projected to result in annual local property tax

LATHAM & WATKINS^{LLP}

increase of approximately \$5.2 million. (Report, pg. 9.) The Project's many economic benefits outlined in the Report provide additional evidence to support the City's findings in the Statement of Overriding Considerations.

The Appeal Lacks Merit. The Project's FEIR has thoroughly analyzed the potential impacts associated with the construction and operation of the Project. Project Overriding Considerations are considerate in comparison to the minimal impacts that are typical for a large Downtown Project. Only temporary cumulative off-site construction noise, temporary Project and cumulative off-site vibration related to human annoyance and cumulative PM peak traffic impacts at the intersection of 8th and Figueroa Streets are significant and unavoidable. All other potential Project environmental effects are less than significant, including air quality impacts, reduced to less than significant with implementation of mitigation measures.

As detailed in Staff's Appeal Report, the appeal does not provide substantial evidence to dispute the findings of the EIR, which is comprehensive and completed in full compliance with CEQA. As further indicated in the Appeal Report, the appellants have proffered no substantial evidence of new impacts or increases in the severity of previously identified impacts; recirculation of the Draft EIR is not warranted. The record is replete with substantial evidence to support the environmental findings and conclusions. Consequently, we concur with Staff that the Advisory Agency decision should be sustained and the Final EIR certified.

Conclusion. Mitsui supports the staff recommendations to deny the appeal, certify the Final EIR and adopt the Statement of Overriding Considerations and Mitigation Monitoring Program, sustain the Advisory Agency's approval of Vesting Tentative Tract Map 74197, and approve the Project's TFAR Transfer Plan and Site Plan Review requests.

Very truly yours,



James L. Arnone
of LATHAM & WATKINS LLP



Peter J. Gutierrez
of LATHAM & WATKINS LLP

Enclosures

cc: The Honorable Councilmember Jose Huizar, Council District 14
Shawn Kuk, Council District 14
Mindy Nguyen, Planning Assistant
Stuart Morkun, Mitsui Fudosan America
Jeff Chang, Mitsui Fudosan America
Lauren Glaser, Latham & Watkins LLP

8TH & FIGUEROA



AN ECONOMIC IMPACT ANALYSIS

Los Angeles County Economic Development Corporation
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This report was commissioned by MITSUI FUDOSAN AMERICA

The LAEDC Institute for Applied Economics provides objective economic and policy research for public agencies and private firms. The group focuses on economic impact studies, regional industry analyses, economic forecasts and issue studies, particularly in workforce development, transportation, infrastructure and environmental policy.

Every reasonable effort has been made to ensure that the data contained herein reflect the most accurate and timely information possible and they are believed to be reliable.

This report is provided solely for informational purposes and is not to be construed as providing advice, recommendations, endorsements, representations or warranties of any kind whatsoever. 20190123

EXECUTIVE SUMMARY

Mitsui Fudosan America proposes a mixed-use development on the site of the current 8th & Figueroa in downtown Los Angeles. The mixed-use development is anticipated to add 438 residential units and 7,300 square feet of ground-floor commercial space.

The LAEDC Institute for Applied Economics (LAEDC) has conducted an analysis of the economic and fiscal impacts in Los Angeles County associated with the 8th & Figueroa development project. The analysis is based on the projected increase in economic activity in the plan area, as well as the one-time economic and fiscal impacts from the construction phase. ❖

One-Time Project Development Impacts

The cost of the 8th & Figueroa development plan is currently estimated at around \$438 million. This will generate in 2019 dollars:

- ▶ 4,593 jobs;
- ▶ \$267.6 million in labor income;
- ▶ Almost \$740 million in total output or business revenues;
- ▶ \$32.6 million in state and local taxes, of which \$8 million will be collected by Los Angeles County and \$3.6 million by local cities. ❖

Exhibit ES-1

8th & Figueroa Development

One-Time Economic and Fiscal Impact in Los Angeles County

Total Economic Impact:

Output (\$ millions)	\$739.8
Employment (jobs)	4,593
Direct	2,593
Indirect and induced	2,000
Labor earnings (\$ millions)	\$267.6

Total Fiscal Impact:

State/local taxes (\$ millions)	\$32.6
Federal taxes (\$ millions)	60.3

Source: Estimates by LAEDC



Source: <https://urbanize.la/post/new-renderings-41-story-8th-figueroa-tower>

Annual Impacts of Ongoing Activity

The total annual economic impact in Los Angeles County of the ongoing activity occurring at 8th & Figueroa is shown in Exhibit ES-2. Every year, this activity will generate in 2019 dollars:

