



Via E-Mail

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January 20, 2017

Milena Zasadzien
Los Angeles Department of City Planning
200 N. Main St., Room 350
Los Angeles, CA 90012

**Re: ENV-2016-2595-EIR
Fig+Pico Conference Center Hotels
Comments on Environmental Impact Report Notice of Preparation**

Dear Ms. Zasadzien:

The Coalition for Responsible Equitable Economic Development (“*CREED LA*”) hereby provides comments on the Notice of Preparation (“*NOP*”) of an Environmental Impact Report (“*EIR*”) pursuant to the California Environmental Quality Act (“*CEQA*”) for the referenced Fig+Pico Conference Center Hotels project (“*Project*”) proposed by Lightstone DTLA, LLC (“*Lightstone*” or “*Applicant*”).

The Project would develop approximately 506,682 square feet of floor area in two hotel towers, providing up to 1,162 guestrooms and 13,145 square feet of retail/restaurant space on an approximately 1.22-acre development site. The Project Site currently contains a two-story commercial building and surface parking lots, which are to be demolished. The Project site, which is partially owned by the City, is located on Figueroa Street at the western end of the Central City Community Plan Area and within the South Park district of the City across from the Los Angeles Convention Center.

Pursuant to City Council File 11-1718, the sale of the City-owned portion of the site to Lightstone for the Project involves the City’s surplus property rules and is the subject of the November 1, 2012 “Request for Proposal: Property Sale for Future Hotel Development on Corner of West Pico Boulevard and South Figueroa Street” (“*2012 RFP*”). The 2012 RFP should define the objectives for this Project; yet, CREED LA is concerned whether the competitive RFP process has been complied with and questions whether Lightstone responded to the 2012 RFP or made any competitive proposal.

Requested discretionary approvals for Lightstone’s Project that require the EIR include: 1) a City-Initiated General Plan Amendment pursuant to Los Angeles Municipal Code (“*LAMC*”) § 12.32.A and City Charter § 555 from High Density Residential to Regional Center Commercial; 2) a City-Initiated Zone Change and Height District Change pursuant to LAMC §§ 12.32.A and 12.32.F from [Q]R5-4D-O to C2-4-SN and C2-4D-O to C2-4-SN to permit a floor area ratio of up



to 13:1; 3) a City-Initiated “SN” Sign District pursuant to LAMC §§ 13.11 and 12.32.S on the Project site and certain surrounding parcels for a comprehensive signage program; 4) a Conditional Use Permit pursuant to LAMC §12.24.W.24 to permit a hotel located within 500 feet of an R Zone; 5) a Conditional Use Permit for Floor Area Ratio Averaging across a unified development pursuant to LAMC §12.24.W.19; 6) Site Plan Review for 50 or more guest rooms pursuant to LAMC §16.05; 7) a Vesting Tentative Tract Map for subdivision pursuant to LAMC § 17.15; and 8) a Development Agreement (“DA”) between the City and Lightstone.

The CEQA NOP and its Initial Study (“IS”) identify the Project’s potentially significant impacts under CEQA to include: aesthetics, air quality, geology and soils, greenhouse gases (“GHGs”), hazardous materials, hydrology, land use, noise, public services, recreation, transportation and utilities. CREED LA respectfully requests under CEQA complete analysis of these impacts, imposition of all feasible mitigation and study of a reasonable range of alternatives to the Project.

This Project is discretionary, not by right. Lightstone’s requested discretionary approvals require numerous findings under the LAMC and applicable land use plans. The City has clear legal authority to disapprove the Project, and go in a different direction with the use of its land, if these findings cannot be made. *Kavanau v. Santa Monica Rent Control* (1997) 16 Cal.4th 761. Of particular concern is the scheme to re-zone the property to avoid payments due to the City from Lightstone under the Transfer of Floor Area Rights (“TFAR”) Ordinance that are typically required of other applicants seeking to exceed a 6:1 “D” limitation. CREED LA questions any effort to deviate from the City’s regular development and TFAR standards for this Project, especially without undergoing a competitive bid process for Lightstone.

Interests and Standing of CREED LA

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, the environmental and public service impacts of the Project, and the City’s determinations regarding the Project. CREED LA’s mission is to ensure that proposed development projects in the City of Los Angeles foster sustainable communities by minimizing environmental impacts and ensuring community benefits, including the advancement of a safe and skilled construction workforce through job training and career path construction industry jobs that maintain area wage standards and working conditions.

CREED LA’s members include 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 John Ferrucio, Jorge Aceves, John Bustos, Gery Kennon, Chris Macias, and Robert E. Murphy Jr, who live, work, recreate and raise their families in Los Angeles and would be directly affected by the environmental impacts of the Project.

Background on CEQA EIRs

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“*Guidelines*”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring implementation of “environmentally superior” alternatives and all feasible mitigation measures. *Guidelines* § 15002(a)(2) and (3); *Citizens of Goleta Valley*, 52 Cal.3d at 564. If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub. Res. Code § 21081; *Guidelines* § 15092(b)(2)(A) and (B).

Although the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1355 (quoting *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 409 n. 12 (1988)). Substantial evidence in the record must support any foundational assumptions used for the impact analyses in the EIR. *Citizens of Goleta Valley*, 52 Cal.3d at 568 (EIR must contain facts and analysis, not just bare conclusions); *Laurel Heights*, 47 Cal.3d at 392-93 (agency’s conclusions must be supported with substantial evidence).

The Project Objectives Should be Guided By Council File 11-1718 and the 2012 RFP

The City must accurately and completely detail the Project objectives, particularly since many of the requested discretionary land use approvals are City-initiated. In CREED LA’s view, these objectives should be guided by Council File 11-1718 and the 2012 RFP, which identified a much smaller hotel Project for this site and numerous other desired community benefits.

