

**ORIGINAL**

**MASTER APPEAL FORM**

City of Los Angeles – Department of City Planning

**APPEAL TO THE:** City Council  
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

**REGARDING CASE #:** VTT-71898-CN-1A AND ENV-2012-111-MND

**PROJECT ADDRESS:** 11965-73 Montana Avenue, Los Angeles, California 90049

**FINAL DATE TO APPEAL:** May 3, 2014

- TYPE OF APPEAL:**
- 1.  Appeal by Applicant
  - 2.  Appeal by a person, other than the applicant, claiming to be aggrieved
  - 3.  Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

**APPELLANT INFORMATION – Please print clearly**

**Name:** Daniel Gryczman

- Are you filing for yourself or on behalf of another party, organization or company?
- Self
  - Other: behalf of myself and Regent Properties, our principals and employees

**Address:** 11990 San Vicente Blvd, Ste 200

Los Angeles, CA Zip: 90049

**Telephone:** (310) 806-9822 **E-mail:** dg@regentproperties.com

- Are you filing to support the original applicant's position?
- Yes
  - No

**REPRESENTATIVE INFORMATION**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

Zip: \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

**JUSTIFICATION/REASON FOR APPEALING** – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

Entire

Part

Your justification/reason must state:

- The reasons 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

**ADDITIONAL INFORMATION/REQUIREMENTS**

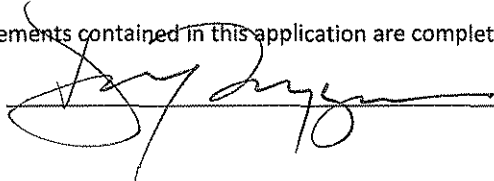
- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
  - Master Appeal Form
  - Justification/Reason for Appealing document
  - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

*"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."*

--CA Public Resources Code § 21151 (c)

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

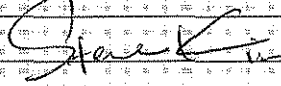
Appellant Signature: \_\_\_\_\_



Date: \_\_\_\_\_

4/29/14

**Planning Staff Use Only**

Amount	106.80	Reviewed and Accepted by		Date	5/12/14
Receipt No.	16710	Deemed Complete by		Date	

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)



**REGENT PROPERTIES**

April 28, 2014

City Council  
City of Los Angeles  
c/o Planning and Land Use Management Committee  
200 North Spring Street  
Los Angeles, California 90012

***Re: Justification/Reasons for Appealing Case No. VTT-71898-CN-1A/ENV-2012-1111-MND***

Dear Honorable Councilmembers:

On behalf of myself, Regent Properties and our other principals and employees, I write to express our opposition to the above referenced determination relative to a proposed project located at 11965-73 Montana Avenue, Los Angeles, California 90049 (the "Project"). We occupy the entire second floor of the immediately adjacent office building at 11990 San Vicente Blvd and are aggrieved by the determination given our close proximity to the project site. The reasons for our appeal as well as the specific points at issue are clearly stated below. For each of the reasons, arguments and points stated below we believe the determination is in error or there has been an abuse of his discretion in approving the requests made in conjunction with the case numbers referenced above. There is also a related Director's Determination, DIR-2012-1112-DB-1A, that although unappealable to the City Council pursuant to the LAMC, relies on the mitigated negative declaration (the "MND") referenced above. Therefore, it is our understanding that this appeal, which includes an appeal to the certification of the MND (the "CEQA Appeal"), also operates to stay the Director's Determination and tolls the statute of limitations to file a writ of mandate in the Superior Court. Therefore, our reasons for appeal stated below also include specific objections the Director's Determination even if that determination is not currently before the City Council on appeal.

**Density Bonus Determination**

California Government Code Section 65915, under which LAMC Section 12.22 A 25 operates, states that a bonus density and related concessions are available unless they are "not required in order to provide for affordable housing costs . . . or for rents for the targeted units . . ." Nevertheless, while the Director's Determination states that the incentives are necessary to provide the financial means to set aside the affordable units, there is no economic analysis to substantiate that finding. The Director's finding is simply conclusory in nature and states that the incentives are necessary and that granting the bonus density is required to make all of the units the same size and provide for less expensive at grade parking. However, there is very little reference whatsoever to any empirical evidence, market data and/or economic analysis to support this conclusion. Furthermore, analyzing the economics of the Project ourselves, it is clear that

the incentives and bonus density that have been requested are not necessarily required to make the project economically feasible in terms of providing the four affordable units offered by the Project.

