APPLICATIONS:

ORIGINAL

APPEAL APPLICATION

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

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☑ City Council ☐ Director of Planning

Regarding Case Number: VTT-74200 - ENV-2012-2055-EIR

Project Address: 129-135 W. College St. and 924 N. Spring St., 90012

Final Date to Appeal: 11/16/2018

Type of Appeal:
☐ Appeal by Applicant/Owner
☑ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Southwest Regional Council of Carpenters

Company: Southwest Regional Council of Carpenters

Mailing Address: c/o Wittwer Parkin LLP, 147 S. River Street, Suite 221

City: Santa Cruz State: CA Zip: 95060

Telephone: (831) 429-4055 E-mail: nwhipps@wittwerparkin.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

  ☑ Self ☐ Other:

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☑ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Nicholas Whipps

Company: Wittwer Parkin LLP

Mailing Address: 147 S. River Street, Suite 221

City: Santa Cruz State: CA Zip: 95060

Telephone: (831) 429-4055 E-mail: nwhipps@wittwerparkin.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☑ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☑ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

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

5. APPLICANT'S AFFIDAVIT

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

Appellant Signature: _____ Date: 11/13/18

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
  - Appeal Application (form CP-7769)
  - Justification/Reason for Appeal
  - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
  - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: $89.00	Reviewed & Accepted by (DSC Planner): Blayne Sutton-Wills	Date: 11-13-18
Receipt No: 0101967784	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

Attachment to Appeal to Planning Commission

Justification/Reason for Appeal

Inaccurate and Unstable Project Description

An accurate and stable Project Description is "the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.)

In the Final Environmental Impact Report (FEIR), the City incorrectly concludes Footnote 12 of the Central City North Community Plan is not applicable to the Project. (FEIR, p. 2-219.) The City removes reference to a General Plan Amendment from the Project Description that would have permitted the Project Applicant to avoid complying with this footnote. (FEIR, p. 3-3.)

Contrary to the City's statements, Footnote 12 is part of the City's General Plan, and the Project cannot be approved without either complying with Footnote 12 or receiving City approval of a General Plan Amendment eliminating the Project Applicant's need to comply with this footnote. (*See Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 158-159 (City bound by land use designation contained in general plan land use map).) Thus, as drafted, the Project Description depicts an illegal Project that cannot be approved as presented to decisionmakers and the public. Likewise, the City's Revised Alternative 5 requires a General Plan Amendment in order to proceed. Thus, removal of the General Plan Amendment from the list of approvals renders this amendment infeasible. (FEIR, p. 3-9.) According to CEQA, the City is required to consider a reasonable range of *feasible* alternatives. (14 Cal. Code Regs. § 15126.6(a).) It defeats the informational purposes of CEQA to put forth an infeasible Project alternative, especially where that alternative is selected to replace the Project proposed in the DEIR.

Moreover, the City confusingly presents what appear to he mitigation measures as aspects of the proposed Project. These include some or all of the air quality and greenhouse gas mitigation measures, which the City claims are "Project Design Features." (DEIR, pp. 2-28 – 2-31.) While the City states these are components of the Project, the City presents these as though they were mitigation measures throughout the EIR. Confusingly, the City emphatically denies these are mitigation measures, although they are presented in the same location as all other mitigation measures and otherwise appear to meet the definition of "mitigation." (*See, e.g.*, DEIR, p. ES-17; 14 Cal. Code Regs. § 15370.) Incorrectly identifying the Project Design Features as something other than mitigation fails to provide decisionmakers and the public with

an accurate, stable, and finite Project Description. (14 Cal. Code Regs. § 15126 (lead agency must consider and discuss environmental impacts).)

Inadequate Discussion of Air Quality Impacts

In its EIR, City claims a project cannot have significant cumulative air quality impacts unless it determines the Project surpasses significance thresholds for direct and indirect impacts. While the City claims SCAQMD adopted such a threshold, SCAQMD has never done so. Regardless, the City cannot rely on a threshold that runs counter to the definition of "cumulative impacts." CEQA Guidelines define "cumulative impacts" as "two or more individual effects, [which] when considered together, are considerable or which compound or increase other environmental impacts." (14 Cal. Code Regs. § 15355.) Critically, "Cumulative impacts can result from ***individually minor but collectively significant projects*** taking place over a period of time." (14 Cal. Code Regs. § 15355 (emphasis added).) Thus, the City fails to properly analyze the significant cumulative impacts of the Project.

