VTT-82152-1A-CHANNEL_LAW-JUST..pdf


Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

Phone: (310) 347-0050
Fax: (323) 723-3960
www.channellawgroup.com

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas


September 22, 2020

**VIA ELECTRONIC UPLOAD**

City of Los Angeles Dept. of City Planning
221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012

**Re: Justifications of Appeal for Vesting Tentative Tract for Hollywood Center Project (VTT-82152)**

To Whom It May Concern:

This firm represents the Federation of Hillside and Canyon Associations, Inc. ("Federation" or "Appellant"). The Federation is a 501(c)(3) organization that was founded in 1952 and represents 44 homeowner and resident associations with approximately 250,000 constituents spanning the Santa Monica Mountains. This letter outlines the justifications for the appeal of the Vesting Tentative Tract for the Hollywood Center Project ("Project"), which was approved by the Advisory Agency on September 14, 2020[1]. The Federation brings this appeal because its hillside member organizations and their members will be directly impacted by the Project.

## 1. The Map and Subdivision are Inconsistent with General and Specific Plan

The Subdivision Map Act requires that a proposed project be consistent with all applicable general and specific plans. Govt. Code §66473.5; Govt. Code §66474. The Advisory Agency erred when it determined that consistency findings could be made for the Project.

The Project is not consistent with the Hollywood Community Plan. It requests an almost 7:1 Floor Area Ratio, when the local planning permits at most a 6:1 ratio. Appellant's members

[1] Appellant notes that the Letter of Determination erroneously states that the deadline for filing an appeal of the tract map is September 23, 2020. However, applicable local law provides for a 10-day appeal period from the Advisory Agency and thus the correct appeal deadline is September 24, 2020. (Los Angeles Municipal Code (LAMC) § 17.06A(3); see California Civil Code § 10.)

VTT-82152-1A-CHANNEL_LAW-JUST..pdf

have expressed concern that the calculations used to determine the actual Floor Area Ratio do not comply with normal City procedures. Neither the DEIR nor the FEIR made the process by which the City determined the FAR clear.

In addition, member organizations pointed out that the D Limitations currently imposed at the site were improperly removed, since they were put in place as an environmental mitigation. This required further study and consideration by the City in the EIR prepared by the City to ensure the City and applicant were complying with all legal requirements.

**2. The Project is Likely to Cause Substantial Environmental Damage**

As noted in the Letter of Determination issued by the Advisory Agency, one of the required findings under the Subdivision Map Act is as follows: "The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat." There is ample evidence in the record that the Project will cause "substantial environmental damage." The Advisory Agency therefore erred when it concluded that this required finding could be made.

Several Federation member organizations and other community groups expressed concern that the Draft Environmental Impact Report ("DEIR") was inadequate in determining that impacts on police and fire services will not be significant. The Beachwood Canyon Neighborhood Association was extremely concerned, due to its proximity to brush and wildland areas of the eastern Santa Monica Mountains, that emergency response times will be negatively impacted by the Project and current evacuation planning for their community will no longer be sufficient due to the project. Neither the DEIR not the FEIR adequately addressed those issues.

Moreover, the submission made by United Neighborhoods for Los Angeles raised the concern that the population estimates used by the DEIR were inaccurate. The City has variously used 165,000 and 300,000 as the population number for this part of the City. Any public services impacted by this broad discrepancy should have been addressed in the Final EIR to allow members of the public and City decision makers to understand the significant project impacts to police, fire, and other services.

Additionally, transportation planning for the project clearly raises potentially significant environmental impacts, and Appellant's affected members and other community organizations do not believe they have been adequately addressed. There are several impacted intersections with significant impacts, on- and off-ramps to the 101 Freeway are significantly impacted, and as a traffic report submitted by KOA on behalf of member Oaks Homeowners Association shows, there are at least two projects that were listed on the cumulative impact list for the DEIR whose contributions to the roadway analysis were apparently elided, causing that analysis to be insufficient. The FEIR does not rectify these deficiencies. Beachwood Canyon Neighborhood Association also noted there is already parking overflow in the lower part of its canyon neighborhood from existing projects, and their local expert opinion is that this project will exacerbate parking demand and cause an even greater impact than at current. This will especially be true during the project construction period when it is unclear where temporary parking for the Capitol Records building and parking lot will be located. The EIR for the Project should have been revised to address these concerns.

