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September 5, 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, California 91401

Re: **Justification for Appeal to the Los Angeles City Council of the August 8, 2019 City Planning Commission Determination Regarding the Southern California Flower Market Project (Case No. VTT-74568-1A; ENV-2016-3991-EIR; related: CPC-2016-3990-GPA-VZC-CUB-ZV-SPR)**

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's ("Planning Commission") August 8, 2019 decision sustaining the Deputy Advisory Agency's approval of the Vesting Tentative Tract Map ("VTTM"), certifying that Final Environmental Impact Report ("EIR") complies with the California Environmental Quality Act ("CEQA"), adopting environmental findings and a mitigation monitoring program, and denying CREED LA's June 13, 2019 Appeal (VTT-74568-1A; ENV-2016-3991-EIR), for the Southern California Flower Market project ("Project").

The Project is located at 709-765 S. Wall Street, 306-326 East 7th Street, and 750-752 S. Maple Avenue, and includes an expansion and redevelopment of the existing Flower Market facility between Maple Avenue and Wall Street, south of 7th

[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.

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Street, and a new mixed-use development consisting of wholesale trade, retail, restaurant, office, and residential uses.

On June 13, 2019, CREED LA filed an appeal of the Advisory Agency's approval of the VTTM and certification of compliance for the EIR. The appeal was heard by the Planning Commission on August 8, 2019. On August 26, 2019, the Planning Commission published its Letter of Determination ("LOD") denying the appeal and sustaining the Advisory Agency's decisions.

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

The reason for this appeal is that the Planning Commission abused its discretion and violated CEQA when it approved the VTTM and certified that the EIR had been completed in compliance with CEQA. As explained more fully below, the EIR: (1) fails to provide a complete project description and analyze the impacts of the entire Project; (2) fails to adequately disclose and mitigate the Project's construction air quality and health risk impacts; and (3) fails to adequately disclose and mitigate the Project's significant construction noise impacts. In sum, the EIR has not provided the public with an informative and legally sufficient CEQA document, and the EIR's findings regarding impacts on air quality, noise, and public health are not supported by substantial evidence. The City cannot approve the Project, certify the EIR, or approve the VTTM, until the errors in the EIR are remedied and a revised EIR is circulated for public review and comment.

Our June 13, 2019 Appeal to the Planning Commission and our August 6, 2019 Response to the City Planning's Appeal Report are attached hereto and incorporated by reference.[2,3] We also reference and attach hereto technical comments from air quality consultant, Greg Gilbert of Autumn Wind Associates, and noise and acoustic consultant, Derek Watry of Wilson Ihrig. Mr. Watry's and

[2] **Exhibit 1:** Letter from Camille Stough 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, June 13, 2019 ("June 13 Appeal").
[3] **Exhibit 2:** Letter from Camille Stough re: Response to Department of City Planning Appeal Report Regarding the Southern California Flower Market Project, August 6, 2019, ("August 6 Response").

Mr. Gilbert's technical comments are fully incorporated herein.[4] The specific reasons for this appeal are set forth in detail in these letters and summarized 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.[5]

(1) The EIR Fails to Provide A Complete Project Description And Fails Analyze The Impacts Of The Entire Project.

The EIR fails to comply with CEQA's informational requirements because it fails to include an accurate, complete and stable Project description, rendering the entire analysis of environmental impacts 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]."[6] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[7]

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...."[8] As articulated by the court in *County of Inyo*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."[9] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[10]

The EIR's inconsistent discussions related to the northern portion of the Project site results in an inaccurate and misleading project description. Further, since the EIR fails to provide a complete project description, including omissions of

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[4] **Exhibit 3:** Technical Comments from Greg Gilbert to Camille Stough, September 4, 2019 ("Gilbert Comments"); **Exhibit 4**: Technical Comments from Derek Watry to Camille Stough, September 4, 2019 ("Watry Comments").

[5] 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.

[6] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (*"County of Inyo"*).