Further, as mentioned above, the City confusingly claims certain mitigation measures designed to address air quality and greenhouse gas impacts are not mitigation measures and are, instead, Project features. This is the case although the City treats these Project Design Features as mitigation measures, including by listing these features in the appropriate mitigation sections throughout the FEIR and in the Mitigation, Monitoring, and Reporting Plan. This distinction is important because Project air quality impacts will be significant absent mitigation. (14 Cal. Code Regs. § 15126.)

Improper Greenhouse Gas Impacts Analysis

The City claims that it appropriately relied on a qualitative analysis of consistency with plans not adopted by the City and that were not designed to address greenhouse gas impacts or to be applied at the project-level.

The City is incorrect to assume its reliance on a purely qualitative impacts threshold was informative or adequate in this situation. (Cal. Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97, pp. 23-24 (stating that, for large projects, "a lead agency may find it difficult to demonstrate a good faith effort through a purely qualitative analysis"); *Berkeley Keep Jets Over the Bay Com. v. Board of Port Comm.* (2001) 91 Cal.App.4th 1344, 1370 (agency must make a good faith effort at disclosing greenhouse gas impacts).) The City's environmental review addresses greenhouse gas impacts arising from a massive project, including several stories, hundreds of dwelling units, and tens of

thousands of square feet of commercial space. Under these circumstances, reliance on a purely qualitative threshold of significance cannot be seen as a good-faith attempt at disclosing Project impacts, as required by CEQA. (14 Cal. Code Regs. § 15064.4(a).) The City's qualitative review of various plans and policies do not serve to adequately inform the reader of the Project's impacts on the environment, and this approach does not clearly explain what mitigation, if any, could be used to address any Project impacts. (14 Cal. Code Regs. § 15064.4.)

The City admits that there are currently no applicable City significance thresholds or specific reduction targets and no approved policy regarding greenhouse gas impacts. (DEIR, p. 4.4-30.) Instead, the City relies on plans and policies adopted by state and regional agencies that that were never adopted by the City and that are not designed to be used at the Project-level. (DEIR, pp. 4.4-31, 4.4-37, 4.4-65.) The City's evaluation of consistency with plans it has not, itself, adopted runs counter the standards set forth in the CEQA Guidelines and, thus, violates CEQA.

CEQA Guidelines section 15064(h)(3) states, "A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program… that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located." Here, the City admits that there is no previously approved plan or mitigation program that the is applicable to assist in determining significance at the project or cumulative levels. Per CEQA Guidelines section 15064(h)(3), the City cannot rely on other plans not adopted by it to conclude that the project will avoid or substantially lessen the cumulative problem of greenhouse gases when there is no plan to analyze the Project against. The City must adopt a GHG reduction plan in order to make the finding that the Project will not have significant impacts to greenhouse gas emissions. (*Center for Biological Diversity* v. *Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.)

In *Center for Biological Diversity* v. *Department of Fish & Wildlife*, the California Supreme Court invalidated an EIR that incorrectly relied on the California Air Resources Board Scoping Plan. (*Id.* at 216.) This is because "neither Assembly Bill 32 nor the Air Board's Scoping Plan set out a mandate or method for CEQA analysis of greenhouse gas emissions from a proposed project." (*Id.* at 216-217.) "In short, neither Assembly Bill 32 nor the Scoping Plan establishes regulations implementing, for specific projects, the Legislature's statewide goals for reducing greenhouse gas emissions. Neither constitutes a set of "regulations or requirements adopted to implement" a statewide reduction plan within the meaning of Guidelines section 15064.4, subdivision (b)(3)." (*Id.* at 223.)

In the EIR, the GHG analysis compares the Project's GHG emissions to the emissions that would be generated by the Project in the absence of any GHG reduction measures under a "business as usual" scenario. (DEIR, pp. 4.4-37 – 4.4-38.) This approach mirrors the concepts used in the CARB's Scoping Plan for the implementation of AB 32. But comparing the Project's GHG emissions that would be generated by the Project in the absence of any GHG reduction measures with GHG emissions generated with GHG reduction measures does not provide the analytical route necessary to determine what is required from individual projects in order to ensure consistency with statewide reduction efforts and whether the Project is aligned with those objectives. (*Center for Biological Diversity* v. *Department of Fish & Wildlife*, *supra*, 62 Cal.4th at 217.)

