



DEPARTMENT OF CITY PLANNING

APPEAL REPORT

City Planning Commission

Date: September 12, 2019
Time: After 8:30 A.M.
Place: Los Angeles City Hall
Council Chamber, Room 340
200 North Spring Street
Los Angeles, CA 90012

Public Hearing: May 8, 2019
Appeal Status: Further Appealable to City Council
Expiration Date: September 12, 2019
Multiple Approval: Yes

Case No.: VTT-74593-1A
CEQA No.: ENV-2016-3766-EIR
Incidental Cases: N/A
Related Cases: CPC-2016-3765-TDR-MCUP-CUX-ZAD-DD-SPR
Council No.: 14–Huizar
Plan Area: Central City
Specific Plan: None
Certified NC: Downtown Los Angeles
Land Use: Regional Center Commercial
Zone: C2-4D
Applicant: Jeffrey Fish,
JMF Enterprises V LLC
Applicant Representative: Loren Montgomery,
Montgomery Clark Advisors
Appellant: Supporters Alliance for
Environmental Responsibility
(SAFER)
Appellant Representative: Michael Lozeau,
Lozeau Drury LLP

PROJECT LOCATION: 319-323 5th Street and 440-442 South Hill Street

PROPOSED PROJECT: Vesting Tentative Tract Map for the merger and re-subdivision of an approximate 16,663 square-foot site (0.38-acres) to create two (2) ground lots and four (4) airspace lots, creating a mixed-use development consisting of 190 hotel guest rooms, 31 residential condominium units, and 29,232 square feet of commercial uses, above an eight-level above-grade podium structure including two levels of subterranean parking and three levels of above-grade parking.

REQUESTED ACTION: Appeal of the entire decision of the Advisory Agency on the following actions:

1. Pursuant to Sections 21082.1(c) and 21081.6 of the Public Resources Code, the Advisory Agency has reviewed and considered the information contained in the Environmental Impact Report prepared for this project, which includes the Draft Environmental Impact Report (EIR), No. ENV-2016-3766-EIR (SCH No. 2017031018), dated November 1, 2018 and the Final EIR, dated April 26, 2019 (5th and Hill Project EIR), and adopted the Environmental Findings and the Mitigation Monitoring Program prepared for the 5th and Hill Project EIR, as well as the whole of the administrative record, and

CERTIFIED the following:

- a. The 5th and Hill Project EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
- b. The 5th and Hill Project EIR was presented to the Advisory Agency as a decision-making body of the lead agency; and
- c. The 5th and Hill Project EIR reflects the independent judgment and analysis of the lead agency.

ADOPTED the following:

- a. The related and prepared 5th and Hill Project Environmental Findings;
 - b. The Statement of Overriding Considerations; and
 - c. The Mitigation Monitoring Program prepared for the 5th and Hill Project EIR.
2. Pursuant to Section 17.03 and 17.15 of the Los Angeles Municipal Code (LAMC), an approval of Vesting Tentative Tract Map No. 74593 for the merger and re-subdivision of a 0.38-acre vacant site to create two (2) ground lots and four (4) airspace lots located at 319-323 5th Street and 440-442 South Hill Street for a 53-story mixed-use development consisting of 190 hotel guest rooms, 31 residential condominium units, and 29,232 square feet of commercial uses, above an eight-level above-grade podium structure including two levels of subterranean parking and three levels of above-grade parking as shown on the map stamp-dated February 4, 2019 in the Central City Community Plan area.

RECOMMENDED ACTIONS:

1. **Deny** the appeal.
2. **Find** that the City Planning Commission has reviewed and considered the information contained in the Environmental Impact Report No. ENV-2016-3766-EIR (SCH No. 2017031018), prepared for this project, which includes the Draft EIR, dated November 1, 2018, and the Final EIR, dated April 26, 2019 (5th and Hill Project EIR), as well as the whole of the administrative record.

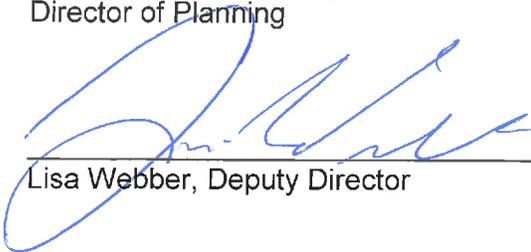
CERTIFY the following:

- a. The 5th and Hill Project EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
- b. The 5th and Hill Project EIR was presented to the Advisory Agency as a decision-making body of the lead agency; and
- c. The 5th and Hill Project EIR reflects the independent judgment and analysis of the lead agency.

ADOPT the following:

- a. The related and prepared 5th and Hill Project Environmental Findings, dated August 2, 2019;
 - b. The Statement of Overriding Considerations contained in Environmental Findings; and
 - c. The Mitigation Monitoring Program prepared for the 5th and Hill Project EIR (Exhibit D).
3. **Sustain** the decision of the Advisory Agency in approving Vesting Tentative Tract Map No. 74593.
 4. **Adopt** the Advisory Agency's Conditions of Approval and Findings.