- ▶ 329 annual jobs;
- ▶ \$16.3 million in labor income;
- ▶ \$49.5 million in total output (business revenues);
- ▶ \$8.1 million in state and local taxes, of which \$5.1 million will be collected by Los Angeles County and \$1.3 million by local cities. ❖

Exhibit ES-2

8th & Figueroa

Total Annual Economic and Fiscal Impact of Ongoing Operations

Total Economic Impact:

Output (\$ millions)	\$49.5
Employment (jobs)	329
Direct	220
Indirect and induced	109
Labor earnings (\$ millions)	\$16.3

Total Fiscal Impact:

State/local taxes (\$ millions)	\$8.1
Federal taxes (\$ millions)	4.3

Source: Estimates by LAEDC

Local Residential Housing Conditions

- ▶ Housing prices are high, suggesting a lack of adequate supply.
- ▶ Expected population growth in the region is quite likely to absorb additional units in the downtown Los Angeles area. ❖

1 INTRODUCTION

Headquartered in New York City, Mitsui Fudosan America, Inc. (MFA) is the US subsidiary of Mitsui Fudosan Co., Ltd., Japan's largest real estate company. MFA's portfolio currently includes 4 million square feet of office space, an additional 4.4 million square feet of office space under development, almost 1,200 residential units, another almost 1,700 units under development and other projects in development including hotels. MFA currently owns assets in New York, Washington, Los Angeles, San Francisco, Seattle and Honolulu.

MFA purchased the 8th & Figueroa property in 1987. However, after developing 601 Figueroa in 1990, had remained largely absent from downtown Los Angeles until in 2017, when MFA re-established its office in Los Angeles and filed an application to develop 8th and Figueroa.

The company proposes a high-rise on the site of the current 8th & Figueroa property in the Financial District of downtown Los Angeles currently being used as a surface parking lot. The mixed-use development is anticipated to add residential units and retail space.

The proposed 41-story, 530-foot tall building will include 438 residential units, 7,300 square feet of retail space and 505 vehicle and 211 bicycle parking spaces.

The Los Angeles County Economic Development Corporation Institute for Applied Economics (LAEDC) has been retained to estimate the economic activity that will be associated with the development in Los Angeles County. ❖



Source: <http://dlanc.org/sites/dlancd7.localhost/files/2018%2003.08%208th-Figueroa%20DLANC%20PLUC.pdf>



Source: <https://urbanize.la/post/new-renderings-41-story-8th-figueroa-tower>

Economic Impact Analysis

Economic impact analysis is used to estimate the overall economic activity, including spill-over and multiplier impacts, which occurs as a result of a particular business, event or geography.

The economic activity related to the new construction and the expected ongoing operations of 8th & Figueroa is the hundreds of millions of dollars of goods and services purchased from local vendors and the wages and benefits paid to local workers.

During the development and construction phase, millions of dollars will be spent for the wages and benefits of construction employees. These workers, as well as employees of all suppliers, will spend a portion of their wages on household consumer goods such as groceries, rent, vehicle expenses, healthcare, entertainment, and so on. Once the development is completed and occupied, commercial activity and new residential households will spend millions of dollars annually in the course of their day-to-day activities. This recirculation of the original expenditures multiplies their impact through these indirect and induced effects.

The extent to which the initial expenditures multiply is estimated using economic models that depict the relationships between industries (such as the construction industry and its suppliers) and among economic agents (such as firms and their employees).

These models are built upon expenditure patterns that are reported to the U.S. Bureau of Labor Statistics, the U.S. Census Bureau and the Bureau of Economic Analysis of the U.S. Department of Commerce. Data is regionalized so that it reflects and incorporates local conditions such as prevailing wages rates, expenditure patterns, and resource availability and costs.

The magnitude of the multiplying effect differs from one region to another depending on the extent to which the local region can fill the demand for all rounds of supplying materials, goods and services. For example, the automobile manufacturing industry has high multipliers in Detroit and Indiana since these regions have deep and wide supplier networks, while the same industry multiplier in Phoenix is quite small. In another example, the jobs multiplier for the construction industry is higher in, say, Arkansas, than in California because the same amount of spending will purchase fewer workers in Los Angeles than in Little Rock.