VTT-82152-1A-CHANNEL_LAW-JUST..pdf

Further, many of Appellant's member organizations are understandably concerned that the City is repeating the catastrophic mistake of allowing residential and other structures to be built directly atop an existing earthquake fault with this new project iteration. Appellant believes the information provided in the EIR regarding this issue was inadequate to conclude that it is safe to allow construction of massive buildings atop the fault zone. Since the previous project at this site by the same developer should be considered as part of the record of this case, Appellant draws the City's attention to any and all objections made with respect to the earthquake fault zone issue in that record, and also to any comments that may be submitted by others on this topic now.

Also, several of Appellant's members raised the concern that the environmental documents shared with the public are corrupted and illegible and they have therefore been unable to understand the record sufficient to make intelligible comments. While this was eventually corrected, the City did not extend the public comment period to provide for a 45-day review of the corrected DEIR. On this basis alone, the EIR should have been corrected and recirculated since the earthquake issue above relies heavily on this appendix.

The Federation also contends that the City has violated CEQA by conducting a public hearing for the Project without completion and publication of the Final Environmental Impact Report for the Project. As the staff recommendation report for the vesting tentative tract map case noted, the Final EIR was held back to address a late-submitted letter from the California Geological Survey (CGS). The CGS letter was not some minor or technical land use issue, it related to a matter of significant public safety. The letter reports to the City that on May 8, 2020, the United States Geological Survey "issued a new, peer-reviewed analysis of the Hollywood Fault zone in the immediate area of [the project]." The peer-reviewed analysis found: (1) new earthquake traces not identified in the existing environmental document's appendix G, (2) that it is highly likely that an active fault strand crosses the project site, and (3) that neither the 2014 earthquake trench nor other investigative techniques are adequate to clear the project site of active faults. (Sr. Eng. Geologist Hernandez/ Sup. Eng. Geologist McCrink, CGS, project comment letter to Mindy Nyugen, July 16, 2020.) In light of the extremely serious nature of the CGS findings, an additional exploratory trench was requested by the Los Angeles Department of Building and Safety. (Recommendation Report, p. 32.)

Conducting the public hearing for the Project **before** the entire environmental record was complete robbed members of the public of the ability to make meaningful comment on the project. This is assuredly not the CEQA process envisioned by California's legislature or courts "to demonstrate to the public that it is being protected." (*See* 14 Cal. Code of Regs. § 15003, citing leading CEQA cases.) Our California Supreme Court has held that the environmental review process is intended "to demonstrate to an apprehensive citizenry that the [City] has, in fact, analyzed and considered the ecological implications of its action." An EIR "is a document of accountability . . . protect[ing] not only the environment but also informed self-government." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.

Angelenos are deservedly apprehensive about the environmental review process in Los Angeles due to the terrible corruption in our City government, and also due to the City's business-as-usual approach to planning and land use decision-making, even while we are at the height of the worst public health emergency in the modern era. The City's citizens are right to be extremely apprehensive about this project.

VTT-82152-1A-CHANNEL_LAW-JUST..pdf

Finally, the Federation contends that the City engaged in deferred environmental analysis and mitigation when it added a condition requiring additional exploratory trenching in light of the letter received by the California Geological Survey. (See Vesting Tentative Tract Map Approval, p. 4, Condition 18 [explaining post-approval trenching is intended "to demonstrate, or rule out, the presence of an active fault in the southerly part of the Project Site"] and pp. 13-14, Condition 34.) Conditioning a project on another agency's future review of environmental impacts, without evidence of the likelihood of effective mitigation by the other agency, is insufficient to support a determination by the lead agency that potentially significant impacts will be mitigated. *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296. Further, requiring formulation of mitigation measures at a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before a project is approved. PRC § 21080, subd. (c)(2)). See *League for Protection of Oakland Architectural & Historic Resources v. City of Oakland (*1997) 52 Cal.App.4th 896; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396; *Quall Botanical Ganlens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1605, fn. 4; *Oro Fino Gold Mining Corp. v. Cnty. of El Dorado* (1990) 225 Cal.App.3d 872, 884; *Sundstrom v. Cnty. of Mendocino*, supra, 202 Cal.App.3d at p. 306, (condition requiring that mitigation measures recommended by future study to be conducted by civil engineer evaluating possible soil stability, erosion, sediment, and flooding impacts was improper). Moreover, a condition that requires implementation of mitigation measures to be recommended in a future study may conflict with the requirement that project plans incorporate mitigation measures. Pub Res C §21081.6(b); 14 Cal Code Regs §15126.4(a)(2); *Federation of Hillside & Canyon Ass'ns v City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (holding there was no substantial evidence to support a finding that mitigation measures were adopted by the City of Los Angeles). Studies conducted after a project's approval do not guarantee an adequate inquiry into environmental effects. Such a mitigation measure would effectively be exempt from public and governmental scrutiny.

