



**4. JUSTIFICATION/REASON FOR APPEAL**

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

Are specific conditions of approval being appealed?  Yes  No

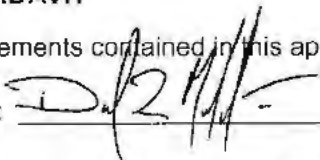
If Yes, list the condition number(s) here: \_\_\_\_\_

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

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

**5. APPLICANT'S AFFIDAVIT**

I certify that the statements contained in this application are complete and true:

Appellant Signature: 

Date: 05/08/19

**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): 0103036029	Date: 5/6/2019
Receipt No: 0103036029	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

**Attachment to Appeal to Planning Commission**

Southwest Carpenters adopts and incorporates all objections to the Project that it has previously raised and that have been raised by any other individual or entity during the administrative process for this Project before the City of Los Angeles.

**Justification/Reason for Appeal**

**I. If the City Certifies the EIR and Adopts the Advisory Agency's Determination, It Will Violate CEQA.**

**A. The EIR fails to properly analyze the spot zone created by the Project.**

In order to be constructed, the Project Applicant requested a General Plan Amendment to alter the Central City North Community Plan's land use designation for the Project site from Heavy Industrial to Commercial Industrial. (DEIR, p. II-14.) The Applicant also requested a vesting zone and height district change from M3-1-RIO (Heavy Industrial Zone) to CM-2-RIO (Commercial Manufacturing Zone, Height District 2). (*Ibid.*) The zone change and General Plan Amendment ("GPA") requests would alter applicable zoning and General Plan designations solely for the Project site in order to permit construction of a mixed-use residential development. (*Id.* at p. II-14.) This would create an island of commercially zoned land with residential, office, and retail uses amid a large industrially zoned area. (See DEIR, p. III-4.)

The City of Los Angeles California Environmental Quality Act Thresholds Guide ("LA CEQA Thresholds Guide") defines spot zoning as occurring "when the zoning or land use designation for only a portion of a block changes, or a single zone or land use designation becomes surrounded by more or less intensive land uses." (LA CEQA Thresholds Guide, p. H.2-2.) According to the LA CEQA Thresholds Guide, such spot zones require further study. (LA CEQA Thresholds Guide, p. H.2-2.) The LA CEQA Thresholds Guide also requires that an Environmental Impact Report ("EIR") analyze the "extent to which existing... land uses would be disrupted, divided, or isolated, and the duration of the disruptions." (*Id.* at p. H.2-3.)

The Project, if approved, would alter the land use designation for a portion of a block, and would create a single commercial land use designation amid industrially zoned land and thus create a spot zone as defined by the LA CEQA Thresholds Guide. Yet, the City did not engage in any analysis of how the Project may or may not result in a spot zone, nor what the impacts of such a spot zone might be. (See DEIR, § IV.G.) The Southwest Regional Council of Carpenters ("Southwest Carpenters") raised this issue in their Draft Environmental Impact Report Comment

Letter (“DEIR Comment Letter”). (DEIR Comment Letter, p. 4.) But the City’s responses to comments and revisions to the DEIR fail to address how the Project may create a spot zone and may result in an inconsistency or incompatibility with surrounding zoning. (Final Environmental Impact Report [“FEIR”], pp. III-1 – III-3, II-32 – II-34.) Though the City identified uses surrounding the Project site in response to Southwest Carpenters’ concerns, it failed to discuss and analyze the surrounding zoning in compliance with the LA CEQA Thresholds Guide. (*Ibid.*) Furthermore, the City’s assertions that a General Plan Amendment and zone change resolve any inconsistency, without more, fails to rise to the level of sufficient analysis of a spot zone under the LA CEQA Thresholds Guide. (See *ibid.*; *Arts District Community Council Los Angeles, et al. v. City of Los Angeles* (Apr. 29, 2019), Los Angeles Superior Court Case No. BS172014 [“ADCCLA”], p. 42.)