Multipliers can also differ from year to year as relative material and labor costs change and as the production “recipe” of industries change. For example, the IT revolution significantly reduced the job multiplier of many industries (such as manufacturing, accounting, architecture and publishing) as computers replaced administrative and production workers. ❖

Approach and Methodology

The analysis here uses the development budget of the overall project, combined with the estimated revenues of all operations once the property is occupied. Data was provided by the client and supplemented with regional and local data and analysis to provide revenue estimates (where these were not provided by the client).

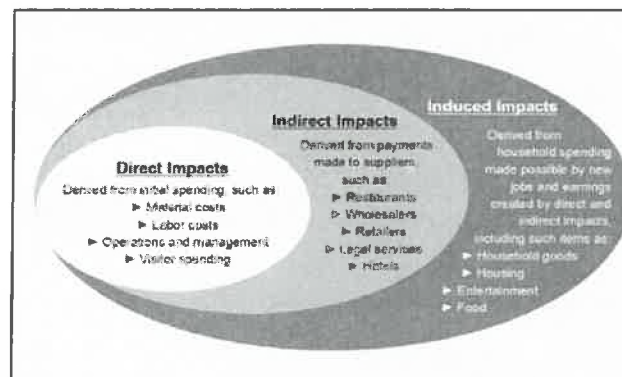
The total estimated economic impact includes direct, indirect and induced effects. *Direct* activity includes the materials purchased and the employees hired by the developer and its construction contractors. Included are operations staff such as management, human resources and maintenance, and construction workers such as laborers, electricians and other trades. *Indirect* effects include those expenditures which stem from purchases made by the contractors and their suppliers. *Induced* effects are those generated by the household spending of employees whose wages are sustained by both direct and indirect spending, such as those on groceries, rent, vehicle expenses, healthcare, entertainment, and so on.

A visual depiction of the different impacts is shown in the graphic.

Indirect and induced impacts are estimated using models developed with software and data from the IMPLAN Group, LLC. The economic region of interest is Los Angeles County, under the assumption that most of the suppliers and workers are located within the county.

The metrics used to define the value of the economic impact include employment, labor income and the value of output. *Employment* includes full-time, part-time, permanent and seasonal employees and the self-employed, and is measured on a job-count basis regardless of the number of hours worked. *Labor income* includes all income received by both payroll employees and the self-employed, including wages and benefits, such as health insurance and pension plan contributions. *Output* is the value of the goods and services produced. For most industries, this is simply the revenues generated through sales; for others, in particular retail industries, output is the value of the services supplied. Unless noted otherwise, estimates for labor income and output are expressed in 2019 dollars.

It should be noted that a development of this size will have significant impacts. The added residential property will be occupied by new residents, and commercial properties will house businesses and retail activities. The extent to which these activities are *new* rather than a relocation of existing activities from other areas of the study area is not known. Given expected population growth over the development period, it is reasonable to assume that the addition of households represents new activity, but this may not be an appropriate assumption for the incremental commercial and retail activities implied from low vacancy rates. The economic and fiscal impact results should therefore be interpreted as those that are attributable to the new development rather than assuming the new development will generate such net new activities. ❖



2 PROJECT DEVELOPMENT

The development and construction of 8th & Figueroa will generate substantial economic activity, which will extend beyond the construction industry as wages paid to the construction workers and payments made for purchases of goods and services circulate throughout the economy generating additional indirect and induced activity in Los Angeles County.

The project envisions seamless integration with the preexisting business and retail ecosystem. In addition to providing 438 needed housing units in a particularly high cost section of Los Angeles, the development is intended to not only provide a full suite of amenities to residents but also benefit and improve the city block. This will be accomplished through street, alley and sidewalk improvements; 134 trees and additional greenery; and a dedication of 13 percent of the property to public use.

The site will also include 505 car parking stalls and 211 bike parking stalls to meet the needs of residents. Other neighborhood-oriented building plans include public right-of-way (ROW) improvements; integrated access to the proposed LA Streetcar and Metro expansions; and a pedestrian crosswalk and signalization.



Source: <https://urbanize.la/post/new-renderings-41-story-8th-figueroa-tower>

A summary of the development program by land uses and square footage is shown in Exhibit 2-1. ❖



Exhibit 2-1
Net Square Feet of Space by Use

	Sq. Ft	% Total
Residential	364,362	42.5%
Retail	7,320	0.9%
Open Space	47,405	5.5%
Garage	277,150	32.3%
Other	160,555	18.7%
Total	856,792	100.0%

Source: Mitsui Fudosan American

Construction Budget

The overall development budget, provided by the developer is over \$438 million. Not included are land costs of \$23.4 million and loan financing costs of \$15.4 million as these do not generate economic activity.