We also question how the Director can make the required health and safety findings in light of the real health and safety issues associated with the construction phase of the Project involving the alleys as well as the circulation and access issues described below.

The proposed height of the Project from grade (68 feet at some points) is over the allowable height incentive provided by the "on-menu" LAMC Bonus Density incentives. Even given the difference between the lowest and highest grade on the site, the proposed height violates LAMC Section 12.21.1B2. Additionally, the applicant's representative stated at the Advisory Agency hearing on May 8, 2012 that the Project is a "hillside project." If that is the case the relief contained in LAMC Section 12.21.1B2 does not apply at all.

#### **Violation of the Los Angeles Municipal Code**

Los Angeles Municipal Code Section 12.22 A.25(g)(2)(ii) requires that the Density Bonus request be heard as part of the tract map case by the Advisory Agency. Despite that fact, the Advisory Agency stated affirmatively that it would not be hearing the bonus density part of the case. This is contrary to the law. The code specifically states that "[w]hen the [density bonus] application is filed as part of a project requiring multiple approvals, the initial decision maker shall be as set forth in Section 12.36 of this Code; and when the application is filed in conjunction with a subdivision and no other approval, the Advisory Agency shall be the initial decision-maker." At the City Planning Commission hearing, the City Attorney did not address this issue but rather confused it with an unrelated issue and did not allow us, as the appellant, to correct his confusion so that he could adequately address this failure to comply with the LAMC.

#### **Adoption of Mitigated Negative Declaration**

On November 18, 2013 the City of Los Angeles released a proposed **recirculated** mitigated negative declaration (the "MND") for the Project that identifies a number of environmental impacts that can supposedly be mitigated to a level of insignificance. (Please note that the MND is inexplicably pre-dated November 18, 2013 as if it was signed by the City on that day). However, the Director's Decision does not reference the recirculated MND, but rather the original MND and "adopts" that original MND. In addition, the "Environmental Mitigation Compliance Conditions" in the Director's Determination are inconsistent, in a number of instances, with the mitigation measures included with the Project's tract map approvals and the MND and/or recirculated MND.

Regardless of which MND is considered for the Project (the original or the recirculated MND), we believe the Project cannot proceed as proposed and that a full Environmental Impact

Report should be prepared and circulated prior to any further consideration of the requested Project approvals. Specifically, the proposed MND is legally deficient in many respects. This fact, as well as others discussed below, leads us to conclude that the Project will create numerous significant environmental impacts that have not been sufficiently analyzed and that will therefore not be mitigated by the proposed mitigation measures. The EIR should broaden the scope of environmental review and identify probable impacts that will result from the Project.

We also note that various environmental reports/technical studies for the Project (i.e., traffic/transportation, noise, greenhouse gas emissions, noise etc.) are non-existent or were not made available to the public for review. Therefore there is inadequate record evidence to support many of the MND's baseless conclusions. The MND states "[a]ll supporting documents and references are contained in the Environmental Case File referenced above and may be viewed in the EIR Unit, Room 763, City Hall." However, after visiting the Environmental Case File in Room 763 of Los Angeles City Hall, we confirmed that the file contains no underlying environmental reports for the Project whatsoever other than a shade/shadow report. Despite numerous verbal and written requests to City Staff for copies of any and all such reports, none were made available to us for review.<sup>1</sup> Should these reports exist, they cannot be used to support the conclusions of the MND if they are not available for public review. CEQA as well as other state laws require their public disclosure.

