

EXHIBIT A

APPEAL OF VESTING TENTATIVE TRACT MAP NO. VTT-72914

I. INTRODUCTION

On July 6, 2016, the Advisory Agency of the Department of City Planning approved Vesting Tentative Tract Map no. VTT-72914, certified Final Environmental Impact Report No. ENV-2014-1773-EIR (“FEIR”) and adopted the Mitigation Monitoring Program, the required Findings for the adoption of the EIR, and a statement of Overriding Considerations (the “Determination”). United Neighbors In Defense Against Displacement (“UNIDAD”) herein appeals the Determination to the Los Angeles City Planning Commission.

The project site is located at 1900-1933 Broadway; 104-122, 132-150 Washington Blvd.; 1900-1912 Hill Street; and 1905-2009 Main Street. Vesting Tentative Tract Map No. VTT-72914 (the “VTTM”) would permit the merger and subdivision of the 9.7 acre site into four ground lots and 76 airspace lots, allowing for 1,444 market rate residential apartments and condos, 96,670 square feet of retail/commercial use, and a 208 key hotel (the “Project”). Currently, the project site is zoned M1-2-O, and has a General Plan land use designation of “Limited Manufacturing.” The M1 zone does not permit the uses proposed for the Project. As a result, the Applicant seeks to change the zone to (T)(Q)C2-2-O-SN. The “Limited Manufacturing” land use designation does not permit the uses proposed for the Project either. As a result, the Applicant also seeks a General Plan Amendment to change the General Plan use designation to “Community Commercial.” The “Community Commercial” use designation does not permit the density proposed for the Project. As a result, the Applicant seeks another General Plan amendment to allow the Project to be built at height district 2. The Applicant is seeking many additional discretionary land use entitlements.

As described below, UNIDAD appeals the Determination because the findings and conclusions contained therein are not supported by substantial evidence. UNIDAD is a coalition of tenants, homeowners, workers, business owners, students, teachers, healthcare providers and advocates, faith congregations, and community-based organizations who work together to create a healthy and strong South Los Angeles community by ensuring that the interests of low-income communities, especially low-income communities of color are represented in the decisions and processes that drive development in South Los Angeles. UNIDAD appeals the Determination because its members will be adversely affected by the Project, as proposed.

II. GROUNDS FOR APPEAL

The Advisory Agency erred and abused its discretion in approving the VTTM as set forth below.

**(a) SUBDIVISION MAP ACT FINDINGS ARE NOT SUPPORTED BY
SUBSTANTIAL EVIDENCE**

i. Consistency with Applicable General and Specific Plans

The California Subdivision Map Act prohibits a city from approving a tentative tract map unless it is consistent with the city's general plan.¹ As described below, the Determination's findings and conclusions regarding consistency with certain General Plan objectives are plainly wrong.

The Determination claims the Project is consistent with Southeast Los Angeles Community Plan ("SELA CP") Objective No.1-2, which calls for the reduction of vehicular trips.² However, the Project cannot be found to comply with this Objective because it will actually generate hundreds of additional daily vehicle trips.³

The Determination finds the Project is consistent with the General Plan by selectively discussing just six objectives contained in the SELA CP. The Determination fails to acknowledge or evaluate the Project's inconsistency with numerous other relevant and applicable policies and programs in the current SELA CP. The Project is in fact inconsistent with Policy 11-2.3 of the SELA CP ("maximize opportunities for affordable housing and pedestrian access adjacent to rail stations."), Policy 1-5.2 of the SELA CP ("ensure that new housing opportunities minimize displacement of the residents"), and Policy 2-1.4 of the SELA CP ("Ensure the viability of existing neighborhood stores (i.e., mom-and-pop) which support the needs of local residents and are compatible with the neighborhood.").

Further, the Subdivision Map Act requires consistency with applicable objectives, policies and programs in the entire General Plan – not just the land use element.⁴ In fact, the Project is inconsistent with a number of other important General Plan policies and objectives. The Project proposes to construct 549 market rate rental units and 895 market rate condominium units and *zero* affordable units on a site that is less than a quarter mile from a major transit stop. This is clearly inconsistent with a number of General Plan policies and objectives that highlight the importance of creating new affordable housing,

¹ Government Code 66474(a)-(b).

