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October 5, 2022

VIA ONLINE SUBMISSION

Commission President Ilissa Gold and Commission Members
Central Area Planning Commission

Email: apccentral@lacity.org

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VIA EMAIL

Vince Bertoni, Director of Planning

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Re: Appeal of 216 S. Spring Street Project, Case No. DIR-2020-7846-DB-SPR-HCA, CEQA No. ENV-2020-7847-CE

Dear President Gold, Commission Members, Mr. Bertoni, and Ms. Lu:

On behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)**, we submit this appeal of the Director’s approval of the 216 S. Spring Street Project (Case No. DIR-2020-7846-DB-SPR-HCA, ENV-2020-7847-CE) (“Project”), including approval of Site Plan Review and Density Bonus pursuant to LAMC Sections 12.22 and 16.05, adoption of Findings and Conditions of Approval, and determination that the Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to a Class 32 categorical exemption.¹

On September 21, 2022, the City of Los Angeles (“City”) Director of Planning (“Director”) issued a Letter of Determination (“LOD”) approving the Project. The LOD approves a Density Bonus and Site Plan Review, adopts Findings and Conditions of Approval, and determines that the Project is exempt from the CEQA pursuant to a Class 32 categorical exemption.² The LOD indicates that the appeal period for the determination ends on October 6, 2022. This appeal is timely filed in compliance with the Los Angeles Municipal Code (“LAMC”).

¹ CEQA Guidelines, Section 15332.

² A copy of the LOD is attached to this Appeal.

October 5, 2022

Page 2

CREED LA hereby appeals the Director's approval of the Site Plan Review, Density Bonus, Findings and Conditions of Approval, and categorical exemption, as described in the LOD dated September 21, 2022. This letter supplements CREED LA's Appeal Application, filed concurrently herewith, and is accompanied by the required appeal fee.

The reasons for this appeal are set forth herein. Our appeal is supported by technical comments provided by air quality and hazards expert James Clark, Ph.D.,³ and noise expert Jack Meighan.⁴

As explained herein and in the attached comments, the Director abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a categorical exemption and without substantial evidence to support the approval findings.⁵ To qualify for a categorical exemption, a lead agency must provide substantial evidence that the Project will not have a significant effect.⁶ But as is explained below, the Project may result in potentially significant public health and noise impacts. Specifically, the Project's construction and operation may result in emissions of toxic air contaminants ("TACs") that would increase health risks to significant levels. And the Project's construction and operation includes noise-generating activities that may result in significant noise impacts on nearby receptors. These impacts are especially severe due to the proximity of residential receptors – four residential buildings are located within 500 feet of the Project site, including one diagonally adjacent to the Project site.⁷ As a result, an EIR is the correct form of environmental review for the Project, not a categorical exemption. Due to these significant environmental and public health impacts, and the related failure to prepare the correct form environmental review, the Director also abused its discretion in approving the Site Plan Review and Density Bonus.

Because the Director abused its discretion and failed to proceed in the manner required by law, CREED LA respectfully requests that the City set a hearing on this appeal, and that the Area Planning Commission uphold this appeal,

³ Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit A ("Clark Comments").

⁴ Mr. Meighan's technical comments and curriculum vitae are attached hereto as Exhibit B ("Meighan Comments").

⁵ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

⁶ *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

⁷ Higgins Building, 108 W 2nd St, Los Angeles, CA 90012.

vacate the Director's approval of the Project, and direct staff to prepare an EIR for the Project.

I. STANDING TO APPEAL AND STATEMENT OF INTEREST

The Project's Site Plan Review can be appealed by "[t]he applicant, any officer, board, department, or bureau of the City, **or any interested person** aggrieved by the decision of the Director."⁸ The Project's Density Bonus may also be appealed.⁹

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes City of Los Angeles residents Gerry Kennon, Chris Macias, and John Bustos, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations live, work, recreate and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA and its members are aggrieved by the Director's decision to approve the Project and adopt unsupported approval findings in reliance on a CEQA

⁸ LAMC Section 16.05(H); *see* LAMC 12.22 A.25 (g)(2)(f); Section 12.36(c)(4) (collectively providing that the Central Area Planning Commission is the proper appellate body).

⁹ LAMC Section 12.22 A.25 (g)(2)(f).

exemption, without analyzing and mitigating the Project's potentially significant impacts in an EIR.

II. THE PROJECT DOES NOT QUALIFY FOR A CLASS 32 CATEGORICAL EXEMPTION FOR INFILL DEVELOPMENT PROJECTS

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR, except in certain limited circumstances.¹⁰ The EIR is the very heart of CEQA.¹¹ “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”¹²

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹³ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹⁴ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹⁵

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹⁶ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁷ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and

¹⁰ See, e.g., PRC § 21100.

¹¹ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

¹² *Communities. for a Better Env. v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“*CBE v. CRA*”).

¹³ 14 Cal. Code Regs. § 15002(a)(1).