In *Arts District Community Council Los Angeles, et al. v. City of Los Angeles*, the City approved a zone change from M3-1-RIO to C2 and provided a General Plan Amendment to permit the conversion of industrial land to a commercial land use designation. (*ADCCLA, supra*, at 1.) In *ADCCLA*, the City failed to analyze a spot zone as required by the LA CEQA Thresholds Guide in its initial study, Mitigated Negative Declaration, and Sustainable Communities Environmental Assessment. (*Id.* at p. 42.) The court found that the City’s failure to do so violated CEQA. (*Ibid.*)

*ADCCLA* is instructive, here. The *ADCCLA* Project is located less than one mile from the Project site. The proposed Project, requested entitlements, and City determinations, here, closely mirror the project, entitlements, and City’s actions in *ADCCLA*. The Project, here, requested a zone change from M3-1-RIO, the same land use designation the *ADCCLA* project site initially possessed. (DEIR, p. I-2, II-14; *ADCCLA, supra*, at 1.) Here, the City converted the land use to C2 in order to construct a mixed-use project on previously industrially-zoned land, just as it did in *ADCCLA*. (*Ibid.*) In addition, just as in *ADCCLA*, the City in this proceeding created a spot zone by changing the zoning and General Plan solely for the Project site, which resulted in an island of commercially zoned land amid a large swath of industrial land. (DEIR, pp. III-4, II-14.) Likewise, in this case, the City failed to analyze the spot zone in any of its environmental review documents. (See generally DEIR, FEIR, § III.) Just as in *ADCCLA*, the City’s actions in this matter are impermissible under CEQA and the LA CEQA Thresholds Guide, and adoption of the FEIR without a spot zone analysis would constitute a failure to proceed in a manner required by law.

**B. The FEIR's consistency findings fail to analyze relevant policies regarding the preservation of industrially-zoned land.**

When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515 [*Topanga*].) It “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Ibid.*)

The DEIR concludes that “the Project would be consistent with the applicable policies of the Framework Element... and, therefore, a less-than-significant impact would occur.” (DEIR IV.G-23.) This is not supported by the evidence or by reasonable analysis. The City failed to analyze relevant, applicable land use plans and requirements. Framework Element Policy 7.2.8 provides that the City must “[r]etain... current manufacturing and industrial land use designations.” Policy 7.2.9 mandates that the City must “[l]imit the redesignation of existing industrial land to other land uses.” Framework Element Policy 3.14.6 provides that industrial lands should only be converted when “it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts.” In addition, Chapter 3 of the Framework Element provides “[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies.” The City failed to address or clearly analyze these policies in the FEIR. (See FEIR, §§ II, III.)

The City also failed to analyze the Project's inconsistency with the applicable Community Plan, which explains that the City faces “[i]ntrusion of commercial and residential uses into previously industrial areas.” (Central City North Community Plan I-7; see DEIR, p. II-1 [explaining that Project is within the Central City North Community Plan].) Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (*Id.* at III-8.) Objective 3-3 directs the City to “retain industrial plan designations ... and to increase it (sic) whenever possible.” (*Ibid.*) The City's analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3-1.1 and 3-3.1. (DEIR, pp. IV.G-8 – IV.G-11, IV.G-40, IV.G-45.)

This is impermissible under CEQA. In *ADCCLA, supra*, the project applicant obtained a zone change and GPA to alter the project land use designation from Heavy Manufacturing (M3) to Commercial (C2). (*ADCCLA, supra*, 1.) The court found that the City violated CEQA

because it did not analyze or discuss the exact Framework Element and Central City North Community Plan policies listed, above. (*Id.* at 31-35.) The City cannot completely fail to analyze the applicable policies in the Framework Element and the Central City North Community Plan, and still find that the Project is consistent with applicable land use plans. If the City retains this analysis and approves the Advisory Agency's determination, its action will constitute an unlawful abuse of discretion. (See *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921; Code Civ. Proc. § 1094.5; Pub. Resources Code § 21168.)

