



**APPLICATIONS:**

**APPEAL APPLICATION**

Instructions and Checklist

**Related Code Section:** Refer to the City Planning case determination to identify the Zone Code section for the entitlement and the appeal procedure.

**Purpose:** This application is for the appeal of Department of City Planning determinations authorized by the Los Angeles Municipal Code (LAMC).

**A. APPELLATE BODY/CASE INFORMATION**

**1. APPELLATE BODY**

- Area Planning Commission     City Planning Commission     City Council     Director of Planning
- Zoning Administrator

Regarding Case Number: ZA 2021-9890-ZV

Project Address: 719 - 725 E. 5th (El Sol Hotel) and 2053 - 2059 East 7th Street (Rendon Hotel)

Final Date to Appeal: 04/01/2022

**2. APPELLANT**

- Appellant Identity:** (check all that apply)
- Representative     Property Owner
  - Applicant     Operator of the Use/Site

Person, other than the Applicant, Owner or Operator claiming to be aggrieved  
Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA)

- Person affected by the determination made by the Department of Building and Safety
- Representative     Owner     Aggrieved Party
- Applicant     Operator

**3. APPELLANT INFORMATION**

Appellant's Name: CREED LA c/o Darien Key

Company/Organization: Adams Broadwell Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco    State: CA    Zip: 94080

Telephone: (877) 810-7473    E-mail: dkey@adamsbroadwell.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self     Other: CREED LA

b. Is the appeal being filed to support the original applicant's position?     Yes     No

**4. REPRESENTATIVE/AGENT INFORMATION**

Representative/Agent name (if applicable): Darien Key

Company: Adams Broadwell Joseph & Cardozo

Mailing Address: 601 Gateway Boulevard Suite 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: dkey@adamsbroadwell.com

**5. JUSTIFICATION/REASON FOR APPEAL**

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

b. Are specific conditions of approval being appealed?  Yes  No

If Yes, list the condition number(s) here: All conditions approved by the Zoning Administrator

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

**6. APPLICANT'S AFFIDAVIT**

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

Appellant Signature:  Date: March 31, 2022

**GENERAL APPEAL FILING REQUIREMENTS**

**B. ALL CASES REQUIRE THE FOLLOWING ITEMS - SEE THE ADDITIONAL INSTRUCTIONS FOR SPECIFIC CASE TYPES**

**1. Appeal Documents**

a. **Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- Appeal Application (form CP-7769)
- Justification/Reason for Appeal
- Copies of Original Determination Letter

**b. Electronic Copy**

Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Appeal Form.pdf", "Justification/Reason Statement.pdf", or "Original Determination Letter.pdf" etc.). No file should exceed 9.8 MB in size.

**c. Appeal Fee**

- Original Applicant - A fee equal to 85% of the original application fee, provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- Aggrieved Party - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

**d. Notice Requirement**

- Mailing List - All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC
- Mailing Fee - The appeal notice mailing fee is paid by the project applicant, payment is made to the City Planning's mailing contractor (BTC), a copy of the receipt must be submitted as proof of payment.



**SPECIFIC CASE TYPES - APPEAL FILING INFORMATION**

**C. DENSITY BONUS / TRANSIT ORIENTED COMMUNITES (TOC)**

**1. Density Bonus/TOC**

Appeal procedures for Density Bonus/TOC per LAMC Section 12.22.A 25 (g) f.

**NOTE:**

- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.
- Appeals of Density Bonus/TOC cases can only be filed by adjacent owners or tenants (must have documentation), and always only appealable to the Citywide Planning Commission.

- Provide documentation to confirm adjacent owner or tenant status, i.e., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, drivers license, bill statement etc.

**D. WAIVER OF DEDICATION AND OR IMPROVEMENT**

Appeal procedure for Waiver of Dedication or Improvement per LAMC Section 12.37 I.

**NOTE:**

- Waivers for By-Right Projects, can only be appealed by the owner.
- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

**E. TENTATIVE TRACT/VESTING**

**1. Tentative Tract/Vesting** - Appeal procedure for Tentative Tract / Vesting application per LAMC Section 17.54 A.

NOTE: 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.

- Provide a copy of the written determination letter from Commission.

**F. BUILDING AND SAFETY DETERMINATION**

- 1. Appeal of the Department of Building and Safety determination, per LAMC 12.26 K 1, an appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.**

**a. Appeal Fee**

- Original Applicant - The fee charged shall be in accordance with LAMC Section 19.01B 2, as stated in the Building and Safety determination letter, plus all surcharges. (the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code)

**b. Notice Requirement**

- Mailing Fee - The applicant must pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt as proof of payment.