¹⁴ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

¹⁵ *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁶ 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

¹⁷ 14 Cal. Code Regs. §15002(a)(2).

that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁸

Under CEQA, mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.¹⁹ A CEQA lead agency is precluded from making the required CEQA findings to approve a project unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved. For this reason, an agency may not rely on mitigation measures of uncertain efficacy or feasibility.²⁰ This approach helps “ensure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”²¹

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA, called categorical exemptions.²² Categorical exemptions apply to certain narrow classes of activities that generally do not have a significant effect on the environment.²³ “Thus an agency’s finding that a particular proposed project comes within one of the exempt classes necessarily includes an implied finding that the project has no significant effect on the environment.”²⁴ “It follows that where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper.”²⁵

CEQA exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.²⁶ They should not be construed so broadly as to include classes of projects that do not normally satisfy the requirements for a categorical exemption.²⁷ Erroneous reliance by a lead agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA.²⁸ “[I]f the court perceives there was substantial evidence that the project might have

¹⁸ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

¹⁹ CEQA Guidelines, § 15126.4, subd. (a)(2).

²⁰ *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

²¹ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

²² PRC § 21084(a); 14 CCR §§ 15300, 15354.

²³ PRC § 21084(a); 14 CCR §§ 15300, 15354; *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380.

²⁴ *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115.

²⁵ *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1191 (“*Azusa Land Reclamation*”), quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 205–206.

²⁶ *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.

²⁷ *Azusa Land Reclamation* (1997) 52 Cal.App.4th 1165, 1192.

²⁸ *Azusa*, 52 Cal.App.4th at 1192.

an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law."²⁹

To qualify for a categorical exemption, a lead agency must provide "substantial evidence to support [its] finding that the Project will not have a significant effect."³⁰ "Substantial evidence" means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency.³¹ If a court locates substantial evidence in the record to support the agency's conclusion, the agency's decision will be upheld.³² If, however, the record lacks substantial evidence, as here, a reviewing court will not uphold an exemption determination.

Section 15332 of the CEQA Guidelines provides an exemption from CEQA for projects characterized as in-fill development meeting the conditions:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

CEQA also contains several exceptions to categorical exemptions. In particular, a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances,"³³ or where there is a reasonable

²⁹ *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, 656).

³⁰ *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

³¹ CEQA Guidelines § 15384.

³² *Bankers Hill Hillcrest*, 139 Cal.App.4th at 269.

³³ 14 CCR § 15300.2(c).

possibility that the activity will have a significant effect on the environment, including (1) when “the cumulative impact of successive projects of the same type in the same place, over time is significant.”³⁴ An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.³⁵

Here, the Class 32 Exemption and any other CEQA exemption are inapplicable to the Project due to its significant effects on air quality, health risk and noise.³⁶

A. A CEQA Exemption is Inapplicable Because the Project May Result in Significant Effects Related to Air Quality and Health Risk

1. The City Lacks Substantial Evidence to Conclude that the Project’s Health Risk Impacts from Air Emissions are Less Than Significant

The City lacks substantial evidence to support its reliance on an exemption because the City failed to analyze the health risk impacts of Project construction and operation to workers and nearby sensitive receptors.

The Project would increase health risks in the surrounding community by contributing TACs such as Diesel Particulate Matter (“DPM”) during construction.³⁷ During the Project’s construction, heavy equipment and diesel trucks would emit DPM, and during operations, the Project’s backup generator would emit DPM. DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.³⁸ The Project’s emissions of DPM would impact numerous sensitive receptors, including residents in four residential buildings located within 500 feet of the Project site.³⁹

CEQA requires analysis of human health impacts. As the LOD acknowledges, CEQA Guidelines Section 15065(a)(4) provides that the City is required to find a project will have a significant impact on the environment and require an EIR if the environmental effects of a project will cause a substantial adverse effect on human

³⁴ 14 CCR § 15300.2(b).

³⁵ *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”) (2004) 125 Cal.App.4th 1098, 1198-1201.

³⁶ The Project’s significant effects also create exceptions to an exemption under 14 CCR § 15300.2(b), (c).

³⁷ Clark Comments, pg. 5.

³⁸ Clark Comments, pg. 3-5.

³⁹ Categorical Exemption, pg. 65.

beings.⁴⁰ The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.⁴¹

For development projects like this one, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines recommend a formal health risk analysis ("HRA") for short-term construction exposures to TACs lasting longer than 2 months and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.⁴² In an HRA, lead agencies must first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.⁴³ Following that analysis, then the City can make a determination of the relative significance of the emissions.

The City did not conduct this analysis. Here, the City concludes that the Project would not result in significant health risk impacts without conducting any of the above analytical steps. The City fails to disclose or analyze that the Project's construction and operation would result in emissions of TACs. And the City fails to disclose or analyze the health impacts of exposure to certain concentrations of TACs. And the City fails to quantify the magnitude of TACs emitted by the Project, and fails to model the concentration of TACs at sensitive receptors.⁴⁴ In sum, there is no evidence in the Justification to Support a Categorical Exemption ("Categorical Exemption")⁴⁵ that the City considered health risks from TACs when determining that the Project qualifies for a categorical exemption.

