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May 26, 2020

Honorable Council Members
Planning and Land Use Management Committee
City of Los Angeles
City Hall, Room 350
Los Angeles, CA 90012

APPEALS OF THE 2110 BAY STREET PROJECT; CF 20-0105 and 20-0105-S1

On January 8, 2020 the City Planning Commission denied an appeal and sustained the decision of the Deputy Advisory Agency in certifying the 2110 Bay Street Project Environmental Impact Report (EIR), and approving Vesting Tentative Tract Map No. 74564 for the 2110 Bay Street Project ("Project"). In addition, under Case No. CPC-2016-3479-GPA-VZC-HD-SPR, the City Planning Commission approved a General Plan Amendment, Vesting Zone Change and Height District change; and, a Site Plan Review for the Project.

An appeal of the City Planning Commission's action relative to VTT-74564-1A was filed by Blue Arch Investments on January 21, 2020. An Appeal of the City Planning Commission's action relative to Case No. CPC-2016-3479-GPA-VZC-HD-SPR was also filed by Blue Arch Investments.

As discussed below, upon careful consideration of the appellants' points, the appellants have failed to establish that the City erred or abused its agency discretion. In addition, no new substantial evidence was presented that City erred in its actions relative to the EIR and the associated entitlements. The appellants have raised no new information to dispute the Findings of the EIR or the CPC's actions on this matter. Planning staff therefore respectfully recommends that the appeals of VTT-74564-1A and CPC-2016-3479-GPA-VZC-HD-SPR be denied. In support of the Department of City Planning's recommendation to deny the appeals, responses to the appeal points raised by the appellant are provided below.

1. Blue Arch Investments, Inc Appeal

Appellant Comment 1

Reason for Appeal: The findings in support of the Project approval are not supported by the record in this case. Specifically, the EIR fails to comply with the requirements of CEQA for the purposes stated in the attached letter from Kensinger Environmental Consulting dated September 4, 2019.

Staff Response 1

This comment serves as an introduction to the appeal and claims the Project EIR fails to comply with CEQA. As described in detail in the below responses, the Appellant failed to provide any evidence of any such inadequacy.

Appellant Comment 2

There are three major projects in this block should have been analyzed together, cumulatively, as a part of a redesigned zoning or special zoning district See Figure 1. Instead, a piece-meal approach circumvented cumulative effects analysis. Hyperloop One to the east of the proposed Bay Street project, fits the context of the industrial area. But it has plans to expand as a research and development campus with commercial restaurant and 8-story creative office workspace and a minimum of 444 parking spaces. This Hyperloop One Campus expansion would be served by the adjacent Bay Street residential complex with restaurants and other amenities and the newly opened Soho hotel and fitness center on the corner of Santa Fe Ave. Hyperloop One already uses all of the buildings between Sutter and Bay Street.

Staff Response 2

The EIR for the Project did analyze the aforementioned projects as part of the cumulative analysis for the Project. Soho House was identified as Related Project #35 and Hyperloop as Related Project #45 (2159 E Bay Street) in the Project EIR. Thus, any potential cumulative impacts as a result of these 2 unrelated project were addressed as appropriate in the Project EIR.

Each of these projects is separately owned, independently proposed, sought, and/or is seeking entitlement applications independently and they are not connected such that they should be analyzed as one project. As such, there is no basis to the comment that the Hyperloop project, the Soho House and the Project should have been analyzed as one project. Mere proximity or similarity in entitlement requests does not make separate projects one project for CEQA purposes.

See and compare Soho House:

<https://planning.lacity.org/pdiscaseinfo/search/encoded/MjAxOTUz0>

Hyperloop:

<https://planning.lacity.org/pdiscaseinfo/search/encoded/MjEyNDk10>

2110 Bay Street Project:

<https://planning.lacity.org/pdiscaseinfo/search/encoded/MjA5OTgz0>

Appellant Comment 3

We are asking for a public participation process in rezoning like the Recode: LA promised. Small businesses and developers need to be aware and prepare for the coming opportunities at the same time as the big developers which in this case are driving the plan rather than local government representing a local constituency of people and developers.

The re:Code LA process is languishing due to lack of planning as meetings have been planned and cancelled all summer. So far this year meetings occurred in February, March and May. The Bay Street project requests General plan and Central City North Community Plan amendments to rezone to the developer's needs and violates re:Code LA's promise to Zone like we mean it, and in a transparent way. Let's broadcast our intention to get quality development for everyone. Let's streamline the review processes to achieve the outcomes we want with less hassle. Let's upgrade our neighborhood protection. Let's make LA a model of how web-based zoning gets

done right. Re:code LA will serve up the Code in smart, functional, and easy-to-use way.
<https://urecode.la/about>

Staff Response 3

The 2110 Bay Street Project is not part of re:code LA, which is a separate Planning Department initiative. That initiative is subject to an open and ongoing public participation process which Appellant can participate in. The Project is pursuing entitlements as allowed for under the LAMC. This comment raises no information in support of their appeal that the City erred in its discretion to certify the EIR and approve the Project.

