

1 of 8 an

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

nlotan@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
YAIR CHAVER
SARA F. DUDLEY
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
MILES F. MAURINO

MARC D. JOSEPH
Of Counsel

February 7, 2019

RECEIVED
CITY OF LOS ANGELES
FEB 07 2019

CITY PLANNING
VALLEY PUBLIC COUNTER

Via Hand Delivery

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

Re: Justification for Appeal to the Los Angeles City Council of the January 18, 2019 City Planning Commission Determination in the College Station Project case CPC-2012-2054-GPA-ZC-HD-MCUP-SPR. (SCH No. 2014061066)

Dear Honorable Mayor Garcetti and City Council Members:

On behalf of Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ we are writing to appeal the City Planning Commission ("Planning Commission") approval of (1) a Master Conditional Use Permit pursuant to LAMC Section 12.24 W.1, and (2) a Site Plan Review pursuant to LAMC Section 16.05 for the College Station Project ("Project").

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 Atlas Capital Group LLC, ("Applicant"). We submitted comments on the Draft EIR for the Project on April 30, 2018 and responses to the City's Final EIR on September 24, 2018, urging the City to deny all discretionary approvals requested by the Applicant for the Project. On November 16, 2018 we filed an appeal on the Advisory Agency's approval of the Vesting Tentative Tract Map and adoption of the EIR. The appeal was heard by the Planning Commission

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.

4223-014acp

CPC-2012-2054

February 7, 2019
Page 2 *AJ*

on December 13, 2018. On January 18, 2019 the Planning Commission published its letter of determination in which it approved all the requested entitlements for the Project, and its letter of determination in which it denied the appeal and sustained the Advisory Agency's decisions.

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 Planning Commission abused its discretion and lacked substantial evidence to support its findings for the Master Conditional Use Permit and Site Plan Review and violated the California Environmental Quality Act ("CEQA") when it approved the entitlements and adopted the EIR. In short, the City must revise its findings and its EIR.

Our April 30, 2018 comment letter on the Project ("DEIR Comments")² our September 24, 2018 comment letter on the FEIR ("FEIR Comments")³, our November 16, 2018 Justification for appeal to the Planning Commission⁴ and our December 12, 2018 comment letter on Appeal Staff Report⁵ are attached hereto.

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.

⁴ See **Exhibit 3**: Letter from Nirit Lotan to City Planning Department, 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), November 16, 2018.

⁵ See **Exhibit 4**: Letter from James J.J. Clark, Ph.D. to be submitted to the Los Angeles City Planning Commission Agenda at the December 13, 2018 hearing, Item 7: Comment Letter on Appeal Staff Report Case No. VTT-74200-1A, CEQA No. ENV-2012-2054-EIR SCH. No. 2014061066, College Station Project EIR.

February 7, 2019

Page 3 of 8 *Ann*

(A) The City Cannot Make the Required Findings for the Master Conditional Use to Allow for the Sale and Dispensing of Alcohol on the Site, Because the City Has No Evidence to Support the Required Findings

Under the City's Code, the Commission must make a number of findings before it can grant a master conditional use for alcohol sale. The City failed to support its findings with evidence, and in fact, the evidence shows the City cannot make the required findings.

The City cannot make the required findings under section 12.24.E(2) "that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety." A similar finding is required under Section 12.23.W.1(a)(1) of the Code, requiring the City to find that "the proposed use will not adversely affect the welfare of the pertinent community."

Here, the Project will create adverse effects on public health and welfare due to both the emission of toxic air contaminants ("TAC") from construction as well as due to significant impacts that may result from existing soil and groundwater contamination and related hazards at the Project Site. Those potentially significant and significant impacts were not properly analyzed or mitigated by the City, as required by CEQA:

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

As described in detail in Exhibits 1-4, we reviewed the environmental analysis with the assistance of Dr. James Clark, an expert on air quality. Dr. Clark found that the City's conclusions regarding the Project's potential impacts on health, as they were presented in its health risk analysis, were not supported by the evidence. Dr. Clark notes four main reasons why the City's conclusions are unsupported:

First, the City's HRA used a "unitized" approach to the three group sources of DPM emissions, assuming all to be equal to an arbitrary value and divided among the various components from each source. As Dr. Clark explains, "[t]his

4223-014acp

February 7, 2019

Page 4 *H.R. Ann*

“unitized” approach ignores the actual emission rates from each of the sources and does not accurately assess the project’s impacts.”⁶ Second, Dr. Clark explains that the HRA underestimates the exposure concentration for off-site workers by a factor of 4.2, in violation of the OEHHA guidance.⁷ Third, Dr. Clark explains the HRA utilized incorrect daily breathing rates (DBR) for the different age groups, thus underestimating risk for children by 15%.⁸ Finally, Dr. Clark explains that the HRA is flawed since it failed to consider deposition of materials from the project, thus ignoring an important secondary exposure to DPM.⁹

The City must therefore revise its health risk assessment to properly account for all the Project’s impacts on public health. Until the City does that, it cannot make the findings required under the Code.

