



Department of City Planning

City Hall, 200 N. Spring Street, Room 272, Los Angeles, CA 90012

June 15, 2020

TO: City Planning Commission

FROM: Luciralia Ibarra, Principal City Planner
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SUPPLEMENTAL RESPONSES TO LETTERS FROM THE APPLICANT DATED MARCH 9, 2020, AND APRIL 30, 2020, AS ADDITIONAL INFORMATION TO THE STAFF RECOMMENDATION REPORT FOR CASE NO. CPC-2017-3251-TDR-MCUP-SPR; 1045 OLIVE STREET

For consideration at the June 25, 2020 City Planning Commission (CPC) hearing, is the 1045 Olive Project (the Project), which proposes the development of a 70-story mixed-use, high-rise development, with 794 residential units and 12,504 square feet of ground floor restaurant and retail uses. Among the required entitlements, the Project is seeking Transfer of Floor Area (TFAR) to achieve a total Floor Area of 751,777 square feet for the 38,097 square foot site. Prior to the events of COVID-19, the Project was scheduled for CPC consideration on March 12, 2020. In preparation for the March 2020 CPC date, Planning staff noticed that the TFAR worksheet that was submitted, under penalty of perjury, had been intentionally altered by changing the term "Lot Area" to "Buildable Area" in several locations. This alteration both modified the formula for calculating TFAR payment calculations, as well as overstated the by-right base floor area allocated to the subject property, which resulted in a smaller amount of requested floor area to be transferred necessary to construct the project. Both of these ultimately resulted in incorrect calculations for both the Transfer Payment and the Public Benefits Payment to the City, creating a significant shortfall in the amount of \$11,230,469.

In a conversation with City Staff, following the discovery of the alteration to the City's worksheet, the Applicant's representative was advised that City staff would propose calculations consistent with the Los Angeles Municipal Code (LAMC) in the recommendation report to CPC, and the Applicant's representative stated the correct payment calculations would be accepted. Instead, the Applicant submitted a letter to the CPC, dated March 9, 2020, which erroneously stated that Planning staff is misinterpreting Lot Area in this case, and argued that under the Housing Accountability Act the City could not redefine Lot Area or require the correction to the case file.

On April 27, 2020, Planning staff again discussed the corrections with the applicant's representatives, affirming the Department's position on the interpretation of Lot Area, and discussed the calculation of both the Transfer Payment and the Public Benefit Payment, reflecting decades of established precedent of the Department's implementation of the TFAR provisions. While the applicant's representatives stated that they had altered the Department's worksheet, Planning staff nevertheless gave the applicant's representatives an additional opportunity to resubmit a corrected TFAR worksheet, without alterations, to correct the calculations.

On April 30, 2020, the applicant's representative submitted an updated TFAR application that acknowledges the correct Lot Area, but nevertheless uses Buildable Area (in lieu of Lot Area) to determine the by-right floor area rights, therefore once again resulting in an undercount for the required amount of floor area to be transferred, and therefore also affecting Public Benefit and Transfer payment

calculations. This still resulted in a total shortfall in the required Transfer Payment and Public Benefit Payment to the City in a total of \$5,502,041.

The intent of this letter is to provide the CPC with detailed guidance on the City's interpretation of TFAR and to address the Housing Accountability Act issues raised by the applicant's representative.

Background

On August 15, 2017, an entitlement package for Case No. CPC-2017-3251-TDR-MCUP-SPR was filed with the Department of City Planning. The package included a TFAR application. The TFAR application included a calculation for the required Public Benefit Payment, but did not provide information regarding proposed allocations of the Public Benefit Payment.

On November 26, 2019, the Applicant provided proposed allocations of the Public Benefit Payments, which included: \$2,030,000 to the Los Angeles Affordable Housing Trust Fund, \$200,000 to the South Park Business Improvement District for capital improvements including power washers, public seating and pet waste receptacles, and \$3,300,000 towards a new public plaza within the Project Site.

On December 4, 2019, the Department of City Planning, Council District 14, Chief Legislative Analyst, and the Mayor's Office conducted the TFAR Early Consultation Session to discuss the Applicant's initial proposed allocation for the Public Benefit Payment. The committee reviewed the proposal and recommended that the South Park BID funds be used for tangible physical improvements and that no credit be provided for the Project's on-site ground floor plaza and instead be utilized as additional funding for affordable housing.