[7] *Id.* at 192.

[8] *Id.* at 192-193.

[9] *Id.* at 197-198.

[10] *See, e.g., Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

the North Parking Addition, the EIR's analysis of impacts from the Project is effectively inadequate. As discussed further below, the EIR must be revised to include an adequate project description and analysis of environmental impacts related to the construction and operational activities of the North Parking Addition.

a. The EIR fails to describe the North Parking Addition.

CEQA requires that an EIR analyze "the whole of the project."[11] Failure to include a component of a project in an EIR's project description renders the description inaccurate and inadequate under CEQA.[12] CEQA requires that "[a]ll phases of a project must be considered when evaluating its impact on the environment."[13]

The EIR describes the Project site as consisting of two buildings – the North building (206,517 square feet) and the South building (185,111 square feet).[14] The South building's construction activities include demolition, subterranean parking, and construction of a new 15-story mixed-use building. However, as discussed in our June 13 Appeal and August 6 Response, the EIR remains unclear, if not misleading, as to the proposed constructional and operational activities concerning the North building and the loading dock area located within the surface parking lot, which is north of and adjacent to the North building.[15]

Based on a recent review of the EIR's updated Project floor plans provided with the City's August 8, 2019 Appeal Staff Report, it now appears that a **new building structure**, labeled in the plans as the "North Parking Addition," will be constructed over the surface parking lot area between the North building and 7th Street.[16] The new plans also show that the North Parking Addition will include new restaurant and office uses on the ground floor (the original surface parking lot), above-ground parking levels that will consist of an extension from the third floor roof-top parking of the North building and **two additional parking levels** on the new 4th and 5th floors.[17]

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[11] 14 CCR § 15062(a); *Laurel Heights,* at 396.
[12] 14 CCR § 15062(a).
[13] 14 CCR § 15126.
[14] DEIR, p. 1-5.
[15] For purposes of discussion of the project description, the North building, loading dock area, and the adjacent surface parking lot where the loading docks are located, will be identified collectively as the "northern portion" of the Project.
[16] DEIR, Figures 2-2 through 2-21.
[17] *Id.*

While the updated floor plans provide a visual representation of the location and measurements of the "North Parking Addition," the EIR does not describe or mention this additional structure in any of its analyses and some of its analyses, such as the Air Quality analysis incorrectly assume that the surface parking lot area will remain untouched. Rather, much of the EIR continues to mischaracterize the Project as consisting of the South building and North building, where the South building will require most of the construction and new land uses and the North building will only involve renovation and maintenance of existing uses, with the exception of the new event space.[18] On the contrary, as the plans show, the North Parking Addition is a new building structure that will replace the surface parking lot along 7th Street and partially adjoin with the North building. The EIR's project description for the northern portion of the Project site is inconsistent and therefore is inadequate.

Finally, in response to our June 13 Appeal addressing the EIR's inadequate project description, the Planning Commission stated that, "[r]enovations on the North building would, on their own, not be likely to require an Environmental Impact Report," and "the impact analysis in the EIR adequately covers construction over the entire Project Site."[19] The Planning Commission's response acknowledges that additional construction is contemplated for the North building, and also discloses additional "renovation" work includes "reconfiguration of the loading dock" and "construction of the parking decks above the loading dock."[20] However, the EIR fails to analyze or mitigate the impacts of these renovations, and the Planning Commission failed to require the City to revise and recirculate the EIR to address this new construction prior to certifying its compliance with CEQA. Thus, the EIR that was approved by the Planning Commission ignores and disregards the North Parking Addition and its related construction activities and environmental impacts, in violation of CEQA.