- 2. Appeal of the Director of City Planning determination per LAMC Section 12.26 K 6, an applicant or any other aggrieved person may file an appeal, and is appealable to the Area Planning Commission or Citywide Planning Commission as noted in the determination.**

**a. Appeal Fee**

- Original Applicant - The fee charged shall be in accordance with the LAMC Section 19.01 B 1 a.

**b. Notice Requirement**

- Mailing List - The appeal notification requirements per LAMC Section 12.26 K 7 apply.
- Mailing Fees - The appeal notice mailing fee is made to City Planning's mailing contractor (BTC), a copy of receipt must be submitted as proof of payment.

**G. NUISANCE ABATEMENT**

**1. Nuisance Abatement - Appeal procedure for Nuisance Abatement per LAMC Section 12.27.1 C 4**

NOTE:

- Nuisance Abatement is only appealable to the City Council.

**a. Appeal Fee**

Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

**2. Plan Approval/Compliance Review**

Appeal procedure for Nuisance Abatement Plan Approval/Compliance Review per LAMC Section 12.27.1 C 4.

**a. Appeal Fee**

Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.

Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

**NOTES**

*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.*

*Please note that the appellate body must act on your appeal within a time period specified in the Section(s) of the Los Angeles Municipal Code (LAMC) pertaining to the type of appeal being filed. The Department of City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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*\*Not admitted in California.  
Licensed in Colorado.*

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**Via Online Submission**

City Planning Commission  
c/o Appeals Clerk  
City of Los Angeles Planning Department  
Online Portal: <https://plncts.lacity.org/oas>

**Via Email Only**

Oliver Netburn, City Planner  
Los Angeles City Planning Department  
200 N. Spring St., Room 763  
Los Angeles, CA 90012  
Email: [oliver.netburn@lacity.org](mailto:oliver.netburn@lacity.org)

**Re: Appeal to the Los Angeles Area City Planning Commission of the March 17, 2022 Zoning Administrator Determination in the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV**

Dear City Planning Commissioners, Mr. Netburn:

On behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)** we are writing to appeal the Zoning Administrator’s March 17, 2022 approval of the Mitigated Negative Declaration (“MND”), including the March 2022 Errata to the MND (“Errata”, collectively “Revised MND”), and Zoning Variance for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR; ZA 2021-9890-ZV (“Project”). The Zoning Administrator issued these approvals without a public hearing and issued a Letter of Determination (“LOD”) on March 17, 2022.

The original project, proposed by Rendon, LLC (the “Applicant”), proposed a one-story addition to an existing three-story hotel and the construction, use, and maintenance of an attached 15-story hotel building with 103 guest rooms and approximately 15,907 square feet of commercial space comprised of an art gallery,  
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café, restaurant, and bar uses.<sup>1</sup> The Revised MND includes an expansion of the Project to add 42 new single room occupancy apartment units (“SROs”) at an off-site location at 719-725 East 5th Street, the El Sol Hotel building.<sup>2</sup> Addition of the SROs will expand the Project’s footprint and requires additional interior construction activities to renovate the SROs in the El Sol Hotel building.<sup>3</sup> In addition to substantially altering the Project description, the Revised MND acknowledges that the proposed expansion of the Project will result in increased environmental impacts that were not considered in the original MND, including additional construction and operational air emissions, energy impacts, noise impacts, increased greenhouse gas (“GHG”) emissions, hazardous materials, transportation, and utilities and public services.<sup>4</sup> The Revised MND includes new qualitative and quantitative analyses of each of these impacts which were not included in the original MND.

Rather than prepare and circulate an environmental impact report (“EIR”) for the revised Project, or revise and recirculate the MND for additional public comment pursuant to the California Environmental Quality Act (“CEQA”), the City of Los Angeles (“City”) illegally labelled the Revised MND as an “Errata” and failed to circulate it for public review before the Zoning Administrator approved it. This was a clear violation of CEQA’s requirements that a project’s potentially significant impacts must be analyzed in an EIR, and that any substantive changes to a previously circulated CEQA document require recirculation pursuant to CEQA.<sup>5</sup> The Revised MND and LOD also fail to acknowledge or respond to CREED LA’s comments and expert comments on the original MND, or the MND comments of any other members of the public, demonstrating that the Zoning Administrator failed to consider these comments before adopting the Revised MND and approving a portion of the Project, in further violation of CEQA.<sup>6</sup>

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<sup>1</sup> MND p.1, 8.

<sup>2</sup> Revised MND, p. 12.

<sup>3</sup> Revised MND, p. 13.

