

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO CA 94080-7037

TEL: (650) 589-1660  
FAX: (650) 589-5062

LdCastillo@adamsbroadwell.com

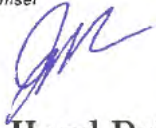
SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350  
SACRAMENTO CA 95814-4721

TEL: (916) 444-6201  
FAX: (916) 444-6209

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
KYLE C. JONES  
MARC D. JOSEPH  
RACHAEL E. KOSS  
NIRIT LOTAN  
MILES F. MAURINO  
COLLIN S. MCCARTHY

LAURA DEL CASTILLO  
Of Counsel

P.1 (77) 

ORIGINAL

November 27, 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

RECEIVED  
CITY OF LOS ANGELES  
NOV 28 2018

CITY PLANNING  
VALLEY PUBLIC COUNTER

Re: Justification for Appeal to the City of Los Angeles Planning Commission of the November 16, 2018 Advisory Agency's Determination in Case No. VTT- 74197; ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR.

Dear Honorable Planning Commissioners:

On behalf of **Coalition for Responsible Equitable Economic Development** ("CREED LA"),<sup>1</sup> we are writing to appeal the Advisory Agency ("Agency") approval of a Vesting Tentative Tract Map ("VTT") and the adoption of the Environmental Impact Report ("EIR") prepared for the 8th & Figueroa Project (VTT-7497; ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR) ("Project), proposed by MFA 8th & Figueroa LLC ("Applicant").

The Project is located at 44 South Figueroa Street, 732-756 South Figueroa Street, and 829 West 8th Street and proposes to develop a mixed-use project on a 50,335-square-foot site (1.16 gross acres or 1.07 net acres). The Project includes up to 438 residential units, up to 7,500 square feet of commercial retail and restaurant uses, and 522 vehicle parking spaces. The proposed uses would be located within a new 41-story mixed-use building with four subterranean levels. Overall, the new building would comprise up to 481,753 square feet of floor area.

<sup>1</sup> 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.

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We submitted comments on the Project on June 11, 2018 and responses to the Final EIR on October 24, 2018, urging the City of Los Angeles (“City”) to deny all discretionary approvals requested by the Applicant for the Project.

Pursuant to the 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 Agency abused its discretion and violated the California Environmental Quality Act (“CEQA”) when it approved the VTT and adopted the EIR. CEQA requires that an EIR adequately disclose, analyze and mitigate a project’s significant impacts, and that the EIR’s conclusions are supported by substantial evidence. As this appeal packet and our previous comments demonstrate, the Agency’s approval of the VTT and adoption of the EIR is an abuse of discretion and violates CEQA because the Project will have (1) significant, unmitigated air quality impacts from NOx emissions during construction, (2) significant, unmitigated impacts to public health from exposure to toxic air contaminants (“TACs”) from the Project’s construction, and (3) energy use impacts that were not adequately evaluated in the EIR.

Our June 11, 2018 comment letter on the Project<sup>2</sup> and our October 24, 2018 Final EIR comments<sup>3</sup> are attached hereto, and the specific reasons for this appeal are set forth in detail in these letters and summarized below.

We prepared this appeal letter with the assistance of air quality expert Matt Hagemann, P.G., C.Hg. and Hadley Nolan of Soil / Water / Air Protection Enterprise (“SWAPE”). Their technical comments on the Letter of Determination (“LOD”) are attached hereto as Exhibit 1 and are fully incorporated herein.<sup>4</sup>

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<sup>2</sup> See **Exhibit 2**: Letter from Tanya A. Gulesserian and Nirit Lotan to Jonathan Chang, City Planning Associate re: Comments on the Draft Environmental Impact Report –Fig & 8th Project (ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR-MS; VTT- 74197), June 11, 2018.

<sup>3</sup> See **Exhibit 3**: Letter from Nirit Lotan to Deputy Advisory Agency and Hearing Officer on behalf of City Planning Commission re: Comments on the Final Environmental Impact Report for the Fig & 8th Project (ENV-2016-1951-EIR; CPC-2016-1950-TDR-SPR-MS; VTT-7497), October 24, 2018.

<sup>4</sup> See **Exhibit 1**: Letter from SWAPE to Laura del Castillo re: Response to the Letter of Determination for the Fig & 8th Project, November 26, 2018 (hereinafter SWAPE comments).

