



DEPARTMENT OF CITY PLANNING

APPEAL REPORT



Central Area Planning Commission

Date: December 8, 2015
Time: After 4:30 p.m.
Place: Los Angeles City Hall
200 North Spring Street, 10th Floor
Los Angeles, CA 90012

Public Hearing: Not required
Appeal Status: Not further appealable
Expiration Date: December 8, 2015
Multiple Approval: Yes

Case No.: DIR-2014-3941-SPR-1A
CEQA No.: ENV-2013-3198-MND-REC1
Incidental Cases: ZA-2013-3197-CU-ZV-ZAA-SPR-PA1
Related Cases: ZA-2013-3197-CU-ZV-ZAA-SPR
Council No.: 14
Plan Area: Central City Planning Area
Specific Plan: None
Certified NC: Downtown Los Angeles
GPLU: Regional Center
Zone: Commercial C2-4D
Applicant: 5 Olive Hill, LLC., Susan Kreusch

Representative: Armbruster Goldsmith & Delvac, LLP, Matt Dzurec

Appellant: CREED-LA

PROJECT LOCATION: 401-433 West 5th Street, 432-440 South Olive Street, and 429-441 South Hill Street

PROPOSED PROJECT: The project involves the construction, use and maintenance of a new seven-story and 24-story mixed-use project consisting of 660 residential apartment units and 13,872 square feet of commercial space.

APPEAL: Pursuant to Los Angeles Municipal Code Section 16.05-H, an **appeal** of the entire decision of the Director's approval of Site Plan Review for the construction, use and maintenance of a new seven-story and 24-story mixed-use project consisting of 660 residential apartment units and 13,872 square feet of commercial space.

RECOMMENDED ACTIONS:

1. **Deny** the appeal and **sustain** the decision of the Director for the construction, use and maintenance of a new seven-story and 24-story mixed-use project consisting of 660 residential apartment units and 13,872 square feet of commercial space, pursuant to the provisions of Los Angeles Municipal Code Sections 16.05.
2. **Adopt** the Addendum to Mitigated Negative Declaration No. ENV-2013-3198-MND (Case Reference No. ENV-2013-3198-MND-REC1) pursuant to CEQA Guidelines Section 15074.
3. **Advise** the applicant that, pursuant to California State Public Resources Code Section 21081.6, the City shall monitor or require evidence that mitigation conditions are implemented and maintained

throughout the life of the project and the City may require any necessary fees to cover the cost of such monitoring.

4. **Advise** the applicant that pursuant to State Fish and Game Code Section 711.4, a Fish and Game Fee is now required to be submitted to the County Clerk prior to or concurrent with the Environmental Notice of Determination (NOD) filing.

MICHAEL J. LOGRANDE
Director of Planning



Jae H. Kim
Associate Zoning Administrator



Jane Choi, AICP
City Planner



Oliver Netburn, City Planning Associate
Hearing Officer
Telephone: (213) 978-1382

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, Room 532, City Hall, 200 North Spring Street, 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 agendaed 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 these 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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- Exhibit C – Plans: Renderings, Site Plan, Elevations, and Landscape Plan
- Exhibit D – Addendum to Mitigated Negative Declaration No. ENV-2013-3198-MND
 - (Case Reference No. ENV-2013-3198-MND-REC1) & Mitigation
 - Monitoring Program for ENV-2013-3198-MND-REC1
- Exhibit F – CREED-LA Appeal

PROJECT ANALYSIS

Project Summary

The project involves the construction, use and maintenance of a unified development that consists of a mixed-use high-rise tower and a mixed-use mid-rise tower with an average floor area ratio of 6:1 and a total floor area of approximately 593,902 square feet. The project includes 660 apartments units and approximately 13,872 square feet of commercial uses.

The applicant requested a Site Plan Review for a mixed-use project and a concurrent filing of a Plan Approval of a previously approved Zone Variance to allow 594 standard parking stalls and 130 trees for 660 residential units under ZA-2013-3197-CU-ZV-ZAA-SPR-PA1.

Background

The subject site is located in the Central City Community Plan and has a Regional Center Commercial land use designation. The project site is an approximately 2.27 acre site, consisting of seven parcels encompassing the southern portion of the block bounded by Olive Street to the west, Hill Street to the east, 5th Street to the south and 4th Street to the north. The site is currently improved with a surface parking lot that will be demolished.

The project site is designated as Historic Cultural Monument No. 61 for the now-demolished Philharmonic Auditorium. Although the former historic structure had been previously demolished, the site is still designated as a City-designated Historic Cultural Monument and the project has been conditioned to incorporate a commemorative or interpretative display that references the Philharmonic Auditorium.

The site is zoned C2-4D with a Height District 4 allowing a FAR of 13:1. However, the 'D' limitation attached to the zone restricts the property's development to a FAR of 6:1, unless approval from the Community Redevelopment Agency granting a Transfer of Floor Area (TFAR) was attained.

In 2008, the City Council and the Community Redevelopment Agency of Los Angeles (CRA), acting in concert, granted a Transfer of Floor Area approval to allow a floor area to exceed 6:1 as permitted by the underlying zoning and certified an Environmental Impact Report (EIR) for the development of 790 condos, a 242 room hotel, and 32,000 square feet of commercial space on the property. As part of the TFAR approval, a significant Public Benefits Package was also approved. In that same year, a vesting tentative tract map (VTT-67512-CN) for residential condominiums, hotel condominiums, and commercial condominiums was also approved for the prior project.

Subsequently, the applicant modified the project, and in 2014, the Zoning Administrator approved a Conditional Use to permit Floor Area Ratio averaging across the project site within a Unified Development not to exceed a 6:1 FAR; a Variance to allow 545 standard parking stalls in lieu of the required 615 standard stalls for the residential use; and a Variance to allow 88 trees in lieu of the required 154 trees for 615 residential units; a Zoning Administrator's Adjustment to waive the transitional height requirements for a C2-4D Zone property located within 100 feet of an OS Zone (Pershing Square), and a Site Plan Review for the development of mixed-use project with 615 dwelling units.

The applicant has now modified the proposed project to include an additional 45 units, for a total of 660 apartments units and a reduction in the commercial floor area from 16,968 square feet to approximately 13,872 square feet. The proposed does not substantially change the mass and scale of the project approved in 2014.

The new project is a unified development that consists of a mixed-use high-rise tower and a mixed-use mid-rise tower with an average floor area ratio of 6:1 and a total floor area of approximately 593,902 square feet. The project will consist of a mixed-use tower building (the Tower) located on the southwest portion of the property with 348 residential units and approximately 5,820 square feet of commercial uses within a 24-story building, with a maximum height of 241 feet; and a mid-rise mixed-use building (the Mid-Rise) with 312 residential units and approximately 8,052 square feet of ground floor commercial uses within a seven-story building, with a maximum height of 98 feet.

Under a separate action, on September 24, 2015, the project was granted a Lot Line Adjustment (Case No. AA-2014-3856-PMEX) to reconfigure the existing parcels to create two separate parcels for the development of the Tower parcel and the Mid-Rise parcel.

The Tower and the Mid-Rise buildings would be operated and maintained as a unified development as defined in, and previously approved under LAMC 12.24-W,19 and some of the required parking, open space, and vehicular access for the Tower is provided within the Mid-Rise. The project would provide a total of 714 parking spaces; 71,652 square feet of open space which includes an 8,868 square-foot ground level paseo on the north side of property adjacent to the Metro 417 apartments (Subway Terminal Building); a 20,960 square-foot podium level deck consisting of a pool, spa, fire elements, planted areas, a barbecue area, and water features within the Mid-Rise and Tower; a 6,458 square-foot pool deck on the 23rd floor within the Tower; a 5,500 square-foot roof top deck on the Mid-Rise; 10,266 square feet of interior resident amenity spaces; and 19,600 square feet of private balconies.

General Plan Land Use Designation

The Central City Community Plan designates the subject property for Regional Center Commercial land uses with corresponding zones of CR, C1.5, C2, C4, C5, R3, R4, R5, RAS3 and RAS4. The subject property is zoned C2-4D.

Surrounding Properties

The surrounding neighborhood includes residential, commercial, office, and a public park. Adjoining properties include the Metro 417 residential building (Subway Terminal Building) to the north in the C2-4D Zone, Pershing Square and associated parking located south across 5th Street in the OS-1XL Zone, office uses (the SBC building and the Gas Company Tower) to the west across Olive Street in the C2-4D Zone, commercial and office uses to the east across Hill Street in the C2-4D Zone, and to the southeast abutting the site is residential uses (Title Guarantee Building) in the C2-4D Zone.

Street and Circulation

Hill Street is a Modified Avenue II (Secondary Highway), dedicated to a width of 86 feet and improved with asphalt roadway and concrete curb, gutter and sidewalk.

5th Street is a Modified Avenue II and Modified Avenue III (Secondary Highway), dedicated to a width of 69 feet and improved with asphalt roadway and concrete curb, gutter and sidewalk.

Olive Street is a Modified Avenue II (Secondary Highway), dedicated to a width of 80 feet and improved with asphalt roadway and concrete curb, gutter and sidewalk.

Site Related Cases and Permits

Case No. ZA 2013-3197-CU-ZV-ZAA-SPR: On April 25, 2014, the Zoning Administrator approved a Conditional Use to permit Floor Area Ratio averaging across the project site within a Unified Development not to exceed a 6:1 FAR; a Variance from Section 12.21-A,5(c) to allow 545 standard parking stalls in lieu of the required 615 standard stalls for the residential use; and a Variance from Section 12.21-G,2(a)(3) to allow 88 trees in lieu of the required 154 trees for 615 residential units; a Zoning Administrator's Adjustment from Section 12.21.1-A,10 to waive the transitional height requirements for a C2-4D Zone property located within 100 feet of an OS Zone (Pershing Square), and a Site Plan Review for the development of mixed-use project with 615 dwelling units.

Case No. AA-2014-3856-PMEX: A Lot Line Adjustment was submitted on October 16, 2014 to request a lot line adjustment between two lots, no action has been taken to date.

Case No. AA-2013-3428-PMEX: On April 29, 2014, the Advisory Agency approved a Parcel Map Exemption to reconfigure the existing parcels to create separate parcels for the development of the Tower and Mid-Rise.

Case No. ZA 2008-1049(ZV): On June 11, 2008, the Zoning Administrator approved a Variance to permit 88 trees in lieu of the required 198 trees for 790 residential units and in conjunction with the construction, use and maintenance of a 1,286,792 square foot mixed use project.

Case No. VTT-67512: On May 15, 2008, the Deputy Advisory Agency approved a Vesting Tentative Tract Map to allow the construction of a 790-unit residential condominium, 212-unit hotel condominium, and 400-unit commercial condominium within 27,000 square feet of floor area.

CRA File No. 5260: The Community Redevelopment Agency approved the Transfer of Floor Area Ratio rights for the proposed project on April 17, 2008.

Ordinance 164,307: The Ordinance became effective January 30, 1989 and changed the zoning of the subject site from C5-4 and (Q)CM-4 to C2-4-D. The site is within subarea 1085 which limits the floor area ratio to 6:1, except for projects approved under Section 418 (Transfer of Floor Area) of the Redevelopment Plan for the Central Business District Redevelopment Project.

Appeal

On May 27, 2015, CREED-LA filed an appeal on DIR-2014-3941-SPR, the adequacy of the environmental review and the adoption of the Addendum to Mitigated Negative Declaration No. ENV-2013-3198-MND (Case Reference No. ENV-2013-3198-MND-REC1). Specifically, the

appeal addressed the use of an EIR adopted in 1985 and the Supplemental Final EIR adopted in 2008 as the basis for the Addendum.