² Determination, 108.

³ See DEIR of The Reef Project, section IV.N Transportation at IV.N-22, (September 2015). Available at <http://planning.lacity.org/eir/theReef/deir/DEIR%20Sections/IV.N.%20Transportation.pdf#page=22>

⁴ See Government Code §66473.5. "A proposed subdivision shall be consistent with a general plan or a specific plan only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses, and programs specified in such a plan." See also *Friends of "Bs" St. v. City of Hayward*, 106 Cal. App. 3d 988, 998 (1980) ("City approval of a proposed subdivision, construction of public improvements, and private sale of subdivided lots may be enjoined for lack of consistency of the subdivision map with the general plan. Such consistency is expressly required by Government Code section 66473.5. [City] was required to adopt all mandatory elements specified in Government Code section 65302, and was required to conform [projects] to its general plan." (citations omitted)).

especially in developments located near transit.⁵ To build these residential units, the Project requests General Plan amendments, a zone change and parking reductions in order to dramatically increase the number of residential units permitted on site. Yet the Project seeks this increase in residential density without utilizing the city's density bonus ordinance, the Downtown Housing Incentive Ordinance, or meeting the standards of the FAR incentive program in the draft Southeast LA Community Plan. In other words, the Project would receive all the benefits contained in these incentive programs, without meeting even the minimum requirements to qualify. By completely circumventing existing density incentive programs, the Project would undermine the city's entire affordable housing incentive structure. This is entirely inconsistent with numerous important General Plan policies and objectives.⁶

Obscuring the fact that the Project needs over a dozen discretionary land use entitlements to be developed as proposed, the Determination merely states that “[t]he proposed General Plan designation *will be* consistent with the proposed zone *upon approval* of Case No. CPC-2014-1771-GPA-VZC-SN-VCU-MCUP-CUX-ZV-SPR-MSD.”⁷ This circular logic presumes a laundry list of discretionary approvals and it fails to present evidence that such approvals are permitted by the City Charter or otherwise allowed by law.

The Project is inconsistent with numerous other policies, programs and requirements of the General Plan, including but not limited to those inconsistencies described in the November 2, 2015 UNIDAD DEIR Comment Letter⁸, the November 2,

⁵ See, General Plan Housing Element Policy 1.1.2: (“Expand affordable rental housing for all income groups that need assistance.”), General Plan Housing Element Policy 2.5.1 (“Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers.”), General Plan Housing Element Policy 2.5.2 (“Foster the development of new affordable housing units citywide and within each Community Plan Area.”), General Plan Housing Element Program 8. (“Explore the feasibility and appropriateness of creating affordable housing requirements for projects that receive benefits from the City, including projects that receive City subsidies or City land, projects receiving zone changes that result in significantly more units than otherwise permitted, as well as projects that obtain a Development Agreement.”).

⁶ See, General Plan Housing Element Program 73. (“When building envelopes are increased, take care not to undermine the density bonus program. Aim to attach community benefits, including affordable housing, to significant bonuses in floor area and density.”), General Plan Housing Element Program 99: (“Explore ways to improve affordable housing production under the [Downtown Affordable Housing Bonus] program...”), General Plan Housing Element Program 101: (“Take care to not undermine the density bonus program by providing significant land-use incentives without an affordable housing provision...”), General Plan Framework Element Policy 4.1.6: (“Create incentives and give priorities in permit processing for low- and very-low income housing developments throughout the City.”), General Plan Framework Element Policy 4.2.1: (“Offer incentives to include housing for very low- and low-income households in mixed-use developments.”).

⁷ Determination, 107.

⁸ Available at,

[http://planning.lacity.org/eir/TheReef/FEIR/FEIR%20Sections/III.%20Responses%20to%20Comments%20\(The%20Reef\)%20Public%20Review%20FEIR%20060616.pdf](http://planning.lacity.org/eir/TheReef/FEIR/FEIR%20Sections/III.%20Responses%20to%20Comments%20(The%20Reef)%20Public%20Review%20FEIR%20060616.pdf)

2015 Public Counsel DEIR Comment Letter,⁹ and the June 20, 2016 UNIDAD Comment Letter (EXHIBIT B), which are incorporated herein by reference.