On January 9, 2020, the Applicant responded to the committee's comments with an updated proposal where only \$1.5 million of Public Benefit Payments would be allocated towards the Project's plaza. However, based on the committee's original feedback from December 2019, the Department of City Planning proposed that the public plaza funds be redistributed evenly between the Citywide and Council District 14 trust funds for affordable housing and to the South Park Business Improvement District (BID).

On February 20, 2020, Department of City Planning staff found discrepancies in the Project's TFAR application with regards to the lot area square footage used to calculate the Public Benefit Payment amount and informed the Applicant. Specifically, staff discovered that the Applicant had intentionally altered the City's TFAR application form and had deliberately replaced the words "lot area" with the words "buildable area" in three separate places in Section 8. Public Benefits Payment of the form. This included Section 8.1 (b), the calculation in 8.2.1, and the calculation in 8.2.2. The Municipal Code for TFAR is clear that "lot area" and not "buildable area" shall be used for the calculation of the Public Benefits Payments. The applicant's alteration of the application form was therefore contrary to the payment calculation identified in the Municipal Code. This misrepresentation of the calculation benefitted the Applicant by reducing the required total Public Benefit Payment amount to the City from \$21,698,509 to \$11,060,000, a reduction of \$10,638,509 million in public benefits.

On March 2, 2020, the Staff Recommendation Report for the TFAR requests became available, which identified the correct lot area of the site as 38,907 square feet, but the report incorrectly identified the Public Benefit Payment as \$16,788,428, based on an error in the Applicant's form for the amount of floor area requested to be transferred.

On March 9, 2020, the Applicant submitted a letter to the City Planning Commission, disputing the City's determination, and established precedent, that the Project Site contains 38,907 square feet of lot area and further stating that even if the City's determination of floor area were correct, the City did not have the ability to recalculate the Public Benefits Payment identified in the Applicant's original TFAR application worksheet due to the provisions of the Housing Accountability Act.

On March 10, 2020, a Staff Technical Modification was released, in response to the Applicant's letter, providing further clarification on Staff's previous assertion in utilizing the correct lot area 38,907 square feet.

On March 12, 2020, the City Planning Commission continued the item to May 14, 2020.

On April 30, 2020, the Applicant submitted a revised TFAR application form, with the correct Lot Area of 38,907 square feet identified in the application. However, City staff discovered a second error in the Applicant's request, which resulted in an undercount in the amount of floor area to be transferred. The revised TFAR application incorrectly used Buildable Area in lieu of Lot Area to determine the Maximum Allowable Floor Area for the Project. This has the direct effect of overstating the by-right floor area, reducing the requested floor area to be purchased from the City, and greatly minimizing the Public Benefit and Transfer Payments due to the City.

On May 14, 2020, the City Planning Commission continued the item to June 25, 2020 at the request of City staff, to allow for staff to fully address arguments from the Applicant in the two respective March 9, 2020 and April 30, 2020 letters, and for further investigation of the TFAR calculations.

On June 8, 2020, City staff contacted the Applicant's representative regarding the second error used to calculate the amount of floor area to be transferred and notified the Applicant's representative that City staff's recommendation to CPC would represent an accurate calculation consistent with the LAMC.