In 2014, the Zoning Administrator adopted as the appropriate form of documentation to meet the statutory requirements of CEQA Addendum No. 1 to the previously adopted Subsequent Final EIR SCH No. 2007041044. In 2015, the Zoning Administrator and Director of City Planning adopted Addendum No. 2 to the previously adopted Subsequent Final EIR SCH No. 2007041044.

Subsequent to the appeal filing, the applicant and the appellant have been in negotiations in an effort to address the appellant's concerns. As a result of those negotiations, the applicant has made certain changes to the project which they will present to the Commission at the December 8, 2015 hearing.

Nevertheless, staff finds that the initial action of the Director in adopting Addendum No. 2 to the previously adopted Subsequent Final EIR SCH No. 2007041044 is the appropriate form of documentation to meet the statutory requirements of CEQA.

Conclusion

Staff recommends that the Central Area Planning Commission deny the appeal and sustain the Director's approval of the Site Plan Review for the construction, use and maintenance of a new seven-story and 24-story mixed-use project consisting of 660 residential apartment units and 13,872 square feet of commercial space.

Staff also recommends the adoption of the Addendum to Mitigated Negative Declaration No. ENV-2013-3198-MND (Case Reference No. ENV-2013-3198-MND-REC1) and the associated Mitigation Monitoring Program.

Vicinity Map



Address: 429 S. HILL STREET



14-353

EXHIBIT A

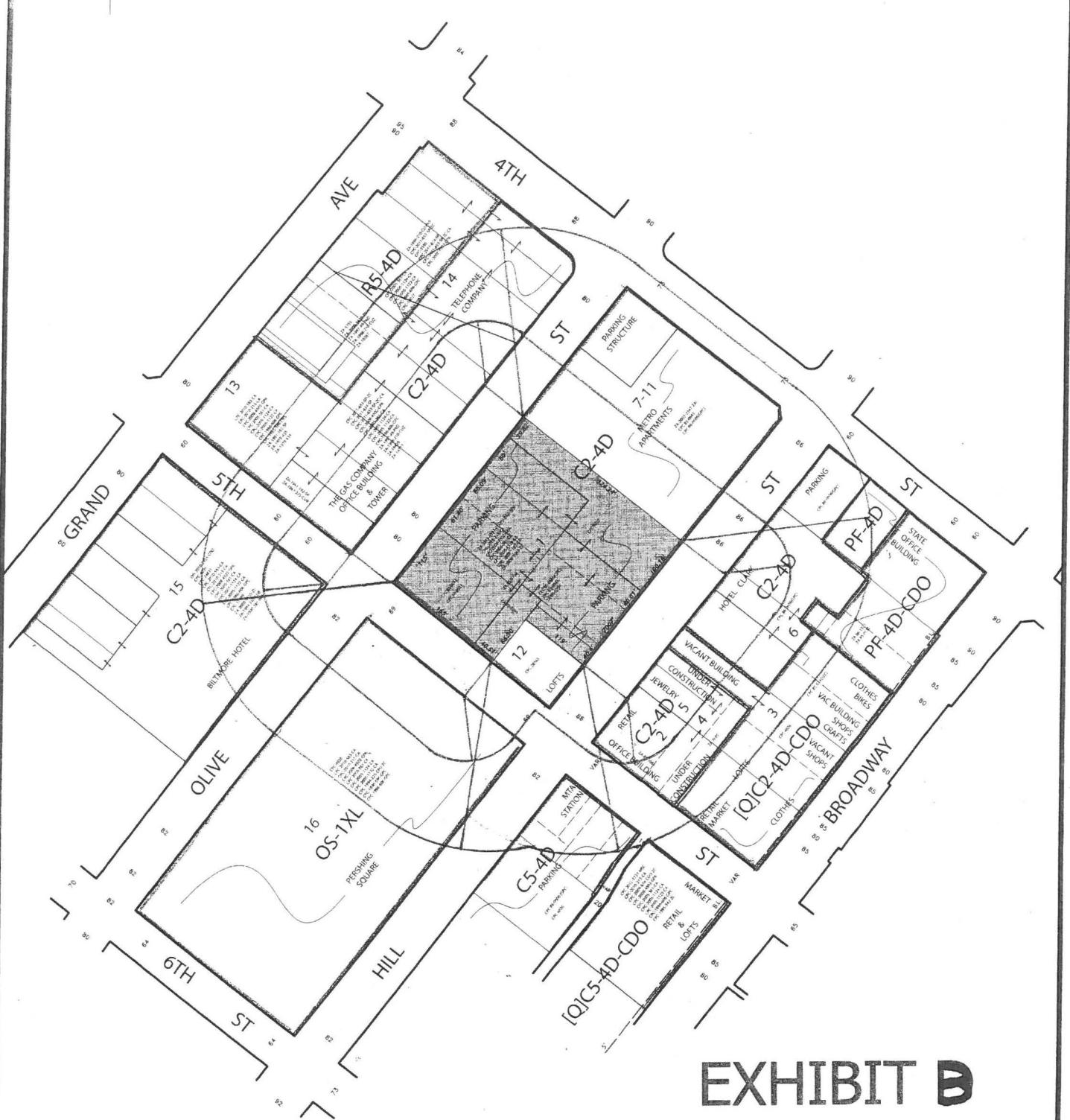
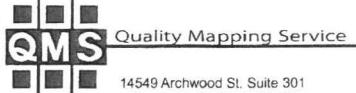


EXHIBIT B

SITE PLAN REVIEW



14549 Archwood St. Suite 301
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qmapping@qesqms.com

DRAWN BY:

THOMAS BROTHERS
Page: 634 Grid: F-4

LEGAL

"SEE APPLICATIONS"

CONTACT: ARMBRUSTER GOLDSMITH & DELVAC LLP

ASSESSOR PARCEL NUMBER:
5149-027-0136
5149-028-(003, 004, 009, 011-013)
SITE ADDRESS: 429 S HILL ST

CD: 14

CT: 2075.02

PA: 110 - CENTRAL CITY

USES: FIELD

CASE NO:

SCALE: 1" = 100'

D.M.: 129A211, 129A209,
130-5A211, 130-5A209

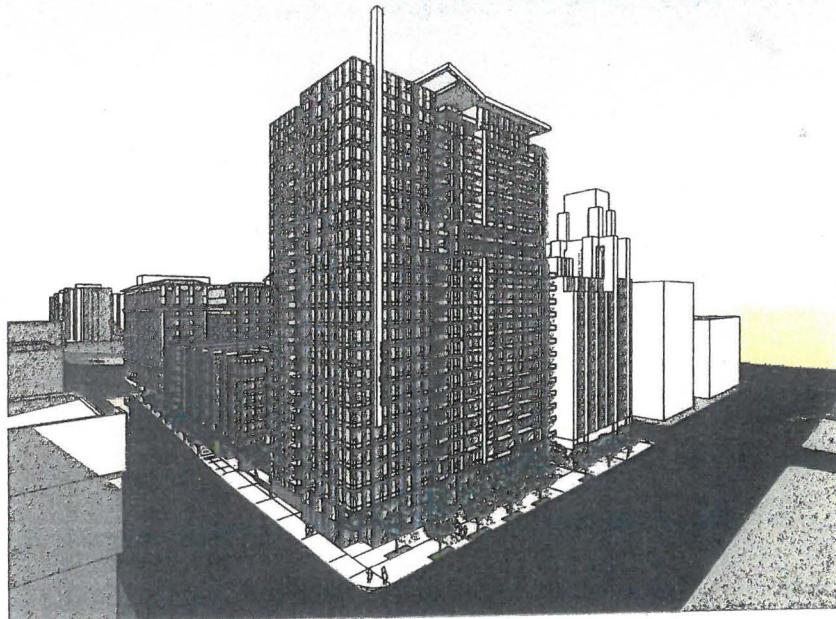
PHONE: 310-209-8800

DATE: 10-16-14

Update: _____

NET AC: 2.27

NORTH



SITE PLAN REVIEW UNIFIED DEVELOPMENT

11/20/2014

0000-00000-000



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TITLE SHEET
DEMOLITION PLAN
GRAVING PLAN
UTILITY PLAN
EROSION CONTROL PLAN

437 S. Hill St.
437 S. HILL STREET, LOS ANGELES, CA 90017

Macfarlane Partners

EXHIBIT C

DATE	REASON
11-20-2014	SP-01
PROJECT NUMBER	138825
SCALE	SP-01

CONCEPTUAL LANDSCAPE DIAGRAM

WATER



EARTH



LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS



EXHIBIT "A"

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Case No. ZA 2013-3197 (PA1)

AHBE

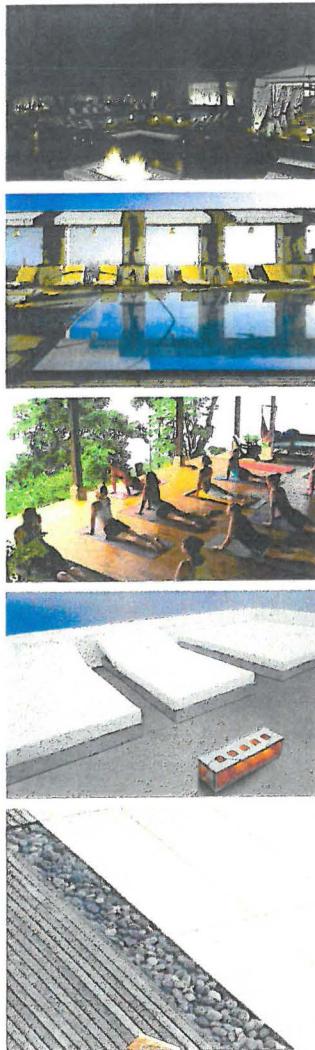
DIR-2014-3441-51

437 S. Hill St.
437 S. Hill Street, Los Angeles, CA 90017

Marinone Partners

DIVISION STATE RELATION WITH PROJECT

MID-RISE PODIUM LANDSCAPE PLAN

LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS

2014 NOV



- ① Yoga Deck Area
- ② A.D.A. Access Lift
- ③ Stairs to Pool Area
- ④ Step Seating
- ⑤ Pool Access Gate
- ⑥ Pool
- ⑦ Spa
- ⑧ Water Feature
- ⑨ TV Lounge Area
- ⑩ Lounge Area
- ⑪ Group Dining Area
- ⑫ Bar and Seating
- ⑬ BBQ
- ⑭ Fire Place & TV
- ⑮ Gaming Table
- ⑯ Overhead Trellis Structure
- ⑰ Shower
- ⑱ Day Beds



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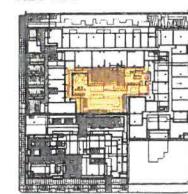
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KEY MAP

MID-RISE PODIUM
LANDSCAPE PLAN

DATE: 11-20-2014 REVISION: 1

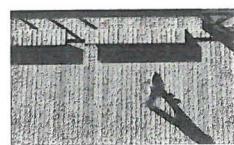
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FILE NUMBER: SP-05