<sup>4</sup> Revised MND, pp. 12-27.

<sup>5</sup> See Pub. Resources Code, §§ 21100; 21080 (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1), 15088.5, 15073.5; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602 (*Quail Botanical*).

<sup>6</sup> CEQA Guidelines, § 15074(b).

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The City also failed to hold a public hearing before approving the Zoning Variance, in violation of the City's municipal code. LAMC Section 12.27 requires the Zoning Administrator to hold a public hearing on an application for a zoning variance unless there is substantial evidence in the record demonstrating that the project (i) will not have a significant effect on adjoining properties or on the immediate neighborhood, and (ii) is not likely to evoke public controversy.<sup>7</sup> CREED LA's MND comments of March 3, 2021 and September 23, 2021 included expert comments which provided substantial evidence supporting a fair argument that the original Project would have significant, adverse air quality, noise, and health risk impacts on the immediate neighborhood of the Project, thus meeting the first criteria for a public hearing on the Zoning Variance. The Revised MND failed to respond to or mitigate these impacts, and failed to adequately analyze impacts associated with the expansion of the Project, and therefore lacks substantial evidence demonstrating that the Revised Project will not have significant effects on adjoining properties or the surrounding neighborhood. The fact that CREED LA and other members of the public filed comments identifying deficiencies in the MND and asking the City to prepare an EIR for the Project demonstrate that the Project "evokes public controversy," thus meeting the second criteria for a public hearing on the Zoning Variance. The City has not responded to CREED LA's MND comments, has not prepared an EIR for the Project, and has not corrected any of the errors and omissions in the original MND. Therefore, the public controversy remains ongoing.

Pursuant to the City of Los Angeles ("City") appeal procedures, we have provided an electronic copy of this Justification for Appeal letter, the Appeal Application (form CP-7769), and the original Determination Letter. We have also paid the required appeal fee via the Department of City Planning Online Application Portal.

The reason for this appeal is that the Zoning Administrator abused its discretion and violated CEQA when it approved a Zone Variance and adopted the Project's Revised MND without a public hearing. CEQA requires that the potential impacts of this Project be evaluated in an EIR, not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to air quality and public health, from GHG emissions and noise, and on transportation.

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<sup>7</sup> LAMC Section 12.27(C)(i), (ii).  
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Our March 3, 2021 and September 23, 2021 comment letters on the Project are attached hereto.<sup>8</sup> We incorporate the letter and attached expert comments by referenced herein. The specific reasons for this appeal are outlined in detail in those letters and summarized below.

In short, the Zoning Administrator lacked the authority to approve the MND and the Zoning variance on March 17, 2022 and violated the due process rights of CREED LA and other members of the Project by adopting the Revised MND and approving a portion of the Project without a public hearing. The Zoning Administrator lacked the authority because: (1) the approval of the Zoning Variance and Revised MND under a separate project from the Rendon Hotel was premature and resulted in piecemealing of the approvals for a single project; (2) the City failed to consider our March 3, 2021 and September 23, 2021 comments regarding the MND, thus violating CEQA Guidelines Section 15074(b); (3) the “Errata” fails to conform to the requirements of CEQA Guidelines Section 15073.5 which necessitated, at a minimum, recirculation of the original MND for additional public comment on the new information and evidence addressing the environmental impacts of the Revised Project; (4) approval of the Zoning Variance resulted in premature approvals which are not allowed under CEQA and *Save Tara*, and (5) approval of the Zoning Variance without a public hearing was a due process violation.

In addition to the procedural issues above, the record contains substantial evidence that supports a fair argument that that Project will cause: (1) significant, unmitigated cancer risk from toxic air contaminant emissions, (2) potentially significant, unmitigated impacts from GHG emissions, (3) significant, unmitigated impacts from noise, (4) significant, unmitigated impacts on transportation, and (5) significant unmitigated cumulative impacts. These impacts will be further compounded and exacerbated by the renovation of the El Sol Hotel, as described in the Errata.