Transfer of Floor Area Rights

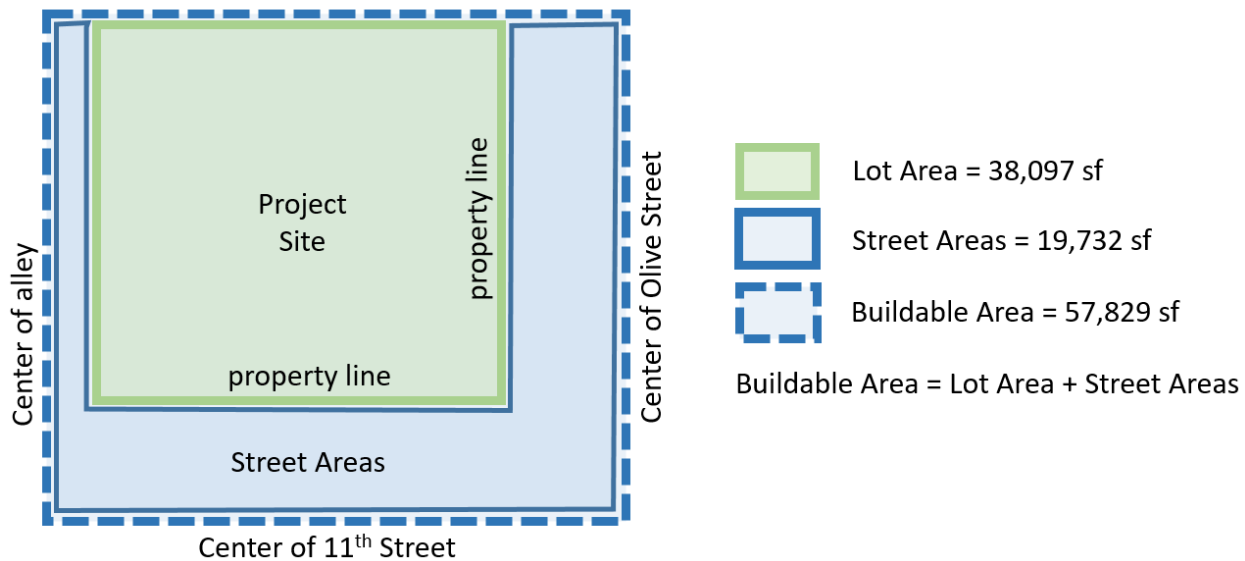
Transfer of Floor Area Rights (LAMC Section 14.5) is a process that permits private development projects to request additional Floor Area Rights, in excess of the Floor Area Ratio limitations of the underlying zone, in exchange for payments to the City Public Benefit Payment Trust Fund, or other approved bodies. The express purpose of the program is to regulate overall development levels downtown while providing flexibility as to specific parcels, and to generate public benefits through these payments. Under TFAR, a private development project must make two payments: 1) the direct payment for the cost of the floor area being transferred; and, 2) a public benefit payment that reflects the value of the floor area being transferred. Each of these have established formulas that determine the required payments, as discussed further below.

Calculating the Maximum Allowable Floor Area and Requested Transfer Floor Area

To determine the maximum available Floor Area that may be requested to be transferred to a site, an Applicant would find the difference between the maximum floor area allowed by-right, and the desired floor area for the Project. The LAMC explicitly calculates by-right floor area based on Lot Area, which is the area of the private parcel. Lot Area, per LAMC Section 14.5.3, is defined as "the total horizontal area within the lot lines of a lot (prior to any dedication)." In this instance, the maximum floor area allowed by-right would be six times the Lot Area of 38,097 square feet.

The maximum allowable floor area allowed under TFAR could be up to thirteen times the Lot Area. However, the maximum desired floor area can be further increased if a Project qualifies as a Transit Area Mixed Use Project. In that case, the maximum allowable floor area rights may be increased based on Buildable Area, rather than Lot Area. Buildable Area, for a Transit Area Mixed Use Project, is defined as the Lot Area, "plus the area between the exterior lot lines and the centerline of any abutting public right-of-way". The following diagram showcases the difference between Lot Area and Buildable Area, where Buildable Area combines Lot Area and Street Areas.

