

ORIGINAL



APPLICATIONS:

APPEAL APPLICATION

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

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

Area Planning Commission City Planning Commission City Council Director of Planning

Regarding Case Number: ENV. 2015-3927-MND

Project Address: 675-85 S. BIXEL ST.

Final Date to Appeal: 03/15/2018

Type of Appeal:

- Appeal by Applicant/Owner
 Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
 Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): John W. Mackay

Company: Little Wood Landings LLC

Mailing Address: 4679 W. Prickly Pear Dr.

City: Eagle State: ID Zip: 83616

Telephone: 208-863-3938 E-mail: mackinvest12@yahoo.com

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

Self Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): _____

Company: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ E-mail: _____

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4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

Entire

Part

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

5. APPLICANT'S AFFIDAVIT

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

Appellant Signature: _____

Date: 3/6/2018

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- 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.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- 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.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$89-</u>	Reviewed & Accepted by (BSC Planner): <u>Yarawa Perez</u>	Date: <u>3/6/18</u>
Receipt No: <u>0104858716</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	

Re: Appeal Application for Bixel Tower Residence Project; Case Nos. ZA-2015-3926-CU-CUB-SPAA-SPP, ENV-2015-3927-MND; Approved by Zoning Administrator on 9/27/17; Appeal Denied by Central APC on 2/28/18

Dear Honorable PLUM Commissioners:

This Appeal challenges the mitigated negative declaration (“MND”) for the referenced **Bixel Tower Residence Project** (“Project”), pursuant the California Environmental Quality Act (“CEQA”) and respectfully requests an adequate environmental impact reports (“EIR”) is prepared for the following reasons:

1. **Applicant failed to adequately respond to CEQA comments:** Applicant *failed to mention*, much less address, the environmentally superior Modified Design project-alternative proposed by Appellant that moves the tower to the west. This Modified Design is feasible and reduces environmental impacts including shadow impacts that are inconsistent with the Central City West Specific Plan (“CCWSP”).

Moreover, the Department of City Planning (“DCP”) *entirely ignored* land use inconsistency concerns raised, including but not limited to:

- Failure to demonstrate “unnecessary hardship” to justify deviations from neighborhood use requirements or massing setbacks for the hotel,
- Failure to guarantee the Project’s residential units will be actually used to house residents and not turned into more short-term hotel units, and
- Inconsistency with DCP’s Parking Podium Advisory issued by the City of Los Angeles (“City”).

Additionally, this Appeal takes issue with the Project receiving excessive guest rooms. The hotel site is 19,266 square feet (“SF”) and zoned C4, is subject to the plain language of LAMC §§ 12.16.C.3 and 12.11.C (requiring 200 SF of lot area per guestroom), and therefore limits the Project to a maximum of 97 guestrooms¹—not 126 guestrooms. The Zoning Administrator Interpretation (“ZAI”) relied upon by the applicant here, including ZAI of LAMC § 12.22.A.18, is contrary to the plain language of the City’s Municipal Code and does not further the purpose of that Code section—to create multi-family residential housing, not hotel guestrooms.²

2. **There is a “Fair Argument” of Air Quality, GHG & Traffic Impacts:** CEQA favors EIRs; MNDs, such as that used for this Project, are analyzed under the low threshold known as the “fair argument” standard. Here, the Project is massive including 548 residential/hotel units, 43 stories, and 588,000+ SF on a ten-lot unified development site (1.95 acres). Expert letters show a “fair argument” of significant air quality, greenhouse gas (“GHG”), and traffic impacts. An EIR is needed.

¹ Calculated by 19,266 SF lot / 200 SF = 96.13 guestrooms.

² See PLUM Committee Staff Report (6/28/10) RE: City Plan Case NO. 2010-961-CA, pp. 5-10, available at http://clkrep.lacity.org/onlinedocs/2010/10-1354_rpt_plan_7-28-10.pdf; see also City Attorney Report (8/9/11) Report No. R11-0315, available at http://clkrep.lacity.org/onlinedocs/2010/10-1354_rpt_atty_8-9-11.pdf.