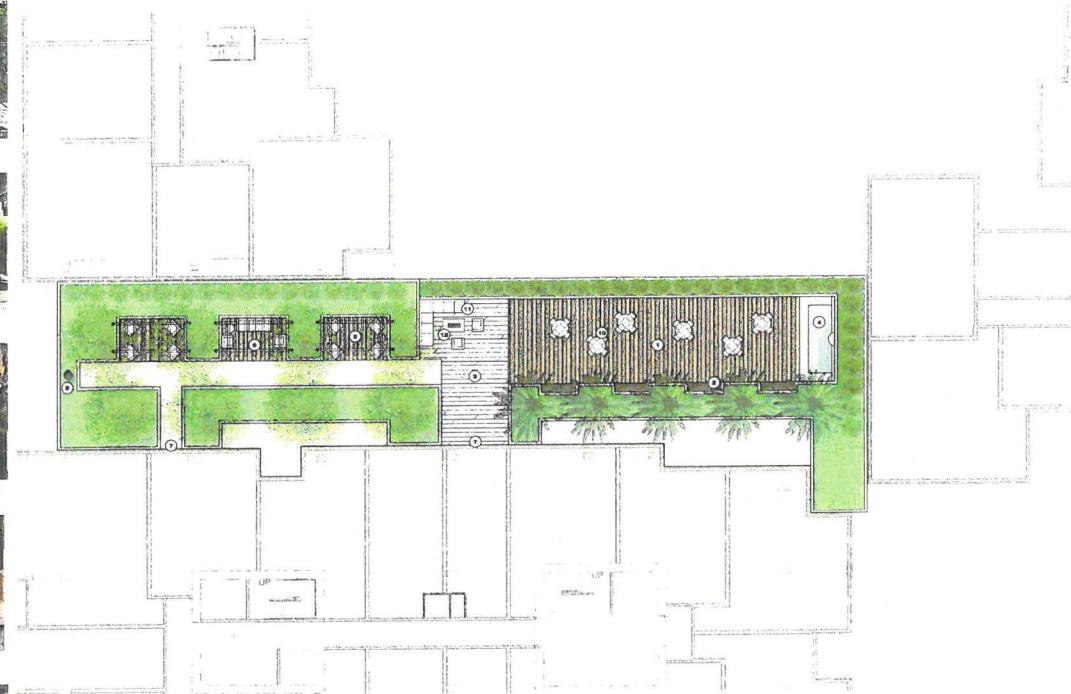
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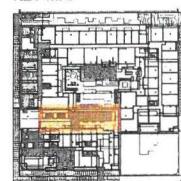
TOWER PODIUM DECK LANDSCAPE PLAN



LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS



KEY MAP



437 S. Hill St.
437 S. HILL STREET, LOS ANGELES, CA 90007

Michaeline Partners

TOWER PODIUM DECK
LANDSCAPE PLAN

DATE: 11-20-2014
REVISION: SP-06
PROJECT NUMBER: 138825
SCALE: SP-06

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D12-2014-3641-SPR

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MID-RISE ROOF LANDSCAPE PLAN



LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS



- ① Elevator
- ② Wood Deck
- ③ Concrete Deck
- ④ Event Spaces
- ⑤ Seating
- ⑥ Adjacent Streetscape



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437 S. HILL STREET, LOS ANGELES, CA 90017
MacFarlane & Partners

REVISION DATE REVISION DATE ISSUE

MID-RISE ROOF
LANDSCAPE PLAN

DATE
11-20-2014
PROPERTY NUMBER
138825
SCALE

REVISION
SP-07

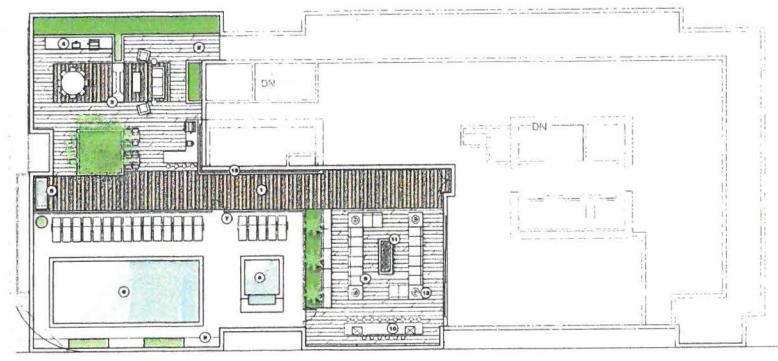
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DIR 2014-3441 SPR

AHBE

TOWER ROOF LANDSCAPE PLAN



LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS



- ① Wood Deck
- ② Concrete Deck
- ③ Double Sided Fireplace
- ④ BBQ
- ⑤ Water Feature
- ⑥ Pool
- ⑦ Pool Gate
- ⑧ Spa
- ⑨ Built-in Banquet Seating
- ⑩ Transept Bar Table
- ⑪ Fire Table
- ⑫ Lighting
- ⑬ Green Wall
- ⑭ Adjacent Streetscape

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437 S HILL STREET, LOS ANGELES, CA 90017
Madame Partners



NORTH

EXHIBIT "A" AHBE
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Case No. ZA 2013-3197 (PA1)

DIR 2014-2941-5912

TOWER ROOF
LANDSCAPE PLAN

DATE 11-20-2014
PROJECT NUMBER 138825
SCALE SP-08

REVISION SP-08

PLANTING IMAGE

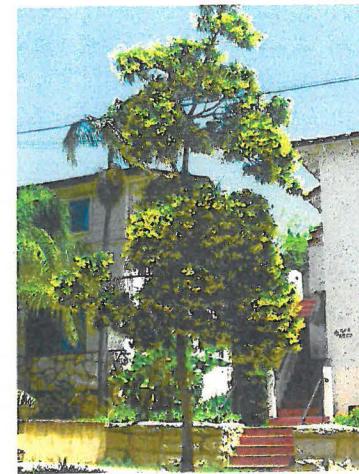
TREES



Platanus x acerifolia
London Plane Tree



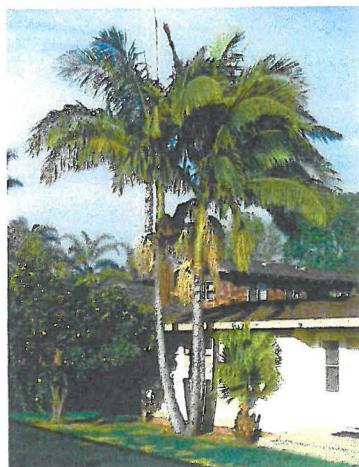
Koelreuteria paniculata
Golden Rain Tree



Hymenaea courbaril
Sweet Sham Tree



Olea europaea
Olive Tree



Archontophoenix alexandrae
King Palm

LOS ANGELES, CALIFORNIA
437 SOUTH HILL APARTMENTS

EXHIBIT "A"

Page No. 9 of 31
Case No. ZA 2013-3197(PA1)

DIR 2014-3991-SPR

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Ankrom Moisan

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T 213.688.6448

437 S. HILL ST.
437 S. HILL STREET, LOS ANGELES, CA 90017
Madeline Partners

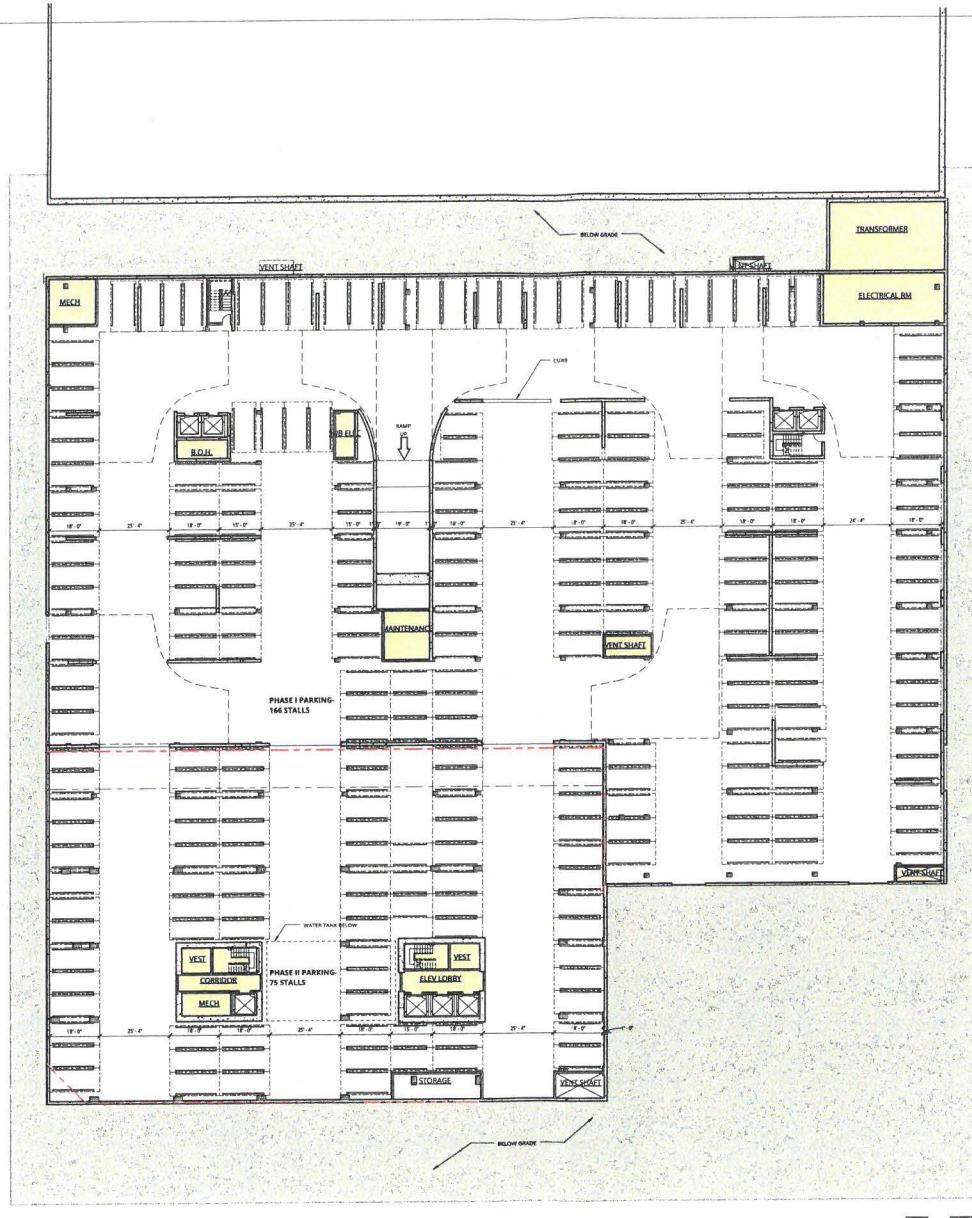
ENVIRON DATE BEARING FOR POLICE

PLANTING IMAGE

DATE 11/20/2014 REVISION

PROJECT NUMBER 138825 IN/OUT DATE

SCALE SP-09



1 LEVEL B2 SPR

SP-10 1'-0" x 1'-0"

EXHIBIT "A"
Page No. 10 of 31
Case No. ZA 2013-5197 (PA)
DIR 2014-3941-SPR

4725 SMALLOAK AVENUE, SUITE 100
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Macarthur Partners

REVISION DATE REASON FOR REVISION

11-20-2014

138825

LEVEL B2 PLAN

DATE
11-20-2014

PROJECT NUMBER
138825

DRAWING NUMBER
SP-10

SCALE
1/16" = 1'-0"



EXHIBIT "A"
Page No. 11 of 31
Case No. ZA 2013-3197
(PAI)

DIR 2014-3941-500

437 S. HILL AVENUE, SUITE 100
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Madarane Partners

REVISION DATE REASON FOR ISSUE

LEVEL B1 PLAN

DATE 11-29-2014 REVIEW

PROJECT NUMBER 138825 DRAWING NUMBER SP-11

SCALE 1/16" = 1'-0"

