



**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

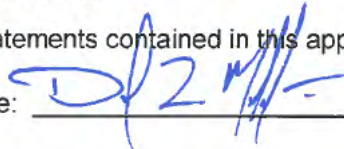
If Yes, list the condition number(s) here: \_\_\_\_\_

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

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- 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: 11-26-18

**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: <u>\$89.00</u>	Reviewed & Accepted by (DSC Planner): <u>Anna Van</u>	Date: <u>11/26/18</u>
Receipt No: <u>0101972214</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	

**Attachment to Appeal to Planning Commission**

**Justification/Reason for Appeal**

The EIR fails to adequately disclose and evaluate baseline conditions and direct, indirect and cumulative impacts, including in the categories of aesthetics, air quality, biological resources, cultural and historic resources, greenhouse gases, land use, public services, traffic, and utilities. The City has failed to consider a reasonable range of alternatives and to adopt all feasible mitigation measures, and its proposed findings are not supported by substantial evidence. Because the City has not recirculated an EIR that satisfies the procedural and substantive requirements of CEQA, the City is in violation of CEQA.

***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.)

The City erroneously presents mitigation measures as aspects of the proposed Project. These include mitigation for impacts to aesthetics, greenhouse gas, noise, public services, and traffic, which the City claims are “project design features.” (DEIR, pp. I-38-42.) While the City states these are components of the Project, the City presents these as though they were mitigation measures throughout the EIR. These features are presented in the same location as mitigation measures and otherwise meet the definition of “mitigation.” (14 Cal. Code Regs. § 15370.) The City failed to correctly identify these as mitigation measures and further failed to properly disclose pre-mitigation Project impacts in these categories of environmental impacts. Incorrectly identifying these 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***

The City states it is in non-attainment for 1-hour ozone, 8-hour ozone, 24-hour PM<sub>10</sub>, annual PM<sub>10</sub>, 24-hour PM<sub>2.5</sub>, Annual PM<sub>2.5</sub>, and lead. (DEIR, p. IV.B-3.) Regardless, in its DEIR, the City claims the Project would not result in cumulatively significant impacts regarding any of these criteria pollutants because a project cannot have significant cumulative air quality impacts unless the City determines the Project surpasses significance thresholds promulgated for direct and indirect impacts. (DEIR, p. IV.B-45-46.) Further, while the City’s DEIR initially

claimed impacts from NO<sub>x</sub> (a precursor to ozone) would be cumulatively significant, it revised this conclusion in its FEIR. (DEIR, p. IV.B-43, FEIR, p. II-22.)

While the City claims SCAQMD adopted the above-referenced cumulative impacts 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, the City erroneously failed to recirculate the EIR after the addition of significant new information. (14 Cal. Code Regs. § 15088.5(a).) As mentioned, in the DEIR, the City determined Project NO<sub>x</sub> emissions would be individually and cumulatively significant and unavoidable. (DEIR, p. IV.B-43.) However, in the FEIR, the City added a new mitigation measure, AIR-MM-5, which reduced the number of daily haul truck trips “from 200 hauls per day to 135 hauls per day. The duration of the excavation phase would be extended from 3.5 months to 5.5 months in order to remove the required amount of soil with fewer hauls per day.” (FEIR, p. II-22.) According to the City, adoption of this mitigation measure would reduce this impact from 140 pounds per day to 99 pounds per day—immediately below the NO<sub>x</sub> emissions significance threshold of 100 pounds per day. (FEIR, p. II-22.)

The addition of this new mitigation measure represents significant new information requiring recirculation because this mitigation measure caused the City to significantly revise a conclusion in the DEIR, from “significant and unavoidable” to “less than significant.” Further, the City failed to evaluate the impacts of this mitigation measure, which will serve to exacerbate other Project impacts by increasing their duration. For instance, in the DEIR, the City found Project-related noise resulting from construction hauling is cumulatively significant and unavoidable. (DEIR, p. IV.E-50, 55, 62.) Thus, the implementation of this mitigation measure, which will increase the duration of truck hauling by 57 percent (from 3.5 months to 5.5 months) will serve to exacerbate these significant and unavoidable Project noise impacts. Finally, recirculation is especially fitting where, as here, the City relies on this mitigation measure to just barely reduce Project impacts to less than significant—the highest possible Project emissions that can be found less than significant—to reject as unnecessary all feasible mitigation measures proposed by SCAQMD. The City’s failure to recirculate the EIR despite this addition of significant new information violates CEQA.

### ***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 dozens of stories, hundreds of dwelling units, and 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).) Furthermore, the City’s qualitative review of several plans and policies is confusing, uninformative, and does 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 states Project greenhouse gas emissions will be 3,178 metric tons of carbon dioxide equivalent (MTCO<sub>2e</sub>) per year, which is above the 3,000 MTCO<sub>2e</sub>/year threshold advanced by SCAQMD and used as a significance threshold by dozens of agencies within the Southern California Air Basin. While the City rejects this as an appropriate significance threshold, it does not replace this threshold with anything more informative. Instead, the City admits it currently does not have a quantitative significance threshold or specific reduction targets, and it has no approved policy regarding greenhouse gas impacts. (e.g., DEIR, p. IV.C-42.) Instead, the City relies on plans and policies adopted by state and regional agencies that were never adopted by the City and that are not designed to be used at the Project-level. 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. (14 Cal. Code Regs. § 15064(h)(3).) 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 greenhouse gas 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.) Furthermore, the City's "plan consistency" evaluation with several different plans is confusing, uninformative, and does not serve the disclosure and informational purposes of CEQA.

Further, the City masks an undisclosed volume of greenhouse gas impacts by claiming mitigation measures are, in fact, parts of the Project. In addition, since the City has not made these mitigation measures binding on the Project as part of the Mitigation and Monitoring Program, 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 a violation of CEQA for the City to fail to accurately disclose pre-mitigation Project-related greenhouse gas impacts.

### *Noise*

The City erroneously discounted cumulative Project impacts. The City only considered cumulative impacts from six of the 181 cumulative Projects located within the direct vicinity of the Project, thereby failing to consider the cumulative impacts arising from the vast majority of nearby past, present, and reasonably foreseeable projects. (FIER, p. II-89.) Of the six projects the City supposedly evaluated for cumulative impacts, the City further erroneously ignored cumulative operational impacts from these Projects, thus narrowing its disclosure of cumulative impacts to only two other projects. (FEIR, p. II-91.) The City's decision to consider only a fraction of cumulative impacts fails the informational purposes of CEQA, fails to adequately consider the significance of Project impacts, and fails to provide mitigation to address significant Project-related impacts.

As with greenhouse gases, the City failed to accurately disclose pre-mitigation Project-related noise impacts by erroneously claiming certain mitigation measures are "project design features." (DEIR, p. IV.E-26.) This served to mask Project impacts and fails the informational purposes of CEQA.

### *Traffic*

The City failed to accurately disclose pre-mitigation Project-related traffic impacts by evaluating certain traffic mitigation measures as "project design features." (DEIR p. IV.G.-34-35.) These "project design features" were clearly designed to mitigate Project-related traffic impacts, which impacts should have been evaluated and disclosed in the EIR. This served to mask Project impacts and fails the informational purposes 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.

**Decisionmaker Error**

The Hearing Officer erred in approving the EIR for the Project when the EIR fails the procedural requirements and informative purposes of CEQA, the City's findings are not supported by substantial evidence, and the EIR does not adopt all feasible mitigation measures. This failure to conduct adequate environmental review as required under CEQA, CEQA Guidelines, and case law constitutes an abuse of discretion.