**C. The FEIR fails to analyze the cumulative displaced industrial development impacts from the Project and related Projects.**

An environmental review document must consider cumulative impacts. (Pub. Resources Code, § 21155.2(b)(1).) Cumulative impacts are the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and foreseeable future projects. (Cal. Code Regs., tit. 14, § 15355(b).) An agency must "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (*Ibid.*) In this process, it "must use its best efforts to find out and disclose all that it reasonably can." (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [*"San Franciscans"*].)

In *ADCCLA, supra*, the court found that the City "failed to comply with CEQA because the MND and SCEA do not discuss the cumulative displaced industrial development impacts from this and other projects." (*ADCCLA, supra*, at 34.) In the cumulative impacts land use analysis in this EIR, the City failed to analyze how the Project, in conjunction with other projects in the vicinity, would result in the displacement of industrial land uses, though the DEIR indicates that several other related projects would result in the provision of "residential and commercial uses in formerly industrially-zoned lots." (See DEIR, pp. IV.G-61 – IV.G-63.) Likewise, as raised in the DEIR Comment Letter, the City fails to examine the impacts that the Project and related projects that alter existing industrial land use designations in the downtown Los Angeles Area will generally have on industrial land uses. (DEIR, p. 5.) The EIR does nothing to analyze or address these impacts. (See, e.g., FEIR, § III.) This does not evidence that the City used its "best efforts to find out and disclose all that it reasonably can," and, if upheld, will constitute reversible error. (See *San Franciscans, supra*, 151 Cal.App.3d at 74.)

**D. The FEIR fails to identify significant environmental impacts.**

An "EIR must include a detailed statement concerning the environmental effects, alternatives and other relevant factors concerning the project." (*Pesticide Action Network North*

*America v. Department of Pesticide Regulation* (2017) 15 Cal.App.5th 478, 494, citing *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 856–857.) The EIR, however, does not adequately identify significant impacts to land use, cumulative air quality impacts, greenhouse gas emissions, or fire and emergency services. (See DEIR Comment Letter, pp. 3-9.) Despite DEIR comments raising concerns regarding the failure to identify significant impacts in these areas, the City failed to correct the DEIR's faulty analysis in the FEIR. (See FEIR, § III.) This is impermissible under CEQA.

**E. The Statement of Overriding Considerations is not supported by substantial evidence and adoption of a Statement of Overriding Considerations will constitute an abuse of discretion.**

In the EIR and Notice of Determination, the City found that the Project will result in unavoidable and un-mitigatable significant traffic impacts, but nonetheless decided to approve the Project. (See April 26, 2019 Determination Letter for 2110 Bay Street, Los Angeles, California ["Determination Letter"], p. 96.)<sup>1</sup>

CEQA provides that an agency may adopt a project with unavoidable adverse environmental impacts, "[i]f the specific economic, legal, social, technological, or other benefits... of a proposal project outweigh the unavoidable adverse environmental effects." (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15093(a).) Under CEQA, if an "agency approves a project which will result in the occurrence of significant effects [that] are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record." (Cal. Code Regs., tit. 14, § 15093(b).) The agency must provide specific overriding legal, economic, social, technological, or other considerations that outweigh the environmental impacts of a project. (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093.) A "statement of overriding considerations shall be supported by substantial evidence in the record." (Cal. Code Regs., tit. 14, § 15093(b); see *Sierra Club v. County of Contra Costa* (1992) Cal. App. 4th 1212, 1223 ["*Sierra Club*"] [disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499].)