The City reasons that because the Project's emissions would not exceed Localized Significance Thresholds ("LSTs"), there would not be a significant health risk. LSTs are based on the number of pounds of emissions per day that can be

⁴⁰ LOD, p. 12, citing 14 CCR § 15065(a)(4); PRC § 21083(b)(3), (d).

⁴¹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

⁴² Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁴³ *Id.*

⁴⁴ The City's failure to analyze the magnitude and concentration of the Project's TACs also conflicts with the OEHHA recommendations for HRAs. The OEHHA guidelines recommend an HRA be prepared for this Project's construction and operation because its 24-month construction schedule exceeds 2 months, and its operations would last over 6 months.

⁴⁵ City of Los Angeles Planning Department, Justification to Support a Categorical Exemption (September 21, 2022).

generated by a project that would cause or contribute to adverse localized air quality impacts.⁴⁶ But LSTs only apply to four pollutants: NO_x, CO, PM₁₀, and PM_{2.5}. Dr. Clark explains that LSTs do not apply to DPM and other TACs.⁴⁷ Therefore, the City completely failed to analyze health risk impacts from exposure to TACs during Project construction, and thus fails to support its finding of a less-than-significant health risk impact.

2. The Project Has Potentially Significant Health Risk Impacts

Dr. Clark calculates that the Project's emissions of DPM would exceed applicable significance thresholds for health risk.

Using OEHHA's HARP 2 Standalone Risk software, Dr. Clark calculated the cancer risk to the most sensitive population – infants less than 2 years old.⁴⁸ The cumulative risk for exposure during the 2 years of construction is 814 in 1,000,000, much greater than the 10 in 1,000,000 threshold set forth by the South Coast Air Quality Management District ("SCAQMD"). For adults, the risk from exposure to DPM from the construction phase of the project is 17.5 in 1,000,000, which also exceeds the threshold.⁴⁹

As a result of these significant effects, the Project does not qualify for any CEQA exemption, including a Class 32 exemption. The Project's significant impacts must be disclosed and mitigated in an EIR.

3. Project Impacts Associated with Operational Diesel Exhaust from the Backup Generator May be Significant

The City lacks substantial evidence to support its reliance on a categorical exemption because the City failed to adequately analyze the health risk impacts associated with use of the Project's backup generator during Project operation.

Dr. Clark explains that diesel-powered backup generators emit DPM, which poses a public health risk. The City's air quality analysis assumes that the backup generator will only be operated for 12 hours a year for testing and maintenance.⁵⁰ But according to SCAQMD Rules 1110.2 and 1470, backup generators are allowed

⁴⁶ Categorical Exemption, pg. 66.

⁴⁷ Clark Comments, pg. 3.

⁴⁸ Clark Comments, pg. 7.

⁴⁹ Clark Comments, pg. 7-8.

⁵⁰ Clark Comments, pg. 11.

to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. Thus, the Project's back-up generator is permitted to operate up to 250 hours per year. As a result, the City's assumption that the backup generator would be operated for 12 hours a year likely underestimates the Project's emissions.⁵¹

Dr. Clark further explains that the City's analysis underestimates emissions because use of emergency generators is expected to rise due to climate change and increased instances of Public Safety Power Shutoff ("PSPS") events and extreme heat events.⁵² For every PSPS or Extreme Heat Event triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis, which only assumes the backup generator will be used 12 hours a year for testing and maintenance.

In sum, the City's operational health risk conclusions are not supported by substantial evidence because the City's analysis does not reflect reasonable hours of use of backup generators.

Dr. Clark generated a site-specific screening level HRA for emissions from the back-up generator to assess the health risk impacts on nearby receptors.⁵³ Assuming the backup generator is limited to maintenance and testing for 12 hours per year or less, the model calculates emissions of DPM of approximately 1.07 lbs per year. This magnitude of emissions results in health risk impacts of 17.3 in 1,000,000 for residents living within 25 meters of the Project site (the nearest residential receptors for this Project are located diagonally adjacent to the Project site).⁵⁴ This impact exceeds the 10 in 1,000,000 threshold set forth by SCAQMD, resulting in a significant impact.

Because the Project has a potentially significant health risk impact, the City cannot rely on a categorical exemption. An EIR must be prepared to analyze impacts on sensitive receptors.

⁵¹ Clark Comments, pg. 8.

⁵² Clark Comments, pg. 9.

⁵³ Clark Comments, pg. 10.

⁵⁴ Higgins Building, 108 W 2nd St, Los Angeles, CA 90012.