Because the Determination fails to adequately evaluate consistency with the Community Plan, and because the Project is inconsistent with many other General Plan policies and programs, the Determination is not supported by substantial evidence and the decision to approve the VTTM constitutes an abuse of discretion.

ii. Physical Suitability of the Site for the Proposed Type and Density of Development

The Subdivision Map Act requires a city to deny approval of a tentative map where the site is not physically suitable for the type or density of development.¹⁰ As described below, the Determination's findings and conclusions regarding the Project site's suitability for the proposed type and density of development are not supported by substantial evidence.

The Determination finds that the site is physically suitable for the proposed type of development based on a short description of the site's current and proposed uses.¹¹ This unsupported conclusion is entirely insufficient to support the decision to approve the VTTM. The Determination neglects to acknowledge or adequately evaluate the site's history of being zoned for industrial uses, the proposal to erect enormous digital signage in close proximity to major freeways, the impacts of luxury housing on neighboring rental housing stock, and other important considerations regarding such a substantial change of use on the site.

The Determination states that "the project site's density is suitable because it is compatible with the high density campuses of the Los Angeles Trade Technical College and the Santee Education Complex."¹² Such a comparison might be laughable, were it not such an egregious affront to informed decision-making. It goes without saying, but high schools and commuter colleges with no residential uses are clearly inappropriate or non-instructive examples when considering impacts of adding 1,444 housing units on an industrially zoned site. Incredibly, the Determination then states that the Project is compatible with the Rutland apartment building directly north of the Project site.¹³ The Rutland building contains 127 residential units. Conversely, the Project would create 1,444 residential units among 10 low and mid-rise buildings, a 35-story residential tower, a 32 story residential tower, and another 19-story hotel tower. What does it say when the best available comparison to justify the suitability of proposed density is a neighboring building that contains *less than one-tenth* the number of units as the Project? What it says

⁹ Available at, [http://planning.lacity.org/eir/TheReef/FEIR/FEIR%20Sections/III.%20Responses%20to%20Comments%20\(The%20Reef\)%20Public%20Review%20FEIR%20060616.pdf](http://planning.lacity.org/eir/TheReef/FEIR/FEIR%20Sections/III.%20Responses%20to%20Comments%20(The%20Reef)%20Public%20Review%20FEIR%20060616.pdf)

¹⁰ Government Code 66474(c)-(d).

¹¹ Determination, 12

¹² Determination, 113.

¹³ Determination, 113.

is that the Project is patently incompatible. The blunder of the Determination's findings and conclusion is self-evident.

iii. Likelihood of the Design of the Subdivision and Improvements to Cause Substantial Environmental Damage

The Determination's conclusion regarding the environmental impact of the Project also is unsupported by substantial evidence. The Project will have significant and unavoidable impacts relative to Aesthetics, Air Quality, and Transportation, as acknowledged in the FEIR. UNIDAD hereby adopts and incorporates by reference the comments regarding the Project's environmental impacts contained in the November 2, 2015 UNIDAD DEIR Comment Letter, the November 2, 2015 Public Counsel DEIR Comment Letter, and the June 20, 2016 UNIDAD Comment Letter.

iv. Likelihood of the Design of the Subdivision and Proposed Improvements to Cause Public Health Problems

The Subdivision Map Act requires a city to deny approval of a tentative tract map where the design of the subdivision or type of improvements is likely to cause serious public health problems.¹⁴ As proposed, the Project threatens to add to the daunting displacement pressures experienced by lower income, rent burdened households. According to the Reef Project Health Impact Study, over 40,000 people have a moderate to very high risk for financial strain and/or displacement as a result of the Project's impacts on housing prices in the surrounding area.¹⁵ Within the South Central community that would be impacted by the Project, thousands of households are already rent burdened, and a large number of subsidized affordable housing units are at risk of converting to market rate in the near future.¹⁶

There are severe negative public health consequences associated with the Project's displacement threat. For example, the Reef Project Health Impact Report found:

“Housing instability, living in substandard housing, overcrowding, and homelessness are all determinants of poor health that can be caused by the financial strain of gentrification. These health determinants can have negative impacts on mental and physical health for adults, and can also specifically impact children... There are significant associations between high housing costs and hunger, inadequate childhood nutrition, and poor childhood growth.”¹⁷

The Reef Project Health Impact Report also notes:

¹⁴ Government Code § 66474(f).