(2) 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 Project site has a history of significant soil contamination related to the site’s historic uses as a rail freight yard.¹⁰ Despite that, the City failed to properly disclose and analyze potential hazards from this contamination, and as a result, failed to require mitigation. Instead, the City relies on a No Further Action determination letter, which was prepared in 2003 by the LARWQCB for a different project on the site, and which restricted the use of the ground level for residential use.

As explained in detail in Exhibits 1-4, the city’s reliance on the 16-year-old letter ignores the fact that the letter was issued for a different project which, unlike this Project, did not include any underground structures. The City also violates its duty to properly establish the existing conditions for the site, by failing to conduct a Phase II ESA to quantify the *current* level of soil and groundwater contamination in all areas of the Project site that will be disturbed during Project construction.

Until the City conducts a current analysis of the contamination on the site, its findings regarding the Project’s impact on public health, welfare, and safety are

⁶ See Exhibit 4, p. 1.

⁷ See Exhibit 4, p. 1-2.

⁸ See Exhibit 4, p. 2.

⁹ See Exhibit 4, p. 2.

¹⁰ DEIR, p. 4.5-1 to 4.5-2; Appendix E, 2013 Phase I Environmental Site Assessment, pp. 8-11.
4223-014acp

not supported by substantial evidence. Therefore, the City cannot make the findings required under section 12.24.E(2) and Section 12.23.W.1(a)(1) of the Code, because the Project will adversely affect the public health and welfare of the surrounding communities.

(B) The City Cannot Make the Required Findings for the Site Plan Review, Because the City Has No Evidence to Support the Required Findings

Under section 16.05.F of the City's Code, the Commission must make specific findings before it approves a Site Plan Review. The Commission cannot make these findings as they are not supported by the evidence. Specifically, the City cannot find "that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan."

(1) The Project is Not in Substantial Conformance with Applicable Affordable Housing Plan Provisions

The Project is not in substantial conformance with the *affordable housing* requirements of the applicable plans. The Project as originally proposed included no affordable housing. At the Planning Commission hearing, a condition was added to reserve a minimum of 5% housing units for Very Low-Income units.¹¹ While this is a step in the right direction, this is far from bringing the Project into "substantial conformance" with the applicable plans.

The Central City North Community Plan which applies to the Project sets as Goal 1 "[a] safe, secure and high-quality residential environment for all economic, age and ethnic segments of the plan area." And Objective its 1-4 is to "promote and insure the provision of adequate housing for all persons regardless of income, age, or ethnic background."¹²

¹¹ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2012-2054-GPA-ZC-HD-MCUP-SPR, January 18, 2019, p. Q-1.

¹² Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2012-2054-GPA-ZC-HD-MCUP-SPR, January 18, 2019, p. F-21,22.

The affordable housing needs in the area are far more acute than the Project provides for. The latest regional assessment conducted by the Southern California Association of Governments (SCAG) shows that the need for affordable housing to Very Low, Low and Moderate Income households totals 46,590 new units in the City, which represents 57% of the overall projected need in the City.¹³ The 37 affordable units provided by this Project are not in substantial conformance with the requirement to insure the provision of adequate housing for all persons. This is also evident by the wall to wall opposition the Project is facing from the local communities, all pointing out the need for more affordable housing.¹⁴

In addition, Footnote 12 of the Central City North Community Plan requires that the Project will set aside 20% of its units for affordable housing, due to its FAR ratio.¹⁵ The City argued in the Final EIR that Footnote 12 was never formally adopted by the City, and thus is not an effective regulation, and amended the FEIR accordingly.¹⁶ However, the plain language of the Plan suggests the Footnote is applicable. In the City's staff report prepared for the Planning Commissions' December 13 hearing, the City states that it is "in the process of correcting the Central City North Community Plan's Land Use Map to reflect the non-applicability of Footnote 12."¹⁷ Until the City finalizes the process, it cannot argue the Footnote is not applicable.

Moreover, even if the City formally revises Footnote 12, it should serve as guidance for the allocation of affordable housing project such as this one should have to conform with the Plan's objectives. The City must therefore revise its affordable housing requirements before it can make the findings under the Code.

(2) The Project is Not in Substantial Conformance with Applicable Environmental Plan Provisions

The Project is not in substantial conformance with the *environmental provisions* of the General Plan. The Air Quality Element of the General Plan

¹³ <http://scag.ca.gov/documents/5thcyclePfinalRHNAplan.pdf>

¹⁴ See, for example, Letter from Chinatown Community for Equitable Development re: Written Comment for College Station Project, December 13, 2019, stating that to truly meet the neighborhood demands, 100% of the Project's units should be made available at low income levels.

¹⁵ <http://cityplanning.lacity.org/complan/central/pdf/ccnfootnotes.pdf>

¹⁶ FEIR, response to comments, p. 2-125.

¹⁷ Department of City Planning, Appeal Staff Report, December 13, 2018, p. A-3.
4223-014acp

February 7, 2019

Page 7 *HJM*

includes Goal 1.3 which states “[i]t is the objective of the City of Los Angeles to reduce particulate air pollutants emanating from unpaved areas, parking lots and construction sites”. Policy 1.3.1 which follows is to “[m]inimize particulate emissions from construction sites.”¹⁸ As explained above (see section (A)(1)) and in Exhibits 1-4, the EIR for the Project failed to properly analyze and therefore to mitigate the Project’s impacts from Diesel Particulate Matter, rendering it not in conformance with the General Plan Air Quality Element. The City therefore cannot make the required finding under the Code.

(C) The City Cannot Make the Required CEQA Findings Because It Failed to Properly Analyze and Mitigate the Project’s Impacts

As part of its LOD, the Commission finds that the Project was assessed in an Environmental Impact Report (EIR) and that no major revisions are required and no subsequent EIR or negative declaration is required for the approval of the Project.¹⁹ Under “CEQA Findings,” the Commission states that it denied the appeals filed on the EIR certification by the City’s Deputy Advisory Agency and re-certified the EIR.²⁰

As explained in detail in our justification for appeal that was filed regarding the Commission’s decision in Case no ENV-2012-2055-EIR, VTT-74200-1A²¹ and which is fully incorporated herein, the Planning Commission lacks substantial evidence to support its conclusions regarding significant impacts from hazards and public health from the Project. Because the City failed to analyze and mitigate those potentially significant and significant impacts as required under CEQA, it cannot make the CEQA findings required for the approval of the rest of the discretionary entitlements for the Project and must prepare an EIR that is circulated for public review and comment prior to consideration of any permit for the Project.

¹⁸ <https://planning.lacity.org/cwd/gnlpln/aqltyelt.pdf>

¹⁹ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2012-2054-GPA-ZC-HD-MCUP-SPR, January 18, 2019, p. F-27.

²⁰ Los Angeles City Planning Commission, Letter of Determination for Case no. CPC-2012-2054-GPA-ZC-HD-MCUP-SPR, January 18, 2019, p. F-27

²¹ Letter from Nirit Lotan to the City Council re: Justification for Appeal to the Los Angeles City Council of the January 18, 2019 City Planning Commission Determination in the College Station Project case (SCH No. 2014061066) (Environmental Case No. ENV-2012-2055-EIR, VTT-74200-1A), January 28, 2019.

February 7, 2019
Page 8 *48 M*

Thank you for your attention to these important matters.

Sincerely,

 Nirit Lotan

NL:acp



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: CPC-2012-2054-GPA-ZC-HD-MCUP-SPR; Related VTT-74200-1A; ENV-2012-2055 EIR

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

Final Date to Appeal: 02/07/2019

- 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 Nirit Lotan

Company: _____

Mailing Address: 601 Gateway Boulevard, Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: nlotan@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
- Is the appeal being filed to support the original applicant's position?
 - Yes
 - No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Nirit Lotan

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: nlotan@adamsbroadwell.com

CPC-2012-2054-GPA-ZC-HD-MCUP-SPR-1A

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part *MCVP SPR*

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: ~~MCVP-32~~

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: 2/6/2019

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: <i>\$89.00</i>	Reviewed & Accepted by (DSC Planner): <i>Steven Wechsler, City Planning Associate</i>	Date: <i>2-7-2019</i>
Receipt No: <i>0203602094</i>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	