B. An Exemption is Inapplicable Because the Project May Result in Significant Noise Impacts Which Require Mitigation

1. The Class 32 Exemption is Inapplicable Because the City Improperly Relies on Noise Mitigation Measures

The Notice of Exemption states that the Project would result in less-than-significant construction noise impacts. According to the Categorical Exemption, the Project’s construction noise impacts are significant if they exceed 75 dBA at a distance of 50 feet from the Project site,⁵⁵ and would not exceed ambient noise levels by more than 5 dBA at nearby sensitive receptors.⁵⁶ In Table 10, the City presents the estimated construction noise impact at the nearest sensitive receptors, and concludes that neither of these significance thresholds are met.⁵⁷ But the City incorrectly incorporates noise reductions from mitigation measures – labeled “project design features”⁵⁸ – into this significance determination. The City’s noise reductions include (1) avoiding conducting demolition and construction activities concurrently, (2) using noise-muffled equipment, (3) implementing a sound barrier at least 8 feet tall that achieves a minimum 15 dBA noise reduction, and (4) using portable barriers during jackhammering and structural framing.⁵⁹ These measures are intended to reduce the Project’s construction noise levels to less than significant, and are therefore mitigation within the meaning of CEQA.

An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects.⁶⁰ In *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”), the court held that a single-family residence was improperly approved pursuant to a categorical exemption because the project included mitigation of the project’s impacts on a stream.⁶¹ The lead agency concluded that the project was categorically exempt from CEQA because it entailed construction of a single-family residence with no potentially significant impacts on the environment. The agency’s conclusion that the project would not result in adverse effects was founded on “dozens of conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts.”⁶² The conditions included detailed

⁵⁵ See LAMC Section 112.05.

⁵⁶ See LAMC Section 112.04; Categorical Exemption, pg. 61.

⁵⁷ Categorical Exemption, pg. 61.

⁵⁸ Categorical Exemption, pg. 57.

⁵⁹ Categorical Exemption, pg. 57-58.

⁶⁰ *Salmon Pro. & Watershed Network v. County of Marin* (“SPAWN”) (2004) 125 Cal.App.4th 1098, 1198-1201.

⁶¹ *Id.* at 1103.

⁶² *Id.* at 1107.

construction limitations and incorporation of a riparian protection plan. The riparian protection plan acknowledged that runoff from new rooftops and driveways can erode stream banks, and proposed drainage features for erosion and sediment control. The court held that these conditions were mitigation measures, and that eligibility for a categorical exemption must be determined without reference to mitigation measures. Thus, the categorical exemption was inapplicable.

In *Lotus v. Department of Transportation*,⁶³ the court addressed the adequacy of an EIR analyzing proposed highway construction adjacent to old-growth redwood trees, as opposed to the approval of a categorical exemption as was the case in *SPAWN*.⁶⁴ Like the project in *SPAWN*, however, the *Lotus* construction was found by the reviewing agency not to involve any significant effect on the environment, but only after mitigation measures were made a condition of project approval.⁶⁵ The court held that actions such as restorative planting, removal of invasive plants, and the use of an arborist and specialized equipment were “plainly mitigation measures and not part of the project itself,” resulting in the improper compression of environmental impacts and mitigation measures into a single issue in the EIR.⁶⁶

Here, the instant Project is ineligible for a categorical exemption for the same reason the project in *SPAWN* was ineligible. In both cases, the lead agency’s conclusion that the project would not result in adverse effects was founded on “conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts.”⁶⁷ Just as the project in *SPAWN* “detailed construction limitations and incorporation of a riparian protection plan” designed to mitigate impacts from runoff, the instant Project includes noise-reducing construction techniques and devices to mitigate construction noise impacts. Per the court’s ruling in *SPAWN*, the Project’s noise-reducing measures must be considered mitigation measures. Eligibility for a categorical exemption must be determined without reference to mitigation measures. Thus, the Project’s categorical exemption is inapplicable.

And per the *Lotus* decision, the Project is ineligible for a categorical exemption because its mitigation measures are not part of the project design. The Project’s measures to reduce construction noise are similar to the plant techniques in *Lotus* because they are designed to mitigate the Project’s adverse impacts, and are not part of the Project itself. Mitigation of construction noise is not part of the

⁶³ 223 Cal.App.4th 645,

⁶⁴ *Id.* at 647–648.

⁶⁵ *Id.* at 648–649.

⁶⁶ *Id.* at 656, fn. 8.

⁶⁷ *SPAWN*, 125 Cal.App.4th 1098, 1107.

Project design because the Project proposes a mixed-use building – noise-reducing devices and techniques merely reduce noise caused by construction of that building. Thus, the categorical exemption is inapplicable.

The City may attempt to rely on cases such as *Citizens for Environmental Responsibility v. State ex rel. 14th District Agricultural Association* (“*CER v. State*”),⁶⁸ *Berkeley Hills Watershed Coalition v. City of Berkeley* (“*Berkeley Hills Watershed*”),⁶⁹ or *Berkeley Hillside Preservation v. City of Berkeley* (“*Berkeley Hillside Preservation*”)⁷⁰ to assert that the Project’s noise mitigation does not preclude reliance on an exemption. However, as discussed below, these cases are distinguishable from the instant Project.