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[18] For example, the DEIR states: "Though Sensation Flowers, located at 709 Wall Street, also abuts the Project Site, it would not be expected to experience significantly considerable vibration impacts as a result of the Project. The north building that this receptor abuts would be maintained and renovated. Work related to this north building would not require the types of heavy-duty construction equipment capable of generating excessive groundborne vibrations." DEIR, 4.I-18; *See e.g.* in DEIR, pp. 1-5, 2-1, 4.B-9, among many other examples throughout, including appendices.
[19] *Staff Response CREEDLA-4*, Appeal Report, City Planning Commission (Case No. VTT-74568), issued July 30, 2019 ("Appeal Report"), p. A-6.
[20] *Id.*

In *San Joaquin Raptor*, court determined that the curtailed and shifting project description clearly affected the EIR process when the EIR on the one hand indicated there would be no increase in mine production as part of the project, while on the other hand, provided for substantial increases of mine production if the Project was approved. Since analysis primarily relied on the lower mine production figure, the court found that the inconsistencies were enough to mislead the public and thwart the EIR process. [21] Here, the EIR's failure to include the North Parking Addition in the project description is a critical omission. While the only mention of the North Parking Addition is in the project floor plans, the rest of the EIR characterizes the northern portion of the Project site as simple renovation that will likely not require heavy equipment and maintenance of the existing wholesale market. By failing to describe the proposed North Parking Addition and the relevant land uses anticipated in that new building structure, the EIR presents conflicting signals to decision makers and the public about the nature and scope of the project and is fundamentally inadequate and misleading.[22] The EIR should therefore be revised with a complete and stable project description, that includes the North Parking Addition, and recirculated for public comment in order to comply with CEQA.

b. The EIR failed to disclose and analyze potential geology and soil impacts from construction of the North Parking Addition.

The EIR fails to disclose and analyze the potential geology and soil impacts of the North Parking Addition. The EIR's July 2016 Geotechnical Investigation Report states:

> "It is our further understanding that the North building will remain and undergo limited modification and additions...The site also includes an existing loading dock and parking area which may be used for an **undetermined future development.** Due to the undefined scope of work for the future development at this time, detailed recommendations for the future development can be provided under separate cover when information on the proposed development is available...Any changes in the design, location or elevation of any structure as outlined in this report, should be reviewed by this office.

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[21] *See San Joaquin Raptor Rescue Center v. County of Merced,* (2007) 149 Cal. App. 4th 645.
[22] *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052.

> Geocon should be contacted to determine the necessity for review and possible revision of this report."[23]

It is also clear that, when the Geotechnical Report was prepared, the North Parking Addition had yet to be proposed and instead identified that area of the Project site as a "future development" or "future expansion area."[24] As such, the geotechnical consultants had not analyzed any impacts related to geology and soils as a result of the North Parking Addition. Finally, the Geotechnical Report includes recommendations to the City and applicant, that the geology consultants receive a copy of the final construction plans so that recommendations on excavation, settlements, or earth pressures could be properly reviewed and revised if necessary.[25] Since this is the most recent geology and soils analysis provided in the EIR and doesn't analyze the North Parking Addition or provide recommendations to mitigate its impacts on geology and soil, the Geotechnical Report's analysis is stale.

In a recently published case, *Millennium Hollywood*, the court determined that errors in an EIR's project description was prejudicial because the failure to include relevant information precludes informed decision making and informed public comment, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.[26] Similarly here, informed decision making and public review have been prejudiced based on inconsistent project descriptions and an inadequate geology and soil analysis that does not include the entirety of impacts from the Project. The EIR fails to adequately disclose and analyze potential impacts on geology and soil related to the North Parking Addition and should be revised.

c. The EIR must be recirculated because of significant new information regarding the North Parking Addition.

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."[27] 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

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[23] DEIR, Appendix G: Geotechnical Report, p. 2 (emphasis added).
[24] December 2015 Site Plans, Geotechnical Report, pp. 51-52.
[25] *See* Geotechnical Report, p. 10-41.
[26] *See Stopthemillenniumhollywood.com, v. City of Los Angeles, (2019) ___ Cal.App.5th ___*, published August 22, 2019.
[27] 14 CCR § 15088.5(a).

comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement.