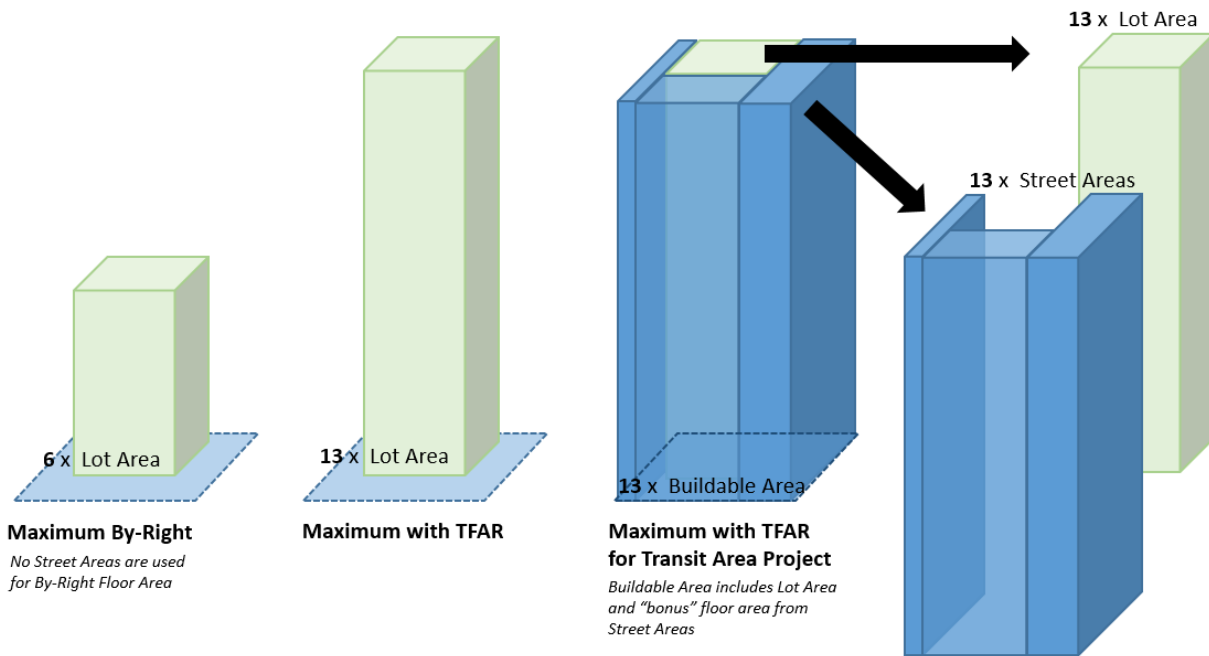
Figure 1 - Lot Area and Buildable Area



A Transit Area Mixed Use Project is defined by LAMC Section 14.5.3 as “any Project or portion of a Project in the Central City TFAR Area that: (1) provides floor area for at least two different land uses, such as commercial office and commercial retail, commercial office and multi-family residential, or commercial retail and hotel, or any other combination of uses; (2) is located within 1,500 feet of a fixed rail transit station, as measured from the exterior lot line to the nearest station entrance; and (3) meets the standards and guidelines in the Downtown Design Guide.” The Project qualifies as a Transit Area Mixed Use Project, per LAMC 14.5.3, which allows the Project to calculate its maximum available floor area rights based on Buildable Area.

As stated above, by-right floor area is based on Lot Area. However, the TFAR ordinance is unique in that the maximum floor area attainable under the ordinance is calculated using Buildable Area for projects located in transit areas. This allows a project to include areas to the center line of adjacent streets. However to be clear, this additional area of inclusion has no base area rights to floor area. In this aspect, the Lot Area of the proposed project has a base floor area ratio of 6:1, and the additional area calculated out to the mid-point of the street has a base floor area ratio of zero. Through the TFAR process, both can go up to 13:1 and be built on the private parcel area. Essentially, this provides additional floor area benefits for Transit Area Mixed Use Projects, since these projects can use not only floor area rights from their Lot Area, but also floor area rights added from adjacent street areas. In other words, with a maximum Floor Area Ratio (FAR) of 13:1, the Project is permitted to calculate their maximum allowable floor area based on thirteen times the Buildable Area of the project site. The following diagram showcases how Lot Area and Buildable Area are utilized in the calculation of by-right and maximum allowable floor areas.

Figure 2 - Maximum By-Right and TFAR Floor Area



The maximum allowable floor area available to be transferred through a TFAR request is calculated as the difference between the Buildable Area at a 13:1 FAR and the Lot Area at a 6:1 FAR.

$$(13 \times \text{Buildable Area}) - (6 \times \text{Lot Area}) = \text{Maximum request for Floor Area transfer}$$

In the specific request for the Project, the calculation to determine the floor area available to be transferred to the Project is provided in the calculations below. However, in this case, the Applicant's representative falsely claimed that the entire Buildable Area, including the area to the mid-point of adjacent streets, had a base floor area ratio of 6:1, resulting in an undercount of necessary floor area to be transferred to build the proposed project, and a corresponding undercount of the required Transfer Fee and Public Benefit Fee calculations.

Calculation 1: Requested Transfer Floor Area Comparison

DEPARTMENT OF CITY PLANNING CALCULATION

$$(13 \times 57,829 \text{ sf}) - (6 \times 38,097 \text{ sf}) = 523,195 \text{ sf}$$

APPLICANT CALCULATION

$$(13 \times 57,829 \text{ sf}) - (6 \times 57,829 \text{ sf}) = 404,803 \text{ sf}$$

Requested Floor Area Transfer Difference = 118,392 sf

The Applicant's incorrect calculation results in a net difference of 118,392 square feet of floor area that should be accounted for as part of the Project's Requested Transfer Area. As proposed by the Applicant's calculation, the Project would effectively receive 118,392 square feet of floor area from the City for free. Since calculation of both the Transfer Payment and Public Benefit Payment rely on the Requested

Transfer Floor Area, this error has the direct consequence of advantageously reducing the Applicant's obligations for both the Transfer Payment and the Public Benefit Payment. The value of this 118,392 square feet of floor area omitted from the Applicant's calculation equates to \$4,910,081 for the Public Benefit Payment, and \$591,961 for the Transfer Payment.