Operating expenses for construction will account for 96.5 percent of the overall development budget. Of this, most will be spent on construction of the residences. About 4.4 percent is allocated for permits and fees.

Development of the project is anticipated to take approximately three years from 2019 through 2022. As is customary for this type of analysis, the estimates of the economic impact of project development are presented as if the entire construction occurred within the 2019 calendar year. ❖

Total Economic and Fiscal Impact

The construction activity associated with the development project will generate considerable economic activity in Los Angeles County as expenditures are made for goods and services to produce the new structures and facilities.

The primary economic impact of the development phase on the local economy is the expenditure of millions of dollars towards goods and services from local vendors and for the wages and benefits of local construction workers.

The total economic impact in Los Angeles County of the 8th & Figueroa project is shown in Exhibit 2-2.

Exhibit 2-2

8th & Figueroa Project Development

One Time Economic and Fiscal Impact in Los Angeles County

Total Economic Impact:

Output (\$ millions)	\$739.8
Employment (jobs)	4,593
<i>Direct</i>	<i>2,593</i>
<i>Indirect and induced</i>	<i>2,000</i>
Labor earnings (\$ millions)	\$267.6

Total Fiscal Impact (\$ millions)

\$92.9

Source: Estimates by LAEDC

It is estimated that spending over \$438 million for the development of 8th & Figueroa will support almost 4,600 jobs with labor income of almost \$268 million within Los Angeles County. Development activity will also generate almost \$740 million in economic output to the county.

Of the jobs generated, 2,593 will be directly involved in construction activity and the remaining portion will be indirect and induced jobs supported by the suppliers and household spending of direct and indirect employees.

This economic activity in Los Angeles County is projected to generate around \$32.6 million in state and local taxes and \$60.3 million in federal taxes. The disaggregation of taxes by type is shown in Exhibit 2-3.



Exhibit 2-3

Detailed Fiscal Impact of Project Development

By Type of Tax (\$ millions):

Personal income taxes	\$32.5
Social insurance	27.8
Sales and excise taxes	11.9
Property taxes	7.4
Corporate income taxes	8.5
Other taxes and fees	4.8
Total	\$92.9

By Type of Government (\$ millions):

Federal	\$60.3
State	21.0
County	8.0
<i>Property taxes</i>	<i>6.0</i>
<i>Sales taxes</i>	<i>2.0</i>
Cities	3.6
<i>Property taxes</i>	<i>1.3</i>
<i>Sales taxes</i>	<i>0.6</i>
<i>Other fees and fines</i>	<i>1.5</i>
Total	\$92.9

Source: Estimates by LAEDC

Personal income taxes are estimated to be \$32.5 million to all levels of government. Social insurance payments to both state and federal governments will reach almost \$27.8 million. Other sources of tax revenues include sales and excise taxes, taxes on corporate income and other taxes and fees paid by businesses and households.

The federal government will collect approximately two thirds of all tax receipts. Federal tax revenues consist mainly of social insurance taxes, personal income taxes and corporate income taxes. The State of California will collect over \$21 million, which includes sales tax revenues, personal income taxes, corporate income taxes and other taxes and fees. The County of Los Angeles will collect approximately \$8 million, largely from property taxes and its share of sales tax revenues. Cities across the county will receive around \$3.6 million from a share of property taxes, sales taxes and licenses and fees.

The total annual economic impacts from construction spill across industries through indirect and induced effects. The complete list of estimated impacts by industry sector is shown in Exhibit 2-4.

Of the 4,593 jobs generated by development of 8th & Figueroa, almost 60 percent will be in the construction industry, including direct, indirect and induced job impacts. However, virtually all industry sectors in Los Angeles County will experience a positive economic impact from direct development spending related to 8th & Figueroa, including retail trade, health and social services, professional and technical services, and accommodation and food services.

