

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
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

December 6, 2021

VIA ONLINE SUBMISSION

Los Angeles City Council

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

VIA EMAIL

Jane Choi, Principal City Planner

Email: jane.choi@lacity.org

Valentina Knox-Jones, City Planner

Email: valentina.knox.jones@lacity.org

Jason Hernandez, City Planning
Associate

Email: jason.hernandez@lacity.org

Re: Appeal of Central Area Planning Commission Approvals for the HPMC Building Project (Case No. APCC-2020-1764-SPESPP- SPR, Environmental Case No. ENV-2015-310-MND-REC1)

Dear City Council, Ms. Choi, Ms. Knox-Jones, and Mr. Hernandez:

On behalf of the **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")**, we submit this appeal of the Central Area Planning Commission's ("Commission") approval of the HPMC Building Project (Case No. APCC-2020-1764-SPESPP-SPR, Environmental Case No. ENV-2015-310-MND-REC1) ("Project"), including, approval of a Project Permit Compliance pursuant to LAMC Section 11.5.7(C), approval of Specific Plan Exceptions pursuant to LAMC Section 11.5.7(F), approval of a Site Plan Review pursuant to LAMC Section 16.05, adopting conditions of approval and related findings, and adopting the HPMC Building Project Addendum to the 2015 Initial Study/Mitigated Negative Declaration ("MND") for the original HPMC Project, including finding that no

L5740-004acp

December 6, 2021

Page 2

subsequent EIR or negative declaration is required for the Project pursuant to the California Environmental Quality Act (“CEQA”).¹

On October 26, 2021, the Commission conducted a hearing on the Project. On November 23, 2021, the Commission issued a Letter of Determination (“LOD”) approving the Project.² The LOD states that the Commission found that no subsequent EIR or negative declaration is required, approved a Project Permit Compliance, approved Specific Plan Exceptions, approved a Site Plan Review, adopted conditions of approval, and adopted amended findings. The LOD indicates that the appeal period for the determination ends on December 8, 2021.

This appeal is timely filed in compliance with the Los Angeles Municipal Code (“LAMC”). This letter supplements CREED LA’s Appeal Application, filed concurrently herewith, and is accompanied by the required appeal fee. This appeal is based on each of the reasons set forth herein and in the attached and referenced exhibits.

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 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 include John Ferruccio, Jorge L. Aceves, and John P. Bustos. These individuals 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.

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

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

L5740-004acp

I. REASONS FOR APPEAL

CREED LA hereby appeals all actions taken by the Central Area Planning Commission with regard to the Project on October 26, 2021 and described in the LOD dated November 23, 2021. The reasons for this appeal are set forth in the attached comments and exhibits, including CREED LA's October 18, 2021 comment letter to the Planning Commission, as well as the comments of air quality expert James Clark, Ph.D. We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.

As explained herein and in the attached comments, the Commission 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.³

A. The City Cannot Rely on an Addendum – a Subsequent EIR or Mitigated Negative Declaration is required

As discussed in our prior comments, a Subsequent EIR or Mitigated Negative Declaration ("MND") is required to analyze the Project's environmental impacts. Case law provides that when a project's impacts were previously reviewed in an MND, adoption of an addendum is not permitted if substantial evidence shows changes to the project, changes in circumstances, or new information might result in a significant impact.⁴

Here, the City's decision to prepare an addendum, rather than a subsequent or supplemental EIR or MND, for the Project is not supported by substantial evidence. The Addendum does not simply provide "some changes or additions" to the EIR; rather, it includes analysis for a 95,995 square foot medical office project. This is an entirely new use that was not analyzed in the original IS/MND. As a result of this new use, our comments show that the Project may have new or more severe significant impacts than previously analyzed in the IS/MND, including impacts on noise, air quality, greenhouse gas, and public health. Therefore, the City Council

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

⁴ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist. ("San Mateo Gardens II")* (2017) 11 Cal.App.5th 596, 606-607.

December 6, 2021

Page 4

must reverse the Commission's decision and find that a subsequent or supplemental EIR or, at a minimum, a subsequent MND is required for the Project.

B. The Commission's Approval of a Project Permit Compliance for the Project Was Contrary to Law and Unsupported by the Record

LAMC Sec. 11.5.7(C)(2) requires certain findings to be made before a Project Permit Compliance may be granted:

The Director shall grant a Project Permit Compliance upon written findings that the project satisfies each of the following requirements:

- a. That the project substantially complies with the applicable regulations, findings, standards and provisions of the specific plan; and
- b. That the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.

However, the Commission lacked substantial evidence to support the findings required by LAMC Sec. 11.5.7(C)(2), which requires that environmental impacts be mitigated to the extent physically feasible. Our comments show that the Project's impacts on noise, air quality, greenhouse gas, and public health were not adequately disclosed and mitigated by the Addendum. The City must vacate the Commission's approval of the Project Permit Compliance and require that a subsequent EIR or MND be prepared for the Project which includes adequate analysis and all feasible mitigation to reduce the Project's significant impacts to the fullest extent feasible.

C. The Commission's Approval of the Project's Specific Plan Exceptions Was Contrary to Law and Unsupported by the Record

The Commission erroneously approved Specific Plan exceptions from Vermont/Western Transit Oriented District Station Neighborhood Area Plan ("SNAP") Section 9.E.3 (Project Parking Requirements – Commercial), and SNAP Section 9.G (Pedestrian Throughways) without substantial evidence to support the approval findings.

L5740-004acp

Certain findings must be made by the City in order to approve Specific Plan exceptions. LAMC Sec. 11.5.7(F)(2) provides:

The Area Planning Commission may permit an exception from a specific plan if it makes all the following findings:

- a. That the strict application of the regulations of the specific plan to the subject property would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the specific plan;
- b. That there are exceptional circumstances or conditions applicable to the subject property involved or to the intended use or development of the subject property that do not apply generally to other property in the specific plan area;
- c. That an exception from the specific plan is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property within the specific plan area in the same zone and vicinity but which, because of special circumstances and practical difficulties or unnecessary hardships is denied to the property in question;
- d. That the **granting of an exception will not be detrimental to the public welfare** or injurious to the property or improvements adjacent to or in the vicinity of the subject property; and
- e. That the **granting of an exception will be consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan.**

The Commission lacked substantial evidence to support Findings (d) and (e), as the City's Addendum fails to adequately disclose or mitigate impacts on noise, air quality, greenhouse gas, and public health. Until the City fully discloses and mitigates the Project's environmental impacts, as identified in our comments, the City cannot approve the Project's Specific Plan Exceptions.

D. The Commission's Approval of the Project's Site Plan Review Was Contrary to Law and Unsupported by the Record

The Commission 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 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 Addendum 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 in our comments, the appropriate environmental clearance is a subsequent or supplemental EIR or MND, not an addendum. Further, the analysis conducted in the addendum contained flaws in violation of CEQA, as shown in our comments. The findings adopted by the Commission in support of the Project's Site Plan Review approval were not

December 6, 2021

Page 7

supported by substantial evidence, and were therefore contrary to law.⁵ The City Council must vacate the Commission's approval of the Project's site plan review.

II. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the City Council uphold this appeal and vacate the Central Area Planning Commission's approval of the Project.

Sincerely,



Aidan P. Marshall

APM:acp

Attachment

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



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: APCC-2020-1764-SPE-SPP SPR; ENV-2015-310-MND-RECI

Project Address: 1318 North Lyman Place, 4470-4494 W De Longpre Avenue, and 1321-1323 North Virgil

Final Date to Appeal: 12/08/2021

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 Central Area Planning Commission

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: 12/6/2021

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.