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<sup>8</sup> See **Exhibit 1**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, March 3, 2021; **See Exhibit 2**: Letter from Darien Key to Oliver Netburn re: Comments on the Initial Study/Mitigated Negative Declaration for the Rendon Hotel Project ENV-2017-4735-MND; CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR, September 23, 2021.  
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## **I. REASONS FOR APPEAL**

CREED LA appeals all actions taken by the Zoning Administrator regarding the Project as described in the LOD dated March 17, 2022. The reasons for this appeal is set forth in the attached comments and exhibits, including CREED LA's MND comment letter dated March 3, 2021. Reasons for the appeal include violations of CEQA and State and local land use codes. We incorporate by reference all comments included in Exhibit 1. A brief summary of the issues is below. CREED LA respectfully requests that the CPC consider all of our comments on the Project in their entirety in responding to this appeal. We reserve the right to supplement this appeal at later hearings and proceedings related to the Project.<sup>9</sup>

## **II. THE ZONING ADMINISTRATOR'S PROJECT APPROVAL PROCESS FOR APPROVAL VIOLATED PROCEDURAL AND CEQA REQUIREMENTS**

The Zoning Administrator violated the LAMC and CEQA by approving a portion of the Revised Project before the rest of the Project is considered by the CPC, and by adopting the Revised MND without public comment or a public hearing. The CPC should rescind all approvals issued by the Zoning Administrator on March 17, 2022, require that an EIR be prepared for the Project, and require the Zoning Administrator to conduct a public hearing on the Zoning Variance.

### **A. The Approval Of The Zoning Variance and MND Under A Separate Project From The Rendon Hotel Resulted In "Piecemealing" Of The Project**

The Rendon Hotel Project and El Sol Hotel Project are two components of the same Project. Yet, the City prepared two separate land use cases with no connection between the two in their online data, despite abundant facts demonstrating that the El Sol Hotel renovation would not occur or be needed without the Rendon Hotel's requirement to replace residential units it was demolishing, and despite the Revised MND's admission that the El Sol Hotel is part of the Rendon Hotel Project.

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<sup>9</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121  
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The LOD and Revised MND explains that the City's Residential Hotel Unit Conversion and Demolition Ordinance (Ord. No.179,868), the Wiggins Settlement Agreement, and the City's CRA Guidelines and Controls for Residential Hotels in the Central Industrial Redevelopment Project Area require that the Rendon Hotel replace the 42 SRO residential units present at the Rendon Hotel site on a one-to-one basis subject to the conditions in the ordinance and settlement agreement. The Applicant chose to do so at the El Sol hotel located at 719-725 E. 5<sup>th</sup> Street.<sup>10</sup> The fact that the SROs are purportedly required by the City further demonstrates that the El Sol Hotel component is part of the overall Rendon Hotel Project, and should be processed by the City as a single Project. This replacement is required by the City, but the separation of this replacement into two separate City cases results in "piecemealing" or "segmenting" which confuses the public and has resulted in a truncated CEQA process which the public had reasonably expected would not be addressed until the CPC considers the rest of the Project at its April 2022 CPC hearing.

For context, the Rendon Hotel Project is classified under two separate cases for the City: (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP. It is a common practice by the City to include both an environmental review case number which in this case indicates it is an MND review that started in 2017 and a case number that governs the reviewing authority which in this case is the City Planning Commission, with the process starting in 2017, and the entitlements sought: a general plan amendment, a zoning change, a height district change, a conditional use permit for beverages, a conditional use permit for dancing, a zoning variance, a zoning administrators adjustment, and a site plan review. These two cases (1) ENV-2017-4735-MND and (2) CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP are considered "related cases" in the City's Planning Document Information System ("PDIS").<sup>11</sup> Thus a review of the "related cases" for each case number would indicate that only these two cases are related to the Rendon Hotel.

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<sup>10</sup> See generally, *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

<sup>11</sup> See ENV-2017-4735-MND "related cases" PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI40>; See CPC-2017-4734-GPA-ZC-HD-CUB-CUX-ZV-ZAA-SPR-RDP "related cases" PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjE3MTI30>.  
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On the other hand, all environmental review and permit review for the El Sol Hotel is found under ZA-2021-9890-ZV and ENV-2021-9891-CE with those cases being “related cases” under PDIS as well.<sup>12</sup>

The City revised the original MND to include the El Sol Hotel component of the Project. While this approach is correct, the manner in which the City did so violated CEQA and the municipal code because the City failed to provide public notice that the Revised MND for the entire Rendon Hotel Project would be approved at a hearing for a different City land use case.

A review of both the Revised MND and the Errata cover pages indicates that the Applicant is a “The Rendon LLC.”<sup>13</sup> Additionally, if the cases were truly separate the environmental review for the El Sol would not be combined in the same CEQA document. These facts demonstrate that the El Sol and Rendon are indeed one Project.

Here, the City first analyzed the original Project via an MND indicating one set of environmental impacts, but then bootstrapped its environmental review of the El Sol Hotel component over a year later as an “errata” which was then approved in a completely separate proceeding apart from the Rendon Project.<sup>14</sup> While these facts are more than enough to demonstrate piecemealing, the March 17 hearing further compounded issues because the public hearing was waived since the Chief Zoning Administrator determined the project would not have a “significant effect” or “create public controversy” even though there was substantial evidence in the record to the contrary.