The values in the exhibit should be interpreted as illustrative of industry effects rather than precise given model and data limitations. A description of these industries is provided in the Appendix. ❖



Exhibit 2-4

One-Time Economic Impacts by Industry Sector

	Jobs	Labor Income (\$millions)	Output (\$ millions)
Natural resources	2	\$0.4	\$0.8
Utilities	4	0.7	3.2
Construction	2,605	155.3	440.2
Manufacturing	28	2.3	19.1
Wholesale trade	97	7.3	23.1
Retail trade	699	31.4	67.9
Transportation and warehousing	111	7.3	17.9
Information	27	4.3	16.0
Finance and insurance	76	6.7	20.8
Real estate and rental	88	4.9	43.7
Professional, scientific technical	152	14.1	24.5
Management of companies	16	2.0	4.0
Administrative and waste services	141	5.0	9.8
Educational services	48	2.3	3.6
Health and social services	205	12.2	21.2
Arts, entertainment and recreation	30	1.3	3.2
Accommodation and food services	135	4.0	9.5
Other services	122	5.2	8.7
Government and non-NAICs	6	0.9	2.5
Total	4,593	\$267.6	\$739.8

Source: Estimates by LAEDC



Source: <https://urbanize.la/post/new-renderings-41-story-8th-figueroa-tower>

3 ANNUAL ONGOING ACTIVITY

8th & Figueroa will have a recurring impact on the regional economy once construction is completed and the residential and commercial space is occupied. Annual revenues related to the development will include the additional commercial and residential rents and the revenues earned by onsite retail stores. Moreover, the new resident households will make purchases at off-site local businesses, increasing economic activity in the region.

Operational Revenues

Operational revenues of the newly introduced annual activity occurring at 8th & Figueroa include revenues generated by commercial activities and residential rent revenues. This analysis presents all results in 2019 dollars to indicate economic activity as if it were to occur during this calendar year. Future results may vary.

Revenues Generated by Commercial Activities

Revenue generated by proposed commercial activity for the 7,300 square foot retail space was derived using employment density estimates per square foot of space from the U.S. Energy Information Administration's Commercial Buildings Energy Consumption Survey (CBECS), and productivity estimates for a variety of industries. It is estimated that the retail space will be a mix of food and retail stores.

The summary of estimated annual revenues from commercial activities is shown in Exhibit 3-1. The annual revenues are adjusted for purchases from the residents of 8th & Figueroa to avoid double-counting.

Exhibit 3-1

8th & Figueroa

Estimated Annual Revenues from Commercial Activities

	Approximate Square Feet	Adjusted Estimated Annual Revenues (\$ millions)
Dining establishments	3,650	\$318,243
Retail establishments	3,650	\$196,603
Total Estimated Annual Commercial Revenues		\$514,846

Sources: Mitsui Fudosan America; US EIA; Estimates by LAEDC



Residential Rent Revenue

Residential rent revenue is the total amount of rent paid annually by new resident tenants of the 8th & Figueroa residential units. The number of units, average unit size and average rents were either provided by the developer or derived from prevailing market rates and adjusted for occupancy. Occupancy rates are based upon vacancy rates from the *American Community Survey* 5-year estimates for 2017 for Los Angeles County. The vacancy rate in this report for rental units is 3.2 percent.

The aggregate annual net rent revenue from rental residences is therefore estimated to be over \$20.3 million annually.

Summary of Annual Ongoing Operational Revenues

Using these methods, annual revenues of the ongoing activities at 8th & Figueroa, once completed, are estimated and summarized in Exhibit 3-2.

Exhibit 3-2

Estimated Annual Revenues at 8th & Figueroa

	(\$ millions)
Commercial activities	\$0.5
Residential rent	20.3
Total (\$ millions)	\$20.8

Source: Estimates by LAEDC



It is estimated that annual revenues earned from activities generated at 8th & Figueroa will be approximately \$20.8 million annually. ❖

New Resident Spending

Along with the new ongoing commercial activity occurring at 8th & Figueroa, an additional impact on the local economy will derive from the addition of the new resident households (and their spending) to the neighborhood. To quantify this impact, the annual income and local spending patterns for each new household is estimated.

Using expected rents, income levels of future tenants are derived by applying the percentage of income typically dedicated to housing costs. According to the U.S. Census Bureau's *American Community Survey* report on housing characteristics, the median household in Los Angeles County that rents its primary residence pays at least 35 percent of its before-tax income on housing costs. These are presented in Exhibit 3-5 and are adjusted for occupancy using vacancy rates from the *American Community Survey* 5-year estimates for 2017 for Los Angeles County. Vacancy rates in this report for rental homes are 3.2 percent.

