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Of Counsel

November 16, 2018

Via Hand Delivery

City Planning Department
City of Los Angeles
C/o Appeals Clerk
Marvin Braude Constituent Service Center
6262 Van Nuys Boulevard, Suite 251
Van Nuys, CA 91401

Re: Justification for Appeal to the City of Los Angeles Planning Commission of the November 6, 2018 Advisory Agency's Determination in the College Station Project case (SCH No. 2014061066) (Environmental Case No. ENV-2012-2055-EIR, VTT-74200)

On behalf of Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ we are writing to appeal the Advisory Agency ("Agency") approval of a Vesting Tentative Tract Map for the College Station Project, VTT-74200, ("Project") and the adoption of the Environmental Impact Report (EIR) for the Project, ENV-2012-2055-EIR.

The Project is located on an approximately 4.92-acre parcel at 129-135 W. College Street and 924 N. Spring Street ("Project Site") in the City of L.A ("City") and includes mixed-use transit-oriented residential and commercial project. The project is proposed by Chinatown Station Owner, LLC ("Applicant"). We submitted comments on the Draft EIR for the Project on April 30, 2018 and responses to the

¹ 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, and the environmental and public service impacts of the Project.

4223-008aep

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EXHIBIT D: Appeals
VTT-74200-1A, December 13, 2018

City's Final EIR on September 24, 2018, urging the City to deny all discretionary approvals requested by the Applicant for the Project.

Pursuant to the City appeal procedures, we have attached the Appeal Application (form CP-7769) and the original Letter of Determination ("LOD"), and have provided seven (7) duplicate copies of the complete packet. We have also enclosed a check for the appeal fee.

The reason for this appeal is that the Advisory Agency abused its discretion and violated the California Environmental Quality Act ("CEQA") when it approved the Vesting Tentative Tract Map and adopted the EIR. In short, the EIR must be revised because its conclusions regarding the Project's impacts on public health and hazards are not supported by substantial evidence and the EIR must be recirculated for public review because it contains significant new information that was not included in the DEIR.

Our April 30, 2018 comment letter on the Project ("DEIR Comments")² and our September 24, 2018 comment letter on the FEIR ("FEIR Comments")³ are attached hereto, and the specific reasons for this appeal are set forth in detail in these letters and summarized below.

(1) The EIR must be recirculated because significant new information was added to it after the public comment period

In its LOD, the Agency states that:

None of the information submitted after publication of the Final EIR, including testimony at the public hearings on the Project, trigger any of the circumstances that would require revision to and recirculation of the Draft EIR, pursuant to CEQA Guidelines, section 15088.5.

² See **Exhibit 1**: Letter from Christina M. Caro to Johnny Le, City of Los Angeles, Department of City Planning, Comments on the Draft Environmental Impact Report for the College Station Project (SCH No. 2014061066) (Environmental Case No. ENV-2012-2055-EIR), April 30, 2018.

³ See **Exhibit 2**: Letter from Nirit Lotan to Advisory Agency and Hearing Officer and on behalf of City Planning Commission City of Los Angeles, Comments on the Final Environmental Impact Report for the College Station Project (SCH No. 2014061066) (Environmental Case No. ENV-2012-2055-EIR) (CPC-2012-2054-GPA-ZC-HD-MCUP-SPR; VTT-74200), September 24, 2018.