1 LEVEL 1

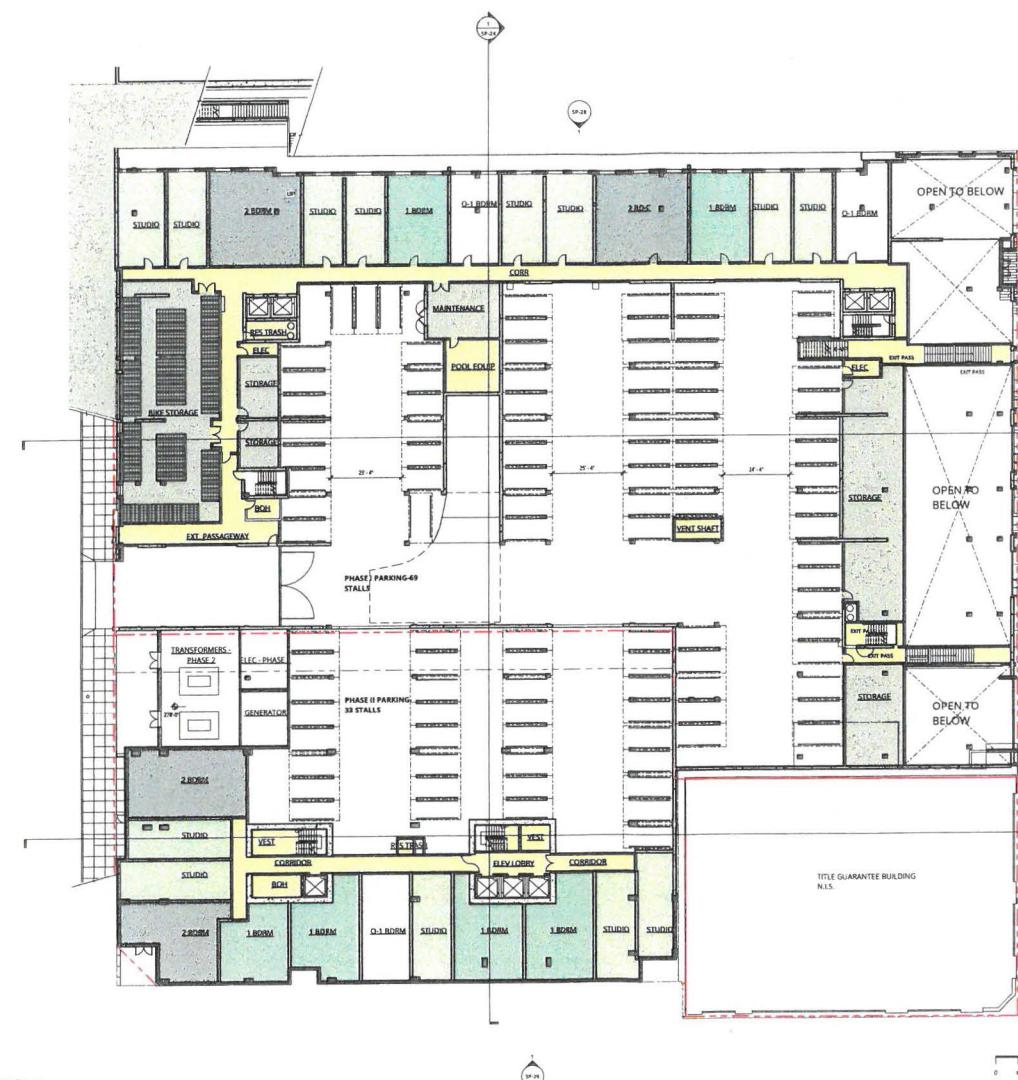


EXHIBIT "A"
 Page No. 13 of 31
 Case No. ZA 2013-3197(PA)

DIR 2014-3941-SPR



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 T 213.626.0446

437 S. Hill St.
 437 S. HILL STREET, LOS ANGELES, CA 90017
 Madefane Partners

REVISION DATE REASON FOR ISSUE

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EXHIBIT "A"

DIR 2014-3944 -SPD

LEVEL 03 PLAN (TYP.)

437 S. Hill St.
437 S HILL STREET, LOS ANGELES, CA 90017



1 LEVEL 3 (TYP.)

DATE 11-20-2014	REVISION SP-15
PROJECT NUMBER 138825	SP-15
SCALE 1/16" = 1'-0"	SP-15

1 LEVEL 08 - MID-RISE ROOF PLAN

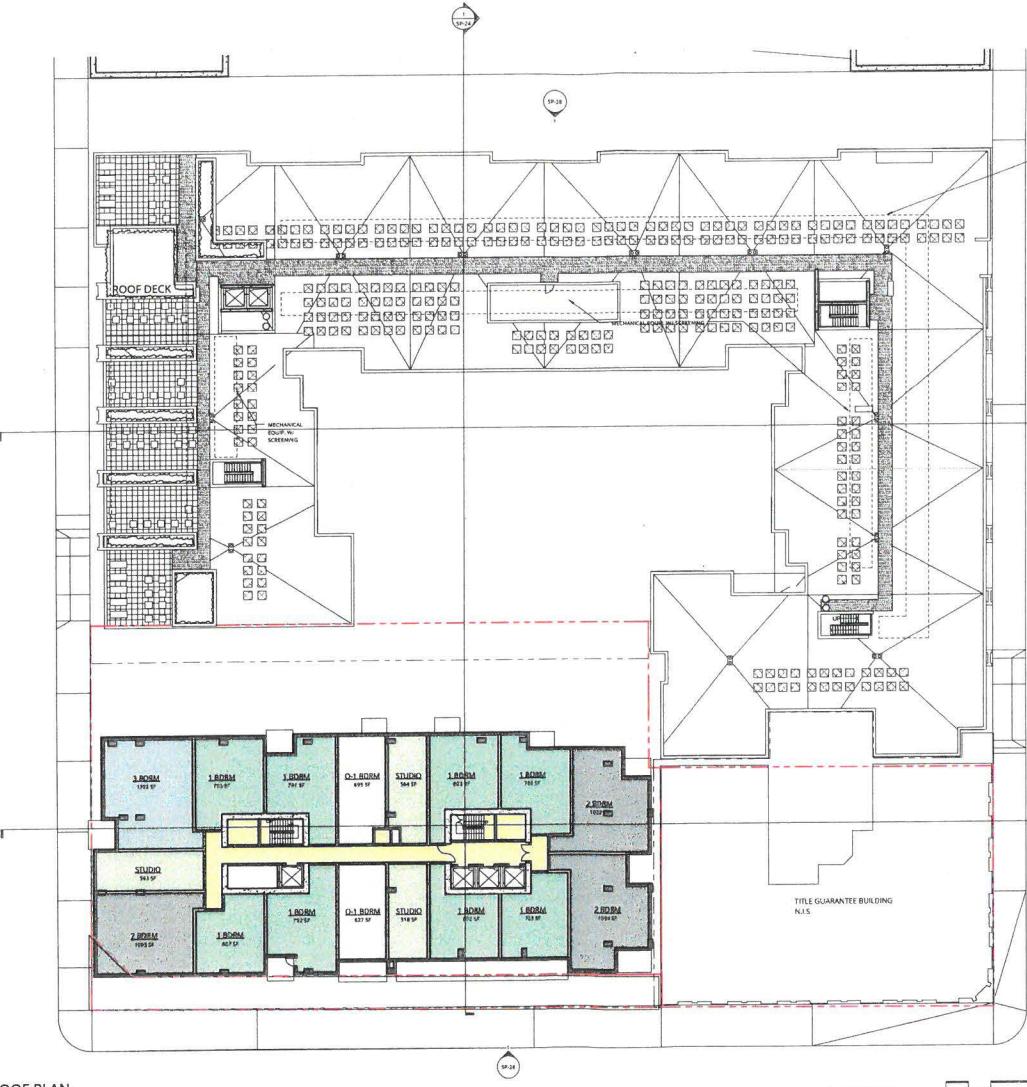


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Page No. 16 of 31
Case No. ZA 2013 3197 (P41)

DIR 2014-3941-SPR

437 S. Hill St.
437 S. Hill Street, Los Angeles, CA 90017
Marjane Partners

REVISION	DATE	REASON FOR REVISION
1	11-20-2014	Revision 1

LEVEL 08 PLAN-
MID-RISE ROOF PLAN

DATE	REVISION
11-20-2014	1

PROJECT NUMBER: 138825
SHEET NUMBER: SP-17
SCALE: 1/16" = 1'-0"



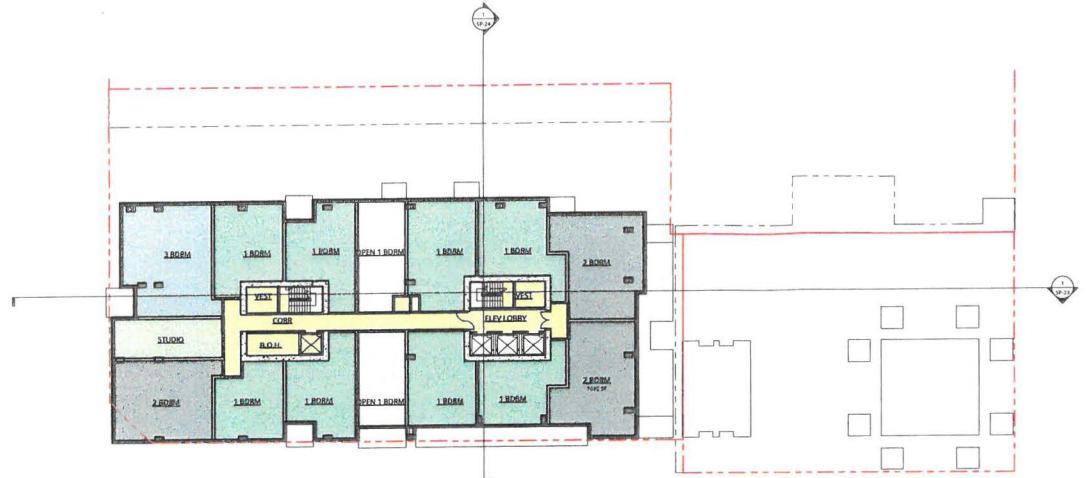
1210 MACADAM AVENUE, SUITE 100
PORTLAND, OR 97219
P 503.224.7100
111 SOUTH MAIN STREET, SUITE 400
DETROIT, MI 48226
T 208.576.1600

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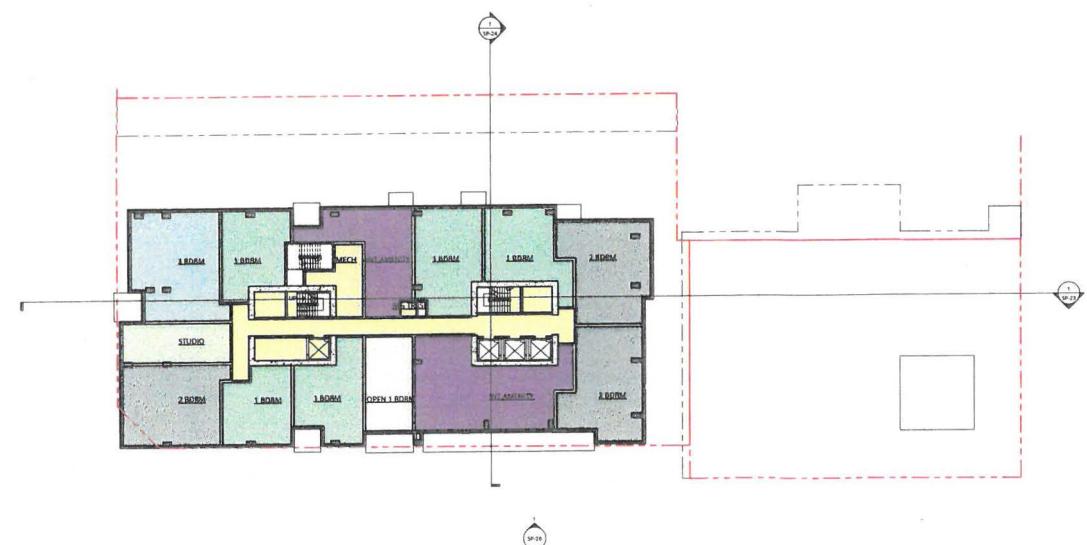
MOLLENHAUER GROUP
2320
215 W. 2nd Street, Office 1000
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LANDSCAPE
437 S. HILL ST.
Los Angeles, CA 90017
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1 LEVEL 15-21 (TOWER)