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**(1) The EIR's Conclusion Regarding Project's Impacts from NO<sub>x</sub> is Not Supported by Substantial Evidence**

We previously commented that that the City lacked substantial evidence to support a finding of overriding considerations for significant and unavoidable impacts from construction-related NO<sub>x</sub> emissions, because there were feasible mitigation measures available to mitigate the impacts. In its response, the City modified the Final EIR to include a new mitigation measure that limits the number of daily hauling trips during the grading and excavation period to 135 trips per day. The City argued that updated air quality analysis showed that implementation of the new Mitigation Measure (AIR-MM-5) would result in a maximum of 99 pounds per day of NO<sub>x</sub>, just under South Coast Air Quality Management District's ("SCAQMD") daily regional construction threshold of 100 pounds per day.

We then demonstrated with substantial evidence, using updated analysis from SWAPE, that the City's conclusion that implementation of AIR-MM-5 would result in a maximum of 99 pounds per day of NO<sub>x</sub> was not supported by substantial evidence. SWAPE also demonstrated that the Final EIR's CalEEMod modeling showed that the grading and excavation phase will only require 5 pieces of construction equipment that have a horsepower equal to or greater than 50 hp. Thus, per Mitigation Measure AIR-MM-1, only those 5 pieces of grading equipment are required to be recorded in the construction inventory list. Furthermore, AIR-MM-1 states that only the equipment on the construction inventory list are required to meet Tier 3 standards. Therefore, only 5 pieces of equipment are expected to be equipped with Tier 3 engines during Project construction.<sup>5</sup>

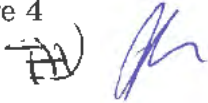
The Agency released the LOD, which claims that Tier 3 mitigation was incorrectly applied to only one piece of equipment, slightly adjusting the analysis. Thus, the LOD finds that reliance on the Final EIR's air modeling to determine the Project's air quality impacts is proper and that after the insignificant change in its analysis, "regional NO<sub>x</sub> emissions remain at 99 pounds per day and less than the SCAQMD significance threshold of 100 pounds per day of NO<sub>x</sub> during the grading/excavation phase with a correction on the modeling."<sup>6</sup> Therefore, the LOD

<sup>5</sup> SWAPE Comments, p. 2.

<sup>6</sup> Letter of Determination, p. 71.

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concludes that “Project-level impacts with regard to construction air quality would be less than significant with the implementation of mitigation.”<sup>7</sup>

SWAPE reviewed the LOD and finds that the City still fails to adequately address the incorrect application of AIR-MM-1. SWAPE explains that the LOD’s analysis is “insufficient and fails to correct the Project Applicant’s application of Tier 3 mitigated engines to nearly all pieces of construction equipment.”<sup>8</sup> The LOD’s removal of Tier 3 mitigation for only one piece of construction equipment “fails to address the issue that this mitigation was incorrectly applied to over 30 pieces of equipment.”<sup>9</sup> Therefore, the Final EIR’s emissions estimates are still incorrect, as the estimates are based on a construction fleet equipped with almost entirely Tier 3 engines, which is not required under Mitigation Measure AIR-MM-1.

As a result, SWAPE explains that “the Project’s construction emissions provided within the Final EIR and LOD continue to be incorrect and underestimated and should not be relied upon to determine Project significance.”<sup>10</sup>

## **(2) The Project Will Have Significant Impacts from NOx Emissions and Additional Mitigation Must be Incorporated**

We previously demonstrated that the Project’s mitigated construction-related NOx emissions *exceed* the 100 lbs/day thresholds set forth by the SCAQMD. The City then released the LOD, concluding that NOx emissions would not exceed thresholds of significance.

SWAPE reviewed the LOD and found that their previous analysis still stands, which demonstrated that the Project’s NOx emissions, assuming application of Tier 3 engines to only the pieces of off-road diesel construction equipment that meet or exceed 50 hp used during grading and excavation, will exceed significance thresholds.<sup>11</sup> Therefore, SWAPE concludes that “the Project will have significant NOx impacts.”<sup>12</sup> SWAPE also concludes that the City cannot approve the Project until the Applicant prepares an updated air model that correctly models the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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Project's mitigated emissions – after the proposed mitigation is correctly applied to the Project's fleet of construction equipment – and adds further measures to mitigate any significant NOx impacts.”<sup>13</sup>