Because the EIR failed to consider the geology and soil impacts of the North Parking Addition, the public was denied an opportunity to meaningfully review and comment on this additional analysis. It is like that there is other environmental analyses throughout the EIR that does not take into account the North Parking Addition since this structure is distinguishable from the Project activities associated with the South and North buildings. The Planning Commission therefore erred when it decided the EIR did not need to be recirculated. CEQA requires the City to recirculate a revised EIR to allow the public meaningful opportunity to review and comment on the EIR.

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

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.[28] Under CEQA, a project has significant impacts if it "[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected air quality violation."[29] The EIR failed to accurately analyze and mitigate the Project's construction emissions by: (i) using unsubstantiated input parameters used to estimate project emissions; (ii) relying on ineffective mitigation which presumes the use of Tier 4 construction equipment without actually requiring it; and (iii) failing to evaluate the cancer risk impacts resulting from exposure to toxic diesel particulate matter ("DPM") emissions generated during Project construction and operation. As a result, the EIR's conclusions that the Project's air quality and health risk impacts from emissions generated during Project construction and operation will fall below SCAQMD thresholds are unsupported.

a. The EIR's air quality analysis relies on unsubstantiated input parameters used to estimate air quality emissions.

Mr. Gilbert reviewed the EIR's air quality analysis and responses to several technical comments from SWAPE, and concludes that the EIR's emissions modeling relies on input values that are not consistent with, or contradict, information

[28] Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq.
[29] CEQA Guidelines, Appendix G.

disclosed in the EIR. As a result, Mr. Gilbert concludes that the Project's construction and operational emissions are greatly underestimated.

First, Mr. Gilbert explains that the DEIR's Air Quality Analysis underestimated the distance and number of the Project's construction haul truck trips in evaluating the Project's construction-related on-road truck emissions.[30] As a result, the truck emissions that aredvs included in the EIR's Air Quality Analysis are less than the actual emissions that will be generated by the Project's construction haul truck trips. Regarding distance, Mr. Gilbert points out that the EIR fails to input the correct number of miles for the haul distance between the Project site and the landfill site.[31] For actual truck trips, Mr. Gilbert demonstrates the underestimated number of haul trips the trucks will make because the EIR fails to include the trips to and from haul trucks' home base and the number of trips between the Project and landfill one truck can feasibly make throughout the day. Specifically, the EIR only accounts for two one-way trips a day per truck. This is incorrect as it assumes a truck will arrive at the Project site (one-way), pick up the haul, then drive to the landfill (one-way), unload and then just stay there for the remainder of the day. Mr. Gilbert elaborates on why two one-way trips are not practical and unlikely considering the amount of material to haul and the EIR's proposed construction scheduling.[32]

After calculating the correct haul truck trips and distances, Mr. Gilbert concludes that the Project will result in 14,583 one-way truck trips, as opposed to the EIR's findings of 6,500 trips. Since this is a crucial input for analyzing the Project's construction emissions, a 63% increase in the original underestimated truck trips in the EIR has the potential to significantly impact air quality emissions. As such, the EIR's conclusion that the Project's construction haul truck emissions will result in less than significant air quality impacts is unsupported based on unsubstantiated inputs.

b. The EIR's Tier 4 mitigation measure for off-road construction equipment is unenforceable.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts,[33] and describe those mitigation measures in the EIR.[34] A public agency

[30] Gilbert Comments, pp. 1-5.
[31] *Id.*, pp. 1-2.
[32] Gilbert Comments, pp. 2-5.
[33] PRC §§ 21002, 21081(a).

may not rely on mitigation measures of uncertain efficacy or feasibility.[35] Mitigation measures must also be enforceable through conditions of approval, contracts or other means that are legally binding.[36] This requirement is intended to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored.[37] As Mr. Gilbert demonstrates, Mitigation Measure C-1 ("MM C-1") fails to meet these basic CEQA requirements because the EIR fails to demonstrate that the use of Tier 4 equipment is feasible, and fails to contain enforceable terms requiring the actual procurement of Tier 4 construction equipment for use during Project construction.[38] Thus, MM C-1 fails to ensure that it will effectively reduce the Project's construction emissions to less than significant levels, as the EIR claims.