### 3. <u>The Project is Likely to Cause Serious Public Health Problems and the Site is Physically Unsuitable for the Density Proposed</u>

Two other required findings that must be made under the Subdivision Map Act are as follows: (1) "The design of the subdivision and the proposed improvements are not likely to cause serious public health problems ," and (2) "The site is physically suitable for the proposed density of development." Govt. Code §66474(f); Govt. Code §66474(c). The Advisory Agency erred when it determined that both of these required findings could be made for the Project.

As explained above, there is substantial evidence in the record that the Project sits atop an active fault. The Legislature long ago determined such development was inherently dangerous under the Alquist-Priolo Act. Locating the Project directly atop an active fault in direct violation of the Act is likely to cause serious public health problem when that fault ruptures. It is a question of when – not if – an earthquake occurs. Moreover, the presence of the fault renders the site physically unsuitable for the proposed development. The presence of geological hazards <u>requires</u> map disapproval on grounds of physical unsuitability. *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817. Additionally, if a site is not physically suitable for the proposed density of development, a public agency cannot approve a map for the proposed subdivision. Govt. Code §66474(d).

VTT-82152-1A-CHANNEL_LAW-JUST..pdf

**Conclusion**

For the aforementioned reasons, the appeal of the Vesting Tentative Tract should be granted. Please note that Appellant reserves the right to supplement the bases of this appeal. I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,

Jamie T. Hall

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: VTT-82152; ENV-2018-2116-EIR

Project Address: 1720-1770 N Vine; 1746-1764 N Ivar; 1733-1741 N Argyle; 6236, 6270, 6334 Yucca St.

Final Date to Appeal: 09/23/2020

### 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
Federation of Hillside and Canyon Associations, Inc.

☐ 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: Federation of Hillside and Canyon Associations, Inc.

Company/Organization: Federation of Hillside and Canyon Associations, Inc.

Mailing Address: Post Office Box 27404

City: Los Angeles State: CA Zip: 90027

Telephone: (310) 982-1760 E-mail: president@hillsidefederation.org

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

☑ Self ☐ Other: ____________________

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

VTT-82152-1A-CHANNEL_LAW-APP.pdf

## 4. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Jamie T. Hall

Company: Channel Law Group, LLP

Mailing Address: 8383 Wilshire Blvd., Suite 750

City: Beverly Hills State: CA. Zip: 90211

Telephone: (310) 982-1760 E-mail: jamie.hall@channellawgroup.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: __________

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- ☑ The reason for the appeal
- ☑ Specifically the points at issue
- ☑ How you are aggrieved by the decision
- ☑ 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: September 22, 2020

### *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.

VTT-82152-1A-CHANNEL_LAW-APP.pdf

## *SPECIFIC CASE TYPES - APPEAL FILING INFORMATION*

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

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

NOTE:
- Density Bonus/TOC cases, only the *on menu or additional incentives* items can be appealed.

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

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

### D. WAIVER OF DEDICATION AND OR IMPROVEMENT

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

NOTE:
- Waivers for By-Right Projects, can only be appealed by the owner.

- When a Waiver is on appeal and is part of a master land use application request or subdivider's statement for a project, the applicant may appeal pursuant to the procedures that governs the entitlement.

### E. TENTATIVE TRACT/VESTING

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

   NOTE: Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.

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

### F. BUILDING AND SAFETY DETERMINATION

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

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

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

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

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

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

VTT-82152-1A-CHANNEL_LAW-APP.pdf

## G. NUISANCE ABATEMENT

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

NOTE:
- Nuisance Abatement is only appealable to the City Council.

   a. **Appeal Fee**
   - ☐ Aggrieved Party the fee charged shall be in accordance with the LAMC Section 19.01 B 1.

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

   a. **Appeal Fee**
   - ☐ Compliance Review - The fee charged shall be in accordance with the LAMC Section 19.01 B.
   - ☐ Modification - The fee shall be in accordance with the LAMC Section 19.01 B.

# NOTES

*A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.*

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

| **This Section for City Planning Staff Use Only** | | |
|---|---|---|
| Base Fee: | Reviewed & Accepted by (DSC Planner): | Date: |
| Receipt No: | Deemed Complete by (Project Planner): | Date: |
| ☐ Determination authority notified | ☐ Original receipt and BTC receipt (if original applicant) | |