The overall estimated annual income of households anticipated to be residing in 8th & Figueroa residences will exceed \$54.7 million.

To estimate the local expenditures of typical Los Angeles County households, household spending patterns described in the *Consumer Expenditure Survey* 2017 of the Bureau of Labor Statistics of the U.S. Department of Commerce are applied to the household incomes implied by the rents.

The survey disaggregates spending for various categories, including housing, transportation, food, health care, and so on. Not all categories of spending are likely to occur in the local area. Expenditures on, for example, insurance payments and education costs, vehicle purchases, or leases and appliance purchases are not always purchased in the local area.

The percentages of spending by category typically purchased locally are applied to the estimated annual household incomes for each of the households (adjusted for estimated occupancy rates). These percentages do differ for households of different income levels.

The final estimates, by spending category, are shown in Exhibit 3-3.

Exhibit 3-3

Overall Projected Local Spending by New Resident Households

	Overall % of Annual Income	Estimated Local Expenditures (\$ millions)
Food at home	4.7%	\$2.5
Food away from home	3.9%	2.1
Water and other public services	0.6%	0.3
Electricity	1.3%	0.7
Residential phone	0.2%	0.1
Household operations	1.7%	0.9
Housekeeping supplies	0.8%	0.4
Household furnishings and equipment	4.5%	2.5
Apparel and services	2.2%	1.2
Gasoline and motor oil	2.3%	1.2
Car maintenance and repairs	1.3%	0.7
Public transportation	0.9%	0.5
Medical services and supplies	1.7%	0.9
Entertainment	2.9%	1.6
Pets, toys and hobbies	1.1%	0.6
Personal care products and services	0.9%	0.5
Reading	0.1%	0.1
Tobacco	0.3%	0.1
Local miscellaneous purchases	1.1%	0.6
Total New Household Expenditures	32.6%	\$17.8

Sources: Bureau of Labor Statistics; Estimates by LAEDC

It is estimated that approximately \$17.8 million will be spent annually at local businesses by new households living in the residential units at 8th & Figueroa—accounting for approximately 32.6 percent of all annual household income added due to the development of 8th and Figueroa and the addition of 438 housing units to downtown Los Angeles. ❖



Economic and Fiscal Impact

The operational revenues and residential spending estimates are used as inputs to determine the total economic activity in Los Angeles County of all ongoing activity anticipated to occur at the 8th & Figueroa. This is presented in Exhibit 3-4.

It is estimated that ongoing activity at 8th & Figueroa will generate economic output in Los Angeles County of roughly \$49.5 million each year and support 329 jobs with labor income of about \$16.3 million.

Exhibit 3-4

Total Annual Economic and Fiscal Impact of Ongoing Operations at 8th and Figueroa

Direct Annual Revenues (\$ millions)	\$20.8
New Resident Household Spending (\$ millions)	17.8
Total Economic Impact:	
Output (\$ millions)	\$49.5
Employment	329
<i>Direct</i>	220
<i>Indirect and induced</i>	109
Labor income (\$ millions)	\$16.3
Total Fiscal Impact:	
State / local taxes (\$ millions)	\$8.1
Federal taxes (\$ millions)	4.3
Estimates by LAEDC	

Additionally, this economic activity is projected to generate \$8.1 million in state and local taxes including the incremental increase in property taxes and another \$4.3 million in federal taxes.

The largest component of overall tax revenues is property taxes. As a development project, 8th & Figueroa will generate an annual increase in property taxes in addition to the ongoing property taxes of workers, residents and business that are impacted by the project, as the assessed value of the property will rise by *at least* the value of construction. This may *underestimate* the actual assessment. The property tax revenues in this area is estimated to be 1.196046 percent. Applied to the construction spending, this implies an annual increase in property tax revenues of \$5.2 million which is shared amongst the County of Los Angeles, the City of Los Angeles, Los Angeles Unified School District, the Community College District and other taxing entities.

The disaggregation of taxes by type is shown in Exhibit 3-5.

