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May 17, 2019

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

APPEAL RESPONSE; CF 19-0370 and CF 19-0370-S1

On December 7, 2018, the Advisory Agency approved a Vesting Tentative Tract Map (VTT-74193-CN) in connection with The Fig project proposal. The current proposal involves an integrated seven-story residential, hotel, and commercial development consisting of a mix of uses totaling 620,687 square feet of floor area, including: 298 hotel guest rooms, 222 student housing units, 186 mixed-income housing units (82 units reserved for Very Low or Low Income households), and approximately 96,500 square-feet of commercial uses, comprised of retail establishments, restaurants, hotel amenities, meeting spaces, and office uses; a central parking structure; and public and private recreational amenities located throughout the site and on the roof deck of the parking structure. The development would remove eight multi-family residential buildings, containing 32 residential units, within the Flower Drive Historic District as well as surface parking areas currently occupying the site. In order to develop the project, the applicant requested several land use entitlements from the City.

In its December 7, 2018 decision, the Advisory Agency approved the project and adopted findings relating to the certification of the Environmental Impact Report (EIR), and approved subdivision requests to merge and resubdivide the property into one ground lot and eight commercial condominium lots, to vacate a portion of Flower Drive, and a Haul Route for the export of 60,800 cubic yards of soil.

On December 14, 2018, the entirety of the Advisory Agency action was appealed by Jim Childs, West Adams Heritage Association (WAHA), and on December 17, 2018, a second appeal to the entirety of the Advisory Agency action was filed by Mitchell M. Tsai, SAJE, both claiming to be aggrieved by the action.

The Department of City Planning responded to the appeals (VTT-74193-CN-1A) in an Appeal Response Recommendation Report. The Appeal Response Recommendation Report and associated documents were presented to the City Planning Commission (CPC) at its meeting on

February 14, 2019. In addition, a separate Recommendation Report was submitted to the CPC for initial consideration and action on other related entitlements for the Project under concurrent case CPC-2016-2658-VZC-HD-CU-MCUP-ZAD-SPR.

On March 26, 2019, the City Planning Commission, following its consideration of the materials before them during the hearing of February 14, 2019, issued its determination to deny the appeals, thereby sustaining the actions of the Advisory Agency in certifying the EIR and approving the Vesting Tentative Tract Map. The City Planning Commission also issued its determination for the related case for the project, approving the environmental clearance, recommending that the City Council approve the Vesting Zone Change and Height District Change requests, and approving a Conditional Use permit for the hotel use, a Master Conditional Use permit for alcohol sales, a Determination to allow for deviations from transitional height requirements, and a Site Plan Review for the Project.

On April 3, 2019, April 5, 2019, April 9, 2019, and April 15, 2019, the same two appellants filed appeals on both cases related to the Project (VTT-74193-CN-1A and CPC-2016-2658-VZC-HD-CU-MCUP-ZAD-SPR). The appeals again claimed that the Project EIR failed to comply with CEQA and that proper entitlement findings could not be made. The appeals also incorporated by reference all previous comments submitted to the file. The submitted appeals mainly rely on the same arguments and information as presented in the appellants' previous letters to the City. The City has already adequately provided detailed and full responses to each of those letters, supported by substantial evidence in the record, including in the Draft EIR, dated October 2017, the Final EIR, dated October 2018, Erratas, dated November 2018 and January 2019, the Recommendation Reports, dated February 2019, and other documents in the administrative case file. The appellants continue to fail to present any new information or substantial evidence to dispute the City's certification of the EIR and adoption of required findings in connection with the approvals and recommendations of approval for the Project.

The following represents a summary and response to the appeals filed on April 3, 2019, April 5, 2019, April 9, 2019, and April 15, 2019:

APPELLANT 1: JIM CHILDS, WEST ADAMS HERITAGE ASSOCIATION (WAHA)

The appellant submitted two appeal letters for both cases for the Project (VTT-74193-1A, filed on April 3, 2019, and CPC-2016-2658-VZC-HD-CU-MCUP-ZAD-SPR, filed on April 9, 2019). Both appeals contained the same principal appeal points, with some formatting and organizational changes between the two letters. The appeal points of both letters are identified below:

Appeal Points

- *Failure to consider or mitigate significant impacts to affordable housing, tenant displacement, and historic resources*
- *Failure to meet required entitlement findings, including the Subdivision Map Act*
- *Failure to provide adequate evidence and cumulative analysis under CEQA*
- *Inadequate alternatives and mitigation measures to address impacts, including failure to include a 21-Story Alternative to avoid significant environmental impacts*
- *Insufficient justification for a Statement of Overriding Consideration*