Appeal Comment 4

The Developments on the block bounded by Sacramento Street, Bay Street and South Santa Fe Avenue are an example of the consequences of preferential zoning that lacks transparency and is not a "web-based recode". While these three new developments flourish under the auspices of piecemeal zoning amendments and a statement of over-riding considerations for significant traffic impacts, The Creative Arts Playhouse, on the same block was forced to close after rigorous enforcement of liquor license laws since they had a potluck with a love-donation and alcohol was present.

Staff Response 4

As previously noted, the three developments are not related in any way. As such, it does not constitute piecemeal zoning. The City has discretion to consider City-initiated or applicant-initiated requests as permitted in, and in accordance with, the LAMC. It is not improper for the City to consider individual projects with their distinct entitlement requests while also considering citywide policy initiatives. The Creative Arts Playhouse is unrelated to the Project's entitlement requests.

Appeal Comment 5

Considering the matter of dividing the community under CEQA thresholds for land use planning, it isn't just dividing a community, it tacitly displaces the "struggling artist community" in favor of the gentrified high-tech community that will likely be living at Bay Street to work at Hyperloop One. The struggling arts community can serve as vendors and entertainment for the exclusive Soho Hotel and club. But when it comes to developing their own properties the neighborhood has become a high-tech members only club.

Staff Response 5

As discussed in Section 4.A, Impacts Found not to be Significant and in the Initial Study (Appendix A-1), the Project Site would not physically disrupt an established community. The Project is not of a size or type to physically divide a community. The Site is within a largely industrial area with no established residential community. It is a vacant site (CPC LOD, F-7; August 2019 Errata at page 19). Nor does the Project "include features such as a highway, aboveground infrastructure, or an easement through an established neighborhood community that could cause a permanent disruption in the physical arrangement of that established community or otherwise isolate an existing land use." (LA CEQA Thresholds Guide page H.2-1.) The EIR determination of no impact is correct (Draft EIR page IV.G-16), and the Appellant failed to submit any substantial evidence to the contrary.

Appeal Comment 6

The Creative Arts Playhouse was a cooperative resource for local artists and performers to gather and perform their craft and share in the Arts District community. They did not receive the kind of

preferential treatment the big money developers received in navigating their entitlements process even after attempts to correct their less-than-egregious error.

Staff Response 6

It is unclear how this statement is intended to support their appeal. Nevertheless, this comment does not provide any information as to how the City erred in approving the Project.

Appeal Comment 7

The developers of the 3 new projects, Hyperloop One Campus owned By Virgin, the Bay Street Mixed use residential owned by Bay Capital Funds and the Soho Hotel and fitness club, which just opened in October 2019, have effectively re-zoned the entire block without having to analyze or comply with the zoning regulations as a cumulative effect. Each one was approved independently with zoning amendments.

Staff Response 7

As noted above, the three listed projects are independently proposed and under separate ownership. Moreover, the City has the discretion to review and consider individual projects, each with their own entitlement requests as provided for under the LAMC.

Appeal Comment 8

CEQA Item IV Biology Resources

In response to Initial Study CEQA checklist items IV Biological Resources, a through f, (all checklist items) the EIR states that:

The Site does not contain any natural open spaces, act as a wildlife corridor, nor possess any areas of significant biological resource value. No hydrological features are present on the Site and there are no sensitive habitats present... Therefore, no impact would occur. Further evaluation of this issue in an EIR is not required.

CEQA requires, "Recirculation of an EIR Prior To Certification" when in the case of Biological Resources Section 15088.5 a) (4):

The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

CEQA checklist questions were developed to prevent opportunism in making baseless claims that "no impacts exist". An unsupported claim that no biological resources exist does not constitute evidence that there are no impacts to habitat or species. The EIR is "insufficient" in its analysis without an evaluation of Biological Resources and the opportunity for meaningful public review and comment.

Staff Response 8

The Appellant is incorrect in asserting that there is no support for the determination that biological resources do not exist on the Project site and also failed to submit any substantial evidence to the contrary. The Initial Study determination was based on a site inspection by the EIR Consultant, CAJA Environmental Services, and confirmed on NavigateLA that the Site is not within a Los Angeles Significant Ecological Area (Navigate LA, Significant Ecological Areas layer: <http://navigatea.lacity.org/navigatea/>) or within a Riparian or Wetland habitat according to the U.S. Fish and Wildlife Service (U. S. Fish & Wildlife Service, National Wetlands Inventory, Wetlands Mapper, website: <http://www.fws.gov/wetlands/Data/Mapper.html>), the Protected Tree Report

(Appendix C to the Initial Study) as well as other physical site inspections including the Phase 1 (Draft EIR Appendix G-1 ["The northern portion of the property is occupied by a large, predominately open-sided warehouse building. The southern portion of the site is occupied by a brick building and a partially enclosed shop-type building. The remainder of the site is open space that is covered with asphalt pavement."].) As such, there can be no impacts to habitat or species or areas of significant biological resources.