MM C-1 states that all Project construction equipment greater than 50 horsepower must meet USEPA Tier 4 emission standards.[39] In order to mitigate the emissions from offroad construction equipment, the mitigation measure necessitates a more refined requirement of Tier 4 *Final* values and not just Tier 4. This mitigation measure makes an assumption that all offroad construction equipment used will operate at Tier 4 *Final* values.[40] However, as Mr. Gilbert shows Tier 4 equipment across all types of construction equipment to be used during the construction phase are not available or possible and therefore renders the mitigation measure ineffective.

Both SWAPE and Mr. Gilbert have provided substantial evidence to refute the City's assumption that this measure is indeed feasible. On the contrary, Tier 4 equipment has been extremely slow to adopt and recent data from the California Air Resources Board clearly show that the state has shown slower-than-expected transition to offroad diesel fleet with certified Tier 4 Final emission status.[41] The EIR however provides minimal supporting analysis to determine the actual availability of Tier 4 equipment for use on the Project site, and fails to state whether the Applicant has already procured, or even investigated whether it can feasibly procure, Tier 4 equipment for use during Project construction. The EIR

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[34] PRC § 21100(b)(3); 14 CCR §n 15126.4.
[35] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727.
[36] PRC § 21081.6(b); 14 CCR § 15126.4(a)(2); *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.
[37] *Fed'n of Hillside & Canyon Ass'n v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261; *Anderson First Coal. v. City of Anderson* (2005) 130 Cal.4th 1173, 1186
[38] Gilbert Comments, pp. 5-9.
[39] DEIR, p. 4-C-23.
[40] Gilbert Comments, p. 5.
[41] Gilbert Comments, p. 6.

therefore lacks any supporting evidence to demonstrate that MM C-1's Tier 4 requirement is feasible.

In order to be feasible, mitigation measures must be "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."[42] Concerns about whether a specific mitigation measure "will actually work as advertised," whether it "can ... be carried out," and whether its "success ... is uncertain" go to the feasibility of the mitigation measure.[43] Actual use of Tier 4 equipment is a technological factor which is determinative of the MM C-1's success. Because the EIR fails to require that the Project will actually use Tier 4 equipment and in what quantity, the measure remains infeasible and ineffective.

c. The EIR fails to evaluate cancer risk impacts resulting from construction and operational DPM emissions.

CEQA expressly requires that an EIR discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.[44] When a project results in exposure to toxic contaminants, this analysis requires a "human health risk assessment."[45] The EIR fails to include a health risk analysis to disclose the adverse health impacts from increased cancer risk that will be caused by exposure to toxic air contaminants ("TACs") from the Project's construction and operational emissions. As a result, the EIR fails to disclose the potentially significant cancer risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the EIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter ("DPM") emissions with the necessary analysis, the EIR's finding that the Project will not have any significant health risk impacts from TAC emissions is not supported by substantial evidence. Indeed, without a quantitative analysis, the EIR's finding of no significant impact is speculative and appears to derive this conclusion based on the fact that it did not analyze the impact in the first place. This is the opposite of what CEQA requires.

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[42] PRC § 21061.1.
[43] *Id.; See California Native Plant Soc. v. City of Rancho Cordova*, 172 Cal.App.4th at 622.
[44] 14 CCR § 15126.2(a).
[45] *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("*Berkeley Jets*") (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project's emissions and human health impacts).