The City must link the Rendon Hotel and El Sol Hotel project components together under a single City case, hold a public hearing on the Zoning Variance for the Project, and must prepare an EIR to fully disclose, analyze, and mitigate the individual and cumulative impacts of the Rendon Hotel and the El Sol Hotel Project

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<sup>12</sup> See ENV-2021-9891-CE “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc30>; See ZA-2021-9890-ZV “related cases” PIDAS entry at <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjUyOTc20>.

<sup>13</sup> MND Cover Page; Errata Cover Page.

<sup>14</sup> *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal. App. 4th 1333, 1340 (serial approval of multiple small housing and subdivision projects by same applicant in same location, leading to single large development project).



components together. The EIR must analyze the environmental effects of other phases or future expansions of a project if the other activities are reasonably foreseeable consequences of the initial project.<sup>15</sup>

**B. The Zoning Administrator’s Findings Violated CEQA and the LAMC and Were Not Supported by Substantial Evidence**

The Zoning Administrator’s approval of the Revised MND and Zoning Variance without considering public comments submitted on the original MND, and without a public hearing violated CEQA and the LAMC and rendered the LODs’ findings unsupported.

**1. The Zoning Administrator Failed to Consider Public Comments on the MND In Violation of CEQA Guidelines Section 15074(B)**

CEQA requires that a lead agency must consider public comments on a circulated MND.<sup>16</sup> Neither the Revised MND or the LOD discuss, respond to, or attach CREED LA’s MND comments. The Zoning Administrator therefore failed consider any public comments regarding the MND before rendering its March 17 decision to approve the Project. The LOD states that the Zoning Administrator considered the “whole of the administrative record” including the MND, the Errata, and “all comments received.”<sup>17</sup> Further on in the LOD under the Finding of Facts though the Public Correspondence section claims no public comments were received.<sup>18</sup> These statements are patently incorrect, because CREED LA and other members of the public filed comments on the MND which were not included in the Zoning Administrator record. These statements are also specious, given that the City failed to provide prior public notice of the Zoning Administrator’s action, failed to hold a public hearing, and failed to circulate the Revised MND for public comments. These actions by the City deprived the public of the opportunity to provide comments on the Zoning Administrator’s actions before the actions were taken.

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<sup>15</sup> *Bozung*, 13 Cal.3d at 283–284.

<sup>16</sup> 14 C.C.R. § 15074.5(b).

<sup>17</sup> LOD, p. 1.

<sup>18</sup> LOD, p. 7.

Thus, the determination made by the Zoning Administrator is both inconsistent in its own claims regarding public comment, and unsupported by the evidence in the record. The City must remedy this by upholding this appeal, vacating the Zoning Administrator's decision, remanding the Project to staff to prepare an EIR for the Project, and requiring the Zoning Administrator to conduct a public hearing on the Zoning Variance.

**2. The "Errata" Fails To Conform To The Requirements Of CEQA Guidelines Section 15073.5**

The Errata to the MND was provided to our office on March 18, 2022 – after it had already been adopted by the Zoning Administrator.<sup>19</sup> Additionally, our office only received a copy of the Appendices to said Errata on March 28, 2022, which is just three days before the Appeal deadline. Furthermore, these changes are a far cry from minor or insignificant modifications appropriate for an Errata.

CEQA Guidelines permits an agency to forego recirculation of an MND, in relevant part, if (1) mitigation measures are replaced with equal or more effective measures; (2) new revisions to the project are added in response to comments on the project's identified effects, which are not new and avoidable significant effects; (3) measures or conditions of approval that are added after circulation of the negative declaration that are not required by CEQA, do not create significant environmental effects, and not necessary to mitigate an avoidable significant effect; and (4) situations where new information is added to the negative declaration that merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.<sup>20</sup> The City even lists out these requirements from CEQA Guideline Section 15073.5 on the first page of the Errata.<sup>21</sup>

An errata, by contrast, is a clerical document used to correct minor errors in text in a short or minor document revision; it does not add new text, nor does it remove existing text.<sup>22</sup>

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<sup>19</sup> See Exhibit 3: Email from City Planner Oliver Netburn to Adams Broadwell, March 17, 2022 at 11:07 pm.

<sup>20</sup> 14 C.C.R. § 15073.5(c)(2)-(4).

<sup>21</sup> MND, p. 1.