Appeal Comment 9

We object to the selection of the Project Alternative in the EIR that has significant traffic impacts and we also object to the environmentally superior alternative which was not selected since both have significant impacts that would require a "statement of overriding considerations". In order to adopt a valid Statement of Overriding Considerations there must be specific considerations that make identified mitigation measures or alternatives infeasible. Instead this loophole is being used as an administrative convenience to violate policies and procedures for planned re-zoning.

Staff Response 9

Appellant provides no reasoned basis to support its objections to the EIR's alternatives analysis. The fact that the Appellant would have liked to see different alternatives considered is irrelevant as the Draft EIR properly provided a reasonable range of alternatives to the Project for consideration and analysis. (Draft EIR Section VI, Alternatives.) Specifically, four alternatives were considered: Alternative 1 – No Project, Alternative 2 – All Office/Commercial, Alternative 3 – Reduced Intensity and Alternative 4 – Zoning Compliant. There is no CEQA prohibition for consideration of an alternative which may have significant and unmitigatable impacts, particularly when they are the same impacts as the proposed project. Furthermore, a Statement of Overriding Considerations is expressly permitted under CEQA (Public Resources Code section 21081; CEQA Guidelines Section 15093); it is not a "loophole."

Appeal Comment 10

While the developer justifies meeting the planned growth objectives for downtown redevelopment, it does so at the expense of other developers who can't get their foot in the door for "spot rezones" with their smaller projects. This Project is within the Central City North Community Plan's Alameda East Redevelopment Study Area. Where:

Many deficiencies exist in the Alameda East study area which makes the area less than desirable for "modern" industrial activity. These deficiencies include the physical condition of the streets, loading and unloading activities, and parking conditions. Other difficulties include poor design of intersections, the presence of dead end streets, and the lack of continuous north/south corridors.

ISSUES

Lack of adequate access to industrial areas due to outdated street design and circulation patterns.

Intrusion of commercial and residential uses into previously industrial areas.

Outdated warehouse and industrial facilities that can no longer accommodate modern technology. <https://planning.lacity.org/complan/pdf/ccncptxt.pdf> (p-1-6)

The proposed project contributes to and exacerbates all of these issues without proper public participation or meeting the "transparency" goals of re:Code LA. Furthermore, both the proposed project and the environmentally superior alternative, have significant impacts to traffic that can

only be resolved with a statement of overriding considerations. Considerations cannot be deemed "overriding" when these impacts conflict with multiple "applicable land use plan, policy, or regulations" in addition to cumulative effects of piecemeal zoning.

Staff Response 10

As previously noted above, the Project is not part of re:code LA as that is a separate Planning initiative. The Appellant urges a moratorium or specific plan in the summary above. The City has not adopted a moratorium on entitlement applications for Downtown projects until the City completes the re:code LA initiative or until a specific plan for "this portion of the Alameda East Redevelopment Study Area" is completed nor is there any City direction to do so. The Project has been pending since 2016 and re:code LA is part of an ongoing process during which no individual projects are being delayed or halted by the City due to re:code LA. In fact, the Project entitlements are being processed as per all applicable requirements and time to act provisions in the LAMC, including but not limited to LAMC Sections 11.5.6, 12.32, and 16.05.

Regarding the comment regarding spot zones and piecemeal zoning, as set forth in the Staff Report for CPC-2016-3479-GPA-VZC-HD-SPR, given the uses surrounding the Project Site, the Project's proposed General Plan Amendment from industrial to commercial industrial land use and commercial manufacturing zoning designations will not lead to impermissible spot zoning. The Project Site is approximately 1.78 acres and the nearby area contains a mix of industrial, residential, and commercial uses, including former industrial sites that have been redeveloped or replaced with arts-focused live-work projects within 0.5 mile, as noted in the related projects listed in Section III, Environmental Setting, Table III-2, of the Draft EIR and shown in Figure III-2 of the Draft EIR.