Calculation of the Public Benefit Payment

Per 14.5.9.C of the LAMC, the formula for calculating the Public Benefit Payment is defined as: "The Public Benefit Payment under any Transfer Plan shall equal: (1) the sale price of the Receiver Site, if it has been purchased through an unrelated third-party transaction within 18 months of the date of submission of the request for approval of the Transfer, or an Appraisal, if it has not; (2) divided by the Lot Area (prior to any dedications) of the Receiver Site; (3) further divided by the High-Density Floor Area Ratio Factor; (4) multiplied by 40%; and (5) further multiplied by the number of square feet of Floor Area Rights to be transferred to the Receiver Site."

The formula for the Public Benefit Payment is expressed as follows:

$$\text{Public Benefit Payment} = \left(\frac{\text{Appraisal}}{\frac{\text{Lot Area}}{6}} \right) \times 0.4 \times \text{Requested Floor Area}$$

Based on the applicant's original submittal of the TFAR worksheet, which had been deliberately modified to replace the word "Lot Area" with "Buildable Area", the Public Benefit Payment was significantly reduced, resulting in an incorrect calculation of \$11,060,000 in lieu of \$21,615,975, as shown in the comparison of calculations below.

Calculation 2: Public Benefit Payment Comparison - Original Submittal

DEPARTMENT OF CITY PLANNING CALCULATION

$$\text{Public Benefit Payment} = \left(\frac{\$23,700,000}{\frac{38,097}{6}} \right) \times 0.4 \times 523,195 \text{ sf} = \$21,698,509$$

APPLICANT CALCULATION

$$\text{Public Benefit Payment} = \left(\frac{\$23,700,000}{\frac{57,827}{6}} \right) \times 0.4 \times 404,803 \text{ sf} = \$11,060,000$$

Public Benefit Shortfall = \$10,638,509

On April 30, 2020, at the direction of Planning staff to correct the TFAR form, the Applicant submitted a revised TFAR application, correcting the identified Lot Area in the Public Benefit Payment calculation. However, the form failed to correct a second error, by continuing to use the incorrect Requested Transfer Floor Area (from Calculation 1). As shown in the calculations below, the Applicant's revised April 30, 2020 form uses an incorrect Requested Transfer Floor Area of 404,803 square feet, thus resulting in a Public Benefit Payment shortfall of \$4,910,081.

Calculation 2: Public Benefit Payment Comparison - Revised April 30, 2020 TFAR

DEPARTMENT OF CITY PLANNING CALCULATION

$$\text{Public Benefit Payment} = \left(\frac{\$23,700,000}{\frac{38,097}{6}} \right) \times 0.4 \times 523,195 \text{ sf} = \$21,698,509$$

APPLICANT CALCULATION

$$\text{Public Benefit Payment} = \left(\frac{\$23,700,000}{\frac{38,097}{6}} \right) \times 0.4 \times 404,803 \text{ sf} = \$16,788,428$$

Public Benefit Shortfall = \$4,910,081

Calculation of the Transfer Payment

The Transfer Payment is the greater of either 10% of the Public Benefit Payment, or \$5 per square foot of the Requested Transfer Floor Area. Since the Applicant’s Original Submittal misrepresented the Requested Transfer Floor Area to the Project (*from Calculation 1*), the Transfer Payment was less than what would have been required if applied correctly. As previously mentioned, while the Applicant’s representative submitted updated and unaltered TFAR form on April 30, 2020 to correct the application of the Lot Area, the calculation continued to misrepresent the Requested Transfer Floor Area, resulting in reduced obligation of \$591,961 to the City, as shown in the calculation below.

