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YOUR FILE NO. CPC-2009-3416-DA-TDR-CUB-CU-
CUW-ZV-SN-ZAD-SPR-GB ENV-2009-1577-EIR-GB
OUR FILE NO. 308144-000012

February 22, 2011

Honorable PLUM Chairman Reyes
Honorable PLUM Councilman Huizar
Honorable PLUM Councilman Krekorian
Los Angeles City Council
200 N. Spring Street
Los Angeles, California 90012

**Re: Appeal of CPC Approval of CPC-2009-3416-DA-TDR-CUB-CU-CUW-ZV-SN-ZAD-SPR-GB
ENV-2009-1577-EIR-GB**

Dear Honorable Chairman Reyes and Councilmen Huizar and Krekorian:

On behalf of Brookfield Office Properties, Brookfield Properties Management LLC, EYP Realty, LLC and 601 Figueroa Co. LLC (collectively, "Brookfield")¹, we have reviewed the Wilshire Grand Environmental Impact Report ("EIR"), including Responses to Comments received December 16, 2010 ("Response to Comments I") and 273 pages of the Additional Responses to Comments ("Response to Comments II") received the afternoon of Friday, February 18th, 2011 (plus 597 pages of Appendices) for the proposed Wilshire Grand project (the "Project"). As the owner of two high-rise office buildings and a retail shopping center (housing the under-construction new Target) directly across the street from the Project to the north and the south, Brookfield is committed to a successful Downtown and welcomes development that will be an enhancement for residents, workers, and the greater community. This Project, however, contains a number of unacceptable features that will irreparably harm Downtown and the rest of the City of Los Angeles. The EIR is deficient in that it fails to fulfill the function of informing the public and decision makers of the impacts of the Project and the potentially feasible mitigation measures and alternatives. Without the reasonable modifications we suggest, the entitlements should not be approved nor should the EIR be certified.

Brookfield has proposed several new conditions, feasible mitigation measures and project changes to reduce or eliminate the components of the Project with the most impact and those that cause the most harm to Brookfield, including: signage/lighting; traffic; heliport noise; and parking impacts. Brookfield's concerns and proposed improvements to the Project were included in correspondence to the City dated

¹ Brookfield Office Properties is the public parent company of Brookfield Properties Management LLC, manager of EYP Realty, LLC, the owner of Ernst and Young Plaza at 725 S. Figueroa and the retail shopping center at 7th and Figueroa Street, and 601 Figueroa Co. LLC, the owner of 601 Figueroa Street.

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December 15, 2010, January 14, 2011, as well as a February 17, 2011 letter that included a redline of proposed conditions, mitigation measures, and the proposed signage Supplemental Use District ("SUD"). In addition to the correspondence, Brookfield has also met with Hanjin International Corporation c/o Thomas Properties Group (the "Applicant"), as well as various City departments and officials to address the most significant remaining adverse impacts of the Project.²

The process of informed decision making for this Project requires more time to review all materials and correspondence; work with various City departments to receive the appropriate approvals to revised mitigation measures and conditions of approval; and settle differences amongst the parties regarding the most important outstanding issues associated with the Project (i.e., traffic, heliport operations, signage/lighting, and parking). We believe that a two week continuance of the PLUM hearing would be appropriate. Considering that the last day for Council to act is not until April 6th; that Response to Comments II was received Friday afternoon and it includes no less than two updated traffic analyses on all of the Project intersections, plus analysis of new intersections; that Response to Comments I was revised in Response to Comments II, but no redline or other information regarding how the responses were changed was provided; and since there has not yet been a City response to our proposed mitigation measures and condition modifications, the Project would best be served by a two week continuance.

As there is no assurance of a continuance, we have no choice but to further comment on the serious environmental deficiencies associated with the Project's EIR. California Public Resources Code ("CPRC") Section 21177(a) allows public comment on an EIR prior to the close of the public hearing on the Project and this has not yet occurred. See *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 and *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199.

I. Recirculation of the EIR is Required

Even if the City determines that the EIR has been certified, the City is required to recirculate the EIR because significant new information has been added to the EIR after public notice was given of the availability of the draft EIR for public review but before the City Council has certified the EIR.³

² Brookfield met with the Applicant prior to the EIR circulation. The Project then proposed did not contain the elements of the Project with the most harmful impacts, such as the signage and the heliport.

³ Page 1-3 of Response to Comments II states that the EIR was certified by the Advisory Agency and adopted by the City Planning Commission. Brookfield appealed the City Planning Commission's adoption of the EIR, such that there is no certified EIR until City Council action because it is now on appeal. Even

"Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

See CCR Section 15088.5(a).