Subsequent to our June 13 Appeal, the City prepared an informational-only health risk analysis for construction emissions only, and without any analysis as to why it did not include operational emissions.[46] Based on that analysis, the City concludes that cancer risk is less than significant from construction emissions. As Mr. Gilbert discusses, the EIR's failure to accurately calculate construction emissions inputs and the failure to include operational emissions as part of the City's health risk analysis results in an underestimated evaluation of health risks associated with TACs.[47]

In order to conclude one way or the other whether the Project's TAC emissions would result in significant health effects, the DEIR is required to include a quantified HRA of the Project's construction and operational TAC emissions.[48] By failing to do so, the DEIR fails to comply with CEQA, and is inconsistent with OEHHA's well-reasoned guidance. The City must revise and recirculate the DEIR to include a legally adequate analysis of the health risks posed by the Project's construction emissions.

(3) The EIR Fails to Adequately Disclose and Mitigate Construction Noise Impacts on Sensitive Receptors.

As we discussed in our June 13 Appeal and August 6 Response, the EIR fails to adequately mitigate the significant construction noise impacts to Santee Court Apartments and the Textile Lofts Building. Mr. Watry provides additional calculations and graphs that clearly demonstrate that these two sensitive noise receptors will continue to experience ambient noise levels above the threshold of significance based on the resident's floor and distance from the building. Furthermore, CEQA requires that mitigation measures be fully enforceable through permit conditions, agreements or other legally binding instruments.[49] As Mr. Watry notes in his comments, the mitigation measures proposed by the EIR, namely mufflers for offroad construction equipment and temporary 15-foot sound barriers, are ineffective. As such, the EIR should be revised to adequately disclose and mitigate construction noise impacts on the Santee Court Apartments and Textile Loft Buildings.

(4) The Planning Commission's approval of the VTTM violated the Subdivision Map Act

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[46] Exhibit F (Health Risk Assessment) to City Planning Commission's July 30, 2019 Appeal Report.
[47] Gilbert Comments, pp. 10-14.
[48] Exhibit A, p. 10.
[49] 14 CCR §15126.4(a)(2).

The City Council must vacate the Planning Commission's approval of the VTTM and deny the VTTM because it is inconsistent with the current Project description, which has not been adequately analyzed under CEQA. As shown on the VTTM attached to the Advisory Agency's Letter of Determination approving the VTTM, the site plans do not include any description or visual depiction of the North Building Addition. Instead, the area where the North Building Addition is proposed to be built, as proposed by the EIR's project plans, is identified as an existing parking lot without any additional structures or parking levels above-grade. Because of the VTTM's inconsistency with the EIR's project description, the VTTM is in violation of the Subdivision Map Act and should not be approved.

Under the Subdivision Map Act, vesting tentative maps are intended to confer the right to proceed with development in substantial compliance with the laws in effect at the time the map application is deemed complete. Govt C. §§66474.2, 66498.1 (b). The local agency may condition or deny a permit, approval, extension, or entitlement if it determines that failure to do so would pose a danger to the health or safety of the residents of the subdivision or community (Govt C §66498.1(c)(1)) or the condition or denial is required in order to comply with federal or state law. Govt C §66498. 1 (c)(2).

Here, the Project description has changed substantially since the Project application was deemed complete due to the recent addition of the northern buildings to the Project plans, and the City has failed to comply with State law by analyzing the northern buildings under CEQA. The VTTM reflects the old Project description. Thus, the City has not determined whether a VTTM for the revised Project is in "substantial compliance" with applicable law, as required by the Subdivision Map Act, and cannot make the requisite findings under the Government Code to approve the VTTM. Govt C. §§66474.2, 66498.1 (b).

Moreover, as previously discussed, the FEIR fails to disclose the construction emissions associated with the northern buildings, and fails to evaluate these building's construction or operational emissions of TACs in a health risk assessment. The City therefore has not determined whether the Project poses a significant health risk from increased cancer risk resulting from exposure to TACs, and lacks substantial evidence to support a finding that the Project would not pose a danger to health and safety of local residents. Govt C §66498.1(c)(1). This analysis is required in order to comply with state law (CEQA). The City cannot approve the VTTM until the Project's health risk are fully disclosed and mitigated.

a. The Planning Commission failed to make the required denial findings under the Map Act, Government Code, section 66474, subdivisions (a)-(g).