In *CER v. State*,⁷¹ the court held that a rodeo project was not precluded from a categorical exemption by its reliance on a manure mitigation plan (“MMP”) to prevent riparian impacts. The court distinguished the MMP from the mitigation in *SPAWN* because the MMP was not a new measure proposed for or necessitated by the rodeo project.⁷² Rather, it was a preexisting measure previously implemented to address a preexisting concern, which was formalized in writing before the rodeo project was proposed. Thus, the MMP was actually part of the ongoing “normal operations” of the fairground at which the rodeo project was located. The court concludes that use of this measure did not disqualify the rodeo project from a categorical exemption.⁷³

In *Berkeley Hills Watershed*,⁷⁴ the court held that a housing project was not precluded from an exemption by its reliance on project design measures to address State requirements for investigation and mitigation within a seismic zone.⁷⁵ The geotechnical report prepared for the project stated “[a]ll owners or occupants of homes on hillsides should realize that landslide movements are always a possibility, although generally the likelihood is very low that such an event will occur,” and recommended suggestions for removing and controlling the landslide.⁷⁶ The court explained these measures were not “mitigation measures” because they were developed as part of the project design to meet building code requirements for properties located in seismic zones and address preexisting conditions on the site as

⁶⁸ (2015) 242 Cal.App.4th 555.

⁶⁹ (2019) 31 Cal.App.5th 880

⁷⁰ (2015) 241 Cal.App.4th 943.

⁷¹ (2015) 242 Cal.App.4th 555.

⁷² *Id.* at 569.

⁷³ *Id.*

⁷⁴ (2019) 31 Cal.App.5th 880

⁷⁵ *Id.* at 246, fn 9.

⁷⁶ *Id.* at 246

opposed to being “proposed subsequent actions by the project’s proponent to mitigate or offset the alleged adverse environmental impacts” of the project.

In *Berkeley Hillside Preservation*,⁷⁷ the court rejected an argument that implementation of a traffic-management plan for project construction precluded a categorical exemption. When the lead agency approved the use permit for the project, it included various conditions under Berkeley Municipal Code, including a construction traffic management plan.⁷⁸ The court stressed that the conditions of approval for this project were standard conditions imposed on residential development which are not intended to address any specific environmental impacts resulting from construction of this project.⁷⁹ This point was supported by the fact that no unique conditions of approval were proposed for the project (aside from one that had no relation to any potential environmental impact).⁸⁰ The court held that because “the plan [...] is not proposed subsequent action taken to mitigate any significant effect of the project, [it is] therefore is not a mitigation measure that precludes the application of a categorical exemption.”⁸¹

This Project is distinguishable from *CER v. State* because the Project’s construction noise measures do not preexist the Project. Whereas the mitigation plan in *CER v. State* was part of the ongoing “normal operations” of the fairground at which the rodeo project was located “for decades,”⁸² the noise measures in this case were first proposed in the Categorical Exemption. This fact completely distinguishes this project, as the court italicized the word “proposed” throughout the opinion to emphasize the importance of that factor. Indeed, the Project’s construction noise measures are proposed – they are not specifically described or required by any preexisting policy. For example, although LAMC Sections 112.04 and 112.05 set out the applicable construction noise thresholds, they do not call for the specific combination of noise reducing techniques and devices proposed to mitigate the Project’s particular construction activities.

This Project is also distinguishable from *Berkeley Hills Watershed* because the measures in *Berkeley Hills Watershed* addressed preexisting conditions on the site – the seismic conditions of the project site – whereas the instant Project’s noise measures address impacts *generated by* the Project. And whereas the *Berkeley Hills Watershed* measures were integrated into the design of the building, this Project’s

⁷⁷ (2015) 241 Cal.App.4th 943.

⁷⁸ *Id.* at 959.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 961.

⁸² 242 Cal.App.4th 555, 566.

construction noise mitigation is not integrated into the design of the apartment building. Instead, the Project's mitigation is designed to resolve its adverse construction noise impacts. Thus, although both projects involve measures designed to meet regulatory requirements – the project in *Berkeley Hills Watershed* aimed to comply with the building code, and here, the Project aims to comply with LAMC noise thresholds – the instant Project is ineligible for a categorical exemption because it mitigates impacts generated by the Project itself.

Finally, this Project is distinguishable from *Berkeley Hillside Preservation*.⁸³ Whereas the conditions of approval in that case were of standard language, general applicability, and were not designed to mitigate specific adverse impacts, the measures for this Project are bespoke measures designed to mitigate specific construction noise impacts. For instance, the proposed 8-foot-tall sound barrier that reduces noise by 15 dBA is not a preexisting condition of general applicability – it is a unique measure tailored to address the Project's acknowledged noise impacts – the Categorical Exemption acknowledges the Project would require use of heavy equipment that would generate noise of up to 90 dBA at 50 feet.⁸⁴ The Project subsequently identifies a combination of mitigation measures to reduce these impacts below LAMC thresholds. Therefore, the Project is precluded from a categorical exemption.