In *Sierra Club, supra*, Cal. App. 4th 1212, the agency adopted a statement of overriding considerations that listed twelve project benefits that the agency claimed overcame the project's

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<sup>1</sup> Southwest Carpenters contends that the Project will have several other significant impacts and raises these impacts by reference to their DEIR Comment Letter, attached hereto. (See generally DEIR Comment Letter.)

environmental impacts. The court found that three of the twelve asserted benefits were not supported by substantial evidence, and, thus determined that the statement of overriding considerations was defective. (*Id.* at 1224.) Likewise, here, the City's asserted benefits are not supported by substantial evidence. For example, the City states that the Project results in the "[l]ocation of a high-density mixed-use development on an under-utilized site." (Letter of Determination, p. 100.) But the record does not support a conclusion that the site is "under-utilized," and the City does not define this term or discuss the relevance of this term in reference to the applicable industrial use land designations of the Project site. The Project Site is currently home to a large manufacturing building and other items and structures related to industrial uses. (DEIR, p. II-5.) The City of Los Angeles is in desperate need of industrial and manufacturing land, and thus, sites with buildings and amenities that support manufacturing are heavily utilized and in high demand. (*See* Los Angeles Department of City Planning and Community Redevelopment Agency, *Los Angeles' Industrial Land, Sustaining a Dynamic City Economy* (Dec. 2007)

<[http://planning.lacity.org/Code\\_Studies/LanduseProj/Industrial\\_Files/Attachment%20B.pdf](http://planning.lacity.org/Code_Studies/LanduseProj/Industrial_Files/Attachment%20B.pdf)> [as of Dec. 13, 2018] ["Competition for industrially zoned land in Los Angeles is extremely high; industrial land in the City has the lowest vacancy rate in the nation, remaining consistently below two percent."] This does not support a conclusion that, in order to appropriately utilize the Project site, it must be constructed into a mixed-use development. As the record does not contain substantial evidence that supports these asserted benefits, under *Sierra Club's* holding and California Code of Regulations, title 14, section 15093(b), the City's Statement of Overriding Considerations is defective and unlawful.

**F. The FEIR fails to adequately respond to comments.**

Southwest Carpenters and others submitted comments to the City regarding the Draft Environmental Impact Report. CEQA mandates: "[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response." (Cal. Code Regs., tit. 14, § 15088.)

The FEIR, however, failed to provide responses that specifically addressed or mitigated the concerns raised by Southwest Carpenters and others. For example, Southwest Carpenters raised the fact that the DEIR failed to examine several relevant and essential Framework Element Policies regarding the preservation of Industrial Land Uses, including Framework Element Policies 7.2.8, 7.2.9, and 3.14.6. (*See* DEIR Comment Letter.) The City, however, fails to address this deficiency in the FEIR or update its analysis to include and discuss these essential policies. (*See* FEIR, pp. III-1 – III-3, II-26 – II-27.) Likewise, the City failed to meaningfully respond to or alter the FEIR in response to Southwest Carpenters' concern that the DEIR failed



to analyze the spot zone created by the Project per the Los Angeles CEQA Thresholds Guide. (FEIR, pp. III-1 - III-3, II-32 – II-34.)

In addition, the City failed to respond to clarifying questions posed by Southwest Carpenters. For example, in the DEIR Comment Letter, Southwest Carpenters asked, “Did the City solely analyze cumulative impacts from projects within 500 feet of the Project site?” (DEIR Comment Letter, p. 7.) The City never responded to this inquiry. (FEIR, p. II-35 – II-37.)

The City’s failure to adequately respond to comments violates CEQA.

**G. The Mitigation Monitoring Program is incomplete.**

Because the City failed to properly identify significant impacts, the City also failed to create a complete mitigation monitoring program to appropriately minimize such impacts. CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are... mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134 [“*Mountain Lion*”], citing Pub. Resources Code § 21081.) In order to ensure that a Project’s impacts to the environment are effectively lessened, such measures must be included as mitigation, and mitigation must be fully enforceable. (Cal. Code Regs., tit. 14, § 15126.4(a)(1) [“An EIR shall describe feasible measures which could minimize significant adverse impacts...”]; *id.* at § 15126.4(a)(2) [mitigation “must be fully enforceable through permit conditions, agreements, or other legally-binding instruments”].) Without a proper analysis and identification of significant environmental impacts, the City cannot provide proper mitigation. The City’s mitigation monitoring program, therefore, does not meet CEQA’s mandate to lessen environmental impacts.