<sup>22</sup> Black's Law Dictionary, 2<sup>nd</sup> Ed. L5073-008j

It is unclear which provision the City is attempting to rely on for its claims that no substantial revisions occurred, but there is no reasonable question that an entire new environmental analysis of a new building does not qualify as a “minor modification” to the existing MND.<sup>23</sup>

The City may attempt to rely on a claim that, because no “new avoidable significant effect” was identified, the need for recirculation does not exist. This is incorrect. New substantive environmental analysis in an MND requires public review and comment under CEQA. Additionally, any claims to this effect are patently wrong due to our office’s previous MND comments, which introduced substantial evidence into the record regarding significant effects to air quality, energy, GHG, hazards, land use, noise, and transportation. Thus, this Revised Project’s addition of further environmental impacts to the previously identified issues compounds existing significant effects disclosed in the original MND, requiring recirculation of the MND at a minimum, and preparation of an EIR in order to fully comply with CEQA.

### **3. The “Errata” And Its Underlying Appendices Have Not Been Made Available To The Public For Public Comment**

As discussed in this appeal letter there is substantial evidence for a fair argument that there are significant impacts which thus require the MND to be recirculated. Additionally CEQA requires that all documents referenced, incorporated by reference, and relied upon in an MND be available for review and “readily accessible” during the entire comment period.<sup>24</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process and that such a failure must be remedied by permitting additional public comment.<sup>25</sup> It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>26</sup> By failing to make all documents and underlying data referenced in the MND Errata “readily available,” during a recirculation comment period the City is violating the procedural mandates of CEQA.<sup>27</sup>

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<sup>23</sup> 14 C.C.R. § 15073.5(c)(2)-(4).

<sup>24</sup> Pub. Resources Code §§ 21092(b)(1); 14 Cal. Code Regs. § 15072(g)(4).

<sup>25</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>26</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

<sup>27</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4).



As of the date of this appeal letter, neither the Errata nor its underlying Appendices have been made available to the public via the Planning Departments website or the PIDAS system for either the Rendon Hotel or El Sol Hotel case numbers.<sup>28</sup> While our office did receive a copy of the Errata on March 17, 2022 and a copy of the appendices on March 28, 2022, a general member of the public would not even know these documents exist, that changes had been made to the MND to include an additional building, or that a decision was made without a hearing which then approved said MND without a review of any public comments on the MND. The procedures used in the approval of the MND make a mockery of CEQA's requirements that an MND not be approved by hidden studies.

Without this critical information, our clients and other members of the public were unable to meaningfully review and comment on the Errata per a public comment period and are deprived of the opportunity to review the supporting information for the MND and the Errata and provide public comment. The City's actions violate CEQA disclosure requirements and have resulted in a violation of Resident's due process rights.

**C. Approval Of The Zoning Variance Resulted In Premature Approvals Which Are Not Allowed Under CEQA And *Save Tara*.**

The Zoning Administrator approved the Revised MND and issued the LOD on March 17, 2022 in conjunction with approval of only one of the Project's entitlements, the Zoning Variance. The Project's remaining entitlements are still pending final approval by the CPC and City Council based on future Planning Commission's approval recommendations for a general plan amendment, a zoning change, a heigh district change, a conditional use permit for beverages, a conditional use permit for dancing, a zoning variance, a zoning administrators adjustment, and a site plan review. The Project is therefore still undergoing its initial approval process and the Zoning Administrator approval was therefore premature and in violation of CEQA.

To approve an MND, CEQA requires that the lead agency determine whether the MND fully and accurately describes a specific development project that is "proposed to be carried out or approved by [the agency],"<sup>29</sup> then make a mandatory

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<sup>28</sup> See FN 11-12.

<sup>29</sup> PRC § 21080(a).  
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finding that the MND has been “completed in compliance with CEQA.”<sup>30</sup> The Zoning Administrator lacked the legal capacity to make those determinations because the Project’s future, scope, and the extent of its entitlements and its environmental impacts remained uncertain at the time the Zoning Administrator conducted its hearing on the Project. The Zoning Administrator also lacks decision-making authority under the LAMC for the majority of the Project’s entitlements, and could not therefore approve the Revised MND for the Project as a whole.

CEQA mandates that agencies refrain from approving and adopting an MND before full consideration of all aspects of a project.<sup>31</sup> The Zoning Administrator’s actions in approving the Revised MND before the majority of the Project’s entitlements had been considered by the Commission or City Council was a clear violation of CEQA, which “skirt[red] the purpose of CEQA by segregating environmental review of the [MND] from the project approval.”<sup>32</sup>

As the courts have explained, “[a] decision on both matters must be made by the same decision-making body because ‘... CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.’”<sup>33</sup> The Commission’s ensuing review under CEQA’s subsequent review standards for the Project’s remaining entitlements would be equally improper because the Project has not received final approval from the City and the Zoning Administrator’s Revised MND approval was facially invalid.