2. The Project's Noise Mitigation Measures Do Not Effectively Mitigate Potentially Significant Construction Noise Impacts

As explained above, the Categorical Exemption states that the Project would not exceed LAMC thresholds⁸⁵ due to implementing measures including a sound barrier at least 8 feet tall that achieves a minimum 15 dBA noise reduction, and using portable barriers during jackhammering and structural framing.⁸⁶ Mr. Meighan notes that the City's noise calculations incorporate a 15 dBA noise reduction on account of the sound barrier.⁸⁷ But Mr. Meighan explains that this barrier would not provide line of sight shielding for sensitive receptors on the second floors and above of neighboring buildings.⁸⁸ He states that “assuming the barrier is 8 feet high, receivers on the second floor or above would be able to look

⁸³ (2015) 241 Cal.App.4th 943.

⁸⁴ Categorical Exemption, pg. 59, Table 9.

⁸⁵ See LAMC Section 112.04; Categorical Exemption, pg. 61.

⁸⁶ Categorical Exemption, pg. 57-58.

⁸⁷ Meighan Comments, pg. 5.

⁸⁸ *Id.*

directly over the barrier onto the property and receive no benefit from the shielding effects.”⁸⁹

Mr. Meighan conducted a calculation of the Project’s potential construction noise impacts on 3rd floor receptors using the Roadway Construction Noise Model (“RCNM”), finding that the Project’s construction noise impacts exceed the City’s 5 dBA threshold.

Table 1: Impact Analysis for Worst-case Construction Scenario on the 3rd Floor of the Higgins Building⁹⁰

Calculated Noise Level (dBA)	Ambient Noise Level (dBA)	Level Above Ambient (dBA)	Impact Threshold (dBA)	Impact?
79.1	61.3	17.8	>5	YES

Mr. Meighan’s analysis constitutes substantial evidence demonstrating that the Project may cause a significant construction noise impact. Therefore, the Project does not qualify for a categorical exemption.⁹¹ The Project’s significant impacts must be disclosed and mitigated in an EIR.

3. The City’s Analysis of Operational and Construction Noise Impacts Are Not Supported by Substantial Evidence

To qualify for a categorical exemption, a lead agency must provide “substantial evidence to support [its] finding that the Project will not have a significant effect.”⁹² The City bases its noise analysis on a flawed and unsupported analysis. As a result, its conclusions that the Project’s noise impacts are less than significant are not supported by substantial evidence.

First, the City fails to adequately establish the baseline noise level. As numerous courts have held, an agency’s failure to adequately describe the existing setting contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.⁹³ Here, the noise analysis relies on a short-term

⁸⁹ *Id.*

⁹⁰ Meighan Comments, pg. 5, Table 2.

⁹¹ See *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

⁹² *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 269.

⁹³ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

measurement of 15-minute duration during the day to describe existing conditions. Mr. Meighan explains that, in order to conduct a proper noise analysis, the baseline must also be established for evening, and possibly nighttime conditions.⁹⁴ Social events in the roof deck terrace with pool and lounge spaces could occur during evening hours, and rooftop equipment could also operate during evening and nighttime conditions. Without this data, it is not possible to evaluate the significance of noise sources operating during non-daytime hours.

Another flaw Mr. Meighan detected is that the City's analysis assumes only the two loudest pieces of equipment is used per stage of construction, measured at the center of the project site.⁹⁵ He explains that this approach may underestimate the Project's noise impacts, which are greater than disclosed by the City when construction equipment is used closer to the borders of the Project site.

Mr. Meighan also explains that the Categorical Exemption erroneously cites an expectation that the Project's HVAC equipment would not cause significant impacts because the HVAC equipment would be similar to equipment on the currently existing building.⁹⁶ Mr. Meighan shows that the mechanical units required for a 17-story mixed-use building will likely be larger and louder than a two-story commercial building.

Mr. Meighan states that the Categorical Exemption does not mention whether the Project would use pile driving during construction.⁹⁷ He explains that pile driving is a preferred construction technique for large buildings like this, and has the potential for damage to neighboring buildings. A categorical exemption cannot be relied upon if the Project can elect to use pile driving.

Finally, as explained in the preceding section, the Project's proposed sound barriers would not achieve the City's claimed 15 dBA reduction on neighboring residences above the ground floor. The City's reliance on the 15 dBA construction noise reduction violates CEQA's principle against relying on mitigation measures of uncertain efficacy or feasibility.⁹⁸ As a result, the City's finding of a less-than-significant construction noise impact is not supported by substantial evidence.

⁹⁴ Meighan Comments, pg. 1.

⁹⁵ Meighan Comments, pg. 5.