A. New Significant Environmental Impacts

Response to Comments II identifies several new significant impacts and each by itself requires recirculation of the EIR. New significant impacts include:

- A new significant traffic impact at Alameda Street and 7th Street. Response to Comment II 3-49 indicates that once the inexplicably omitted 755 S. Figueroa building is included as a related project, there will be a new significant impact at this intersection.

if one were to assume that the EIR were certified by the Advisory Agency (although required findings, a Mitigation Monitoring Program, and language indicating that the Advisory Agency was certifying the EIR were all absent), there are Project changes, changed circumstances, and new information causing new significant environmental impacts that would require a Subsequent EIR pursuant to CPRC Section 21166 and California Code of Regulations ("CCR") Section 15162. These include: a proposed new 64,000 seat Downtown NFL stadium; new phasing of the Project; changed Project size; new Wilshire Boulevard construction staging; new self-parking allowed at the 7th Street entrance per Response to Comment 3-4; and actual noise field testing of the 601 S. Figueroa Street building such that building materials attenuate noise by 22 dBA exterior-to-interior, and not the 35 dBA attenuation assumed in the Applicant's Responses to Comments. Each change or new information will lead to new significant impacts not analyzed in the EIR, such as new and worse significant traffic, noise and air quality impacts, that necessitate a Subsequent EIR.

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- A new significant traffic impact at Francisco Street and 7th Street. Response to Comment II 3-49 indicates that once the omitted 755 S. Figueroa building is included as a related project, there will be a new significant impact at this intersection.
- A new significant traffic impact at Hope Street and First Street. Response to Comment II 3-79 indicates that this intersection, which we requested to be analyzed for potential significant impacts, does in fact result in a new significant impact at this intersection.⁴
- A new significant construction traffic impact as a result of Phase 2 construction. Phase 2 appears to require haul trucks and construction trucks to use Wilshire Boulevard since the construction staging area must be along either Wilshire Boulevard and/or Figueroa Street in order to provide access to the Phase 2 construction area. EIR p. IV.B-46 does not include Wilshire Boulevard as a haul route, and we believe it should not be, but if the construction staging area for Phase 2 is along Wilshire Boulevard as now proposed by the Applicant, this is not only an unacceptable change because Wilshire Boulevard is too important of an arterial roadway to limit the lanes, but it will also create a new significant impact. Response to Comment 3-30 indicates that a portion of Wilshire Boulevard would now be closed "to provide room for construction staging." This was not fully disclosed in the EIR. Further, while the Response to Comment Indicates that four travel lanes would remain operational on Wilshire Boulevard, there is no assurance that the two left turn lanes on Wilshire Boulevard would remain open during construction (inclusive of the two left turn lanes, there are a total of six lanes on Wilshire Boulevard between Francisco and Figueroa). These lanes are critical and their potential removal during construction as a result of the new construction staging area along Wilshire Boulevard for Phase 2 would cause unacceptable new significant traffic impacts and great harm to Brookfield's properties.
- New significant noise impacts as a result of heliport operations. Response to Comment 3-23 indicates that 55 dBA Lmax is the "criteria for speech interference." Several Responses to

⁴ Table 9 of Technical Appendix A of the Response to Comments II in fact omits the analysis of impacts at the five newly analyzed intersections without assuming mitigation and it does not appear as if the missing related project, 765 S. Figueroa Street, has been taken into account. Thus, it is impossible to tell from this table whether mitigation (that has not been publicly circulated for comment), reduces the impact to less than significant at Hope and First Streets, or the other four newly analyzed intersections. In fact, Response to Comments II 3-79 inexplicably omits information regarding whether the impact at Union Avenue and Wilshire Boulevard, another intersection we requested for analysis, is significant prior to mitigation.

Comments (i.e., 2-23, 3-23) assume that there would be a 35 dBA exterior-to-interior noise attenuation as a result of the existing building materials at 601 S. Figueroa, such that the noise levels produced by the heliport would be below a level that would cause speech interference. Pursuant to the field testing done at the building (see the February 17, 2011 letter from PBS&J to Mr. Mark Phillips, attached and incorporated by reference), the exterior-to-interior noise attenuation is only 22 dBA. As a result, whether at the proposed 1,090 AGL or a reduced height elevation which would be allowed through the Design Flexibility Program, utilizing the field measured 22 dBA noise attenuation (and not the EIR's overstated assumed 35 dBA noise attenuation), heliport operations would cause interior noise levels to exceed the 55 dBA Lmax threshold at 601 S. Figueroa and 725 S. Figueroa buildings. Contrary to Response to Comments 3-26, the estimated helicopter noise levels at the interior of 601 and 725 S. Figueroa would not be consistent with the typical office building background noise level, would not be below the 55 dBA Lmax criteria for speech interference, and it would warrant additional sound attenuation. These are new significant impacts.