Further, as provided in more detail in the August Errata, Section 3.1 Spot Zoning, whether a project results in a spot zone is merely a screening criteria under the L.A. CEQA Thresholds Guide; a spot zone does not in and of itself constitute a significant impact. If a project would result in the creation of a spot zone, it would be subject to further CEQA analysis to determine whether there would be a significant land use impact under the Appendix G thresholds of significance. If necessary, the City would require mitigation measures. Here, as set forth in the Draft EIR and August Errata, the Project would not physically divide an established community, conflict with an applicable plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect, or conflict with any applicable habitat conservation plan or natural community conservation plan. Therefore, the Project would not result in a significant land use impact even if it were to result in spot zone.

Appellant is incorrect about the lack of transparency and public participation. The Project's EIR and entitlements have been subject to the standard and required public disclosure and participation process, include publishing the Draft EIR for 50-days starting on November 8, 2018 and ending on December 26, 2018, to which six public comments were received. In addition, public hearings were and continue to be held as described above and will continue to take place until final approval or denial of the project.

Appeal Comment 11

The EIR analysis determines Alternative 3 (Reduced Intensity) to be the environmentally superior alternative. It has a 45% reduction across all uses as compared to The Project. Alt 3 has 61 DU

w/ no affordable housing. Alt 3 has the same FAR 3.9:1 with total 287, 137 sq. ft. as The Project and same commercial space, 50,848 sq. ft., as The Project.

However, impacts from traffic in Alt 3 are much less than The Project. Signal system upgrades (mitigation measure 3) would be required at only one of the five locations recommended for The Project. Alt 3 would result in NO intersections with significant and unavoidable intersection impacts.

This issue on signal upgrades that would be overlooked in Alt 3 the "environmentally superior" alternative, just "kicks the can down the road", these issues should be managed at a planning level in zoning not as a case-by-case spot approach to zoning.

Staff Response 11

Alternative 3 was selected as the Environmentally Superior, because this alternative would reduce the significant and unavoidable Project traffic intersection impact at Soto and Whittier. However, Alternative 3 was rejected as it fails to meet overall Project Objectives as compared to the Project and, significantly, does not include any affordable housing, which is in critical need in the City.

Appellant's comment about spot zoning with respect to signal upgrades which would not be required under Alternative 3 is unclear. The Proposed Project includes signal system upgrades at select intersections as per mitigation measure TRANS-MM-3 Transportation Systems Management (TSM) Improvements.

To the extent that the Appellant is questioning the basis for the determination that Alternative 3 was selected as the Environmentally Superior Alternative, that rationale and determination is set forth at Draft EIR Section IV. Alternatives, Subsection 5, beginning on page VI-78. The EIR and the CEQA Findings provide a reasoned basis for the City's determination that none of the considered Project alternatives are feasible.

Appeal Comment 12

"Project-specific zoning" excludes the smaller developers that are not otherwise able to overcome these zoning barriers. If the actual intention is to change the zoning for this area into a mixed-use industrial with residential, then land use planning should let all entrants to the re-development process in at the same time. Currently the development of this area is only open to exclusive developers, with multiple major projects throughout the City or high-profile exclusive developments than can afford to circumvent the planning process.

Staff Response 12

"Project-specific zoning" is permitted under the City's Charter. The Appellant's comment about zone change requests being limited to "exclusive developers" to the exclusion of "smaller developers" is incorrect. The City does not differentiate between "exclusive developers" or "smaller developers" under the LAMC. The process for entitlements is the same for every applicant. Charter Section 555 and Los Angeles Municipal Code Sections 11.5.6 and 12.32 are available zoning tools for qualifying projects.

Appeal Comment 13

The Project should not be approved with a "Statement of Overriding Considerations" because these considerations can be met in many other ways, more quickly and with broader participation within the development community. We object to all of the proposed mixed use alternatives for these reasons.

Staff Response 13

A Statement of Overriding Considerations must be adopted when the EIR identifies significant and unavoidable environmental impacts, explaining in detail why the benefits of the proposed project outweigh the adverse impacts, and setting forth the specific social, economic, legal, technical or other benefits of the Project. (Public Resources Code section 21081; CEQA Guidelines Section 15093.) The appellant does not specify in what “other ways” the Statement of Overriding Considerations can be met, and offers no justification in how the City did not comply with CEQA as it relates to the City’s adoption of the Statement of Overriding Considerations. The Statement of Overriding Considerations for the 2110 Bay Street Project are adequate, and the City made the necessary findings pursuant to Section 21081 of the Public Resources Code and Section 15093(b) of the CEQA Guidelines. These Findings and the Statement of Considerations are based on the record of proceedings, including, but not limited to, the Final EIR, and other documents and materials that constitute the record of proceedings.

CONCLUSION

As discussed above, upon careful consideration of the appellants’ points, the appellants have failed to adequately disclose how the City erred or abused its agency discretion. In addition, the appellants have not presented new substantial evidence that the City erred in its actions relative to the EIR and the associated entitlements.

Respectfully,



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