The appeal points listed above restate the same points from the appellant's previous public comments regarding the Project as well as its appeal of the Project's tract map, dated December 14, 2018. The appellant provides no new information or substantial evidence regarding these appeal points to dispute the City's EIR and findings. Moreover, these appeal points were addressed in detail in the February 14, 2019 Appeal Response Recommendation Report (see pages A-3 through A-12, as well as Exhibit D – Supplemental Responses to Public Comments

following Release of Final EIR), which is included in Council File 19-0370. Therefore, the appeal should be dismissed.

APPELLANT 2: MITCHELL M. TSAI, SAJE

The appellant submitted appeal letters for both cases for the Project (VTT-74193-1A, filed on April 5, 2019, and CPC-2016-2658-VZC-HD-CU-MCUP-ZAD-SPR, filed on April 15, 2019). Both appeals include duplicate appeal points. The appeal points of both letters that repeat those provided in prior comments and appeals are identified below:

Appeal Points

- *Failure to meet required findings of the Subdivision Map Act*
- *Alleged conflict with land use policies, regulations, and design guidelines*
- *Failure to meet Municipal Code standards for Tract Maps*
- *Alleged significant new information contained in the Errata, requiring EIR recirculation*
- *Failure to study and adopt a feasible Alternative (21-Story Alternative)*

The appeal points listed above restate the same points from the appellant's previous public comments regarding the Project as well as its appeal of the Project's tract map, dated December 17, 2018. The appellant provided no new information or substantial evidence regarding these appeal points to dispute the City's EIR and findings. Moreover, these appeal points were addressed in detail in the February 2019 Appeal Response Recommendation Report (see pages A-13 through A-16, as well as Exhibit D – Supplemental Responses to Public Comments following Release of Final EIR), which is included in Council File 19-0370. The appellant has not provided any new information or substantial evidence to dispute the City's responses to these appeal points, and therefore, these appeal points should be dismissed.

The appellant's April 5, 2019 and April 15, 2019 appeal letters also include several additional appeal points regarding both cases for the Project. Responses to these supplemental appeal points are provided below.

Supplemental Appeal Points

- *Failure to properly make Subdivision Map Act findings regarding project design*

The appellant asserts that the Project's architectural design and compatibility must be addressed pursuant to Section 66474 of the Subdivision Map Act and claims that the City's description of the Project as a condominium, community apartment, or stock cooperative project in the February 2019 Appeal Response Recommendation Report is erroneous. However, as described in the Subdivision Map Act findings adopted by the Advisory Agency and the CPC, and as explained in the February 2019 report, "design" and "improvements" are explicitly defined in the Subdivision Map Act (Sections 66418 and 66419), and exclusively pertain to street alignments, grades, and widths; drainage and sanitary facilities and utilities; lot size and configuration; and other specific physical requirements within the subdivision, *and not the architectural design of proposed buildings*. Moreover, as described in the adopted Subdivision Map Act findings and the February 2019 report, Section 66427 of the Subdivision Map Act expressly states that: "Design and location of buildings are not part of the map review process for condominium, community apartment or stock cooperative projects."

The Project's Vesting Tentative Tract Map proposes the merger and re-subdivision of the development site into a new master lot and up to eight commercial condominium units, and therefore constitutes a condominium project under the Subdivision Map Act. However, as set forth above, building design is not a part of the map review process. Moreover, as set forth in the

adopted Subdivision Map Act findings, the design and layout of the Project's tract map was found to be consistent with the design standards established by the Subdivision Map Act and Division of Land Regulations of the LAMC. Accordingly, the Subdivision Map Act findings adopted by the City, as well as the explanation provided in the February 2019 report, demonstrate that this appeal point has no merit and should be dismissed.