### **(3) The City Failed to Properly Analyze the Project's Impacts on Public Health**

We previously commented that the City failed to conduct a health risk assessment (“HRA”) to evaluate the Project's impacts on public health from exposure to TACs. The City then revised the Final EIR and conducted an HRA, concluding that no significant health risk impacts would occur from construction of the Project. The Final EIR stated explicitly that the HRA did not account for “Age Sensitivity Factors” (“ASF”) and argued that such factors “would not be applicable to this HRA as neither the Lead Agency nor SCAQMD have developed recommendations on whether these factors should be used for CEQA analyses of potential construction impacts.”<sup>14</sup>

However, SWAPE explained in responsive comments that ASF are applicable to the Project and were, in fact, included in SCAQMD guidelines for Risk Assessment Procedures for Rules 1401, 1401.1 and 212, in order to properly reflect Office of Environmental Health Hazard Assessment's (“OEHHA”) updated guidance on health risk assessments.

The Agency then released the LOD, simply stating that an “HRA was prepared which confirmed no significant health risk impacts would from TAC emission occur from construction of the project.”<sup>15</sup>

SWAPE reviewed the LOD and found that it completely fails to provide a response to the assertion that the construction HRA prepared for the Project should have been conducted using ASFs. SWAPE also found that, because of the HRA's omission of the ASFs, the City underestimated the construction cancer risks.<sup>16</sup> SWAPE further explains that the LOD “continues to rely upon the Final EIR's incorrect HRA methodology to conclude that the Project's health risk impacts would

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<sup>13</sup> *Id.*

<sup>14</sup> FEIR, Response to Comments, p. II-43.

<sup>15</sup> Letter of Determination, p. 27.

<sup>16</sup> SWAPE Comments, p. 3.

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be less than significant.” SWAPE concludes that the LOD’s response is “entirely inadequate and incorrect” and provides details in their comment letter demonstrating that the omission of ASFs when conducting an HRA is incorrect, according to both OEHHA and SCAQMD guidance.<sup>17</sup>

#### **(4) The Project Will Have Significant Impacts on Public Health**

We previously demonstrated in our October 24 comments, using updated analysis from SWAPE, that the HRA conducted by the City is flawed and that the excess cancer risks posed to the infant sensitive receptors during Project construction is approximately 13.3 in one million and that the excess cancer risk over the course of construction is approximately 14.9 in one million. Thus, the infant and total construction cancer risks exceed the SCAQMD threshold of 10 in one million.

The City then released the LOD, concluding that the Project’s health risk impacts would be less than significant. SWAPE reviewed the LOD and found that their previous analysis still stands, namely that when ASFs are incorporated, the health risk associated with construction of the proposed Project would pose a significant health impact to nearby sensitive receptors.”<sup>18</sup>

Therefore, SWAPE concludes that “the Project will have significant health risk impacts and should not be approved until the Applicant prepares a proper HRA that includes ASFs to adequately evaluate and mitigate the Project’s health risk impacts.”<sup>19</sup>

#### **(5) The City’s CEQA Energy Use Analysis Still Fails to Comply with the Law, Is Unsupported by Substantial Evidence and Underestimates the Project’s Impacts from Energy Use**

We previously commented that the City’s energy use impact analysis in the Final EIR failed to comply with the law in several ways as detailed in our attached comments. Specifically, the City:

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<sup>17</sup> *Id.*, at 4.

<sup>18</sup> *Id.*, at 5.

<sup>19</sup> *Id.*

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- 1) Failed to compare the Project's energy use to energy use associated with the existing environmental setting – a parking lot;
- 2) Failed to compare the Project energy use to the existing baseline and using CEQA's thresholds for measuring wasteful, uneconomic, inefficient or unnecessary consumption of energy in Appendix F and to the more recent threshold set forth in Governor Brown's Executive Order B-55-18;
- 3) Failed to comply with CEQA's requirement to evaluate the environmental impacts of the project's projected transportation energy use requirements;
- 4) Put forth a fatally flawed argument that its proximity to transit necessarily means some of the transportation energy impact would be mitigated and that the Project has mitigation measures designed to reduce vehicle trips, but failed to adequately describe the measures;
- 5) Failed to evaluate whether renewable energy resources might be available or appropriate and should be incorporated into the Project, as required by CEQA; and
- 6) Failed to support its conclusions regarding transportation energy use with substantial evidence.

The City then released the LOD, concluding that operational-related impacts to energy conservation and infrastructure would be less than significant, and no mitigation measures would be required. Many of these issues were inadequately addressed or not addressed at all in the LOD.