As was the case in *Center for Biological Diversity*, the City has not "related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing . . . cited in the administrative record indicates the required [analysis] is the same for an individual project as for the entire state population and economy." (*Id.* at 225-226.) The EIR commits the same error identified in *Center for Biological Diversity* because it fails to quantify the amount of reduction required from individual projects.

Finally, as with air quality impacts, the City masks a large percentage of greenhouse gas impacts by claiming mitigation measures are, in fact, parts of the Project. Since the City has not made these mitigation measures binding on the Project, it cannot rely on these measures to assume Project impacts will be less than significant or otherwise reduced to the levels disclosed in the EIR. (Pub. Resources Code § 21002.1(b); 14 Cal. Code Regs. § 15096(g)(2).) It is impermissible for the City to fail to accurately disclose pre-mitigation Project-related greenhouse gas impacts.

The Project Is Inconsistent with the Central City North Community Plan

To be approved, the Project must be consistent with the City's General Plan. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.) The DEIR correctly claimed the Project was subject to Footnote 12, as shown on the Central City North Community Plan Land Use Map. (DEIR, p. 2-32.) Footnote 12 reads:

> For the Area bounded by North Spring Street on the west, Ronout [*sic*] Street on the north, North Main Street in the east and College Street on the south, the following restrictions shall apply:
>
> For residential and mixed-use projects, the first 1.5:1 FAR of residential use shall be permitted to be market rate units. Residential uses with FARS 1.5:1 to 3:1 shall set aside

> 20% of their units for affordable housing. Residential projects with FARS in excess of 3:1 shall set aside 100% of the units above the 3:1 threshold as affordable units. Units complying with the affordable requirements of this footnote shall not be used for the purpose of obtaining additional density bonus, under the terms of State law. The affordable component of these projects may be used for any other development incentive listed by state law.

The City states the Project has a FAR of 2.71:1 and, thus, the Project is required to provide at least 20 percent of its units, or 125 units, as affordable housing. (FEIR, p. 3-2.) The City now claims this General Plan provision never applied to the Project and removed the General Plan Amendment which would have addressed the Project's inconsistency with Footnote 12. (FEIR, p. 2-125.) The City directs the reader to FEIR page 3-14 for an explanation as to how the City has determined this is so, but page 3-14 contains no such explanation. (FEIR, p. 2-125.) Contrary to the City's new assertion, the Project is subject to Footnote 12. (*Orange Citizens for Parks & Recreation v. Superior Court, supra*, 2 Cal.5th at 158-159.) Footnote 12 is presented on the Central City North General Plan Land Use Map and there is nothing in the Central City North Community Plan that would contradict this. Footnote 12, in addition to being a policy that addresses the needs of the Chinatown community, has been City policy for a decade. Accordingly, the Project is bound to comply with this policy or else seek a General Plan Amendment, as it originally did. (*Id.*) The City's Revised Alternative 5 does neither and is inconsistent with the City's General Plan, in violation of CEQA. (*See also* CEQA Guidelines Appendix G § X(b).)

Hazardous Materials

The City is required to disclose and mitigate Project-related impacts arising from hazardous materials. (CEQA Guidelines Appendix G § VIII.) The DEIR discloses that the Project site has a history of leaking underground storage tanks and other soil contamination related to the site's historic uses as a rail freight yard. (DEIR, p. 4.5-1 – 4.5-2.)

A Remedial Action Plan and Health Risk Assessment were submitted to and approved by the Los Angeles Regional Water Quality Control Board in 2001 to remove hydrocarbons and arsenic. (DEIR, pp. 4.5-1 – 4.5-2.) To this day, the Project site contains substantial levels of toxic contaminants. (Phase I ESA, p. 11.) The Health Risk Assessment further found that outdoor workers and constructions workers had the potential to be exposed to significant levels of contamination while working at the Project site. (Phase I ESA, p. 10.)

