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October 5, 2023

VIA ONLINE SUBMISSION

Los Angeles City Council

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 City Planning Commission Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN).

Dear City Council President Krekorian, Councilmembers, 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") City Planning Commission ("Commission") September 26, 2023 approvals of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) ("Project"), proposed by Mitsui Fudosan America ("Applicant"). On September 26, 2023, the Commission issued three separate Letters of Determination ("LOD") for Case Numbers VTT-74876-CN, CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and ZA-2021-7053-ZAI. This appeal concerns Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR.

The scope of the Commission's determination for Case No. VTT-74876-CN includes approval of a Vesting Tentative Tract Map; certification of an Environmental Impact Report ("EIR"); adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program ("MMRP"); denying the appeal in part and granting the appeal in part, and sustained the decision of the Advisory Agency dated May 26, 2023. The scope of the

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Commission's determination for Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR includes approval of zone variances, approval of Specific Plan Project Permit Adjustments, approval of a Director's Decision to allow 79 trees to be planted on-site, Site Plan Review, and a recommendation to City Council to approve a Transfer of Floor Area Rights ("TFAR"). The Commission issued its LOD on September 26, 2023.

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 California Environmental Quality Act ("CEQA") Guidelines.¹ 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 LOD was mailed on May 26, 2023. CREED LA appealed the Advisory Agency's determination to the Commission. CREED LA's appeal and other approvals were considered by the Commission at its July 13, 2023, meeting.

CREED LA hereby appeals all actions taken by the Commission with regard to the Project as described in the LODs for Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR. 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 appeal to the Advisory Agency,³ and letter to the Advisory Agency responding to the staff report

¹14 Cal. Code Regs. §§ 15000 et seq.; see Cal. Pub. Res. Code §§ 21000 et seq.

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 **Attachment B:** 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). (June 2, 2023)

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prepared for the Project.⁴ We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.⁵

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.⁶

I. STANDING TO APPEAL

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.

⁴ **Attachment C:** Letter from ABJC to City Re: Agenda Item 8 and 10 – 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) (July 11, 2023).

⁵ 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,

⁶ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

Section 17.06 of the LAMC, “Tentative Map and Appeals,” provides that “[t]he subdivider, the Mayor, any member of the City Council, the Advisory Agency, or any other interested person adversely affected by the proposed subdivision may appeal any action of the Appeal Board⁷ with respect to the tentative map or the kinds, nature or extent of the improvements required by the Appeal Board to the City Council.” CREED LA and its members are interested persons who would be adversely affected by the Vesting Tentative Tract Map approved by the Advisory Agency.

Section 12.27(O) of the LAMC, “Variances,” provides that “[a]n appeal from a decision of the Area Planning Commission granting or affirming the grant of a variance may be filed by the applicant or any person aggrieved by the decision.” CREED LA and its members are aggrieved by the Commission’s decision. And Section 11.5.7(J) of the LAMC, “Specific Plan Procedures,” provides for appeal of Area Planning Commission decisions to the City Council.

As CREED LA’s appeal is timely filed, CREED LA has standing to appeal the Commission’s decision to City Council.

II. REASONS FOR APPEAL

A. The Commission’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:

⁷ LAMC Section 17.02 defines “Appeal Board” as “The Area Planning Commission where the map is located for any parcel map or tentative map that: (a) creates or results in less than 50,000 gross square feet of nonresidential floor area; or (b) creates or results in fewer than 50 dwelling units, guest rooms, or combination of dwelling units and guest rooms; or (c) involves a lot with fewer than 65,000 square feet of lot area. Otherwise, the City Planning Commission.”

- (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 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 air quality, public health, greenhouse gas, and noise impacts. The Commission therefore lacked 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

⁸ Government Code, section 66474.01.
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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 Commission's Approval of Project Permit Adjustments Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant LAMC Section 11.5.7(E), a Specific Plan Project Permit Adjustment for a Director's Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide, as well as a Specific Plan Project Permit Adjustment to allow a deviation from Section 5 of the Downtown Design Guide to allow building and balcony projections up to nine feet and 25 feet into the sidewalk easements along Hope Street and Grand Avenue respectively, and allow projections to begin at an elevation of 25 feet above grade along Hope Street and Grand Avenue.