The Planning Commission should uphold this appeal, vacate the Zoning Administrator’s approval of the Revised MND and approval of the Zoning Variance, and vacate its CEQA findings.

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<sup>30</sup> 14 CCR § 15090(a)(1).

<sup>31</sup> See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/MacArthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.

<sup>32</sup> *California Clean Energy Committee v. City of San Jose* (2013) 220 Cal.App.4th 1325, 1341.

<sup>33</sup> *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360, citing *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731.

**D. The Zoning Administrator Lacked Substantial Evidence to Make Findings Under LAMC Section 12.27 To Waive The Public Hearing**

The LOD claims to have made the required findings that allowed the Zoning Administrator to waive the public hearing under LAMC Section 12.27.<sup>34</sup> LAMC Section 12.27 requires the following two factors to exist to waive a public hearing on a zoning variance:

1. [The Project] will not have a significant effect on adjoining properties or on the immediate neighborhood; or
2. is not likely to evoke public controversy.

The Project fails both of these factors and thus was required to have a public hearing.

First, the Project is likely to have a significant impact on adjoining properties from its unaddressed air quality, TAC, GHG, noise, and transportation issues discussed herein and in CREED LA's MND comments. Thus, there is already substantial evidence in the record supporting a fair argument that the Project will have significant impacts on the immediate neighborhood that the City has not mitigated. Additionally, given the residences that share a wall with the El Sol Hotel directly to the west at the Edward Hotel, the LOD fails to provide substantial evidence demonstrating that there are no new significant impacts from air quality, TAC, GHG, noise, and transportation on the adjoining properties and immediate neighborhood surrounding the El Sol Hotel.

Second, the MND had already created public controversy during its initial public comment period. The public comments originally filed during that comment period, including CREED LA's, demonstrates that members of the public have identified major deficiencies in the City's environmental review of the Project which have not yet been resolved. Thus, the record contains substantial evidence demonstrating that the Project has evoked public controversy due to the outstanding significant impacts from air quality, TAC, GHG, noise, and transportation.

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<sup>34</sup> LOD, pp. 7-11.  
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The City must remedy this by vacating the Zoning Administrator's approvals and requiring a public hearing on the Zoning Variance.

**III. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR**

CREED LA's MND comments included expert comments which provided the City with substantial evidence supporting a fair argument that the Project has several undisclosed and unmitigated environmental and public health impact which require further analysis under CEQA. The Revised MND did not respond to these issues, and did not require any new or additional mitigation measures to address the significant impacts identified in CREED LA's comments. Given that the City has not addressed or made changes to the following issues regarding air quality, energy, GHG, hazards, land use, noise, and transportation, the record still contains substantial evidence supporting a fair argument that significant environmental impacts exist which require an EIR. Additionally, the Errata presents new significant effects because the addition of 42 new SORs at a new location compounds the already existing significant impacts, still without appropriate mitigation.

**A. There is Substantial Evidence Supporting a Fair Argument that the Revised MND Underestimates and Fails to Properly Mitigate Air Quality Impacts**

We previously provided substantial evidence showing that the Project's Air Quality impacts would be significant because: (1) the MND failed to properly calculate construction and operational emissions in the CalEEMod software resulting in understated air quality impacts and (2) the MND failed to include a quantified health risk analysis ("HRA") or require additional mitigation in response to our expert's HRA, which established that cancer risks from the Project exceed the SCAQMD threshold of 10 in one million. Additionally, the Errata does not discuss TACs at all, and thus reliance on the original MND's conclusion to have less than significant impacts is not supported by substantial evidence because the MND did not consider the TACs. These issues are only compounded by the addition of emissions from work on the El Sol Hotel, and are thus likely to further exacerbate the Project's existing significant impacts on air quality.

**B. The Project Will Cause Significant, Unmitigated Impacts from Greenhouse Gas Emissions**

We previously provided substantial evidence showing that the Project's GHG emissions will not comply with "applicable plans, policies, regulations and requirements adopted to" reduce GHGs. The City has not addressed the (1) incorrect and unsubstantiated inputs into the CalEEmod analysis which impermissibly lowered the GHG emissions (2) the GHG analysis fails to properly account for VMT emissions since the MND grossly undercalculated VMT for the Project; (3) the MND's unsubstantiated air model indicated a potentially significant impact when comparing to other MT CO<sub>2</sub>e thresholds set by CARB and AEP; (4) the MND failed to consider performance-based standards under CARB's scoping plan, SCAG's RTP/SCS, and SB 375's RTP/SCS daily VMT per capita target; and (5) the MND fails to adopt all feasible mitigation to reduce these significant GHG impacts.