2 LEVEL 22 (TOWER)

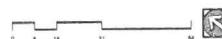


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Page No. 17 of 31
Case No. ZA 2013-3197 (PH)

DIR-2014-3941-SPR

LEVEL 15/16-21 PLAN

DATE	11-20-2014	REVISION	
PROJECT NUMBER	138825	CALL NUMBER	
SCALE	1/16" = 1'-0"	SP-19	

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LANDSCAPE
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Los Angeles, CA 90017
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2 TOWER AMENITY DECK

11-20-1 1-16" x 7-2"



Ankrom Moisan

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437 S. Hill St.
437 S. HILL STREET, LOS ANGELES, CA 90017
Maddalon Partners

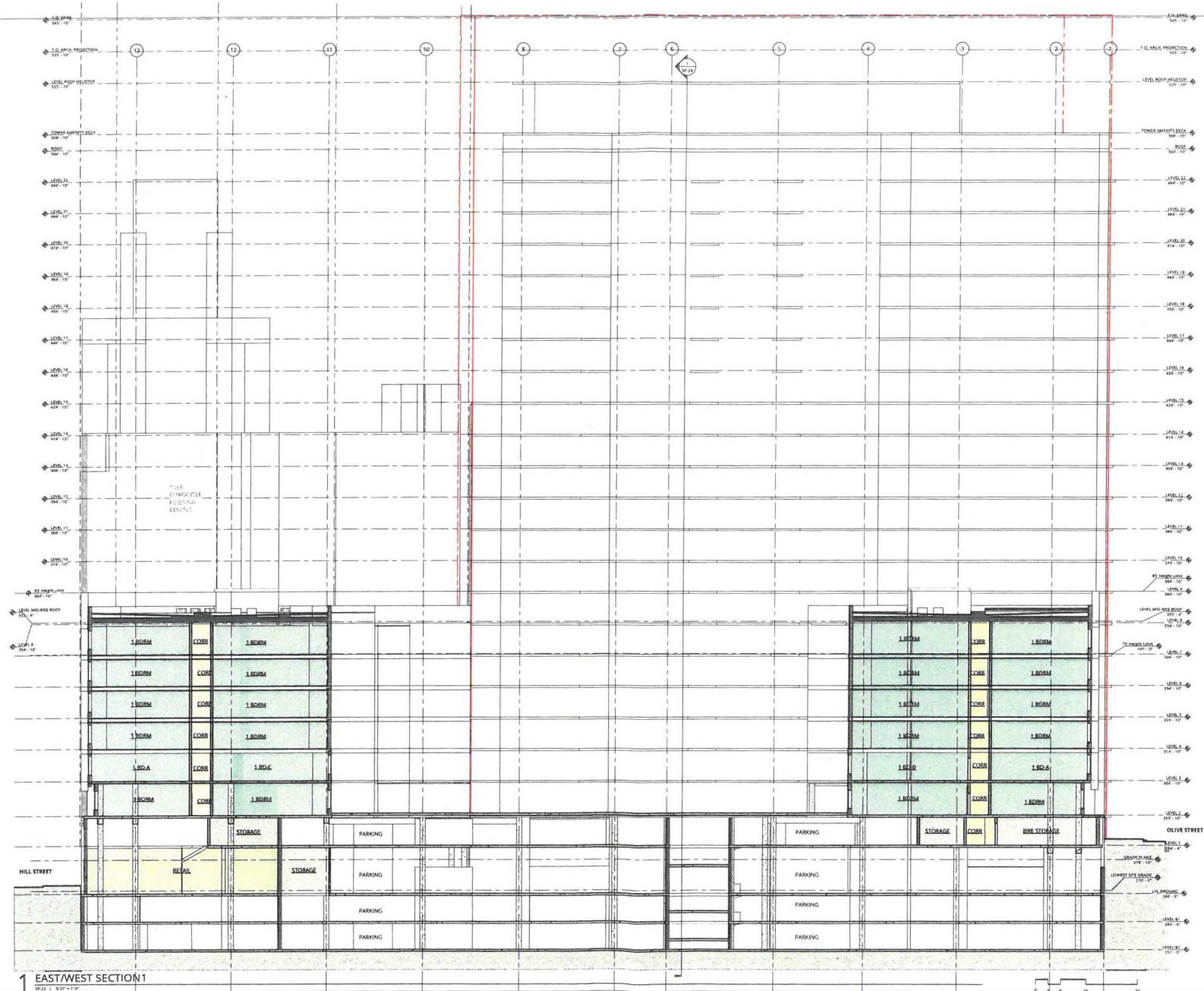
EXHIBIT "A"
Page No. 18 of 21
Case No. ZA 2013-3197 (P41)

D1R-2014-3941-SPR



TOWER ROOF &
HELISTOP ROOF PLAN

DATE: 11-20-2014
REVISION: 0
PROJECT NUMBER: 138825
DRAWING NUMBER: 138825
SCALE: 1/16" = 1'-0"
SP-20



437 S. Hill St.
437 S HILL STREET, LOS

8721 SW MACADAM AVE.
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SEATTLE, WA 98104
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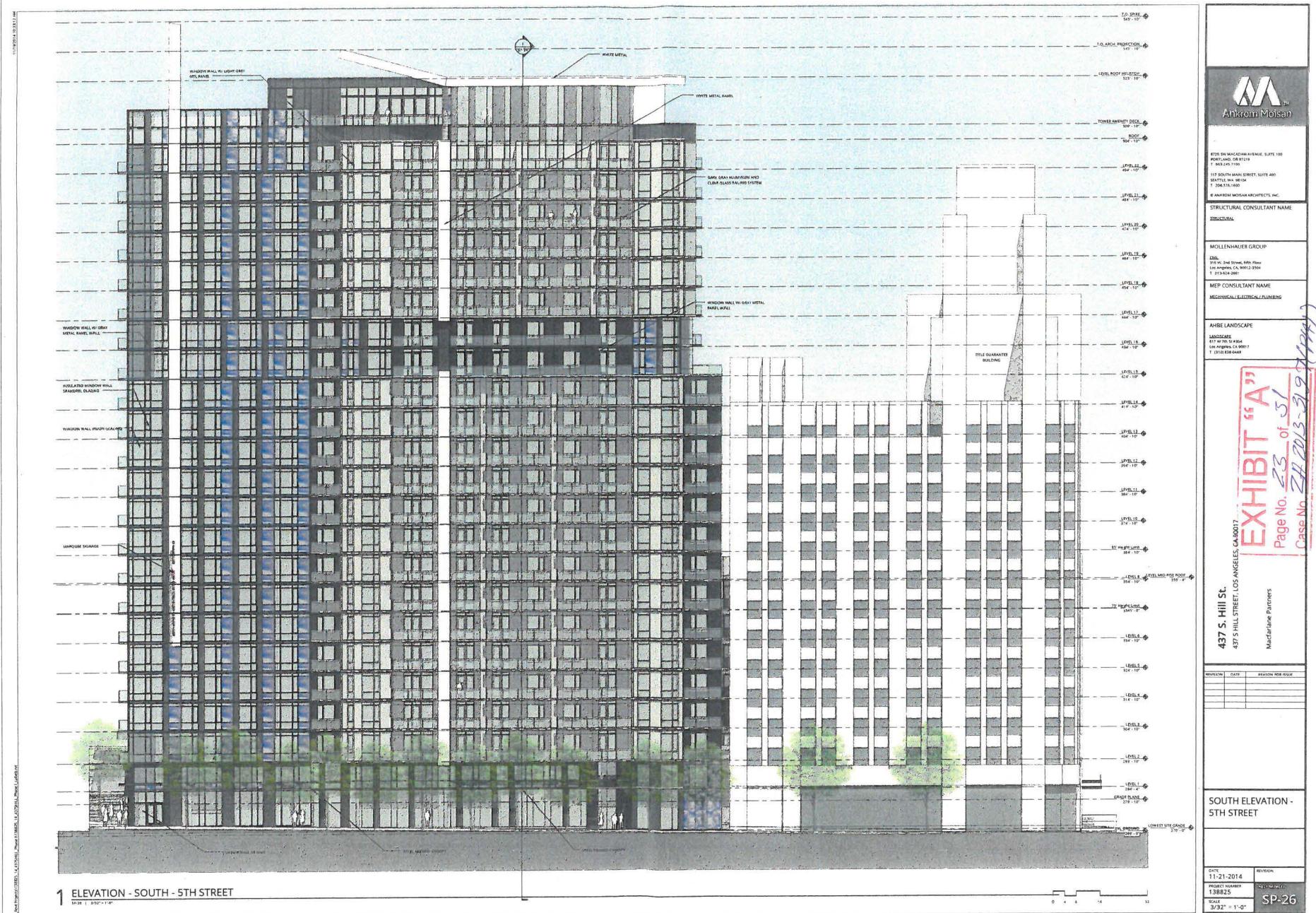
MOLLENHAUER GROUP
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617 W 7th St #304
Los Angeles, CA 90017
T: (310) 858-0448

437 S. Hill St.
437 S HILL STREET, LOS

EAST/WEST SE
MID-RISE

DATE 11-20-2014	REVISI
PROJECT NUMBER 138825	DATE
SCALE 3/32" = 1'-0"	S



1 ELEVATION - SOUTH - 5TH STREET

DIB 2014-391-500



EXHIBIT "A"
24 of 31
Page No. 2013-3197(PAH)
Case No. 2013-3197(PAH)

437 S. Hill St.
437 S. HILL STREET, LOS ANGELES, CA 90017
Marchaline Partners

WEST ELEVATION -
OLIVE STREET

DATE: 11-21-2014 REVISION: 1
PROJECT NUMBER: 138825 DRAWING NUMBER: 1
SCALE: 3/32" = 1'-0"