VINCENT P. BERTONI, AICP
Director of Planning



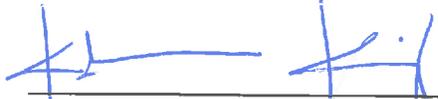
Lisa Webber, Deputy Director



Heather Bleemers, Senior City Planner



Mindy Nguyen, City Planner



Kathleen King, City Planning Associate

ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the Commission Secretariat, 200 North Spring Street, Room 272, Los Angeles, CA 90012 (Phone No. 213-978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent to the week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to this programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request not later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at (213) 978-1300.

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Exhibits:

- A – Appeal Application
- B – Letter of Determination for Vesting Tentative Tract No. 74593
- C – Vesting Tentative Tract Map No. 74593
- D – Mitigation Monitoring Program (MMP)

Environmental Impact Report (EIR) link:

https://planning.lacity.org/eir/5th_and_Hill/CoverPg.html

APPEAL REPORT

BACKGROUND

Location and Setting

The Project Site is comprised of three (3) relatively flat, contiguous lots totaling approximately 16,663 square feet in size, in Downtown Los Angeles within the Central City Community Plan area. The Project Site is designated as Regional Center Commercial with a corresponding zone of C2-4D (Commercial, Height District 4) with D Development Limitation which restricts the FAR to 6:1 without a transfer of floor area (per Ordinance 164,307), with a maximum of 13:1 FAR possible through a Transfer of Floor Area Rights (TFAR). The Project Site is currently vacant and devoid of landscaping, but was developed in the past with two commercial buildings. In the 1990s, a fire severely damaged the buildings which were subsequently demolished in 2004.

Properties located to the north of the Project Site along Hill Street are zoned C2-4D, and improved with a four-story commercial building (immediately to the north of the Project Site), the 10-story Hotel Clark Building and a surface parking lot located at the southeast corner of Hill Street and 4th Street. The property located to the south of the Project Site, at the northeast corner of 5th Street and Hill Street, is zoned C2-4D, and improved with a 16-story office/restaurant building (the Pershing Square Building). The Metro Pershing Square Subway Station is located southwest of the site across 5th Street and Pershing Square (Los Angeles Historic-Cultural Monument No. 480) at the southwest corner of 5th Street and Hill Street. Properties located to the east of the Project Site along Broadway are zoned [Q]C2-4D-CDO-SN, and improved with the Metropolitan Building, a nine-story commercial and residential building (Los Angeles Historic-Cultural Monument No. 1019) and two four-story commercial buildings. Properties located to the west of the Project Site along Hill Street are zoned C2-4D, and improved with a 13-story residential building (National Register ID No. 84000891 and Los Angeles Historic-Cultural Monument No. 278).

Within the Project vicinity, primary regional access to the Site is provided by State Route 110 (SR-110 or Harbor Freeway), which runs north-south approximately 0.4 miles west of the Project Site. Major arterials providing regional access to the Project Site vicinity include Hill Street and 5th Street. The Project site is located in a highly urbanized area and is generally characterized by government facilities, a high concentration of architecturally significant buildings, including nationally recognized historic theaters, office buildings, ground floor retail, and commercial buildings which have been converted to residential uses.

Hill Street adjoins the Project Site to the west, is a designated Modified Avenue II per the Mobility Plan 2035, requiring a width of approximately 86 feet; and is improved with paved roadway, concrete curb, gutter, and sidewalk.

5th Street adjoins the Project Site to the south, is a designated Modified Avenue III per the Mobility Plan 2035, requiring a width of approximately 65 feet; and is improved with paved roadway, concrete curb, gutter, and sidewalk and one Sycamore tree.

4th Street adjoins the uses to the north of the Project Site, is a designated Modified Avenue III per the Mobility Plan 2035, requiring a width of approximately 60 feet; and is improved with paved roadway, concrete curb, gutter, and sidewalk.

Broadway adjoins the uses to the east of the Project Site, is a designated Modified Avenue II per the Mobility Plan 2035, requiring a width of approximately 80 feet, and is improved with paved roadway, concrete curb, gutter, and sidewalk.

Case No. VTT-74593 and Appeal

On August 2, 2019, the Deputy Advisory Agency approved Vesting Tentative Tract Map No. 74593 for the merger and re-subdivision of an approximate 16,663 square-foot site (0.38-acres) to create two (2) ground lots and four (4) airspace lots, creating a mixed-use development consisting of 190 hotel guest rooms, 31 residential condominium units, and 29,232 square feet of commercial uses, above an eight-level above-grade podium structure including two levels of subterranean parking and three levels of above-grade parking. On August 12, 2019, the Department of City Planning subsequently received an appeal of the entire decision by the Deputy Advisory Agency by Supporters Alliance for Environmental Responsibility (SAFER), represented by Michael Lozeau, Lozeau Drury LLP.