Exhibit 3-5

Detailed Fiscal Impact of Ongoing Operations

By Type of Tax (\$ millions):	
Personal income taxes	\$2.0
Social insurance	1.6
Sales and excise taxes	1.2
Property taxes	6.0
<i>Incremental property taxes</i>	5.2
Corporate income taxes	1.1
Other taxes and fees	0.4
Total	\$12.4

By Type of Government (\$ millions):	
Federal	\$4.3
State	1.7
County	5.1
<i>Property taxes</i>	4.9
<i>Sales taxes</i>	.2
Cities	1.3
<i>Property taxes</i>	1.1
<i>Sales taxes</i>	0.1
<i>Other fees and fines</i>	0.1
Total	\$12.4

Source: Estimates by LAEDC; May not sum due to rounding

Personal income taxes are estimated to be \$2 million annually paid to federal and state governments. Similarly, social insurance payments are made to both state and federal governments and will reach \$1.6 million. Sales and excise taxes are estimated to be \$1.2 million. Other sources of tax revenues include taxes on corporate income, motor vehicle license fees and other taxes and fees paid by businesses and households.

The federal government will collect one-third of all tax receipts annually, consisting mainly of social insurance taxes, personal income taxes and corporate income taxes.

The State of California will collect \$1.7 million annually, consisting of sales tax revenues, personal and corporate income taxes and motor vehicle license fees. The County of Los Angeles will collect about \$5.1 million in taxes, mainly from property taxes and its share of sales tax revenues. Cities will receive \$1.3 million from their share of property taxes and licenses and fees. Most of these tax revenues, including the incremental property taxes, will be earned by the City of Los Angeles and surrounding cities.

The total annual economic impact will spill across industries through indirect and induced effects. The complete list of estimated impacts by industry sector is shown in Exhibits 3-6.

Exhibit 3-6

Annual Economic Impacts by Industry Sector

	Jobs	Labor Income (\$ millions)	Output (\$ millions)
Natural Resources	0	\$0.0	\$0.1
Utilities	3	0.5	1.9
Construction	6	0.3	0.9
Manufacturing	1	0.1	1.1
Wholesale trade	3	0.3	0.8
Retail trade	41	1.8	3.7
Transportation and warehousing	26	2.1	1.2
Information	3	0.4	1.5
Finance and insurance	6	0.5	1.7
Real estate and rental	80	3.8	23.9
Professional, scientific technical	8	0.8	1.3
Management of companies	1	0.2	0.3
Administrative and waste services	36	1.0	2.0
Educational services	3	0.1	0.2
Health and social services	24	1.4	2.3
Arts, entertainment and recreation	12	0.5	1.1
Accommodation and food services	42	1.2	3.1
Other services	32	1.3	2.2
Government	0	0.1	0.2
Total	329	\$16.3	\$49.5

Source: Estimates by LAEDC

Virtually all industry sectors in Los Angeles County will experience a positive economic impact from the new activity occurring at 8th & Figueroa including accommodation and food services, retail trade, health services, real estate and rental activities and administrative and waste.

The values in the exhibit should be interpreted as illustrative of industry effects rather than precise given model and data limitations. A description of these industries is provided in the Appendix. ❖



Appendix

Description of Industry Sectors

The industry sectors used in this report are established by the North American Industry Classification System (NAICS). NAICS divides the economy into twenty sectors, and groups industries within these sectors according to production criteria. Listed below is a short description of each sector as taken from the sourcebook, *North American Industry Classification System*, published by the U.S. Office of Management and Budget (2012).

Agriculture, Forestry, Fishing and Hunting: Activities of this sector are growing crops, raising animals, harvesting timber, and harvesting fish and other animals from farms, ranches, or the animals' natural habitats.

Mining: Activities of this sector are extracting naturally-occurring mineral solids, such as coal and ore; liquid minerals, such as crude petroleum; and gases, such as natural gas; and beneficiating (e.g., crushing, screening, washing and flotation) and other preparation at the mine site, or as part of mining activity.

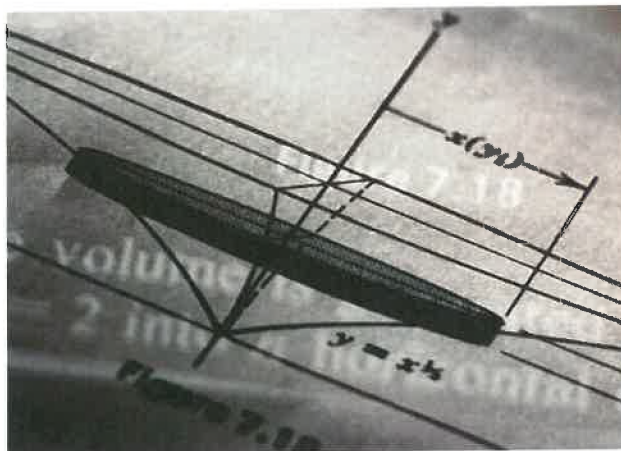
Utilities: Activities of this sector are generating, transmitting, and/or distributing electricity, gas, steam, and water and removing sewage through a permanent infrastructure of lines, mains, and pipes.