In any CEQA process, the project’s objectives serve as the foundation for the range of reasonable alternatives and selecting a preferred alternative. Thus, defining the objectives of a project too narrowly or too broadly has the potential to result in the EIR evaluating a legally deficient range of alternatives. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1447. Clear objectives and need are foundational elements upon which the entire Project EIR analysis will depend, and are especially important for this Project given the Council’s action in Council File 11-1718, the detail in the 2012 RFP, and the Project’s potential significant environmental impacts identified in the NOP and IS. The nature of the financial arrangement

between the parties, including the sale price of the City land and the TFAR payment, may also skew the Project objectives, feasibility and the public welfare – all this must be explained.

The EIR Must Thoroughly Examine The Project’s Land Use Inconsistency

As noted above, CREED LA respectfully requests under CEQA full analysis of the Project impacts in areas including aesthetics, air quality, geology and soils, GHGs, hazardous materials, hydrology, land use, noise, public services, recreation, transportation and utilities. These Project impacts will be extensive when compared to the existing environmental baseline, given that Lightstone is proposing to squeeze in two towers with up to 1,162 guestrooms on a very narrow Project site that now is mostly occupied by surface parking.

In particular, CREED LA wishes to emphasize that an EIR must discuss any land use inconsistencies. Guidelines § 15125(d). Specific Project land use issues here include:

- The propriety of the scheme to re-zone the property to avoid customary payments due to the City from Lightstone under the TFAR Ordinance.
- The lack of competitive bidding by Lightstone or transparent compliance with City Council File 11-1718, the 2012 RFP and the City’s Charter, Administrative Code and LAMC surplus property sale rules for the City-owned portion of the Project site.
- The lack of transparent financial analysis or deal terms provided to the public on the relationship and contractual agreements between the City and Lightstone, to ensure that there is no gifting of City funds or improper subsidy to Lightstone at the City taxpayers’ expense.
- The proposed City-Initiated “SN” Sign District on the Project site that appears to allow the encroaching of billboards into a residential area.
- The gentrification, socioeconomic and urban displacement impacts of the Project, as well as cumulative impacts with many other projects, including hotels, in the area. The EIR also should study the shortage of affordable housing in the City and impacts on the housing needs expressed in the City’s General Plan Housing Element. CEQA requires the lead agency to determine whether the “environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” Pub. Res. Code § 21083(b)(3); Guidelines Appendix G, Section XII.

The EIR Must Impose All Feasible Mitigation and Analyze a Reasonable Range Of Alternatives to the Project

CEQA mitigation measures should be capable of “avoiding the impact altogether,” “minimizing impacts,” “rectifying the impact,” or “reducing the impact.” Guidelines § 15370. Importantly, mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261. A 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. This approach helps “insure the integrity of the process of decision making by precluding stubborn problems or serious criticism from being swept under the rug.” *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

Here, for a Project of this massive size in this location on Figueroa Street adjacent to the Los Angeles Convention Center and the Staples Arena, the imposition of all feasible CEQA mitigation is particularly important. All feasible mitigation must be imposed for the Project’s potentially significant aesthetic, air quality, geology and soils, GHGs, hazardous materials, hydrology, land use, noise, public services, recreation, transportation and utilities, even if it may include costly infrastructure and public transportation mitigation for the South Park district of the City.

In addition, CEQA requires the City to consider a range of alternatives including feasible environmentally superior choices. Guidelines § 15126.6(a). CREED LA cautions the City and Lightstone that the EIR must study a reasonable range of alternatives to Lightstone’s Project, including those better tethered to Council File 11-1718 and the 2012 RFP. The failure to study a reasonable range of alternatives to Lightstone’s Project, and evaluating the comparative merits of these alternatives, could constitute an abuse of discretion. *Id.*

Conclusion

CREED LA appreciates the opportunity to provide these comments on the Lightstone Project’s NOP. CREED LA respectfully requests under CEQA full analysis of the environmental impacts, feasible mitigation and reasonable alternatives to the Project. Project impacts will be extensive when compared to the existing environmental baseline, given that Lightstone is proposing to squeeze in two towers with up to 1,162 guestrooms on a very narrow Project site that now is mostly occupied by a surface parking lot. Moreover, as noted herein, CREED LA questions any effort to deviate from the City’s normal development and TFAR standards for this Project, especially without undergoing a competitive bid process for Lightstone as required by Council File 11-1718 and the 2012 RFP.

This comment letter is made to exhaust remedies under Pub. Res. Code § 21177 concerning the Project, and incorporates by this reference all written and oral comments submitted on the

Project by any commenting party or agency. It is well-established that any party, as CREED LA here, who participates in the administrative process can assert all factual and legal issues raised by any commenting party or agency. *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875.

Finally, CREED LA is requesting CEQA actions and any approvals, Project CEQA determinations, or Project public hearings under any provision of Title 7 of the California Government Code (California Planning and Zoning Law). This request is filed pursuant to Pub. Res. Code §§ 21092.2 and 21167(f), and Gov. Code § 65092, and LAMC §§ 12.28.C.3, 12.32.D.2 and 16.05.G.3.b, that collectively require local agencies to mail such notices to any person who has filed a written request for them. Please send notice by electronic and regular mail to Jeff Modrzejewski, 501 Shatto Place Suite 200, Los Angeles, CA 90020 and Email: jeff@creedla.com.

Thank you for consideration of these comments. We ask that they be placed in the Administrative Record for the Project and EIR.

Sincerely,



Jeff Modrzejewski
Executive Director