¹⁵ Human Impact Partners, Assessing Health and Equity Impacts of the Proposed Reef Development Project in South Central Los Angeles, 19-20 (October, 2015) (hereafter, “Reef Project Health Impact Report”). Available at <http://www.humanimpact.org/news/reefdevelopmentproject/>

¹⁶ Reef Project Health Impact Report, at 20.

¹⁷ *Id.* at 25.

“Disruption of social networks through forced serial displacement and root shock can lead to additional health challenges including exposure to fragmented social environments that have higher rates of violence and sexually transmitted diseases. Multi-generational traumas of this nature can potentially influence the genetic makeup of future generations, leaving them more physiologically susceptible to the impacts of stress.”¹⁸

In a letter to the Chair of the City Council Planning and Land Use Management Committee (“DPH Letter”), the Los Angeles County Department of Public Health further advises that “[m]oving frequently leads to housing instability and has negative impacts on children including increased absenteeism and poor performance in school, which is linked with negative health and social outcomes.”¹⁹ And the City of Los Angeles’ own General Plan Health Element explicitly acknowledges the many negative public health consequences of displacement.²⁰

Given the demonstrated displacement threats posed by the Project and the corresponding public health risks, the Determination’s conclusion that “there appear to be no potential public health problems caused by the design or improvement of the proposed subdivision”²¹ is tone deaf, without merit, and not supported by the evidence.

(b) THE FEIR’S CONCLUSIONS AND THE ADVISORY AGENCY’S CEQA FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

UNIDAD hereby adopts and incorporates by reference the comments regarding the Project’s environmental impacts contained in the November 2, 2015 UNIDAD DEIR Comment Letter, the November 2, 2015 Public Counsel DEIR Comment Letter, and the June 20, 2016 UNIDAD Comment Letter.

i. The CEQA Process has Been Significantly Flawed.

The CEQA process for the proposed Project has been significantly flawed, and fails to account for the true potential impacts of this project on area residents, the community, and the environment. UNIDAD’s objections to the CEQA process include but are not limited to:

- The FEIR should have included an Environmental Justice section to account for the impacts that will be felt by the low income community of color surrounding the Project.

¹⁸ *Id.* at 4.

¹⁹The County of Los Angeles, Department of Public Health May 23, 2016 Project letter to PLUM (hereafter “DPH Letter”);]

²⁰ See Plan for a Healthy Los Angeles, A Health and Wellness Element of the General Plan, at 32 (March 2015). Available at <http://planning.lacity.org/cwd/gnlpln/PlanforHealthyLA.pdf>

²¹ Determination, 114.

- The FEIR should have analyzed, addressed, and mitigated indirect Displacement of residents in the surrounding community as a result of the Project.
- The results of the Reef Project Health Impact Report, which was prepared by a reputable organization, should have been addressed, instead of callously discounted in the responses to comments.
- The lack of affordable housing included in the Project is unacceptable considering the community surrounding the Project.
- The Project aesthetics are entirely different from the current aesthetics of the South LA neighborhood in which the Project would be located and changes should have been made to the Project, as proposed in the DEIR, including fewer signs, smaller and fewer billboards, and less lighting.

ii. The FEIR’s Responses and Conclusions Regarding Project Description and Characterization of Impacts are not Supported by Substantial Evidence.

The Draft EIR contained numerous inaccuracies with respect to the Project description and characterization of impacts, which are especially important features of an EIR because they provide a baseline understanding of the activity being analyzed in the document for decision makers and the public. The FEIR’s response to comments did not remedy these inaccuracies. For example, throughout the EIR, the City concludes that based on the specific features of the Project, impacts will be less than significant, while at the same time providing flexibility to the Project under the Design Guidelines and Land Use Equivalency Program with respect to specific building locations, uses, and other project features. UNIDAD’s comments to the Draft EIR identified this outright inconsistency. And yet the FEIR fails to remedy this inconsistency, and merely states that if the Project is changed through the Design Guidelines or Land Use Equivalency Program, its impacts will be analyzed through separate environmental review at that time. This represents improper deferral of study and mitigation of project impacts under CEQA, and suggests the Draft EIR provides merely a “best guess” as to the specific features and impacts of the proposed Project, in violation of CEQA.