However, as explained in our FEIR Comments, in the FEIR, the City disclosed for the first time that the Project is located in a Methane zone, rather than in a Methane buffer zone, without providing any explanation about this change, or about the fact that a July 2017 Methane Mitigation Plan was not made part of the DEIR documents and was not circulated for public review, despite the fact that the City clearly knew about the Methane Mitigation Plan at the time it released the DEIR in March 2018. Strangely enough, the Agency itself states in one place in the LOD that the Project is located in a Methane buffer zone,⁴ and in another place that it is located in a Methane zone.⁵

As we showed in our FEIR Comments, recirculation of an EIR prior to certification is required when it includes “significant new information” which includes a situation where the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.⁶ The court in *Mountain Lion* held that the crucial stage in which the public has the opportunity to meaningfully participate and comment on an environmental document is *before* the final document is issued.⁷ The Supreme Court explained in *Laurel Heights* that Section 21092.1 favors EIR recirculation for public comment prior to certification.⁸

Here, due to a serious and unexplained omission on the part of the City, the public was denied an opportunity to meaningfully review and comment on the fact that the Project is in a Methane Zone and on crucial analysis regarding the impacts from Methane in the Project site and the proposed mitigation plan to reduce impacts from the Methane in the site. The Agency therefore erred when it decided the EIR does not need to be recirculated. CEQA requires the City to recirculate a revised Draft EIR to allow the public meaningful opportunity to review and comment.

⁴ Department of City Planning, city of Los Angeles, Letter of Determination, November 6, 2018 (“LOD, November 6, 2018”), p. 42

⁵ LOD, November 6, 2018, p. 116.

⁶ CCR § 15088.5.

⁷ *Mountain Lion Coal. v. Fish & Game Com.*, 214 Cal. App. 3d 1043, 1052. (EID is essentially the same as an EIR since the Dept. of Fish and Game had a certified environmental program).

⁸ *Laurel Heights Impr. Assn. v. Reg. of Univ. of Cal.* (1993) 6 Cal. 4th 1112, 1130.

(2) The EIR Fails to Adequately Disclose and Mitigate the Project's Significant Construction Air Quality and Public Health Impacts

The Agency argues that:

the quantitative construction health risk assessment prepared for informational purposes in support of the Responses to Comment Letter 12 confirms the Draft EIR's conclusion that the Project's construction impacts due to TAC emissions are less than significant.⁹

However, the Agency fails to respond to an expert opinion filed with our FEIR Comments, which showed that the City's conclusion is not supported by substantial evidence for three main reasons:¹⁰

First, the City's argument that the Project would not exceed SCAQMD significance thresholds is based on unsubstantiated assumptions. As Dr. Clark shows, the City unjustifiably assumed that daily trip length for trucks are only 0.25 miles per trip length, thus artificially reducing the Project's emissions. Second, the health risk assessment fails to account for all potential impacts on public health from all of the toxic components emitted by diesel engines. Finally, the City failed to provide the complete output files of the AERMOD dispersion modeling run, despite our request for all records relied upon by the City, preventing the public from reviewing and commenting on the health risk assessment impact analysis in the EIR. Since the complete output files of the AERMOD dispersion modeling run is the basis for the City's health risk determination, and those files are not available to the public, the City's health risk determination is not supported by substantial evidence on the record for this Project.

The Agency erred when it concluded that the FEIR conclusions are supported by substantial evidence. The City must revise its health risk assessment and disclose all supporting modelling in order to properly analyze and disclose the Project's impacts on public health.

⁹ LOD, November 6, 2018, p. 32. "Comment Letter 12" refers to our DEIR Comments.

¹⁰ Dr. James J.J, Comment Letter on Proposed College Station Project, 129-135 West College Street and 924 North Spring Street, Los Angeles, CA Final Environmental Impact Report, September 21, 2018.

(3) The EIR Fails to Disclose the Extent of Existing Soil and Groundwater Contamination and Related Hazards at the Project Site and Fails to Propose Mitigation

The Agency states in its decision that:

[T]he Project would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment, and such impacts are less than significant.¹¹

However, as we explained in our previous comments, the City failed to analyze the Hazardous Substances that are potentially present on the Project site and, instead, relies on the Los Angeles Regional Water Quality Control Board's ("LARWQCB") No Further Action determination letter, which was prepared in 2003 for a different project on the site, and which restricted the use of the ground level for residential use.

