

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

June 2, 2023

VIA ONLINE SUBMISSION

City of Los Angeles Appeal Board

Online Portal: <https://plncts.lacity.org/oas>

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner

City of Los Angeles

Department of City Planning

221 N. Figueroa St., Suite 1350

Los Angeles, CA. 90012

Email: polonia.majas@lacity.org

Re: Appeal of Advisory Agency Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN).

Dear Appeal Board Members and Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the City of Los Angeles (“City”) Advisory Agency’s approval of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN) (“Project”), proposed by Mitsui Fudosan America (“Applicant”). The scope of the Advisory Agency’s approval includes:

- Approval of Vesting Tentative Tract Map No. 74876-CN, pursuant to Section 17.15 of the Los Angeles Municipal Code (“LAMC”);
- Certification of the 8th, Grand and Hope Project Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act (“CEQA”);¹
- Adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program (“MMRP”).

¹ Cal. Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq.

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CREED LA submitted comments on the Project's Draft EIR ("DEIR") on January 5, 2022 during the public review period required by Section 15087 of the CEQA Guidelines. CREED LA's comments on the DEIR demonstrated that the DEIR fails to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. The City included responses to comments in the Final EIR ("FEIR") pursuant to Section 15088 of the CEQA Guidelines. CREED LA submitted comments explaining that the DEIR's flaws were not remedied in the City's FEIR. Subsequently, a public hearing for the Project was held by the Deputy Advisory Agency and Hearing Officer on behalf of the City Planning Commission on February 15, 2023. The Advisory Agency's Letter of Determination ("LOD") was mailed on May 26, 2023.

CREED LA hereby appeals all actions taken by the Advisory Agency with regard to the Project as described in the May 26, 2023 LOD. This appeal is timely filed in compliance with the LAMC. The reasons for this appeal are set forth herein and in the attachments, which include CREED LA's comments on the DEIR and FEIR.² We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.³

As explained herein and in the attached comments, the Advisory Agency abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.⁴

I. STANDING TO APPEAL

Section 17.06 of the LAMC, "Tentative Map and Appeals," provides that [t]he subdivider, the Mayor, any member of the City Council, or **any other**

² **Attachment A:** Letter from Adams Broadwell Joseph & Cardozo to City re: Comments on 8th, Grand and Hope FEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (February 15, 2023); Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

³ We reserve the right to supplement these comments at later hearings and proceedings on the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121,

⁴ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

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interested person adversely affected by the proposed subdivision may appeal any action of the Advisory Agency with respect to the tentative map or the kind, nature or extent of the improvement required to the Appeal Board” [emphasis added]. CREED LA and its members are interested persons who would be adversely affected by the Vesting Tentative Tract Map approved by the Advisory Agency. Therefore, CREED LA has standing to appeal the Advisory Agency’s decision.

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City 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 on site.

II. REASONS FOR APPEAL

A. The Advisory Agency’s Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record

The Subdivision Map Act (“SMA”) provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

LAMC Section 17.15(c)(2), “Vesting Tentative Maps,” provides that “a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines:

(a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or

(b) The condition or denial is required in order to comply with state or federal law.

Here, approval of the vesting tentative tract map would place the community in a condition dangerous to its health and safety.

First, CREED LA's comments on the EIR explained that the EIR failed to adequately disclose and analyze significant health impacts on the community from exposure to Diesel Particulate Matter ("DPM") generated by construction activities or Project operations. Specifically, the EIR failed to analyze impacts on all sensitive receptors, including children. Analysis of impacts on children is essential due to the increased sensitivity of children to Toxic Air Contaminants like DPM. As discussed in CREED LA's comments on the FEIR, Dr. James Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million cancer risk significance threshold. Dr. Clark's analysis found that for a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

Second, the Project's operations would involve residential use of natural gas.⁵ The Project's operations would consume a total of 4,859,882 cf of natural gas each year.⁶ Although the Project will not use natural gas fireplaces, the Project's EIR does not preclude use of other gas appliances like stoves.⁷ CREED LA's comments on the FEIR present substantial evidence demonstrating that residential natural gas use has potentially significant health risks on residents – a risk which was not analyzed in the EIR. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474 unless this impact is analyzed and mitigated.

⁵ DEIR, IV.B-15.

⁶ DEIR, IV.B-25.

⁷ FEIR, IV-3.

Third, the Project would have significant construction noise impacts. As explained in CREED LA's comments, excessive noise or significant increases in noise can impact public health. The City must adopt all feasible mitigation measures to reduce these noise impacts before the Project can be approved. CREED LA's expert identified mitigation measures which would reduce the magnitude of these impacts. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and the SMA unless this impact is mitigated to the fullest extent feasible.⁸

For these reasons, and others discussed in CREED LA's comments, approval of the Project is likely to cause significant impacts to air quality, public health, and noise. The Advisory Agency therefore lacks substantial evidence to make the necessary findings. The City must correct the errors in the EIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

B. The Project's Environmental Review Fails to Comply with CEQA

CREED LA's comments on the EIR demonstrated that the EIR fails to comply with CEQA. As explained more fully in CREED LA's comments on the DEIR and FEIR, the EIR failed to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas emissions. The EIR failed to support its significance findings with substantial evidence, and failed to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot adopt a statement of overriding considerations pursuant to CEQA.⁹

⁸ Government Code, section 66474.01.

⁹ Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

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III. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the Appeal Board uphold this appeal and vacate the Advisory Agency's approval of the Project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aidan P. Marshall".

Aidan P. Marshall

APM:acp



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: ENV-2017-506-EIR; VTT-74876-CN

Project Address: 754 S. Hope Street & 609 & 625 W. 8th Street, Los Angeles, CA (APNs 5144-011-009, 5144-011-016).

Final Date to Appeal: 06/05/2023

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 Advisory Agency

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: June 2, 2023

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.