- New significant noise impact as a result of heliport operations. Response to Comment 2-24 states that "with respect to speech interference levels, a maximum noise level of 55-dBA Lmax is used as criteria for classroom environment, where speech is an important consideration," but concludes heliport operations would result in less than significant impacts. Yet, Response to Comment 3-23 indicates that at nearby Gratts Elementary School, the heliport would cause noise levels to exceed 68 dBA Lmax or 69 dBA Lmax (at the Project's top proposed height or a reduced building height, respectively). These noise levels would exceed a maximum noise level of 55-dBA Lmax is used as criteria for classroom environment, where speech is an important consideration, and thus cause a new significant impact not previously disclosed.
- New significant noise impacts as a result of heliport operations. If the heliport is reduced in height as a result of the Design Flexibility Program, there will be a new significant impact at the Jonathan Club (Response to Comment 3-23).

B. Feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the Project.

Brookfield has proposed a substantial number of new or modified conditions of approval which would clearly lessen the significant environmental impacts of the Project. CCR Section 15088.5(a) requires

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recirculation unless these mitigation measures or new conditions are imposed. Please see our February 17, 2011 letter, incorporated herein by reference, for a complete list of these mitigation measures and changed conditions.

The lack of mitigation and appropriate conditions to limit the adverse impacts of the Project thwart CEQA's requirement for the City to "mitigate or avoid the significant effect on the environment of projects that it carries out or approves whenever it is feasible to do so." See CPRC Section 21002.1. In fact, the effectiveness of many of the current Project mitigation measures is unknown and the significant impacts of the Project would remain unabated and worse than disclosed in the EIR. See CCR Section 15164. For example, MM-20 requires a TDM program, but it does not comply with the requirements listed in LADOT's traffic assessment letter to conduct annual trip monitor and reporting with set "trip reduction milestones and a monitoring program to ensure effective participation and compliance with the TDM goals; non-compliance to the trip-reduction goals would lead to financial penalties or may require the implementation of physical improvements." See Response to Comments II 3-80. MM-20 does not include any trip reduction goals, financial penalties or implementation of physical improvements. Without these components, trip reductions will be overstated. And if the TDM program requires potential physical improvements, there has been no analysis of the environmental impacts of this component and it is unclear how MM-20 would require their implementation since nothing is in the Mitigation Measure that would even hint that physical improvements may be required, as indicated in Response to Comment II 3-80 and LADOT's traffic assessment. Further, on a fundamental basis, it is unclear how MM-20 would further reduce trips above and beyond the numerous transit and internal trip capture credits that the Project is already taking. CEQA does not allow double dipping of trip credits and substantial evidence does not support the additional TDM trip credits because similar credits were already taken.

II. Other CEQA Considerations

In the less than one full business day we have been given to review nearly 900 pages of Response to Comments II, the City has not given us a meaningful opportunity to respond. Nevertheless, we do have other preliminary comments, including, but not limited to the following:

- The EIR does not include substantial evidence that DOT would not approve a five lane Francisco; proposed improvements to Wilshire Boulevard, including a triple left or triple dual/through left turn lane, or a direct exit from the parking garage onto Figueroa Street. Recently approved Ordinance 181,557 allows adjustments to the Downtown Street Standards and Design Guidelines, and

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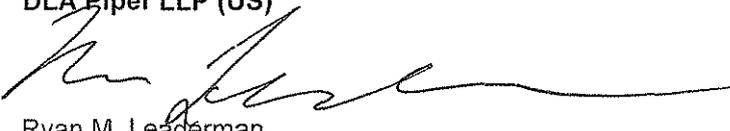
substantial evidence does not indicate that Brookfield's proposed Mitigation Measures are not feasible (Response to Comments II 2-43, 3-3).

- Brookfield's proposed condition that would require retail market parking rates could be enforced through the Development Agreement's Annual Review. The Applicant should be required to provide a retail market study annually to support the market parking rates for retail uses in an urban shopping center (Response to Comments II 3-9).
- Response to Comments II 3-12 lists lighting levels of signage at the tops of nearby Downtown buildings. While the candela level proposed at the crown of the Project's buildings is similar, the area of the signage that the Applicant proposes at the crown is much greater than any other surrounding building.

As an adjacent property owner, developer and property manager, Brookfield will suffer irreparable harm from the significant Project traffic, parking, signage and heliport impacts as will the surrounding community. Important changes are necessary to comply with CEQA and to make the Project tolerable.

Very truly yours,

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