Notwithstanding the above, the EIR failed to study, quantify, or disclose the modern extent of soil contamination within the Project site, including in areas the City claims have been

recently documented to have significant levels of hazardous materials. (DEIR, pp. 4.5-12 – 4.5-13.) The City's failure to evaluate the environmental setting of the Project violates CEQA. (14 Cal. Code Regs. § 15125(a).)

The City also illegally deferred the formulation of mitigation measures in relation to impacts arising from hazardous materials. The City claimed Project excavation could uncover toxic groundwater. (DEIR, p. 4.5-13.) Rather than mitigate this impact, the City assumes, without further explanation or evidence, that "compliance with legal requirements including any applicable [Waste Discharge Requirement] permit, would reduce impacts on the environment related to discharge, treatment, and disposal of potentially contaminated groundwater to a less than significant level." (DEIR, p. 4.5-13.) However, the City does not condition the Project on the Project applicant's obtaining or the City's review of a Waste Discharge Requirement permit and. The EIR provides no discernible, specific performance standards that would support a conclusion that hazardous impacts will be reduced to less than significant. (DEIR, p. 4.5-15.)

Mitigation "must be fully enforceable through permit conditions, agreements, or other legally binding instruments." (14 Cal. Code Regs. § 15126.4.) Further, the City must provide sufficient information regarding mitigation measures to allow the public and decision-makers to adequately discern whether these measures would effectively serve to reduce Project impacts to a less-than-significant level.

The City's assumption that a Waste Discharge Requirement Permit will reduce Project impacts to a less than significant level is unfounded. The City's failure to study baseline on-site hazard conditions, despite the City's recognition that such hazards are likely to be present on site. The City's reliance on a Waste Discharge Requirement Permit is unsupported because, according to the City, a Waste Discharge Requirement Permit would not prevent worker exposure to contamination. According to the City, a Waste Discharge Requirement Permit would only regulate the "discharge, treatment, and disposal of potentially contaminated groundwater." (DEIR, p. 4.5-13.) This does not suggest workers would be kept safe from exposure to contaminants.

Biological Resources

The United States Fish and Wildlife Service (USFWS) maintains an extensive database of potential habitat for federally protected species, which it makes available to the public through the Environmental Conservation Online System (ECOS). This database indicated the Project site had the potential to be located within or near habitat for several migratory bird species protected under the Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.), meaning the Project has the potential to take members of migratory species. (FEIR, p. 2-75.) The Migratory Bird Treaty Act

prohibits the "take" of migratory birds. (16 U.S.C. § 703(a).) California has adopted a similar provisions protecting migratory bird species. (Fish & Game Code §§ 3503, 3513.)

The City never studied and does not disclose whether most of these species have the potential to occur on or near the Project site, instead claiming the majority of these species have no "protection status and therefore none is a special-status species." (FEIR, p. 2-76.) As mentioned, above, ECOS is a database comprised exclusively of federally protected species. Because these species are protected by state and federal law and USFWS has indicated these species have the potential to occur on or near the Project site, at minimum, the City should have conducted baseline surveys for these species. (14 Cal. Code Regs. § 15125(a).) Failure to evaluate the presence of or otherwise mitigate impacts to these species fails the informational and substantive mandates of CEQA.

Aggrieved by Decision

Southwest Carpenters live and work in the City of Los Angeles and are concerned about the environmental impacts of this Project. Without an adequate environmental review document, Southwest Carpenters is aggrieved because the Project's environmental impacts have not been fully disclosed. Similarly, Southwest Carpenters has a keen interest in seeing adequate mitigation provided to properly address environmental impacts through preparation of an EIR. Southwest Carpenters is also interested in orderly planning within the City and adherence to state planning laws, and is, thus, further aggrieved by the City's failure to adhere to its General Plan.

Decisionmaker Error

The Hearing Officer erred in approving the EIR for the Project when the EIR fails the informative purposes of CEQA, and the EIR does not adopt all feasible mitigation measures. This failure to prepare the proper environmental document as required under CEQA, CEQA Guidelines, and case law constitutes an abuse of discretion. The City's failure to ensure Project consistency with its General Plan constitutes additional error that must be corrected prior to the City's approval of the Project.