In addition to items identified in the attached letter from technical expert Urban Crossroads engineers<sup>2</sup>, the following is a list of some additional deficiencies we have identified in the MND:

1. The Environmental Mitigation Compliance Conditions conclude that the Project would not create a significant transportation impact and lists as the sole Transportation/Traffic mitigation measures that the applicant install signs, limit dirt import and obtain a haul route approval subject to certain conditions. First, it appears that these Compliance Conditions totally

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<sup>1</sup> Please note that in their report to the Planning Commission staff excerpts emails from the Appellant claiming that the Appellant chose not to visit the case file and was out of town during the review period. This claim is factually incorrect. A review of the entire email chain in question (which staff conveniently chose not to include in its report to the Commission) clearly shows that the Appellant caused a representative to visit the case file where no geotechnical report could be found. The Appellant clearly continued to correspond with Planning Staff thereafter renewing requests to review this phantom geotechnical report. Such requests fell on deaf ears and the City never provided the geotechnical report for review. The written record is clear on this fact.

<sup>2</sup> The City Planning Staff and Commission have dismissed, a concern submitted by a transportation expert about the Project's potential for vehicular Greenhouse gas impacts by stating that such impacts are mitigated by the fact that the project is mandated to comply with the LABC which is based on Title 24 as well as the Cal Green Code. That response is inaccurate and it is clear that appropriate mitigation relative to the mobile emissions has not been provided. The LABC and Cal Green Code govern construction and therefore stationary emissions. It is a well understood fact that a significant percentage, an overwhelming majority in fact, of GHG emissions emanate from mobile sources, like vehicular trips. Stationary emissions and mobile emissions are distinct and entirely different. Staff, has also relies on SQAMD screening standards from 2006 which is in appropriate given the adjacent sensitive receptors including two schools.

ignore transportation impacts that will result during the operation phase of the project and solely focus on impacts during the construction phase. Second, the Compliance Conditions ((No. 35(f)) state that “[t]he project will result in impacts to transportation and/or traffic systems. **However, the impact can be reduced to a less than significant level through compliance with the following measures.**” However, there are NO measures listed following this statement at all.

The public then is required to search through the recirculated MND to find a corollary condition that states the only measure (at 16-80 ): “the applicant shall provide a tentative schedule for delivery materials and haul materials to DOT and follow direction on various traffic mitigation including but not limited to direction signed, flag men, and all deliveries shall take place during off-pick [sic] hours.” That is clearly inadequate mitigation. First it only attempts to address construction, not operation of the project. Second, this is not mitigation at all but instead is a deferral of mitigation. Under CEQA, mitigation must be definite. There also has to be a mechanism for monitoring and compliance. The stated mitigation is deferred into oblivion without providing the public any certainty that any measures will ever be implemented.

Further, the MND itself required unspecified “various traffic mitigation” and provides some examples. There is no underlying report that provides any evidence that such traffic mitigation will mitigate the identified significant impacts. The initial study simply and summarily concludes that it will not cause any significant impact. Contrary to the conclusory statements in the MND, that are unsupported by any record evidence or otherwise, the Project, including during its construction and operational phases, would create significant access and circulation problems in the immediate area. Specifically, the Project would cause serious congestion and queuing in the very narrow alleys on two sides of the Project. One of these alleys is the only thing that separates our office from the Project and from which we take our only access to our parking garages. This is a health and safety issue as we need to be able to enter and exit the parking garages from this location and have no alternatives in an emergency or otherwise. We requested that these issues be specifically addressed when commenting on the original MND and the recirculated MND and unfortunately these concerns have not been addressed.

Staff has stated “there was no need for a traffic/transportation study . . .” under the City’s CEQA Thresholds and LADOT rules. That is simply incorrect. In fact, one of the staff appeal reports includes, as an exhibit I, LADOT’s stated policy which says that for projects in a transportation specific plan area an initial assessment by DOT is required. The staff reports on file states that nevertheless, the City later decided there was enough of a reason to request that LADOT review the project. However, DOT’s analysis was conveniently released after the MND public comment period closed. Specifically, the recirculated MND was published on October 17, 2013, the public comment period ended on November 18, 2013 and DOT’s report is dated November 26, 2013. Therefore the MND made conclusions about the traffic impacts of the Project without the DOT Assessment and contrary to what is stated in the staff reports. CEQA exists to require public disclosure of environmental impacts to foster informed public comment and public agency decision making about whether and under what circumstances to approve a project. In this case, the public was not afforded the opportunity for informed comment because

the reports upon which the environmental document supposedly relies was produced as an afterthought and after the public comment period closed. This is an egregious violation of the public disclosure requirements mandated by CEQA.