The Planning Commission should have denied the VTTM Because there is substantial evidence in the record demonstrating that the Project Has Significant Environmental And Public Health Impacts that are likely to cause environmental damage or injure the public health.[1] The City also failed to determine whether the Revised Project (i.e. with northern buildings added...) is consistent with applicable general plans, specific plans, and local codes governing development density. The Planning Commission was therefore required to deny the VTTM and make the required denial findings under the Government Code.[2] Government Code, section 66474 requires a local agency to make specific findings and to deny a TTM if the map or design of any improvement is inconsistent with any applicable general or specific plan, when the design of the subdivision or the proposed improvements are "likely to cause substantial environmental damage," or are "likely to cause serious health problems,"[3] as follows:

> A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:
> (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
> (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
> (c) That the site is not physically suitable for the type of development.
> (d) That the site is not physically suitable for the proposed density of development.
> (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
> (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
> (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of

> a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision. Gov Code 66474 (emphasis added).

The LOD ignores substantial evidence submitted by Appellants which demonstrates that the Project, as approved by the Planning Commission, continues to have significant environmental impacts that are "are likely to cause environmental damage or injure the public health" within the meaning of the Map Act.

First, as discussed above, the Project is likely to cause adverse impacts to air quality and public health which have not been adequately disclosed and mitigated in the FEIR. In particular, the Project's cumulative TAC emissions from construction and operation of the Project remain undisclosed and inadequately mitigated. The FEIR also failed to describe, analyze, or mitigate the TAC emissions associated with construction and operation of the northern buildings. Substantial evidence submitted by SWAPE, and verified by air quality expert, Mr. Gilbert, demonstrates that the Project is likely to have significant TAC emissions that the FEIR fails to mitigate. The Planning Commission therefore had an affirmative duty under the Government Code to deny the VTTM and make findings to this effect. Gov Code 66474(e), (f).

Moreover, because the FEIR fails to accurately describe and analyze the northern buildings, the City failed to determine whether the revised Project is, or is not, consistent with the adopted general and specific plans. The Planning Commission therefore lacked substantial evidence to support its findings that the Project and the VTTM were consistent with these plans and policies, and should have therefore denied the VTTM due to a lack of evidence.

Accordingly, the City Council should vacate the Planning Commission's approval of the VTTM and deny the VTTM by making findings consistent with the Section 66474 of the Map Act. Alternatively, the City Council should remand the the VTTM application to staff to revise the VTTM to make it consistent with the current Project description, and should not reconsider the VTTM for approval until the City prepares and recirculates a revised EIR that fully discloses and mitigates the Project's remaining significant environmental impacts.

(5) Conclusion

Based on the issues discussed above, the County must revise and recirculate the EIR to adequately describe the entirety of the Project and adequately disclose and analyze, and mitigate noise, air quality, and health risk impacts. Finally, the City Council should vacate the Planning Commission's approval of the VTTM and deny the VTTM until a revised EIR addresses its deficiencies and is recirculated for further public review.

Thank you for your consideration of these comments.

Sincerely,

Camille Stough

Attachments

L4639-007cgs

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-74568; ENV-2016-3991-EIR (

Project Address: 709-765 S. Wall Street, 306-326 E. 7th Street, and 750-752 S. Maple Avenue

Final Date to Appeal: 09/05/2019

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 Camille Stough

Company:

Mailing Address: 601 Gateway Boulevard, Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: cstough@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): Camille Stough

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: cstough@adamsbroadwell.com

VTT - 74568 - 2A

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: Camille G. Brough Date: 09/04/2019

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: $89.00	Reviewed & Accepted by (DSC Planner): Steven Wechsler	Date: 9-5-19
Receipt No: 0202667934	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified	☐ Original receipt and BTC receipt (if original applicant)	

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