LAMC Section 11.5.7 (E)(3) requires the following findings to be made in order to approve a Project Permit Adjustment, in addition to any other required specific plan findings that may pertain to the Project Permit Compliance:

- (a) That there are special circumstances applicable to the project or project site which make the strict application of the specific plan regulation(s) impractical;
- (b) That in granting the Project Permit Adjustment, the Director has imposed project requirements and/or decided that the proposed project will substantially comply with all applicable specific plan regulations;
- (c) That in granting the Project Permit Adjustment, the Director has considered and found no detrimental effects of the adjustment on surrounding properties and public rights-of-way; and
- (d) That the project incorporates mitigation measures, monitoring of 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.

As summarized herein and in the attachments, the Project would have detrimental health risk, air quality, greenhouse gas, noise, and other impacts on the

surrounding properties. The Project fails to incorporate the requisite mitigation measures to mitigate the negative environmental effects of the Project to the extent physically feasible. As a result, the Commission could not make the requisite findings to approve the Project Permit Adjustments.

C. The Commission's Approval of Zone Variances Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant to LAMC Section 12.27, a Zone Variance to allow relief from providing an additional 10-inch clear space to the parking stall widths when adjoined on their longer dimension by an obstruction, and a Zone Variance to allow relief to allow reduced drive aisle widths of 24 feet in lieu of the required drive aisle width.

LAMC Section 12.27(D) requires the following findings to be made in order to approve a Zone Variance.

1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
5. that the granting of the variance will not adversely affect any element of the General Plan.

Additionally, Section 12.27(E) provides that the decisionmaker may impose those conditions it deems necessary to remedy a disparity of privileges and

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necessary to protect the public health, safety or welfare and assure compliance with the objectives of the General Plan and the purpose and intent of the zoning.

The Commission approved the Project's Zone Variances despite the Project's health risk, air quality, greenhouse gas, noise, and other impacts. These impacts are materially detrimental to the public welfare. These impacts precluded the Commission from making the requisite findings to approve the Project Permit Adjustments. And the Commission failed to use its authority to adopt the necessary conditions to protect the public health, safety and welfare.


D. 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

III. 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 City Planning Commission's approval of the Project.

Sincerely,



Aidan P. Marshall

APM:lj1

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



APPEAL APPLICATION Instructions and Checklist

RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

PURPOSE

This application is for the appeal of Los Angeles City Planning determinations, as authorized by the LAMC, as well as first-level Building and Safety Appeals.

APPELLATE BODY

Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.

- | | | |
|---|---|--|
| <input type="checkbox"/> Area Planning Commission (APC) | <input type="checkbox"/> City Planning Commission (CPC) | <input checked="" type="checkbox"/> City Council |
| <input type="checkbox"/> Zoning Administrator (ZA) | <input type="checkbox"/> Director of Planning (DIR) | |

CASE INFORMATION

Case Number: ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI

Project Address: 754 South Hope Street; 609 - 625 West 8th Street

Final Date to Appeal: VTT-74864-CN-1A - October 6; CPC-2017-505-TDR-ZV-SPPA-DD-SPR - October 11

APPELLANT

For main entitlement cases, except for Building and Safety Appeals:

Check all that apply.

- Person, other than the Applicant, Owner or Operator claiming to be aggrieved
- | | | | |
|---|---|------------------------------------|---|
| <input type="checkbox"/> Representative | <input type="checkbox"/> Property Owner | <input type="checkbox"/> Applicant | <input type="checkbox"/> Operator of the Use/Site |
|---|---|------------------------------------|---|

For Building and Safety Appeals only:

Check all that apply.

- Person claiming to be aggrieved by the determination made by **Building and Safety**¹
- | | | | |
|---|---|------------------------------------|---|
| <input type="checkbox"/> Representative | <input type="checkbox"/> Property Owner | <input type="checkbox"/> Applicant | <input type="checkbox"/> Operator of the Use/Site |
|---|---|------------------------------------|---|

¹ Appellants of a Building and Safety Appeal are considered the Applicant and must provide the Noticing Requirements identified on page 4 of this form at the time of filing. Pursuant to LAMC Section 12.26 K, an appeal fee shall be required pursuant to LAMC Section 19.01 B.2.

APPELLANT INFORMATION

Appellant 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 Code: 94080

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

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

Self Other: CREED LA

Is the appeal being filed to support the original applicant's position? YES NO

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 Code: 94080

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

JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part? Entire Part

Are specific Conditions of Approval being appealed? YES NO

If Yes, list the Condition Number(s) here: All Conditions

On a separate sheet provide the following:

- Reason(s) for the appeal
- Specific points at issue
- How you are aggrieved by the decision
- How the decision-maker erred or abused their decision

APPLICANT'S AFFIDAVIT

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

Appellant Signature:  Date: 10/5/23