The Revised MND did not respond to these comments or correct any of the errors in the City's original GHG analysis. In addition to these previously unaddressed issues, the Errata claims to have the same base mobile Project GHG emissions of 591.04 CO<sub>2</sub>e/MT year, even though the Errata's transportation section notes that there will be an additional 294 VMT each day due to the 42 additional SRUs.<sup>35</sup> The Errata therefore compounds the errors from the original MND and includes new errors, further demonstrating that the City's GHG analysis is inaccurate and lacks substantial evidence, and should be remedied by preparing an EIR for the Project.

**C. The Project May Result in Significant, Unmitigated Noise Impacts**

We previously provided substantial evidence showing the MND's failures regarding the baseline noise analysis, and inadequacy of the proposed mitigation measures. These issues remain unresolved, and the Project's noise impacts at the Rendon Hotel site remain unmitigated. These impacts that the City failed to disclose initially are further exacerbated by the failure to perform any noise analysis of the additional 42 SRU units in the El Sol hotel.

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<sup>35</sup> MND, p.105, Table 4.9; Errata, p. 18, Table 6.  
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Additionally, the City claims without support that, because the El Sol Hotel previously contained SRO dwelling units, there will be no increase in operational noise. This by the City's own admissions false since on the same exact page of the Errata the City notes the site is currently vacant.<sup>36</sup> The baseline for the Project's impacts from operation of the El Sol Hotel component of the Project is therefore zero.<sup>37</sup> The City must perform an actual operational noise analysis stemming from the increase of 42 SRU in the vicinity of the El Sol Hotel and not rely on conclusory statements that there will be no net increase in operational noise.

#### **D. The Project May Result in Significant, Unmitigated Impacts from Transportation**

We previously provided substantial evidence showing the MND's failures regarding the VMT analysis by impermissible parking reduction from a claimed 192 spots to 0 which artificially lowered the employee VMT from 9.2 to 7.4, and inadequacy of the proposed mitigation measures. These impacts remain significant and unmitigated impacts.

Additionally, the Revised MND erroneously concludes no VMT analysis is required for the El Sol Hotel because it would result in less than 250 vehicle trips. There is no evidentiary support for this statement, which is demonstrably false given that the El Sol Hotel will increase VMT over the Project's previously analyzed VMT. An increase in transportation impacts requires CEQA review ..

Lastly, the Revised MND's assertion that a VMT analysis is not needed is factually wrong because, by the City's own admission, the El Sol Hotel VMT alone (294 Daily VMT/40 Daily Vehicle Trips = 7.35 VMT per capita) would exceed the Daily Household VMT per Capita threshold of 6 VMT for the Central Area.<sup>38</sup> As such, the VMT merely from the El Sol Hotel would be significant in its own right, not including the already significant impacts from the Rendon Hotel. The Revised MND, like the original MND, fails to disclose or mitigate this significant transportation impact. The City must remedy this by requiring the Project to be evaluated in an EIR.

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<sup>36</sup> Errata, p. 21.

<sup>37</sup> *Hollywoodians Encouraging Rental Opportunities (HERO) v. City of Los Angeles et al.* (2019) 37 Cal.App.5th 768 (baseline for CEQA review of vacant building is that of unoccupied building which was no longer part of rental market, rather than building's prior status as occupied apartment building).

<sup>38</sup> Errata Appendix C; MND, p. 175.  
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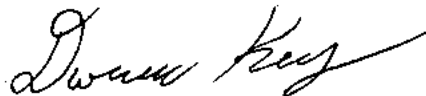
**E. The Project May Result in Significant, Unmitigated Cumulative Impacts**

As noted above, the City failed to properly analyze the Project's construction and operational air quality impacts. Thus, the MND's cumulative impact analysis suffers from the same flaws. This failure makes the MND and the Errata deficient. An EIR should be prepared to analyze these impacts.

**IV. CONCLUSION**

As a result of the errors described herein and in our attached MND Comments, the Zoning Administrator's adoption of the Revised MND, and approval of a Zoning Variance for the Project, resulted in violations of CEQA and other land use laws, and must be overturned. We urge the Planning Commission to grant our appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Darien Key", written in a cursive style.

Darien Key

DKK:lj1