It is especially troubling that the City dedicates significant attention to attempting to dismiss and discredit the lived experience and concrete challenges faced by Project area residents, which were presented in the November 2, 2015 UNIDAD DEIR Comment Letter and the Reef Project Health Impact Report. Rather than addressing the evidence presented, the City unsuccessfully attempts to discredit its methodology (and by extension, the extensive outreach done to collect input from the impacted community). The City disregards the Reef Project Health Impact Report and instead relies on oversimplified assumptions about displacement, without taking into account the economic considerations outlined in the report, as required by CEQA in evaluating the significance of a project’s potential impacts.

The DPH Letter, incorporated by reference herein, which acknowledges the Reef Project Health Impact Report, agrees that a lack of affordable housing and increasing

economic pressures on residents have important implications for the project area. The DPH Letter concludes that “[i]ncreased access to affordable housing in housing development projects such as the Reef Project Development would help ameliorate the lack of quality, affordable housing in the City of Los Angeles and related negative health outcomes...” Despite this, and numerous studies establishing that the siting of affordable housing in projects such as The Reef can alleviate such negative outcomes, ease displacement pressures, and increase utilization of public transit systems (reducing greenhouse gas, air quality, and transportation/traffic impacts), the EIR concludes that including affordable housing as mitigation would not affect the impacts of the Project, and would not be appropriate for inclusion in project mitigation measures. It is beyond disturbing that the City can make this outrageous statement against the backdrop of a declared homelessness emergency, increasing housing insecurity, and a citywide affordable housing crisis. Instead of engaging with the community to investigate the true impacts of the Project, and considering feasible measures to mitigate those impacts, the City has prioritized development at all costs and expressed a lack of interest in the needs of current residents.

iii. The FEIR’s Conclusions Regarding the Impacts of the Project’s Signage are Inadequate and Unsupported by Substantial Evidence.

On November 2, 2015, Public Counsel submitted comments to the Draft Environmental Impact Report (DEIR) submitted for The Reef Project, incorporated by reference herein. In its November 2, 2015 letter, Public Counsel registered numerous serious concerns about the DEIR’s perfunctory, inaccurate and conclusory nature. Unfortunately, the FEIR fails to adequately address these concerns in its responses to the comments. On the contrary, the responses double down on the DEIR’s inadequacies by advancing conclusions unsupported by their own analyses. Although UNIDAD disputes as inaccurate all of the responses to these comments, several starkly highlight the inadequacy of the environmental review and the falsity of the conclusions reached in the FEIR with respect to the proposed signage.

Response to Comment 9-19

No response captures the dangers contained in the FEIR with respect to inadequate signage analysis more accurately than the response to comment 9-19. Comment 9-19 reads as follows:

- (ii) The Project would have significant environmental impacts on the City’s signage regulations and policies.

Regardless of which signage ordinance its conclusions are based, the DEIR ignores significant signage restrictions that form the bedrock of the City’s signage policy with respect to aesthetics and public safety. Specifically, the DEIR fails to address the fact that the Project violates the City’s ban on signage within 2000 feet of a freeway that would be viewed primarily from a main traveled roadway of

a freeway or an on-ramp/off-ramp.²² Not only does this gaping oversight stand as a powerful indictment of its inadequacy, the DEIR fails to account for how its Project's signage threatens to invalidate the City's hard fought ban of freeway facing signage – an environmental impact of monumental significance. Although emerging victorious in *World Wide Rush LLC et al v. City of Los Angeles*, the Ninth Circuit cautioned the City that although the Staples Center and the Fifteenth Street SUD exemptions to the freeway ban did not invalidate the ordinance, additional exceptions could “break the link between Freeway Facing Sign Ban and the City's objectives in traffic and aesthetics.”²³

The Project has all the elements of a sign district that would invalidate the City's ban of freeway facing signs ordinance. Its fully animated billboards would be highly visible from multiple freeways. The City's arguments of blight and improving traffic safety available for the Staples Center and Fifteenth Street SUD are absent. Thus, the Project threatens the City's continued ability to ban freeway facing signs, and opens up the entire length of every freeway to signage the City has fought so hard to ban. The environmental impacts of such a risk are immensely significant. Yet the DEIR fails to acknowledge and analyze this environmental impact. Accordingly the DEIR is inadequate and must be recirculated.