The MND itself concludes, again without any analysis, that there will be no Level of Service impacts to any surrounding intersections. As someone who drives this neighborhood every day, I can testify that there certainly seem to be many failing intersections around the project vicinity and given the City's low threshold for triggering significant impacts at LOS F intersections, this issue merits at least some real some analysis. I note that there is also no analysis of cumulative impacts whatsoever.

2. The MND omits from environmental review several categories of environmental impacts, including Population and Housing and others. The MND fails, however, to explain or provide any reason why these impacts were excluded; *cf.* 14 Cal. Code of Regs. § 15082(a)(1) (requiring sufficient information about the project impacts for responsible agencies to make meaningful responses). These impacts must either be included, or, if omitted, the City must revise and recirculate the CEQA document to provide an explanation for why they were omitted.

4. As stated above, most technical studies are missing from the public file and therefore cannot serve as the basis for the analysis contained in the MND. These include including traffic, air quality, hazardous materials, noise etc. In light of these inadequacies in the environmental work for the Project any future environmental review must essentially start over and begin the analysis with reliable and up-to-date information.

5. The EIR should review the potential for asbestos contamination during demolition in detail and ensure adequate mitigation given the fact that sensitive receptors including homes, a nursery school and an elementary school are immediately adjacent to the Project site.

6. The notice of the MND is incorrect. Both the Los Angeles Times publication as well as the project description on the MND itself are misleading. Both state that the applicant is seeking two Density Bonus Incentives as provided for by the LAMC, however upon further reading, there are at least three incentives being sought: One for height, another for floor area and a third for parking. While the first two may be choices available to the applicant, while the third is not, there are nevertheless three (3) incentives being sought. Therefore the information contained in the notice and the project description is incorrect.

7. According to ZIMAS, the Project is within a fault zone (Santa Monica Fault) as well as an area with liquefaction potential. Nevertheless the MND simply purports to adequately mitigate any seismic or liquefaction impacts by requiring the developer to comply with the California Building Code and submit a geotechnical report to the Department of Building and Safety. The City should require submission of the geotechnical report prior to approval of the Project's entitlements so that it can be reviewed and be made available for public review. In deferring this report until after entitlements are granted, the City is obviating the required public disclosure of possible impacts and formulation of necessary mitigation mandated by CEQA. The

City Council  
City of Los Angeles  
April 29, 2014

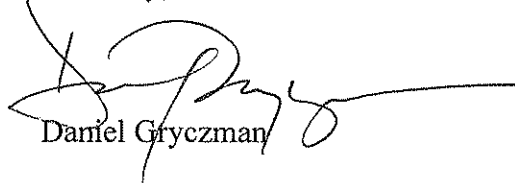
City is also preventing the public review and comment that CEQA mandates and that could materially influence the decision making process. Specifically, the mitigation in the MND is conclusory and unsupported by any record evidence. The MND is relying on mitigation of seismic impacts that have yet to be studied, specified or developed. It is insufficient for the City to simply rely on a future geotechnical report to adequately mitigate impacts.

We understand that the City believes it can process the application with a MND. However the courts have been very clear with regard to the legal standard for reviewing the appropriateness of a Negative Declaration versus an EIR. An MND is inappropriate if it can be "fairly argued" that the project may cause significant environmental impacts. Under this fair argument standard, an EIR must be prepared whenever opponents make a fair argument, based on substantial evidence, that the project may have significant environmental impact. Under the fair argument standard, a project may have significant effect whenever there is a reasonable possibility of a significant effect. Substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. The arguments discussed above as well as in the letter from Urban Crossroads clearly create such a fair argument. Therefore an EIR is warranted and required by law in this case.

Our concerns regarding this Project are very serious and we strongly oppose the Project as proposed. We look forward to working with the City to ensure this Project complies with CEQA and other states laws as well as the LAMC. Furthermore, we must add that as real estate developers ourselves, we were very surprised to learn of the Project at the last minute via a written notice rather than having been approached by the developers. We have never opposed any project and are generally in favor of growth and development however on the same note we have never heard of a project in which the developer does not reach out to its closest neighbor.

Thank you for your consideration.

Sincerely,



Daniel Gryczman

Attachment