Calculation 3: Transfer Payment Comparison - Revised April 30, 2020 TFAR

DEPARTMENT OF CITY PLANNING CALCULATION

$$\text{Transfer Payment} = 0.1 \times \$21,698,509 \text{ or } \$5 \times 523,195 \text{ sf} = \$2,615,976$$

APPLICANT CALCULATION

$$\text{Transfer Payment} = 0.1 \times \$16,788,428 \text{ or } \$5 \times 404,803 \text{ sf} = \$2,024,015$$

Transfer Payment Shortfall = \$591,961

Therefore, as reflected in the Planning staff’s recommendation to the CPC on the entitlement requests, staff recommends a correct Public Benefit Payment of \$21,698,509 and a correct Transfer Payment of \$2,615,975.

In total, the intentional misrepresentation by the Applicant representative’s Original Submittal resulted in a total shortfall of \$11,230,469 to the City, and the revised April 30, 2020 TFAR calculation submitted by the Applicant’s representative resulted in a \$5,502,041 shortfall.

Lot Area Definition

The Applicant also has contested the definition of Lot Area for purposes of TFAR Public Benefit Payment calculations in letters to the City Planning Commission dated March 9, 2020, and April 30, 2020. Staff

responded to the March 9, 2020 letter in a technical modification submitted to the City Planning Commission for its March 12, 2020 meeting. The following discussion incorporates and supplements the previous staff response.

Lot Area is defined by LAMC Section 14.5.3 as “the total horizontal area within the lot lines of a lot (*prior to any dedication*)”. The Applicant contends that the interpretation of the emphasized portion of the definition should apply to any and all dedications required of the property, at any previous point in the history of the site. The Applicant states that the City, under certain circumstances, recognizes that dedications that have already occurred may still be considered as Lot Area, and that the City is without legal authority to net out dedications that burden the Project Site in legal descriptions, title reports, and grant deeds. The Applicant then refers to Los Angeles Department of Building and Safety (LADBS) Zoning Code Manual and Commentary, pages 286-287, which provides guidance on determining “lot area” for the purposes of calculating density in instances where a previous entitlement (namely zone changes, conditional uses, and variances, as well as the issuance of building permits) had required dedications, but the original project was never built. The LADBS commentary explicitly states that this particular guidance only applies to Article 2 of the Zoning Code. Therefore, the LADBS guidance referenced to by the Applicant does not apply to Article 4.5, Transfer of Floor Area.

Under Article 4.5, Transfer of Floor Area, Lot Area is defined as “the total horizontal area within the lot lines of a lot (prior to any dedication)”. The portion of the definition referring to “prior to dedication” does not refer to the area prior to any dedication which may have occurred in the past, but refers to any dedication which may also be required as part of the project or entitlement requests. The existing Lot Area of the Project Site is 38,907 square feet, as evidenced in the submitted survey and confirmed in City records. Both the Certified EIR and Staff Report state that the lot area of the Project Site is 38,907 square feet when not including existing public right-of-way areas or previously dedicated areas.

As there is an associated Vesting Tentative Tract Map with the Project, after 2,959 square feet of required dedications are provided under the Tract Map, the new lot area of the Project Site will be 35,948 square feet. Therefore, the lot area prior to these dedication requirements is 38,907 square feet. Consistent with established City practice and interpretations of the Zoning Code, the definition of Lot Area utilized in Article 4.5 refers to the existing lot area of a site, prior to dedications which may occur under associated entitlements such as zone changes, tract maps, or dedication requirements under Los Angeles Municipal Code Section 12.37.

The Applicant’s incorrect interpretation would result in a reduced payment for public benefits. Staff research of all previous CPC TFAR cases filed, in process, and approved within the City, shows that in all but one case, the one referenced by the Applicant, the City calculated TFAR payments according to the Lot Area interpretation as presented by Staff. In one Director-level case, the TFAR payments were processed in error by calculating areas already dedicated as part of the Lot Area. The Applicant cites this case in their letter dated March 9, 2020, but neglects to divulge that the same Applicant representative also filed the case in question. This resulted in an incorrectly reduced Transfer Payment to the City. The Department does not consider this to be a precedent-setting case, as it is inconsistent with Department past practice and interpretation. This case is now under review by the City.