11/10/2014 12:22:00 AM
11/10/2014 12:22:00 AM

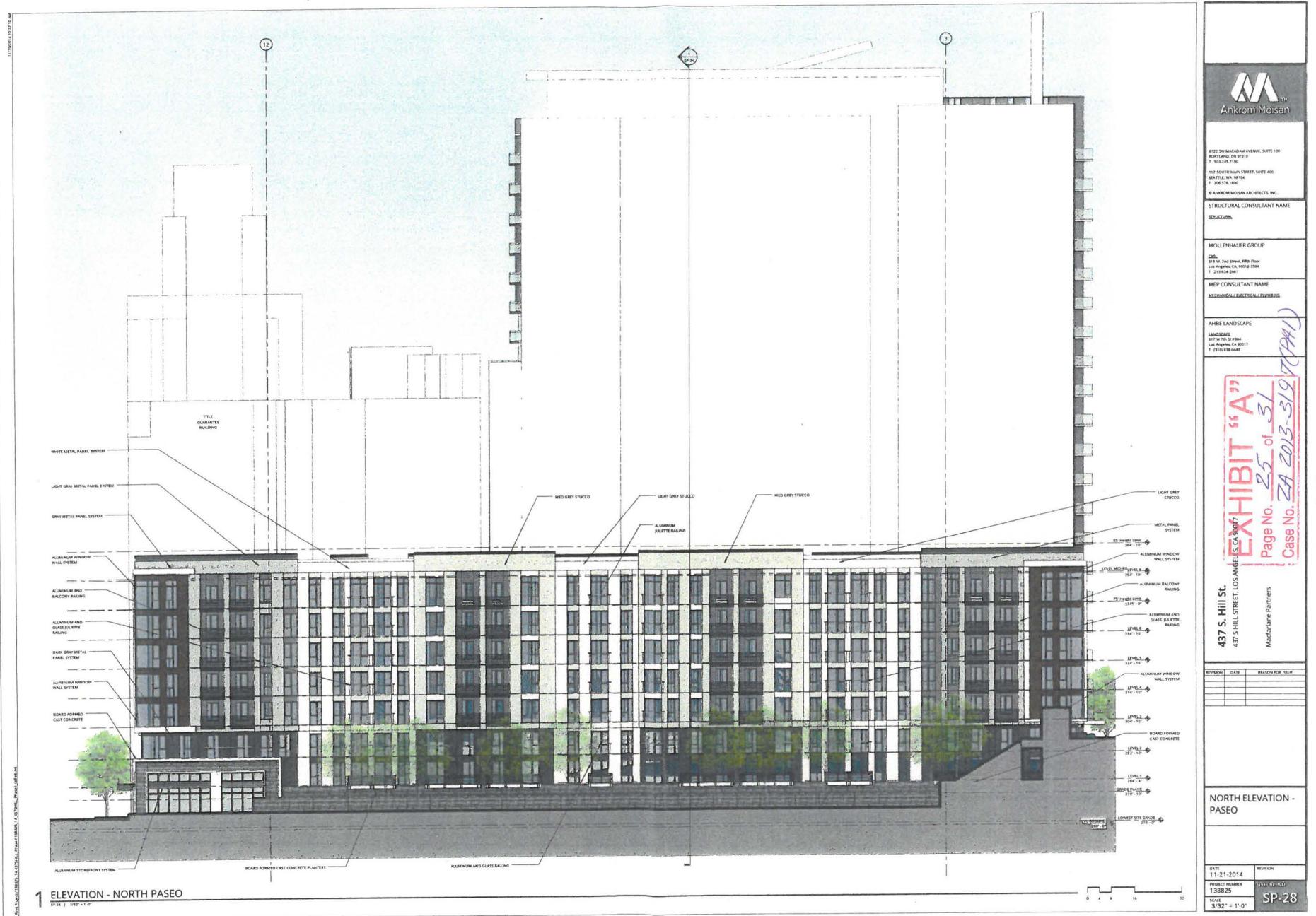
ANKROM MOISAN
1212 SW MACADAM AVENUE, SUITE 100
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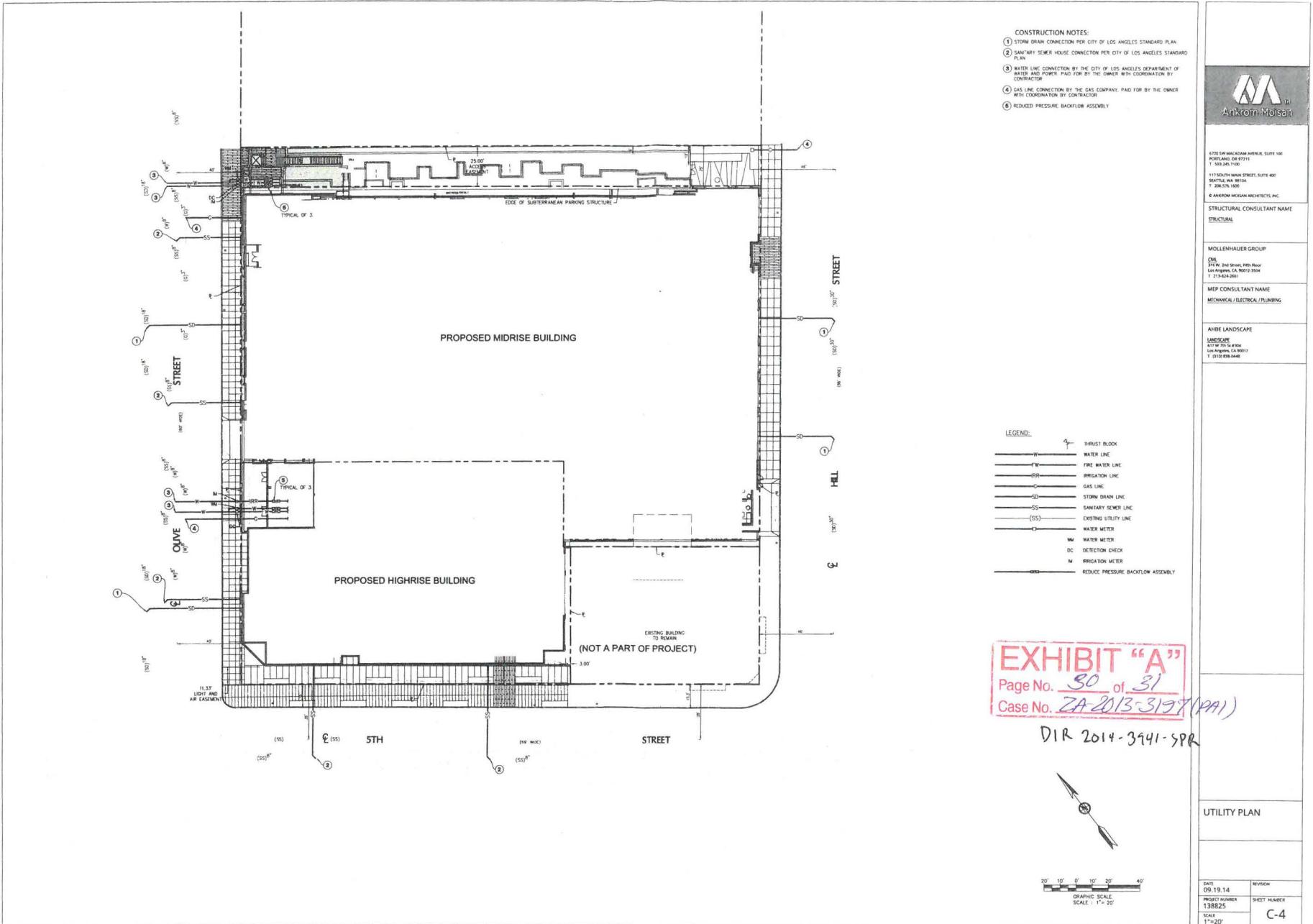
MEP CONSULTANT NAME
MECHANICAL/ELECTRICAL/PLUMBING

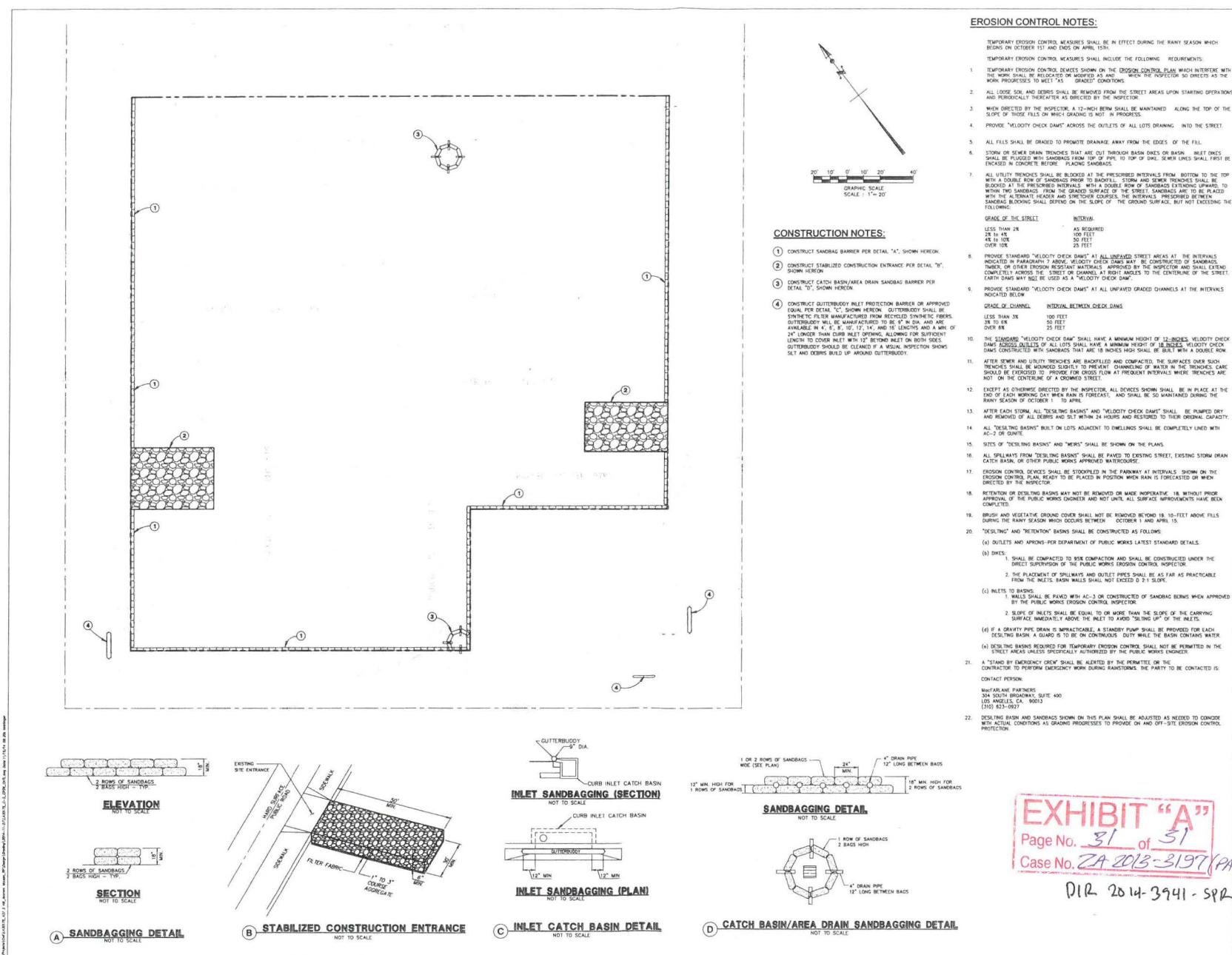
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Los Angeles, CA 90017
T 213.618.6448

DIR 2014-3641-SPR



D11-2014-3491-SR





MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

APPEAL TO THE: Central Area Planning Commission

(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: DIR-2014-3941-SPR-1; ENV-2013-3198-MND-REC1

PROJECT ADDRESS: 401-433 West 5th Street, 432-440 South Olive Street, 429-441 South Hill Street

FINAL DATE TO APPEAL: May 27, 2015

TYPE OF APPEAL:

1. Appeal by Applicant
2. Appeal by a person, other than the applicant, claiming to be aggrieved
3. Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: CREED LA

■ Are you filing for yourself or on behalf of another party, organization or company?

Self Other: _____

Address: 501 Shatto Place, Suite 200

Los Angeles, CA Zip: 90020

Telephone: (877) 810-7473 E-mail: jeff@creedla.com

■ Are you filing to support the original applicant's position?