⁹⁶ Categorical Exemption, pg. 63; Meighan Comments, pg. 6.

⁹⁷ Meighan Comments, pg. 6.

⁹⁸ *Kings County Farm Bureau v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

Due to these analytical flaws, the City’s noise findings are not supported by substantial evidence. Without substantial evidence, the City cannot rely on a categorical exemption.

4. The City’s Noise Significance Thresholds Are Not Supported by Substantial Evidence

The Project’s operational noise significance thresholds are not supported by substantial evidence because they do not reflect sleep disturbance impacts. The Project includes several sources of potential sleep-disturbing operational noise impacts: the balconies and rooftop area; mechanical equipment including an HVAC; and roadway traffic noise. Compliance with the significance thresholds for these noise impacts does not constitute substantial evidence that sleep disturbance impacts are less-than-significant.

Courts have held that compliance with noise regulations alone is not substantial evidence of a less-than-significant impact.⁹⁹ In *Oro Fino Gold Mining Corp. v. County of El Dorado* (“*Oro Fino*”),¹⁰⁰ a mining company applied for a special use permit for drilling holes to explore for minerals.¹⁰¹ The mining company argued the proposed mitigated negative declaration prohibited noise levels above the applicable county general plan noise standard maximum of 50 dBA and, therefore, there could be no significant noise impact. The court rejected this argument: “we note that conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects.”¹⁰² Thus, the court concluded an EIR was required.

In *Citizens for Responsible & Open Government v. City of Grand Terrace* (“*Grand Terrace*”),¹⁰³ the city approved a 120-unit senior housing facility based on a mitigated negative declaration.¹⁰⁴ The noise element of the city’s general plan stated exterior noise levels in residential areas should be limited to 65 dB

⁹⁹ *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020) 45 Cal.App.5th 814, 865.

¹⁰⁰ (1990) 225 Cal.App.3d 872.

¹⁰¹ *Id.* at pg. 876; see also *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714; *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project’s effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

¹⁰² *Id.* at pp. 881–882.

¹⁰³ (2008) 160 Cal.App.4th 1323.

¹⁰⁴ *Id.* at 1327.

CNEL.¹⁰⁵ The initial study concluded the facility's air conditioner units would cause noise impacts, but with mitigating measures the project would operate within the general plan's noise standard. But the court cited *Oro Fino* for the principle that “conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects.”¹⁰⁶ A citizen’s group provided substantial evidence supporting such a fair argument. This evidence included testimony from an individual in the HVAC industry that the type of air conditioning units proposed by the project “sound like airplanes.”¹⁰⁷ And at a city council public hearing, community and city council members expressed concern that the air conditioners would be noisy.¹⁰⁸ The court considered the testimony about the noise generated by the proposed air conditioners, took into account the mitigation measures, and concluded “there is substantial evidence that it can be fairly argued that the Project may have a significant environmental noise impact.”¹⁰⁹

Here, the significance threshold for the Project’s mechanical equipment noise impacts is contained in LAMC Section 112.02, which prohibits noise from mechanical equipment, including HVACs, from exceeding 5 decibels at receptors. The Categorical Exemption states that operational traffic noise would be less-than-significant if it would be less than 3 dBA.¹¹⁰ The City states that adherence to LAMC Section 116.01 is the only applicable criterion for assessing noise impacts from the Project’s open space. LAMC Section 116.01 provides: “it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.”

These significance thresholds do not address the Project’s potential for sleep disturbance at nearby residential receptors. The World Health Organization (“WHO”) identifies a guidance of 45 dBA Leq (outdoors) to avoid sleep disturbance from a continuous source, and a limit of 60 dBA Lmax for intermittent sources.¹¹¹ The significance thresholds summarized above do not necessarily consider noise impacts at WHO levels significant, nor otherwise address potential sleep disturbance impacts. Further, the City’s significance thresholds do not identify the unique impacts of speakers on sleep: low frequency bass notes can cause significant

¹⁰⁵ *Grand Terrace*, 160 Cal.App.4th at 1338.

¹⁰⁶ *Grand Terrace*, *supra*, at pg. 1338.

¹⁰⁷ *Id.* at 1338-1339.

¹⁰⁸ *Id.* at 1338.

¹⁰⁹ *Id.* at p. 1341.

¹¹⁰ Categorical Exemption, pg. 64.