The City's reliance on the LARWQCB's Letter ignores that fact the LARWQCB, when addressing the future mixed use project contemplated at the time, explicitly stated "there are no planned underground structures, green areas, or unpaved areas at the site."¹² The proposed modified Project, however, would include one level of subterranean parking,¹³ as well as over 15,000 square feet of publicly accessible open space.¹⁴ These underground structures and the ground-disturbance that comes with it were not examined by the LARWQCB when the letter was issued, and the LARWQCB did not issue any No Further Action letter for such development. Therefore, no substantial evidence supports the City's conclusion that the impacts from hazardous substances in the ground will be less than significant. The City failed to properly establish the baseline from which to evaluate the significance of the Project's impacts, by relying on a 15-year-old letter that was prepared for a different project.

¹¹ LOD, November 6, 2018, p. 42.

¹² February 20, 2003, LARWQCB Letter re No Further Action – Parcel PA-018, 924 North Spring Street, Los Angeles ("No Further Action Letter"), p. 2.

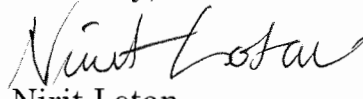

¹³ FEIR, Chapter 3, p. 3-30.

¹⁴ FEIR, Chapter 3, p. 3-27.

November 15, 2018
Page 6

Thank you for your attention to these important matters.

Sincerely,


Nirit Lotan 

NL:acp
Attachments



APPLICATIONS:

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~~ (related CPC-2012-2054-GPA-ZC-HD-MCUP-SPR)

Project Address: 129-135 W. College Street and 924 N. Spring Street

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): Coalition for Responsible Equitable Economic Development c/o Tanya A. Gulesserian

Company: _____

Mailing Address: 601 Gateway Boulevard, Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: tgulesserian@adamsbroadwell.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?
 - Self
 - Other: Coalition for Responsible Equitable Economic Development (CREED LA)
- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Tanya A. Gulesserian

Company: Adams Broadwell Joseph and Cardozo

Mailing Address: 601 Gateway Boulevard, Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: tgulesserian@adamsbroadwell.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:

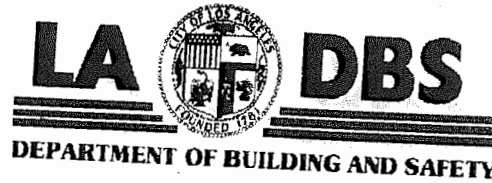
Appellant Signature: *Laura Surini* Date: 11/15/2018

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).
- NA** ● 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.
- NA** ● 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.
- NA** ● 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.
- NA** ● Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- NA** ● 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.
- NA** ● 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): <i>Annam Vidyal Ambrudal</i>	Date: 11/16/18
Receipt No: 0203579839	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	

Office: Van Nuys
 Applicant Copy
 Application Invoice No: 51288



Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

LA Department of Building and Safety
 VN LAUR 203146317 11/16/2018 11:51:13 AM

NOTICE: The staff of the Planning your application, re

PLAN & LAND USE \$106.80
 DEV SERV CENTER SURCH-PLANNING \$2.67

full and impartial consideration to represent you.

Sub Total: \$109.47

Receipt #: 0203579839

Applicant: CREED LA - GULESSERIAN, TANYA A. (D:030-368-1007)
Representative:
Project Address: 135 W COLLEGE ST, 90012

NOTES:

VTT-74200-1A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$2.67
City Planning Systems Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (7%)	\$6.23
Grand Total	\$109.47
Total Invoice	\$109.47
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$109.47

LA Department of Building and Safety
 VN LAUR 203146317 11/16/2018 11:51:13 AM

PLAN & LAND USE \$106.80
 DEV SERV CENTER SURCH-PLANNING \$2.67

Sub Total: \$109.47

Receipt #: 0203579839

Council District: 1
 Plan Area: Central City North
 Processed by VIDAL, ANNA on 11/16/2018

Signature: *Anna Vidal*