Yes No

REPRESENTATIVE INFORMATION

Name: Ellen Wehr, Adams Broadwell Joseph & Cardozo

Address: 520 Capitol Mall, Suite 350

Sacramento, CA Zip: 95814

Telephone: (916) 444-6201 E-mail: ewehr@adamsbroadwell.com

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

Entire

Part

Your justification/reason must state:

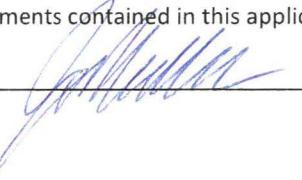
- The reasons for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
 - Master Appeal Form
 - Justification/Reason for Appealing document
 - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K “Appeals from Building Department Determinations” are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

“If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency’s elected decision-making body, if any.”
--CA Public Resources Code § 21151 (c)

I certify that the statements contained in this application are complete and true:

Appellant Signature: 

Date: 5/27/15

Planning Staff Use Only

Amount	Reviewed and Accepted by	Date
Receipt No.	Deemed Complete by	Date

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)

ADAMS BROADWELL JOSEPH & CARDOZO

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ADAM J. REGELE
ELLEN L. WEHR

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SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080
TEL: (650) 589-1660
FAX: (650) 589-5062

May 27, 2015

Central Area Planning Commission
c/o: Los Angeles Development Service Center
201 N. Figueroa Street, 4th Floor
Los Angeles, CA 90012

Re: Reasons for Appeal (Case No. DIR-2014-3941-SPR, ZA-2013-3197-CU-ZV-ZAA-SPR-PA1, ENV-2013-3198-MND)

Dear Commissioners:

The Coalition for Responsible Equitable Economic Development (“CREED LA”) files this appeal pursuant to Municipal Code sections 12.27-U and 16.05-H regarding the City Planning Director and Zoning Administrator’s May 12, 2015 approval of modified variances, development plans, and site plan review for the Park Fifth mixed-use project located at 401-433 West 5th, 432-440 South Olive, and 429-441 South Hill Streets in downtown Los Angeles (“Project”). The Project is proposed by MacFarlane Partners (“Applicant”) and includes one high-rise 24-story building and one mid-rise 7-story building, with 660 residential apartment units, 13,872 feet of commercial space, and 714 parking spaces.

As explained more fully below, the Planning Director and Zoning Administrator abused their discretion in relying on an Addendum to the 2008 Supplemental Environmental Impact Report (“SEIR”) for a previously approved project, which was prepared by the City under the California Environmental Quality Act, Public Resources Code section 21000 et seq. (“CEQA”). The Addendum is significantly flawed and does not comply with the requirements of CEQA. The City may not approve the Project until the City prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant impacts, and incorporates all feasible mitigation measures to minimize those impacts.

I. INTEREST OF APPELLANT

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and their members and their families and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include Thomas Brown, Luther Medina, and John Ferruccio, who live, work, recreate and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LACK OF PUBLIC REVIEW AND COMMENT PERIOD, AND POTENTIAL NEED TO SUBMIT SUPPLEMENTAL POINTS ON APPEAL

On April 21, 2015, the City Planning Department provided a copy of the proposed Addendum to CREED LA, and indicated that the City would not be providing a public comment period or a hearing on the Project or the Addendum. Three days later, on April 24th, CREED LA submitted a written request for a public comment period and hearing, which pointed out that the project site has a long history of successive CEQA documents and approvals, that the proposed Addendum exceeded 100 pages in length, and that an initial review indicated that an

May 26, 2015

Page 3

Addendum was not appropriate.¹ CREED LA requested copies of the previous CEQA documents for the Project site, which the City provided. However, the City did not grant a public comment period or schedule a public hearing before approving the Project and the Addendum on May 12, 2015.

CREED LA only became aware of the recorded Covenant that attaches to the Project site after reviewing the 2008 SEIR.² CREED LA requested copies of the Covenant and related documents, which the City provided last week. The lack of a public comment period or a public hearing, coupled with insufficient time to review the complex history of project approvals, compromises our ability to fully understand the Project. For these reasons, we reserve the right to supplement these appeal points before the Project reaches the Area Planning Commission for hearing on this appeal, and/or before the CEQA issues raised herein reach the City Council on appeal.³

III. SUMMARY OF REASONS FOR APPEAL

The City approved an EIR for a different project on the Project site 30 years ago, in 1985. At that time the project included a hotel, an office tower, and retail space.⁴ The City approved a Supplemental EIR (SEIR) 23 years later for another project on the Project site. The City Council approved and recorded a Covenant with the previous project applicant, requiring a number of specific project features and public benefits. In 2014 the City Planning Director and Zoning Administrator improperly attempted to override these requirements without obtaining City Council approval.

The City proposes to continue its reliance on an outdated EIR and SEIR prepared for different projects that were proposed by different applicants long ago. Based on our review of the Addendum and its supporting documents, we conclude that the Addendum does not comply with the basic requirements of CEQA. The EIR and SEIR were prepared for different projects, and those documents are entirely inaccurate as applied to the current Project. The statement of overriding

¹ See attached.

² See attached.

³ See Pub. Resources Code § 21151(c) (if a nonelected decision-making body makes a determination or approval under CEQA, that determination or approval may be appealed to the agency's elected decision-making body).

⁴ Final SEIR, pp. VI-17 and VI-18 (2008).

considerations approved in 2008 has also been rendered inaccurate and misleading, and is no longer supported by substantial evidence.

Even if the current Project could be characterized as the same “project” that was approved in 1985 or 2008, changes in the project and in the circumstances under which the project is undertaken, along with new information of substantial importance, require the City to prepare a subsequent or supplemental EIR. The Project requires major revisions to the SEIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects. In addition, substantial changes in the circumstances under which the Project is undertaken require major revisions to the SEIR, due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects. Finally, mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR and SEIR would substantially reduce one or more significant effects on the environment.

The Addendum contains errors, fails to meet the informational and public participation requirements of CEQA, and does not provide evidence to support the City’s environmental conclusions. Moreover, substantial evidence exists that the Project may result in significant impacts, and mitigation and avoidance measures that are provided do not comply with CEQA. Because there is substantial evidence that the Project may have one or more significant effects on the environment, the City must prepare an EIR. These issues are discussed more fully below.

III. OVERVIEW OF CEQA REQUIREMENTS

CEQA has two basic purposes, neither of which is satisfied by the Addendum to the SEIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.⁵ The EIR is the “heart” of this requirement.⁶ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁷

⁵ 14 Cal. Code Regs. § 15002(a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁶ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁷ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”⁸ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.⁹ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.¹⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹¹ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹² CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹³ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁴ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁵ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁶

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine

⁸ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁹ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁰ Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

¹¹ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

¹² Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

¹³ *Id.*, §§ 21002-21002.1.

¹⁴ CEQA Guidelines § 15126.4(a)(2).

¹⁵ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁶ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering or other appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared EIR could be used for the project, among other purposes.¹⁷ The initial study must contain the following:

- (1) A description of the project, including the location of the project;
- (2) An identification of the environmental setting;
- (3) An identification of environmental effects...provided that the entries...are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as...an earlier EIR... A reference to another document should include, where appropriate, a citation to the page or pages where the information is found;
- (4) A discussion of the ways to mitigate the significant effects, if any;
- (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- (6) The name of the person or persons who prepared or participated in the Initial Study.¹⁸

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁹ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."²⁰

When a proposed project is a slightly modified version of a previously approved project for which an EIR has been prepared, CEQA requires the lead

¹⁷ CEQA Guidelines §§ 15060, 15063(c).

¹⁸ CEQA Guidelines § 15063(d) (emphasis added).

¹⁹ See, e.g., Pub. Resources Code § 21100.

²⁰ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.²¹

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

²¹ Pub. Resources Code § 21166.

- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.²²

Only where **none** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum or no further documentation.²³ In any case, the decision must be supported by substantial evidence.²⁴ Here, the City's decision not to prepare a new EIR for the Project is not supported by substantial evidence.

IV. THE PROJECT IS A DIFFERENT PROJECT THAN THE PREVIOUSLY APPROVED PROJECT

CEQA requires that public agencies provide a complete and accurate description of a project and its environmental impacts.²⁵ "Deficiencies in the record" create more room for argument that a CEQA document is inadequate, because they allow for a "wider range of inferences" about a project's potentially significant impacts.²⁶

The Addendum attempts to fit the current Project into the City's previous analysis of a completely different project. The Addendum repeatedly states that the

²² CEQA Guidelines § 15162(a)(1)-(3).

²³ CEQA Guidelines § 15162(b).

²⁴ *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

²⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see also *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²⁶ *Sundstrom, id.*

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changes between the current Project and the previously approved project “are minor” and that the current Project “is consistent with the size, scale, and massing of the Approved Project and the impact issues previously examined in the Certified EIR would remain unchanged.”²⁷ The Addendum states that all “project design features under the Approved Project would remain for the Revised Project.”²⁸ This is misleading and inaccurate. Below is a list of just some of the differences between the previously approved project and the current Project:

- The Applicant is not the same. In 2013 the previous applicant, Park Fifth, LLC, informed the City that it was making “good faith efforts to find a new developer with sufficient financing to develop a mixed use project” on the site, using some or all of the previously approved project entitlements.²⁹ In 2014 the previous applicant entered into a purchase and sale agreement with Muref III Holdings, LLC.³⁰ The current Applicant is 5 Olive Hill, LLC (MacFarlane Partners).
- There is no overlap in project permits or entitlements. The current Project does not propose to rely on *any* of the permits or entitlements that the City approved for the previous project in 2008, which included a Transfer Plan under the City’s Transfer of Floor Area Rights (“TFAR”) Ordinance and a tract map.
- The Project is different in size and character than the previously approved project. The City approved a project in 2008 that was 1.2 million square feet in size and included a 212-room hotel, 32,000 square feet of commercial space, and 790 residential units.³¹ The project included a pedestrian connection to the Metro Red Line station, and a public benefits package.³² The current Project is 594,000 square feet in size, does not include a hotel, a pedestrian connection to the Metro station, or a public benefits package, and includes only 660 residential units and less than 14,000 square feet of commercial space.³³

²⁷ Addendum, pp. 7-8.

²⁸ *Ibid*, p. 5.

²⁹ See attached. See also SEIR, p. I-6 (the applicant for the project approved in 2008 under the SEIR was a successor in interest to the applicant for the originally approved project in 1985).

³⁰ See attached.

³¹ SEIR, p. I-6.

³² SEIR, p. I-16; Decision Document

³³ Addendum, cover page.

Courts have found later-proposed projects to be “new” projects requiring CEQA review under much less striking circumstances.³⁴ There is simply nothing to connect the previously approved project and the current Project, and the Addendum is entirely misleading in describing the current Project as having only “minor” differences from the previous project. The City must prepare an EIR.

V. UNDER THE RECORDED COVENANT FOR THE PROJECT AND THE TFAR ORDINANCE, ONLY THE CITY COUNCIL CAN AGREE TO ELIMINATE THE PROJECT’S PUBLIC BENEFITS

The Applicant seeks the best of both worlds, by asking the City to eliminate previously approved binding project features and conditions on one hand, yet rely on the previously approved SEIR on the other hand. This approach violates the law.

In 2008 the Community Redevelopment Agency (“CRA/LA”) approved the project, certified the SEIR, and adopted a statement of overriding considerations and mitigation monitoring and reporting plan (“MMRP”) for the project, as the CEQA lead agency. The City Council then approved a public benefits plan for the project under the TFAR Ordinance, certified the SEIR as complete, and adopted the statement of overriding considerations and MMRP as a CEQA responsible agency.³⁵ The City executed and recorded a Covenant that describes the public benefits required for the project.³⁶

The required public benefits listed in the Covenant include but are not limited to: (1) the payment of almost \$18 million, most of which is to be used for improvements to nearby parks and affordable housing opportunities; (2) execution of a Project Labor Agreement and implementation of a local hire program for project construction; (3) bus stop improvements on Olive Street, a new entry from Hill Street to the Metro Red Line station, and transportation information kiosks.³⁷ The

³⁴ *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1300 (later project that had a different proponent and no reliance on prior project drawings or other materials was a new project and did not qualify for an Addendum).

³⁵ See http://clkrep.lacity.org/onlinedocs/2008/08-1031_CA_05-13-08.pdf. The land use authorities of the CRA/LA were subsequently removed by the Redevelopment Dissolution Act, and therefore the City is acting as CEQA lead agency for the currently proposed Project.

³⁶ See attached. On May 28, 2014, the City Council accepted control of the TFAR program and its associated trust accounts from the CRA/LA: (http://clkrep.lacity.org/onlinedocs/2014/14-0568_mot_5-2-14.pdf).