**II. The Project is Inconsistent with the Framework Element and the Community Plan, so Approval of the Vesting Tentative Tract Map Will Violate Los Angeles Municipal Code Section 17.00 *et seq.* and the Subdivision Map Act.**

The Subdivision Map Act (“SMA”) provides that subdivisions must be consistent with land use requirements, including “local ordinances dealing with subdivisions.” (Gov. Code, § 66474.60.) The SMA provides that “[i]n cities having a population larger than 2,800,000, the advisory agency... shall deny approval of a tentative map... if it makes any of the following findings... [t]hat the proposed map is not consistent with applicable general and specific plans” or “the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.” (*Id.* at §§ 66474.61 (a), (b).) Los Angeles Municipal Code

("L.A.M.C.") section 17.05(C) provides that subdivisions shall comply with relevant zoning and "shall substantially conform to all other elements of the General Plan."

The evidence does not support a finding that the Project complies with the Framework Element or Central City North Community Plan. As discussed *supra*, Framework Element policies 7.2.8 and 7.2.9 require that the City preserve industrial land. Policy 3.14.6 provides that industrial lands should only be converted when "it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts." Chapter 3 of the Framework Element requires that "[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies." Likewise, Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (*Id.* at III-8.) Objective 3-3 directs the City to "retain industrial plan designations... and to increase it (sic) whenever possible." (*Ibid.*) The City's analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3.1-1 and 3-3.1. (DEIR, pp. IV.G-8 – IV.G-11, IV.G-40, IV.G-45.)

Despite these requirements, the record contains no evidence that the conversion of the Project site from an industrial land use designation supports the preservation of industrial land, or that the City made the findings or completed the planning studies required by the Framework Element before approving the zone change and General Plan Amendment for the Project. Nor does the record demonstrate that the Project complies with Community Plan Objectives 3-1 or 3-3. (DEIR Comment Letter, pp. 2-5; FEIR, pp. III-1 – III-3, II-26 – II-27.) In *ADCCLA*, the Court found that such failures to analyze Framework Element policies or Community Plan Objectives regarding the preservation of industrially-zoned land where a project obtained a zone change and GPA to alter the industrial land use designation "preclude subdivision approval under both the SMA and LAMC." (*ADCCLA, supra*, p. 43.)

If the Advisory Agency's determination is upheld, the City will violate the SMA and LAMC. section 17.05(C), because the Project fails to conform to the Central City North Community Plan and Framework Element.

### **Aggrieved by Decision**

Members of Southwest Carpenters live and work in the City of Los Angeles and are concerned about the environmental impacts of this Project. Without an adequate environmental review document, Southwest Carpenters and its members are aggrieved because the Project's environmental impacts have not been fully disclosed. Similarly, Southwest Carpenters has a

keen interest in seeing adequate mitigation provided to properly address environmental impacts through preparation of an EIR. Southwest Carpenters is also interested in orderly planning within the City and adherence to state planning laws, and is, thus, further aggrieved by the City's failure to adhere to its General Plan.

**Decisionmaker Error**

The Hearing Officer erred in approving the EIR for the Project when the EIR fails the informational purposes of CEQA, and the EIR does not adopt all feasible mitigation measures. The Hearing Officer's decision to certify an EIR that has not been properly prepared as required under CEQA, CEQA Guidelines, and case law constitutes an abuse of discretion. The City's failure to ensure Project consistency with its General Plan constitutes additional error that must be corrected prior to the City's approval of the Project, and the Hearing Officer's action to approve the Vesting Tentative Tract Map was in violation of the SMA.

Very truly yours,  
WITWER PARKIN LLP



Nicholas Whipps

Enclosures