The FEIR responded as follows:

The commenter contends that the Project signage would have significant impacts related to existing signage regulations and policies, in particular the City's ban on signs facing freeways. See Responses to Comments 9-5, 9-13, 9-17 and 9-18.

This response grossly neglects to address the hazards relayed in comment 9-19. First, the attempt to dismiss the comment by cross referencing earlier responses fails because the cross referenced responses acknowledge the fact that the signage will be “viewed primarily from”²⁴ the nearby freeways, notwithstanding the FEIR's artful efforts to obscure this fact. By the FEIR's own account, the proposed signage will be “primarily viewable” from the Southbound 1-110, Northbound I-110, Westbound 1-10, and Eastbound 1-10 freeways. Specifically with each viewing, the proposed signage would be visible to the freeway driver for a greater distance than a person traveling on the street adjacent to the sign. Accordingly, the proposed signage would violate the Sign Ordinance, Chapter 62 § 91.6205.5. Despite the Project's obvious violation of the signage ordinance entitled “Hazard to Traffic”, the FEIR erroneously and dangerously concludes that the signage would not impair road safety.

²² Article 4.4, Section 14.4.6 and Section 14.4.5 of draft Signage Ordinance under CPC consideration.

²³ *Word Wide Rush LLC et al., vs. City of Los Angeles*, 606 F.3d 676 (9th Cir. 2010).

²⁴ The phrase “viewed primarily from” shall mean that the message may be seen with reasonable clarity for the greater distance by a person traveling on the main traveled roadway of a freeway or on-ramp/off ramp than by a person traveling on the street adjacent to the sign. Sign Ordinance, Los Angeles Building Code, Chapter 62 § 91.6205.5.

Equally troubling is the fact that the response entirely fails to address the fact that the proposed signage stands to eviscerate the City's ban on freeway facing billboards. The Ninth Circuit in *World Wide Rush LLC et al v. City of Los Angeles* held that projects like the Reef threaten to invalidate the ordinance, as additional freeway signage exceptions could "break the link between Freeway Facing Sign Ban and the City's objectives in traffic and aesthetics."²⁵

Response to Comment 9-6

Public Counsel's DEIR Comment Letter cited to studies showing the negative impact on human health from exposure to excessive artificial nighttime lighting. Here, the FEIR acknowledges that the Project would amount to the single largest concentration of outdoor electronic signage in the City. It acknowledges that this nighttime signage would have a significant impact on the residents of the Rutland Apartment (Response to Comment 9-13). And it acknowledges that scientific studies show that human health is placed at risk when exposed to excessive artificial nighttime lighting. Despite these acknowledgements, the FEIR seeks to minimize these acknowledged impacts by attempting to distinguish the cited literature as "primarily focusing" on indoor lighting. The falsity of this distinction is self-evident given that the signage from the proposed Project will illuminate the insides of the Rutland Apartment residents' bedrooms during sleeping hours. Rather than seriously confront this impact, the FEIR cavalierly asserts these residents can simply draw their blinds to shield themselves from the Project's electronic signage. This suggestion not only requires affected individuals to alter their environment to protect themselves from the Project's impacts, it requires every occupant to have and use window coverings sufficient to block out the proposed electronic signage. Clearly, the FEIR fails to account for the impacts the Project's nighttime lightshow would have on Rutland Apartment residents.

III. CONCLUSION

For the reasons stated above and those presented during the public hearing for this appeal, the City Planning Commission should grant this appeal and overturn the Determination.

²⁵ *Worldwide World Wide Rush LLC*. 606 F.3d at 687.