Related Case No. CPC-2016-3765-TDR-MCUP-CUX-ZAD-DD-SPR

The proposed Vesting Tentative Tract is related to Case No. CPC-2016-3765-TDR-MCUP-CUX-ZAD-DD-SPR, for the construction a new 53-story, 784-foot tall, mixed-use, high-rise building containing 190 hotel guest rooms, 31 residential condominium units, and 29,232 square feet of restaurant uses. As proposed, the Project would provide 129 automobile parking spaces within two subterranean and three-above grade parking levels; and 156 bicycle parking spaces. In total, the Project would contain approximately 255,812 square feet of floor area on a site that is 16,663 square feet (0.38-acres) in size, for a Floor Area Ratio (FAR) of 13:1.

Entitlement requests include a Transfer of Floor Area Rights (TFAR) from the Los Angeles Convention Center (Donor Site) located at 1201 South Figueroa Street, for up to 155,834 square feet to the Project Site (Receiver Site), thereby permitting a maximum 13:1 FAR, in lieu of the otherwise permitted maximum 6:1 FAR; a Master Conditional Use Permit (MCUP) to allow the sale and dispensing of a full line of alcoholic beverages within four restaurants and bars and hotel uses; a Conditional Use Permit (CUX) to allow dancing within the hotel banquet room; a Zoning Administrator's Determination to allow a building height of 250 feet for the portion of the building located on a C2-zoned lot within 100 feet of an OS Zone (Pershing Square), in lieu of the otherwise maximum height 61 feet, as permitted by LAMC Section 12.21.1 A.10; a Director's Decision to permit a 10-percent reduction in the required area for planting of ground cover, shrubs and trees within the common open space areas; and Site Plan Review for development of a project that results in an increase of 50 or more dwelling units and/or guest rooms. This case will be heard by the City Planning Commission concurrently with the subject appeal.

APPEAL POINTS/STAFF RESPONSES

The following is a summary of the appeal points and staff's responses. A link to the EIR is provided in Table of Contents on page 4 of this Report.

Appeal Point 1

The EIR fails to adequately analyze environmental impacts of the Project, fails to adequately describe the environmental setting of the Project, and fails to propose all feasible mitigation measures and alternatives to reduce Project impacts. Specifically, the EIR found potentially significant impacts in the following categories: noise, public services, transportation and traffic. It also found potentially significant impacts for one of the mandatory findings of significance required by CEQA.

Staff Response 1

The statement is general and does not provide any additional information or evidence to substantiate how the EIR fails to adequately analyze the Project's direct and/or indirect impacts and/or describe the Project's environmental setting. The EIR provides a thorough analysis of the environmental impacts of the Project and has been completed in accordance with CEQA requirements, including imposing all feasible mitigation measures and a reasonable range of alternatives that would reduce the Project's significant and unavoidable impacts.

Appeal Point 2

The Project will have significant air quality impacts, indoor air quality impacts, as well as traffic impacts and other impacts. The CEQA document fails to tie environmental impacts to human health impacts in violation of CEQA. These potentially significant impacts must be analyzed in a revised EIR.

Staff Response 2

The EIR concluded that Project and cumulative on-site construction noise impacts and Project and cumulative construction vibration impacts with respect to human annoyance would be significant and unavoidable. However, it should be noted that, contrary to the Appellant's statement, the EIR concluded that impacts to public service and transportation and traffic were less than significant.

The preparation of the 5th and Hill Project EIR complies with the direction and requirements included under the California Environmental Quality Act (CEQA) Guideline Section 15065, Mandatory Findings of Significance. Pursuant to Public Resources Code Section 21081 and the California Environmental Quality Act (CEQA) Guidelines Section 15093(b), the City, acting as the Lead Agency, adopted a Statement of Overriding Considerations as the EIR identified unavoidable and significant impacts that would result from implementation of the Project. Furthermore, the analyses and conclusions in the EIR are supported by substantial evidence and none of the impacts, including air quality and transportation and traffic impacts, were underestimated.

As discussed and analyzed in Sections IV.A, Air Quality and IV.K Transportation/Traffic, of the Draft EIR, the Project's air quality and transportation impacts are less than significant, supported by substantial evidence, and thus no additional analysis is warranted. In addition, no new impacts or substantial increase in previously identified impacts were raised in the comments provided in the Final EIR. As such, the EIR does not violate CEQA and in accordance with CEQA Guidelines Section 15088.5, revision of the Draft EIR is not warranted.

CONCLUSION

In conclusion, the Appellant has failed to demonstrate how the Deputy Advisory Agency erred in approving Vesting Tentative Tract Map No. 74593, as neither appeal has provided substantial evidence to dispute the findings of the EIR. The EIR is comprehensive and has been completed in full compliance with CEQA. As demonstrated by the responses to the appeal points, there are no new impacts or substantial increases in previously identified impacts that would result from the comments raised herein. As such, in accordance with CEQA Guidelines Section 15088.5, no substantial evidence or details to support the conclusory statements regarding the need for additional mitigation measures, or the supposed inadequacy of the findings have been provided to demonstrate that there are new impacts or substantial increases in previously identified impacts, or that revision of the Draft EIR is warranted. The Deputy Advisory Agency correctly made findings of approval consistent with the California Subdivision Map Act and the provisions of CEQA. Therefore, in consideration of all the facts, Planning staff recommends that the appeal be denied, the decision of the Deputy Advisory Agency be sustained and that the EIR be certified.