- *Failure to Acknowledge Substantial Environmental Damage*

The appellant claims that because the EIR has identified significant and unavoidable impacts associated with the Project, the design and improvements of the Project would result in substantial environmental damage, which prevents the City from approving the Vesting Tentative Tract Map pursuant to Section 66474(e) of the Subdivision Map Act. However, as described above, "design" and "improvements" are both specifically defined by the Subdivision Map Act, and exclusively pertain to street alignments, grades, and widths; drainage and sanitary facilities and utilities; lot size and configuration; and other specific physical requirements within the subdivision; none of which include CEQA significant and unavoidable impacts. Moreover, the City has properly determined that no substantial environmental damage would result from the design or improvements of the Project's tract map. Specifically, as set forth in the adopted Subdivision Map Act findings for the Project, multiple public agencies (including the Department of Public Works - Bureau of Engineering, Bureau of Street Lighting, and Bureau of Sanitation, Department of Building and Safety, Department of Transportation, Fire Department, Department of Recreation and Parks, and Department of Water and Power) have reviewed the map and found the subdivision design satisfactory, and have imposed improvement requirements and/or conditions of approval. The Bureau of Engineering requires dedication and improvements to Figueroa Street, 39th Street, and Flower Drive in accordance with the City's Street Standards. Sewers are available and have been inspected and deemed adequate in accommodating the proposed project's sewerage needs. Fire and traffic access, as well as site grading, have been reviewed and deemed appropriate. Additional traffic improvement or control measures for adjacent roadways and nearby intersections have been included for traffic and pedestrian safety. Accordingly, the required findings under Section 66474 of the Subdivision Map Act have properly been made, no substantial environmental damage would result from the design or improvements of the Project's tract map, and this appeal point should be dismissed.

- *Failure to Analyze Emissions from Project's Potential Displacement Effects*

The appellant asserts that displacement effects would result from development of the Project, which would in turn lead to increased vehicular activity by displaced residents and corresponding increases in pollutant and greenhouse gas emissions, which should have been analyzed in the EIR. The appellant does not provide any specific analysis of the Project's alleged displacement effects or any evidence, let alone substantial evidence. The Appellant's April 5, 2019 appeal letter includes two policy newsletter articles as exhibits, each of which briefly discuss the potential correlation between development of new transit stations and decreased transit ridership in the vicinity of those stations, yet neither provides any specific evidence relevant to the proposed project or project site. Generalized speculation is not substantial evidence.

Several comments regarding both direct and indirect residential and commercial displacement in the community were submitted in response to the Project's Draft EIR. As set forth in the Final EIR's response to these comments (e.g. Response to Comments 9-10, 13-6, 13-9), under CEQA, economic impacts are not required to be analyzed unless such economic impacts can be shown with substantial evidence to have a reasonably foreseeable direct or indirect physical impact to the environment. One example of a physical impact that may directly result from economic effects is "urban decay," which is typically characterized by visible symptoms of physical deterioration that invite vandalism, loitering, and graffiti that is caused by a downward spiral of business closures and long-term vacancies (*Bakersfield Citizens for Local Control v. City of Bakersfield*

(2004) 123 Cal.App.4th 1184). However, unless substantial evidence is provided from which a fair argument can be made that a project's economic effects will result in significant effects of the environment, no analysis of such effects are required under CEQA (*Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal.App.5th 1). Here, the appellant offers speculation only regarding purported displacement effects allegedly caused by the Project and provides two newsletter articles that broadly focus on the development of new transit stations and related ridership numbers that are not project or location specific. Neither the appellant's letter nor the newsletter articles present any substantial evidence that the development of the Project would result in economic effects that would in turn produce a reasonably foreseeable direct or indirect physical impact to the environment, whether relating to emissions or any other environmental impact topics. Accordingly, the appeal point should be dismissed.

- *Failure to Analyze Related Projects and Stormwater Impacts*

The appellant cites two comments in a Draft EIR comment letter submitted by the California Department of Transportation (Caltrans) to claim that the Project's EIR failed to disclose related projects and analyze stormwater impacts. In fact, the Caltrans comment letter cited the EIR's identification and analysis of 27 related development projects in the vicinity of the Project, and no allegation was made of failing to disclose those projects. Furthermore, as set forth in the Final EIR's response to the Caltrans comment letter, stormwater impacts would be less than significant through compliance with all applicable regulatory requirements. Therefore, this appeal point should be dismissed.

Conclusion

The appeals and referenced comment letters address specific concerns regarding the adequacy of the EIR and entitlement findings. Upon careful consideration of the appellants' points, the appellants have failed to adequately disclose how the City erred or abused its discretion. In addition, no new substantial evidence was presented that the City has erred in its actions relative to the EIR and the associated entitlements. The appellants have repeatedly failed to raise new information to dispute the Findings of the EIR or the City's actions on this matter. Therefore, the appeals should be denied and the actions of the City Planning Commission should be sustained.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Milena Zasadzien
City Planner

VPB:HB:mz

Enclosures
none

c: Sherilyn Correa, Director of Planning and Economic Development, Council District 9