For example, the LOD states that the Project's increase in electricity and natural gas demand would be within the anticipated service capabilities of the LADWP and the Southern California Gas Company, respectively; that the Project would comply with 2016 Title 24 standards and applicable 2016 CALGreen requirements; and that the Project would achieve at least current LEED® Silver certification.<sup>20</sup> Therefore, the LOD concludes that the Project would not cause the wasteful, inefficient, and unnecessary consumption of energy and would be consistent with the intent of Appendix F to the CEQA Guidelines. Furthermore, the

<sup>20</sup> Letter of Determination, p. 87.  
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LOD concludes that, Project operations would not conflict with adopted energy conservation plans and that the long-term impacts associated with the consumption of fossil fuels would not be significant.

However, this response merely repeats the illegal analysis in the EIR and fails to address our comments regarding the accurate baseline setting against which to compare energy use and fails to address our remaining energy use comments, such as the use of EO B-55-18 as a significance threshold.

Regarding the City's underestimation of transportation energy use specifically, the LOD states that the EIR only "roughly underestimated total haul trips by 1,400 trips" and that the increase in fuel use "is equivalent to a three percent total increase in the amount of diesel used during construction."<sup>21</sup> Thus, the LOD concludes that "[t]his minor increase does not materially change the conclusion reached in the Draft EIR."<sup>22</sup>

However, SWAPE finds that the LOD's response is "inadequate" and maintains that the Project Applicant fails to accurately account for all fuel consumption during Project construction.<sup>23</sup> SWAPE explains that the Final EIR fails to account for the remaining 19,828 hauling trips of the total 32,000 hauling trips required for Project construction. SWAPE further explains that the LOD's addition of 1,400 hauling trips to the fuel consumption calculations still underestimates the total number of trips required by 18,428 trips.<sup>24</sup> Therefore, SWAPE concludes that the significance determinations made within the LOD are still "based on incorrect calculations" that "greatly underestimate" the amount of fuel required and consumed from the demolition and grading phase of construction.<sup>25</sup>

SWAPE concludes overall that "the Project still has significant impacts that have not been adequately evaluated or mitigated under CEQA."<sup>26</sup> Because substantial evidence shows that the Project will have significant unmitigated impacts on public health, air quality, and energy use, the Agency's approval of the

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<sup>21</sup> Letter of Determination, p. 64.

<sup>22</sup> *Id.*

<sup>23</sup> SWAPE Comments, p. 5.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*, at 6.

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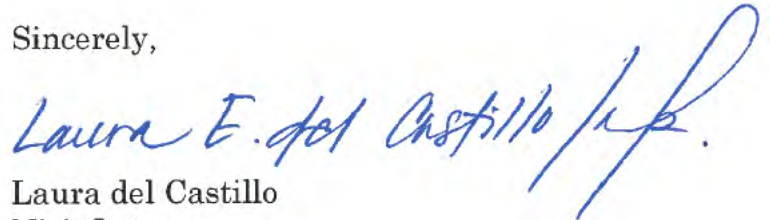
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VTT and adoption of the EIR violates CEQA and must be overturned. We urge the City of Los Angeles Planning Commission to grant our appeal and overturn the VTT approval and EIR certification for the Project. Thank you for your attention to this important matter.

Sincerely,



Laura del Castillo  
Nirit Lotan

LEDC:acp  
Attachments

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**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: Laura E. del Castillo / n.f. Date: 11/27/18

**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>\$109.47</u>	Reviewed & Accepted by (DSC Planner): <u>[Signature]</u>	Date: <u>11/28/18</u>
Receipt No: <u>0201582366</u>	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Office: Van Nuys  
 Applicant Copy  
 Application Invoice No: 51504

City of Los Angeles  
 Department of City Planning



LA Department of Building and Safety  
 VN SELV 201147439 11/28/2018 10:48:35 AM

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

Sub Total: \$109.47

Receipt #: 0201582366

**City Planning Request**

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: CREED LA - DEL CASTILLO, C/O LAURA ( B:650-5891660 )
Representative:
Project Address: 732 S FIGUEROA ST, 90017

**NOTES:**

Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
<b>Case Total</b>			<b>\$89.00</b>

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

LA Department of Building and Safety  
 VN SELV 201147439 11/28/2018 10:48:35 AM

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

Sub Total \$109.47

Receipt #: 0201582366

Council District: 9  
 Plan Area: Central City  
 Processed by HENRY, THOMAS on 11/28/2018

Signature: