

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
cstough@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
ANDREW J. GRAF
TANYA A. GULESSERIAN
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

June 13, 2019

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 Advisory Agency's June 3, 2019 Determination Regarding the Southern California Flower Market Project Case No. VTT-74568; ENV-2016-3991-EIR; related: CPC-2016-3990-GPA-VZC-CUB-ZV-SPR**

Dear Honorable Planning Commissioners:

On behalf of **Coalition for Responsible Equitable Economic Development ("CREED LA")**, 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 Southern California Flower Market Project, located at 755 S. Wall Street (VTT-74568; ENV-2016-3991-EIR; related: CPC-2016-3990-GPA-VZC-CUB-ZV-SPR) ("Project"), proposed by Southern California Flower Growers, Inc. ("Applicant").

The Project is located at 709-765 S. Wall Street, 306-326 East 7th Street, and 750-752 S. Maple Avenue, and proposes to expand and redevelop the existing Flower Market facility between Maple Avenue and Wall Street, south of 7th Street, while maintaining the existing wholesale market. The existing property consists of two buildings, the north building (206,517 square feet) and the south building (185,111 square feet). Both buildings include open roof-top parking. The Applicant proposes to maintain and renovate the north building and its roof-top parking and demolish the south building in preparation of a new building with one level of subterranean parking.

L4639-002acp

June 12, 2019

Page 2

The Project would be a new mixed-use development consisting of wholesale trade, retail, restaurant, office, and residential uses. The new Flower Market building (in place of the existing south building) would be 15 stories (12-story residential tower, over three stories of office, retail, restaurant, wholesale flower market, and parking) and 205 feet in height. The development program would consist of: 323 residential units (with 10% of the units [or approximately 32 units] for moderate income families), 64,363 square feet of office space, 4,385 square feet of retail space, 63,785 square feet of wholesale space and storage, 13,420 square feet of food and beverage space, and 10,226 square feet of event space. The Flower Market would continue to operate in the existing north building during and after the redevelopment.

Pursuant to the appeal procedures, we have attached the Appeal Application (form CP-7769) and the original Letter of Determination ("LOD") and have provided one (1) original and seven (7) duplicate copies of the complete packet. We have also enclosed a check for the appeal filing fee.

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. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.¹

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.² Based on our review of the EIR and related

¹ Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live, work, recreate, and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

² Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq. L4639-002acp

June 12, 2019

Page 3

Project documents, we have determined that the EIR does not comply with the requirements of CEQA. This appeal packet demonstrates that: (1) the EIR fails to accurately identify and adequately evaluate noise and air quality impacts to all sensitive receptors; (2) the City failed to revise and recirculate the EIR after the City added significant new information identifying sensitive receptors; (3) the EIR fails to provide a complete project description; and (4) the City's finding that air quality impacts from construction-related air emissions from hauling truck routes will be less than significant is unsupported by substantial evidence.

We reference hereto technical comments from the Soil Water Air Protection Enterprise ("SWAPE"), whose technical comments are fully incorporated herein as Exhibit 1,³ and the specific reasons for this appeal are set forth in detail in that letter and summarized below, and as set forth below. We reserve the right to supplement the comments in this appeal and the referenced technical comments at a later date, and at any future hearings related to this Project.⁴

(1) The EIR Fails to Accurately Identify and Adequately Evaluate Noise Impacts on All Sensitive Receptors

CEQA requires an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR").⁵ One of CEQA's primary purposes is "to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"⁶ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁷ As discussed below, the EIR for this Project is not in compliance with CEQA.

³ See Exhibit 1: Letter from SWAPE to Elizabeth Watson re: Response to Comments on the Southern California Flower Market Project (Case No. ENV-2016-3991-EIR), May 6, 2019 ("SWAPE Supplemental Comments").

⁴ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁵ 14 CCR § 15002(a)(1); See, e.g., PRC § 21100.

⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

⁷ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

The EIR's Environmental Setting section identifies the following multi-family residential buildings surrounding the Project Site:⁸

- Santee Village Lofts at 738 S. Los Angeles Street (400 units);
- Santee Court Apartments at 716 S. Los Angeles Street (238 units);
- Garment Lofts at 217 E. 8th Street (77 units); and
- Textile Building Lofts at 315 E. 8th Street (77 units).

However, the City's noise impact analysis evaluated noise impacts for only one of the above residential buildings – Santee Court Apartments.⁹ In addition, nowhere in the Draft EIR or FEIR does the City mention, much less provide an impact analysis for, a fifth residential development, the Santee Village Apartments at 738 Santee Street. Santee Village Apartments is directly across the street from the Project Site and is therefore a noise-sensitive receptor.

As the EIR indicates, land uses sensitive to noise include residences per the L.A. CEQA Thresholds Guide.¹⁰ Therefore, a noise analysis must evaluate impacts on all the buildings listed above given their potential sensitivities to noise as multi-family residential buildings and their proximity to the Project Site. The EIR fails to accurately identify all the noise-sensitive receptors in the Project's surrounding area and therefore cannot adequately evaluate the potentially significant impacts to those receptors. For example, the Santee Village Apartments and the Textile Building Lofts are located directly across from the Project Site and are closest distance to the heavy construction activities proposed for the south building of the Project. To illustrate this, the map on the next page indicates the missing receptors in white boxes.

⁸ Draft EIR, September 2018, ("DEIR") p. 3-2.

⁹ DEIR, pp. 4.I-9 to 4.I-10; *See also* DEIR Appendix I: Noise Modeling, "DKA Planning Noise Receptor Map."

¹⁰ DEIR, p. 4.I-9.

L4639-002acp



Thus, the EIR fails to accurately identify and adequately evaluate noise impacts on all sensitive receptors and lacks substantial evidence for its finding that the City has considered noise impacts for all noise-sensitive receptors.

(2) The EIR Fails to Accurately Identify and Adequately Evaluate Air Quality Impacts on All Sensitive Receptors

As discussed above with noise impacts, the EIR also fails to account for all air-sensitive receptors, omitting the air quality impacts to four of the five residential buildings in proximity to the Project Site. Instead, the EIR inadequately evaluates the air quality impacts to the Santee Court Apartments, Ballington Plaza Apartments (622 Wall Street), and Star Apartments (240 E. 6th Street).¹¹ Although Ballington and Star are both properly identified as sensitive receptors due to their proximity to the Project Site and classification as residential buildings, the other four residential buildings described above (Santee Village Apartments, Garment Lofts, Santee Village Lofts, and Textile Building Lofts) are all closer in distance to the Project Site, yet were omitted from the air quality analysis.

¹¹ DEIR, pp. 4.C-19.”
L4639-002acp

Therefore, the EIR fails to accurately identify and adequately evaluate air quality impacts on all sensitive receptors and lacks substantial evidence for its finding that the City has considered air quality impacts for all air-sensitive receptors.

(3) The City Failed to Revise and Recirculate the EIR After the City Added Significant New Information Identifying Sensitive Receptors Required for Adequate Analyses of Noise and Air Emissions Impacts on those Sensitive Receptors

The CEQA Guidelines require a lead agency to “recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification.”¹² New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible project alternative or mitigation measure that would clearly reduce such an effect and that the project’s proponents have declined to implement.¹³ Examples of “significant new information” include, among others, a disclosure showing that “a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.”¹⁴

After review of the EIR, we have determined that the EIR does not comply with CEQA because it failed to accurately identify all sensitive receptors surrounding the Project and adequately evaluate the extent of the Project’s potentially significant impacts to those receptors in its noise and air quality analyses. Accurate identification of all sensitive receptors and adequate analyses of impacts on those receptors constitute significant new information that warrant a revised EIR. Therefore, the agency must prepare and recirculate a new EIR that corrects the deficiencies.¹⁵ The draft recirculated EIR must also be noticed and released for public review and comment in light of the new information.¹⁶

¹² 14 CCR § 15088.5(a).

¹³ *Id. Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112.

¹⁴ 14 CCR § 15088.5(a)(1).

¹⁵ *Id.*

¹⁶ 14 CCR § 15088.5(d).

(4) The EIR Fails to Provide a Complete Project Description Because of an Inadequate Description of Activities Related to the Northern Building of the Project

The EIR fails to include an accurate, complete and stable Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”¹⁷ CEQA requires that a project be described with enough particularity that its impacts can be assessed.¹⁸ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹⁹

Furthermore, it is impossible for the public to make informed comments on a project of unknown or ever-changing description. “A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal’s benefit against its environmental costs...”²⁰ As articulated by the court in *County of Inyo v. City of Los Angeles*, “a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”²¹ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.²²

The EIR fails to describe the full scope of the Project because it does not give an adequate description or discussion for the activities related to the upgrade and renovation of the northern building. Instead, the EIR predominantly focuses on the construction activities related to the southern portion of the Project, where the southern building is to be demolished and replaced with a mixed-use building. Indeed, the northern building is an integral component to the Project since a prime objective of the Project is to “[r]edevelop the existing Southern California Flower Market, including the adaptive reuse of the northerly building to continue the

¹⁷ *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

¹⁸ *Id.* at 192.

¹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (“*Sundstrom*”).

²⁰ *Id.* at 192-193.

²¹ *Id.* at 197-198.

²² See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376. L4639-002acp

include the wholesale flower market uses.”²³ Despite this, the project description only provides that the northern building will be upgraded and renovated.²⁴

The EIR also hints at construction-related activities for the northern building without discussing or evaluating those activities for potential environmental impacts. For example, the DEIR’s project description and traffic impact section, state that trucks are “expected to be on-site for construction of the northern building.”²⁵ Neither the Draft EIR, FEIR or the technical appendices provide any further information on what sort of construction activities are proposed for the northern building.

The EIR thus fails to disclose the full range and severity of the Project’s environmental impacts and prevents the public from meaningful review and opportunity to provide informed comments on the Project’s impacts. The City must revise the EIR to incorporate a complete and consistent project description and adequate evaluation of environmental impacts as it relates to the upgrading and renovation of the northern building.

(5) The City’s Finding That Air Quality Impacts from Construction-Related Air Emissions from Hauling Truck Routes Will Be Less Than Significant is Not Supported by Substantial Evidence

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”²⁶ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”²⁷

²³ LOD, p. 21.

²⁴ See, e.g., Final EIR (“FEIR”), p. 1-3. (“The applicant proposes to maintain and renovate the north building and its roof-top parking and demolish the south building in preparation of a new building with one level of subterranean parking.”)

²⁵ DEIR, pp. 2-6 and 4.L-16.

²⁶ *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

²⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water* L4639-002acp

The EIR improperly underestimates construction-related air emissions based on inaccurate hauling truck routes. SWAPE's Supplemental Comments maintains that the FEIR failed to address the incorrectly modeled hauling truck trip lengths expected to occur during construction, resulting in an underestimation of the Project's construction-related air emissions.²⁸ The EIR identifies two haul route options for the Project, either to the Chiquita Canyon Landfill (Option 1) or the Manning Pit Site (Option 2), which are 40 and 23 miles one way from the Project site, respectively.²⁹ SWAPE's comments on the DEIR identified that the EIR incorrectly assumes that all hauling trucks would travel to the Manning Pit.³⁰ In response, the FEIR provided further analysis by assuming that 50 percent of the haul trips would be destined for the Manning Pit and 50 percent would travel to the Chiquita Canyon Landfill.³¹ The FEIR concluded that this assumption does not change the significance of construction-related air emissions.³²

However, after further review, SWAPE correctly points out that the additional analysis discussed in the FEIR response is still inaccurate and underestimates construction emissions because the Manning Pit (Option 2) has permanently closed.³³ In fact, the City of Irwindale is currently proposing to redevelop the Manning Pit site for construction of a 545,735 square foot warehouse.³⁴ Therefore, the Project would not be able to haul construction debris to this site as proposed. Instead the Project will need to utilize Option 1 and route all hauling trips to the Chiquita Canyon Landfill. Since Option 1 is approximately 17 miles farther from the Project than Manning Pit, the EIR's currently updated air analysis, which inputs 50 percent of trips for each site, underestimates construction-related air emissions from hauling truck trips.

The EIR thus fails to accurately disclose the extent of the Project's potentially significant impacts on air emissions. Further, since the closure of Manning Pit is

Management Dist. (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

²⁸ SWAPE Supplemental Comments, p. 1.

²⁹ DEIR, p. 2-6.

³⁰ FEIR, p. 2-58 to 2-60, Comment B11-28.

³¹ FEIR, p. 2-60.

³² FEIR, p. 2-60.

³³ SWAPE Supplemental Comments, p. 2-3.

³⁴ 5125 Vincent Avenue Project Initial Study and Mitigated Negative Declaration. See <http://www.ci.irwindale.ca.us/documentcenter/view/4095>.
L4639-002acp

June 12, 2019
Page 10

considered new information, the EIR should be revised and recirculated for further public review.

I. CONCLUSION

For all of the forgoing reasons, the City must prepare and recirculate a revised EIR in order to accurately identify all sensitive receptors, accurately describe the whole project, including activities related to the renovation of the northern building, and adequately disclose, analyze, and mitigate the Project's significant air quality and noise impacts. The EIR must be revised and recirculated before the Agency's approval of the VTT and certification of the FEIR, and prior to the Planning Commission's consideration of entitlements for the proposed Project.

Thank you for your consideration of these comments.

Sincerely,



Camille G. Stough

Attachments

CGS:acp

L4639-002acp