Transfer Plan Adjustments

Transfer Allocation

The Applicant has requested several modifications to the Transfer of Floor Area Public Benefit Payment allocations presented in the Staff Report. Per the LAMC, up to 50% of the Public Benefit Payment to be paid directly to the Public Benefit Trust Fund, and the remaining 50% can be allocated directly either on-site or off-site to facilitate physical improvements or affordable housing. The Applicant cites LAMC

Section 14.5.9 (B) which states “As approved by the City Council, a Public Benefit Payment may be provided by any combination of the payment of monies to the Transfer of Floor Area Rights Public Benefit Payment Trust Fund ("Public Benefit Payment Trust Fund") or by the direct provision of Public Benefits by the Applicant; provided, however, that without City Council approval at least 50% of the Public Benefit Payment must consist of cash payment by the Applicant to the Public Benefit Payment Trust fund.” The clear intent of this section of the code provides discretion to the City Council to determine this arrangement of allocation, not at the discretion of the Applicant.

The table below highlights the Applicant’s recommended changes against City staff’s recommendations (highlighted in gray). The City’s recommendations accurately reflect the percentage allocations of the funds consistent with the LAMC and as recommended by the Public Benefit Trust Fund Committee during the TFAR Early Consultation Session for the Project. City staff’s recommendations are plainly consistent with LAMC 14.5.9(B).

Applicant’s Proposed TFAR Transfer Plan as of April 30, 2020			Public Benefit Trust Fund Committee Recommendation
Recipient and Project Name	Amount	Percentage of Public Benefit	Percentage of Public Benefit
Public Benefit Cash Payment		0%	50%
Public Benefit Direct Provisions		100%	50%
Public Benefit Direct Provisions		Percentage of Direct Provision	Percentage of Direct Provision
<i>City’s Affordable Housing Trust Fund</i>	<i>\$8,414,807.35</i>	<i>50%</i>	<i>66%</i>
<i>CD-14 Affordable Housing Fund</i>	<i>\$3,000,000.00</i>	<i>18%</i>	<i>33%</i>
<i>Dog Run and Parklets in South Park (South Park BID)</i>	<i>\$200,000.00</i>	<i>1%</i>	<i>4%</i>
<i>On-Site Integrated Biodiversity Habitat System, Public Art Component, and Public Plaza</i>	<i>\$5,173,620.65</i>	<i>31%</i>	<i>0%</i>

Ground Floor Plaza and Biodiversity Screening

In letters to the City Planning Commission dated March 9, 2020 and April 30, 2020, the Applicant requested TFAR Transfer Payment changes which reflect the inclusion of an “On-Site Integrated Biodiversity Habitat System, Public Art Component, and Public Plaza,” valued at \$5,173,620.65 or 31% of the Total Public Benefit Payment, as calculated by the Applicant.

Although the biodiversity habitat system was not presented or reviewed by the Committee, the Applicant’s original TFAR application requested that 30% of the Total Public Benefit Payment be credited against the Project’s ground floor public plaza. The Committee recommended that no credit be provided for the on-site ground-floor plaza provided as part of the 1045 Olive Project. The Committee did not consider the Project’s 2,728 square foot plaza as a “public benefit” as defined in Section 14.5.3 of the LAMC. Section 14.5.3 defines public benefit as amenities provided to the public for things such as affordable housing, public open space, recreational, cultural, community and public facilities. A portion of the funding for the plaza would have been used to pay for elements integral to the private development of the Project building, such as structural components for the cantilevered structure, ceiling paneling, storefront modifications, fences and gates, as well as items required by the Municipal Code, such as fire sprinklers and bicycle racks. As the publically-accessible plaza was not substantive in size, did not provide a specific access way to other sites or open spaces, and would primarily benefit and potentially serve as an extension of the private commercial components of the Project, the Committee had serious concern about

the request for the plaza to be credited towards the Public Benefit payment. The plaza credit would otherwise be precedent-setting and could allow other TFAR developments to request Public Benefit payment credits for on-site private-serving areas. Although there have been limited TFAR cases where limited credit has been provided for a substantial public plaza or connective public access, this plaza would not qualify as such. Therefore, the Committee did not agree with the Applicant's original proposal of the allocation of 30 percent of the Total Public Benefit Payment (60 percent of the Public Benefit Direct Provision) towards the plaza.

The Applicant contests that the Committee's claim that the potential allocation of Public Benefit Payment funds for the project's plaza is "precedent setting" is incorrect. The Applicant cites precedent in two previous TFAR cases, including the Wilshire Grand project which contains an open plaza that is approximately a quarter of an acre or 10,890 square feet, which is significantly larger than the project's plaza. The project also cites the Emerald Project which contained a 2,368 square foot plaza where TFAR funds were allocated. However, the plaza for the Emerald Project only received approximately \$225,620 of credit for on-site improvements, whereas the Applicant's original proposal requested a three million dollar credit for the plaza, which was subsequently revised to five million dollars.