¹¹¹ Meighan Comments, pg. 4.

impacts even when the A-weighted level complies with applicable code. This occurs because low frequency bass notes pass through exterior walls and closed windows with little reduction.¹¹² Accordingly, other agencies, such as the City of San Francisco, limit low frequency noise increase from this type of use on a C-weighted basis.¹¹³

The Project has potentially significant sleep disturbance impacts on nearby residential receptors. The Project includes 12,692 sf of open space, a majority of which would be concentrated on the 4,237 sf roof deck.¹¹⁴ Noise would potentially be generated by the up to 60 people that are accommodated on the roof deck. Noise would also potentially be generated by speakers on the roof deck or other open spaces. The Categorical Exemption states that while speakers on the roof deck are not anticipated, there is no condition precluding their use. Thus, there is the potential for low-frequency bass notes to disturb sleep. Accordingly, the Categorical Exemption acknowledges that occupancy of the Project's open spaces may increase ambient noise near the Project site.¹¹⁵ Mr. Meighan also states that excessive noise from these rooftop activities occurring between 10 PM and 7 AM could cause sleep disturbance and would be potentially significant.¹¹⁶

In sum, the City's operational noise thresholds do not account for the Project's potential sleep disturbance impacts. Thus, the City lacks the substantial evidence necessary to rely on a categorical exemption.

III. The Director's Approval of the Project's Site Plan Review Was Contrary to Law and Unsupported by Substantial Evidence

The Director erroneously approved a Site Plan Review for the Project pursuant to LAMC Section 16.05 without substantial evidence to support the required findings. This approval requires making certain environmental findings. LAMC Sec. 16.05(A) provides that:

The purposes of site plan review are to promote orderly development, **evaluate and mitigate significant environmental impacts**, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to **control or**

¹¹² *Id.*

¹¹³ Meighan Comments, pg. 4.

¹¹⁴ Categorical Exemption, pg. 63.

¹¹⁵ *Id.*

¹¹⁶ Meighan Comments, pg. 4.

mitigate the development of projects which are likely to have a significant adverse effect on the environment as identified in the City's environmental review process, or on surrounding properties by reason of inadequate site planning or improvements. [emphasis added]

LAMC Sec. 16.05(E) further provides that:

- a. In granting site plan approval, the Director may condition and/or modify the project, or select an alternative project, as he or she deems necessary to implement the general or specific plan and to mitigate significant adverse effects of the development project on the environment and surrounding areas.
- b. The Director **shall not approve or conditionally approve a site plan review for a development project unless an appropriate environmental review clearance has been prepared in accordance with the requirements of CEQA.** [emphasis added]

Here, the purposes of site plan review set forth by LAMC Sec. 16.05(A) have not been fulfilled, as the Project's environmental document failed to adequately evaluate and mitigate significant environmental impacts. Further, the appropriate environmental review clearance has not been prepared in accordance with the requirements of CEQA, in violation of LAMC Sec. 16.05(E). As explained above, the appropriate environmental clearance is an EIR, not a categorical exemption. Further, the analysis conducted in the categorical exemption contained flaws in violation of CEQA, as shown in these comments. The findings adopted by the Director in support of the Project's Site Plan Review approval were not supported by substantial evidence, and were therefore contrary to law.¹¹⁷ The Commission must vacate the Director's approval of the Project's site plan review.

IV. The Director's Approval of the Density Bonus Was Contrary to Law and Unsupported by Substantial Evidence

The Director erroneously approved a Density Bonus for the Project pursuant to LAMC Section 12.22 A.25 without substantial evidence to support the required findings. The LAMC provides that the Director is prohibited from approving a Density Bonus if there is substantial evidence demonstrating that:¹¹⁸

¹¹⁷ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

¹¹⁸ Section 12.22 A.25(g)(2)(i)(c).

(i) The Incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or Section 50053 for rents for the affordable units; or

(ii) The Incentive will have a Specific Adverse Impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

The Findings state that there is no evidence that the density bonus incentive would have a specific adverse impact. This conclusion is unsupported because the City failed to quantify the health risk from the Project's air emissions on nearby sensitive receptors, and failed to accurately analyze noise impacts. The Director's conclusion is also erroneous, as the analysis presented in this letter shows that, when calculated, the Project will cause potentially significant and unmitigated health risk and noise impacts. These impacts are heightened due to the Project's density bonus: the requested increase in FAR allows the Applicant to expand the building envelope so that additional units can be constructed.¹¹⁹ The FAR increase allows the Project to construct an additional 26,856 sf.¹²⁰ The increased size of the Project results in a longer construction period, which extends the duration of the Project's construction noise and emissions. Since this letter demonstrates that these emissions are potentially significant, this Finding was contrary to law and lacks the support of substantial evidence.

V. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the Area Planning Commission uphold this appeal, vacate the Director's approval of the Project, and direct staff to prepare an EIR for the Project.

Sincerely,



Aidan P. Marshall

APM:acp

¹¹⁹ City of Los Angeles Planning Department, Director's Letter of Determination (September 21, 2022), pg. 11.

¹²⁰ *Id.*



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: DIR-2020-7846-DB-SPR-HCA; ENV-2020-7847-CE

Project Address: 212-220 S. Spring Street, Los Angeles CA 90012

Final Date to Appeal: 10/06/2022

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 Aidan P. Marshall

Company/Organization: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: amarshall@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): Aidan P. Marshall

Company: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco State: CA Zip: 94080

Telephone: (650) 589-1660 E-mail: amarshall@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 Director

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: October 5, 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.