Construction: Activities of this sector are erecting buildings and other structures (including additions); heavy construction other than buildings; and alterations, reconstruction, installation, and maintenance and repairs.

Manufacturing: Activities of this sector are the mechanical, physical, or chemical transformation of material, substances, or components into new products.

Wholesale Trade: Activities of this sector are selling or arranging for the purchase or sale of goods for resale; capital or durable non-consumer goods; and raw and intermediate materials and supplies used in production, and providing services incidental to the sale of the merchandise.

Retail Trade: Activities of this sector are retailing merchandise generally in small quantities to the general public and providing services incidental to the sale of the merchandise.



Transportation and Warehousing: Activities of this sector are providing transportation of passengers and cargo, warehousing and storing goods, scenic and sightseeing transportation, and supporting these activities.

Information: Activities of this sector are distributing information and cultural products, providing the means to transmit or distribute these products as data or communications, and processing data.

Finance and Insurance: Activities of this sector involve the creation, liquidation, or change of ownership of financial assets (financial transactions) and/or facilitating financial transactions.

Real Estate and Rental and Leasing: Activities of this sector are renting, leasing, or otherwise allowing the use of tangible or intangible assets (except copyrighted works), and providing related services.

Professional, Scientific, and Technical Services: Activities of this sector are performing professional, scientific, and technical services for the operations of other organizations.

Management of Companies and Enterprises: Activities of this sector are the holding of securities of companies and enterprises, for the purpose of owning controlling interest or influencing their management decision, or administering, overseeing, and managing other establishments of the same company or enterprise and normally undertaking the strategic or organizational

planning and decision-making of the company or enterprise.

Administrative and Support and Waste Management and Remediation Services: Activities of this sector are performing routine support activities for the day-to-day operations of other organizations, such as: office administration, hiring and placing of personnel, document preparation and similar clerical services, solicitation, collection, security and surveillance services, cleaning, and waste disposal services.

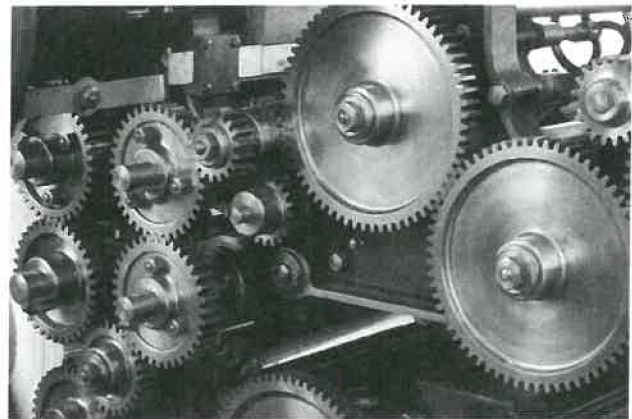
Educational Services: Activities of this sector are providing instruction and training in a wide variety of subjects. Educational services are usually delivered by teachers or instructors that explain, tell, demonstrate, supervise, and direct learning. Instruction is imparted in diverse settings, such as educational institutions, the workplace, or the home through correspondence, television, or other means.

Health Care and Social Assistance: Activities of this sector are operating or providing health care and social assistance for individuals.

Arts, Entertainment and Recreation: Activities of this sector are operating facilities or providing services to meet varied cultural, entertainment, and recreational interests of their patrons, such as: (1) producing, promoting, or participating in live performances, events, or exhibits intended for public viewing; (2) preserving and exhibiting objects and sites of historical, cultural, or educational interest; and (3) operating facilities or providing services that enable patrons to participate in recreational activities or pursue amusement, hobby, and leisure-time interests.

Accommodation and Food Services: Activities of this sector are providing customers with lodging and/or preparing meals, snacks, and beverages for immediate consumption.

Other Services (except Public Administration): Activities of this sector are providing services not specifically provided for elsewhere in the classification system. Establishments in this sector are primarily engaged in activities, such as equipment and machinery repairing, promoting or administering religious activities, grant-making, advocacy, and providing dry-cleaning and laundry services, personal care services, death care services, pet care services, photofinishing services, temporary parking services, and dating services. ❖



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