³⁷ See attached, and see http://clkrep.lacity.org/onlinedocs/2008/08-1031_CA_05-13-08.pdf

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Covenant runs with the land and is binding on the current Project Applicant.³⁸ The Covenant states that it can only be modified by the CRA/LA and the City:

“Only the CRA/LA and City, their successors and assigns, together with Developer its successors and assigns in and to all or any part of the Site shall have the right to consent and agree to changes in, or the elimination in whole or in part of, any of the covenants, easements, or other restrictions contained in this Covenant.”³⁹

The Covenant required payment within 24 months, but the City Council voted to modify the Covenant and extend the payment deadline until 2013.⁴⁰ Thereafter, the Planning Director, with new authority to extend a payment deadline under the TFAR Ordinance, granted two more extensions of the deadline for payment, which is currently September 21, 2015.⁴¹ The most recent extension agreement stated that the Project site owner would pursue a “modified project” and desired that the Covenant would terminate upon the grant of approvals for the modified project. The TFAR Ordinance, however, only allows the Planning Director to approve time extensions, not modifications to required TFAR payments or public benefits.⁴²

In May 2014, the Project Applicant informed the Associate Zoning Administrator that it no longer wished to rely on the previous TFAR approvals for the Project, and that it no longer wished to provide the public benefits required under the recorded Covenant.⁴³ The Zoning Administrator proceeded to approve the a modification to these requirements by way of a “unified development” approval, designed to allow the Applicant to avoid paying for any TFAR credits, providing public benefits, or complying with the binding terms of the Covenant.⁴⁴

By granting this designation the Zoning Administrator improperly overrode the requirements of the recorded Covenant, without City Council approval. The Zoning Administrator did not have the authority to approve the elimination of the required TFAR payments and public benefits that were previously approved by the

³⁸ See attached, section 11.

³⁹ See attached, section 10.

⁴⁰ See http://clkrep.lacity.org/onlinedocs/2008/08-1031-S2_CA_01-21-11.pdf.

⁴¹ See attached; Municipal Code § 14.5.11.

⁴² Municipal Code § 14.5.11.

⁴³ See May 27, 2014 Determination Letter, p. 20, available at:

<http://planning.lacity.org/caseinfo/casesummary.aspx?case=ZA-2013-3197-CU-ZV-ZAA-SPR>

⁴⁴ *Ibid.*

City Council. Relying on a technicality under the unified development option, which is an ordinance that was put in place *after* the Covenant was recorded, the Zoning Administrator attempted to circumvent the City Council's exclusive authority to eliminate the TFAR payments and public benefits attached to the Project site, which is an authority that is expressly delegated "only" to the City under the terms of the Covenant and the TFAR Ordinance. The City Council should make this decision.

VI. STATEMENT OF OVERRIDING CONSIDERATIONS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The 2008 SEIR concluded that the project would have a number of significant and unavoidable environmental impacts. In order to approve the project based on such findings, the City was required to identify "specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers ..."⁴⁵ The City was also required to find that the specific overriding benefits provided by the project would "outweigh the significant effects on the environment."⁴⁶ The City was required to "state in writing the specific reasons to support its action," in a statement of overriding considerations.⁴⁷

In 2008, the City adopted a statement of overriding considerations for the project, setting forth the specific offsetting benefits that the project would provide. Among them were:

- New construction jobs tied to a Project Labor Agreement and a local hiring program goal of 30%;
- \$2.5 million in funding for the Downtown Women's Center Project Home;
- \$2.5 million in funding for permanent supportive housing in the downtown neighborhood;
- Rehabilitation and enhancement of Pershing Square Park through the provision of a Community Benefit payment and Quimby funding; and

⁴⁵ Pub. Resources Code § 21081(a)(3).

⁴⁶ *Id.*, subd. (b).

⁴⁷ CEQA Guidelines § 15093.

- A new pedestrian connection from the Project site to the Metro Rail Red Line Station, with an elevator and pedestrian amenities.⁴⁸

Similar to other findings in an EIR, CEQA requires that the statement of overriding considerations that identifies a project's specific public benefits must be "supported by substantial evidence in the record."⁴⁹ For the Project, however, the record no longer supports the City's findings, because the Applicant will no longer provide any of the public benefits listed above. As stated in the City's recent decision document for the Project, the previously approved project included a "significant Public Benefits Package" that will no longer be required for the current Project.⁵⁰

The City improperly approved the Project in reliance on the 2008 statement of overriding considerations. The City's decision to approve the Project despite unmitigated significant effects must be a "fully informed and publicly disclosed decision" that includes the "specifically identified" public benefits that outweigh CEQA's policy of reducing or avoiding significant environmental impacts.⁵¹ Here, the statement of overriding considerations misleads the reader about the benefits the City has considered, which CEQA does not allow.⁵² There is no substantial evidence in the record to support the conclusions in the statement of overriding considerations regarding the public benefits of the Project that outweigh its significant unmitigated impacts.

VII. SIGNIFICANT CHANGES IN PROJECT DUE TO REMOVAL OF REQUIRED PUBLIC BENEFITS

CEQA requires subsequent or supplemental environmental review whenever changes are proposed in a project that would result in increased environmental impacts and would require major revisions to a previously approved EIR.⁵³ The SEIR relied on the provision of public benefits associated with the Covenant when analyzing potential environmental impacts and responding to comments. The SEIR refers to and relies on these public benefits in multiple places throughout the

⁴⁸ Advisory Agency Decision Document and Statement of Overriding Considerations, pp. 89-90 (2008).

⁴⁹ Pub. Resources Code § 21081(b); CEQA Guidelines § 15093.

⁵⁰ City's Decision Document for DIR-2014-3941-SPR, p. 20 (May 12, 2015) (the "significant Public Benefits Package" previously approved for the Project will no longer be required).

⁵¹ CEQA Guidelines § 15043.

⁵² *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 718.

⁵³ Pub. Resources Code § 21166.

SEIR. The SEIR's analysis of land use and transportation impacts, and its responses to comments, is no longer supported by substantial evidence.

For example, the SEIR concluded that the project would be consistent with the Regional Planning Guide, General Plan, and the Redevelopment Plan, due to the provision of public benefits such as affordable housing payments.⁵⁴ The SEIR also relied on the project's inclusion of a pedestrian connection to the Pershing Square Metro Red Line Station, as evidence that the project would meet the City's land use and transportation policies, and would provide sufficient transportation benefits to allow a deviation from the City's parking standards for condominium units (identified as an otherwise potentially significant impact).⁵⁵ The removal of these project features constitutes a substantial change that undermines the analysis in the SEIR and results in conclusions that are no longer supported by substantial evidence.

VIII. ADDITIONAL MITIGATION MEASURES AVAILABLE

The SEIR concluded that construction-related emissions of nitrous oxides ("NOx") and particulate matter ("PM10") would exceed the daily thresholds of significance for regional emissions impacts, and that emissions of NOx, PM10, and fine particulate matter ("PM2.5") would exceed the daily thresholds for localized impacts. The SEIR only proposed mitigation measures, however, that were already accounted for in project emissions modeling and already required by regional air quality regulations.⁵⁶ Those measures included watering the project site and haul roads, trimming loads and using dust covers and tarps, applying ground covers and soil stabilizers, and lowering the speed of construction equipment.⁵⁷ The SEIR did not require mitigation measures designed specifically to reduce NOx or diesel particulate matter emissions from construction equipment, and concluded that impacts would be significant and unavoidable.

The SEIR also concluded that operational emissions would exceed the thresholds of significance for volatile organic compounds ("VOCs") and NOx.⁵⁸ The SEIR required mitigation measures for energy and water efficiency, but did not

⁵⁴ SEIR, pp. IV.G-16 to IV.G-17, IV.G-19, IV.G-22, VII-11, VII-13, and VII-16.

⁵⁵ *Ibid.*, pp. I-41, IV.G-24, IV.L-48, IV.L-49, and IV.L-51.

⁵⁶ SEIR, pp. IV.B-31 to IV.B-32.

⁵⁷ SEIR, p. I-11.

⁵⁸ *Ibid.* p. I-12.

contain any measures to reduce VOCs, and concluded that impacts from VOC and NOx emissions would be significant and unavoidable.

The City cannot rely on an Addendum if “mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.”⁵⁹ Lead agencies routinely require mitigation measures to reduce NOx and diesel particulate matter emissions from construction equipment, including requirements for cleaner-burning engines and emissions filters. Lead agencies also routinely require VOC reduction measures. The City cannot rely on a finding of significant and unavoidable air quality impacts when standard, feasible mitigation measures are available.

The SEIR also concluded that project construction would exceed the noise and vibrational thresholds for nearby land uses, which could cause damage to historical buildings adjacent to the Project site.⁶⁰ The SEIR imposed Mitigation Measures H-1 through H-7, which require that construction engines be “properly tuned and muffled according to manufacturers’ specifications,” that temporary noise barriers and informational signs be installed, and that certain equipment (compressors, cement mixers and idling trucks) be located away from sensitive receptors.

The City routinely requires additional mitigation measures to reduce noise and vibration impacts on construction sites, including:

- Construction equipment shall utilize rubber tired equipment in place of steel-track equipment whenever feasible;
- The construction contractor shall avoid utilizing high vibration construction equipment (e.g. large bulldozers) near surrounding sensitive receptors, to the maximum extent feasible;
- The construction contractor shall avoid using vibratory rollers and packers near sensitive areas;

⁵⁹ CEQA Guidelines § 15162(a)(1)-(3).

⁶⁰ SEIR p. IV.C-2, IV.H-15 to IV.H-17 (Title Guarantee Building, Subway Terminal Building, and Pershing Square are within 5 to 50 feet from project construction).

- The construction contractor shall avoid impact pile-driving where possible. The construction contractor shall use drilled piles or the use of a sonic or vibratory pile driver where geological conditions permit their use;
- Construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously; and
- Power construction equipment with state-of-the-art noise shielding and muffling devices shall be used.⁶¹

The Addendum for the Project does not incorporate such measures, but concludes that impacts to nearby structures and sensitive receptors, with the mitigation proposed, would remain “significant and unavoidable.” The City’s failure to require all feasible mitigation measures to reduce noise and vibrational impacts leaves adjacent historical structures at risk. The Construction-Induced Vibration Guidance Manual of the California Department of Transportation (“Caltrans”) establishes threshold criteria for “older residential structures” and “historic buildings” that are twice as protective as the criteria for newer structures.⁶² The Caltrans Guidance Manual describes how problematic sources of “continuous” vibration can include excavation equipment and soil compaction equipment, while problematic sources of transient vibration can include pile drivers and jackhammers.⁶³

SEIR Mitigation Measure D-5 requires a survey for wall cracks and offsets at adjacent structures, before and after construction. However, there is no enforceable mechanism requiring the Applicant to repair damage caused by construction related noise and vibration.⁶⁴ The City cannot rely on a finding of significant and unavoidable impacts where mitigation measures are available to reduce the severity of the Project’s impacts.

⁶¹ See e.g. http://clkrep.lacity.org/onlinedocs/2014/14-1547_msc_b_11-5-14.pdf, Planning Commission Determination Letter, p. C-8; http://clkrep.lacity.org/onlinedocs/2014/14-1610_msc_a_11-25-14.pdf, Planning Commission Determination Letter, p. C-9.

⁶² http://www.dot.ca.gov/hq/env/noise/pub/TCVGM_Sep13_FINAL.pdf, p. 38, Table 19. ⁶²

⁶³ *Ibid.*, pp. 9-10.

⁶⁴ See e.g. <http://www.ci.richmond.ca.us/DocumentCenter/View/30689>, p. 73.

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X. CONCLUSION

For the reasons set forth above, we urge the Area Planning Commission to reverse the decision of the Zoning Administrator and Planning Director, and prepare an EIR for the Project.

Sincerely,



Ellen L. Wehr