In subsequent letters, the Applicant has revised the original proposal to include a biodiversity habitat system incorporated into the parking podium screening system, and that this, in concert with the ground floor plaza, constitutes a public benefit. The Applicant's proposals lack specifics and the technical basis to support the Applicant's claims. Specifically, in a letter dated March 9, 2020, the Applicant asserts:

"The biodiversity system provides public benefits and community benefits, including: remediation of urban air quality through plants; provision of waystation and feeding station for at-risk butterflies; tower becomes an "urban lung" for pollution eating moss to thrive; provides a beacon for biodiversity; proves through demonstration that architecture can restore habitats; reverses habitat destruction through proactive design; and provides a vertical meadow for aesthetic pleasure of the community."

Absent specific plant palettes, design details, and robust irrigation and maintenance programs, the veracity of the claims cannot be substantiated. Remediation of urban air quality through a screening system would require a large amount of surface area, with established planting, and specific species which "filter" the air. Additionally, vertical plantings are unlikely to result in a measurable improvement in urban air quality, due to their limited root systems and the need for a very large planting area to result in a measurable improvement. Further, absent any additional technical backing to support the air filtering claim, and no specifics related to "pollution eating moss," assessing the value in public benefits for such a system is infeasible. In addition, the Applicant also fails to provide specifics related to long term viability of such a system, a maintenance program, an adaptive management plan to respond to plantings viability, and substantiation related to meaningful habitat for Monarch butterflies. Finally, the Applicant suggests that an educational component would be included, but provides no specifics, plans, or partnerships. Therefore, approval of the Applicant's request is not only inconsistent with the Committees' recommendation, but could also set precedent that a vegetated area alone, with scant details or long-term plans, could constitute a public benefit.

Housing Accountability Act

Enacted by the legislature in 1982, the Housing Accountability Act's intent is "to significantly increase the approval and construction of new housing for all economic segments of California's communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density for, or render infeasible housing development projects and emergency shelters." The act contains provisions which specifically apply to housing containing income restricted units, as well as requirements for projects which comply with objective standards, and timelines for notification of conflict with those standards.

The Applicant asserts that the City is imposing a new definition of Lot Area to the Project late in the process resulting in significantly increased TFAR payments, and not complying with timelines established in the Housing Accountability Act, unfairly burdening the Applicant. As previously discussed in the Lot Area discussion above, the calculations provided by Staff for the Project are correct. The Applicant's reading of the code falsely gives the impression the City is arbitrarily applying the definition from LAMC Section 14.5.3, but the information in the record reflects that the Lot Area, as calculated based on the LAMC is correct. In a supplemental letter to the City Planning Commission, dated April 30, 2020, the Applicant states they concur with staff direction in the proper application of the definition of Lot Area for the purposes of TFAR calculations. Additionally, the Applicant has submitted an updated TFAR form, with the correct lot area calculations, but with a still incorrect amount of the requested floor area in the transfer, as well as a still incorrect accompanying payment calculation, as discussed above. Staff recommendations in this letter reflect the appropriate calculations, square footage requested, and payment amounts.

The Applicant contends that the City would be in violation of the Housing Accountability Act if the City were to enforce the appropriate calculation of Lot Area and TFAR payments. However, Government Code Section 65589.5(j)(2)(A) applies when a "local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density." The Project Site is restricted to a 6:1 FAR due to the D Limitation on site (Ordinance 164,307), which allows for up to a 13:1 FAR with a TFAR entitlement. The TFAR entitlement does not grant additional density, as there is no density limitation in the Center City Area, but does grant additional floor area. The Staff Recommendation Report recommends approval of the requested TFAR entitlement and a 13:1 FAR and does not limit the density or feasibility of the project. As of April 30, 2020, the Applicant has submitted a revised application, with an updated Lot Area consistent with the methodology in the staff report prepared for the Project. While the Applicant updated the Lot Area, the Applicant did not correct the requested floor area and nevertheless maintained an incorrect requested floor area, resulting in incorrect and drastically reduced Transfer and Public Benefit Payments. The updated application effectively negates the Applicant's contention of violation of the Housing Accountability Act.