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- Michael Valdivia
- Patrice Lattimore
- Todd Gaydowski
- Tom Wong
- Carolina Peters
- Albert Lao

## Fwd: lost attachment

Inbox x



**Rocky Wiles**

2:00 PM (38 minutes ago)

to me

This is another communication from the appellant for the file.

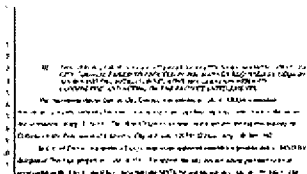
Thanks



**Rocky Wiles**  
**Commission Office Manager**  
**Department of City Planning**  
 T: (213) 978-1389 | M: (818) 307-4877  
 200 N. Spring St., Room 528  
 Los Angeles, CA. 90012

----- Forwarded message -----  
 From: [ggg@copper.net](mailto:ggg@copper.net) <[ggg@copper.net](mailto:ggg@copper.net)>  
 Date: Thu, Jun 8, 2017 at 12:19 PM  
 Subject: lost attachment  
 To: [rocky.wiles@lacity.org](mailto:rocky.wiles@lacity.org)

rocky,  
 here is the resend of the lost attachment to my appeal. please send this and resend the mumaw case to the city clerk with your transmittal letter for my appeal. please coordinate with the clerk so that they are correctly identified in the council file as a communication from the CPC and that they are part of the appeal. also, please ask the clerk to remove the duplicate and erroneous communication from the public entries in the council file.  
 george



**PDF** Pages from BS16.

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2  
3           III.    THE OPPOSITION HAS FAILED TO REFUTE PETITIONERS' SHOWING THAT THE  
4           CITY COUNCIL FAILED TO PROCEED IN THE MANNER REQUIRED BY CEQA BY  
5           APPROVING THE MITIGATED NEGATIVE DECLARATION WITHOUT  
6           CONSIDERING AND ACTING ON THE PROJECT ENTITLEMENTS.

7           The opposition claims that the City Council was entitled to split its CEQA-mandated  
8           discretionary review authority because it was acting in an appellate capacity, rather than as the initial  
9           decisionmaker. (Opp. 27:9-11.) This flips CEQA on its head, and it ignores the express holding of  
10          *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal. App. 4th 340, 362.

11          In *City of Fresno*, a non-elected city commission approved demolition permits and an MND for  
12          designated "heritage properties." (*Id.* at 351.) On appeal, the city council acting pursuant to local  
13          regulations as the City Council here, reviewed the MND, but not the permits. (*Id.* at 559-360.) The  
14          court held that this procedure violated CEQA:

15                 "A decision on both matters must be made by the same decisionmaking body because ' . . .  
16                 CEQA is violated when the authority to approve or disapprove the project is separated from the  
17                 responsibility to complete the environmental review.' [Citation.] Here, the record shows that  
18                 the City Council did not make both decisions. Rather, it considered only the mitigated negative  
19                 declaration."

20          (*Id.* at 360.) The exact same factual scenario occurred in our case. The City Council reviewed only the  
21          MND, and did not review the variance or CUP. (ROP 505 ["[t]he only thing before you . . . is the  
22          environmental determination."].) The City therefore erred by separating environmental review from the  
23          Project's underlying entitlements.

24          The opposition tries to dodge the bullet by saying that the City complied with CEQA by having  
25          the ZA to consider all aspects of the Project, including the MND, CUP, and variance in the first instance.  
26          (Opp. at 27:5-8.) The opposition then argues that the City was permitted under *local regulations* (the  
27          City Charter and zoning ordinance) to leave appellate jurisdiction to the APC. This is nonsense. By  
28          following City regulations conflicting with CEQA, as construed in *City of Fresno*, the council  
29          prejudicially abused its discretion under CEQA. The City's permit appeal review procedures are in  
30          violation of CEQA, and the City cannot escape its obligations by delegating review of the whole project  
31          to a single, unelected decisionmaker. (*Vedanta Soc'y of So. Cal. v. Cal. Quartet* (2000) 84 Cal.App.4th  
32          517, 527; accord *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779.)

33          Furthermore, the City Council, and, for that matter, the PLUM Committee, never considered, or  
34          even purported to use independent judgment and analysis in considering Ms. Shain's appeal from the  
35          APC's decision under CEQA. (ROP 307-08, 35.) This, too, was prejudicial error. Guidelines section

1 15074 spells out a lead agency’s elected decisionmaking body’s own CEQA duty, when subordinate  
2 agency decisionmakers, based on the ROP *before them*, have determined that an MND is appropriate,  
3 i.e., that the ROP *before them* was devoid of any substantial evidence showing “a substantial, or  
4 potentially substantial, adverse change in the environment.” (§ 21068.) As stated in subdivision (b) of  
5 Guidelines section 15074:

6 “Prior to approving a project, the decisionmaking body of the lead agency shall consider the  
7 proposed [MND] together with any comments received during the public review process. The  
8 decisionmaking body shall adopt the proposed . . . [MND] only if it finds on the basis of the  
9 whole record *before it* (including the initial study and any comments received), that there is no  
10 substantial evidence that the project will have a significant effect on the environment and that the  
11 . . . [MND] reflects the lead agency’s independent judgment and analysis.”

12 (*Id.*, subd. (b), emphasis added; see §§ 21082.1, subd. (c)(3), 21151, subd. (c); Guidelines, § 15074,  
13 subd. (f).) This means the City Council, “as an independent decisionmaking body when it deal[s] with  
14 [an] appeal of [a subordinate body’s] decision,” must consider and determine, “*based on their own*  
15 *independent judgment and analysis*, that the evidence showed the Project would not have a significant  
16 effect on the environment.” (*City of Fresno*, 229 Cal.App.4th 340, 361–362, original emphasis; see  
17 *Citizens Assn.*, 172 Cal.App.3d at 173 [where evidence is “not properly considered by the lead agency  
18 the reviewing court may find an abuse of discretion”].) This rule makes sense since the record before  
19 the council almost invariably contains evidence (including citizen testimony) that was not before the  
20 subordinate City decisionmakers. And when the record of the appeal hearing before the elected  
21 decisionmaking body fails to reveal findings demonstrating independent judgment and analysis *by that*  
22 *body*, the staff report for it must explicitly demonstrate that the adoption of the MND reflects such  
23 independent judgment and analysis. (*City of Fresno*, 229 Cal.App.4th 340, at 362.) If it doesn’t, “the  
24 City Council simply might have been deciding that the record was sufficient to support the [subordinate  
25 City review body] decision.” (*Id.* at 362.) That violates CEQA because the administrative appeal must  
26 “as a separate and independent procedure,” comply with the findings requirements for an MND, and if it  
27 does not, writ of mandate relief will be upheld. (*Id.*)  
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