Similar mixed-use projects roughly one-block away from the Project have used EIRs to analyze impacts and consider project-alternatives, such as the Bixel & Lucas project at 1120 W. Sixth St. (648-725 residential units on a unified development)³ and the Sapphire project at 1111 W. Sixth St. (369 residential units, 22,000 SF of neighborhood uses [e.g., retail, restaurant, coffee shop], within two structures totalling 348,431 SF on a 13-lot site [1.92 acres]).⁴

3. **Shade Impacts Are Inconsistent With the CCWSP.** The Project will cast significant shadows on pool areas at 1100 Wilshire and 664 S. Bixel (between Seventh and Wilshire), which will affect residents and patrons at the apartment complex that provides genuine neighborhood uses (e.g., coffee shop, market, dry-cleaning). Under CCWSP §§ 6.B.1 and 8.A.5, these residential uses should be protected from shadow impacts. Since the adoption of the CCWSP in 1991,⁵ residential uses have increasingly encroached commercial areas within the Wilshire Corridor District, such as the above-mentioned properties immediately adjacent to the Project.⁶ The properties are functionally equivalent to the R4(CW) and RC4(CW) zoned property. Hence, the Project as proposed is inconsistent with the purpose and intent of the CCWSP. The Modified Design would substantially reduce these impacts.

4. **Segregating CEQA From Projects Approvals Is Unlawful.** Here, the CEQA approval is appealable to Council, but the Project's underlying land use entitlement approvals purportedly are not. This violates CEQA. A decision on both matters must be made by the same decisionmaking body because "... CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review." *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360.

For these reasons, PLUM should overturn APC's certification of the MND and require an EIR to be prepared for the Project, pursuant to CEQA.

³ Processed under ENV-2007-5887. See e.g., DCP Website, available at <http://planning.lacity.org/caseinfo/casesummary.aspx?case=ENV-2007-5887-EIR>; CEQA State Clearinghouse No. 2008041049, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=660739>; Final EIR, p. 1-6, available at https://planning.lacity.org/eir/Bixel_LucasProj/FEIR/Bixel_Lucas_Final_EIR_August_2012.pdf; Executive Summary, pp. 4-6, available at https://planning.lacity.org/eir/Bixel_LucasProj/DEIR/DEIR/I_Executive_Summary.pdf.

⁴ Processed under APCC-2015-3032/ENV-2015-3033. See e.g., DCP Website, available at <http://planning.lacity.org/caseinfo/casesummary.aspx?case=APCC-2015-3032-SPE-SPP-SPPA-MSD>; DCP Website, available at <http://planning.lacity.org/caseinfo/casesummary.aspx?case=ENV-2015-3033-EIR>; CEQA State Clearinghouse No. 2016031029, available at <http://www.ceqanet.ca.gov/DocDescription.asp?DocPK=700218>; Executive Summary, p. 2., available at <https://planning.lacity.org/eir/Sapphire/Deir/assets/1.%20Executive%20Summary.pdf>.

⁵ See Ordinance 166703, available at http://clkrep.lacity.org/online/docs/1987/87-0168-S2_ORD_166703_04-03-1991.pdf; see also Council File No. 87-0168-S2, available at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=87-0168-S2>.

⁶ See e.g., 1100 W. Wilshire Blvd. (conversion of office space into 240 dwelling-units and 17,000 SF of commercial space in 2004 entitled under CPC-2003-5286), available at <http://planning.lacity.org/caseinfo/casesummary.aspx?case=CPC-2003-5286-SPE-ZV-CU-ZAD-SPP>; 666 S. Bixel St. (construction of 214 dwelling-units and 7,743 SF of commercial retail between 2003 and 2009 under DIR-2003-1372 and DIR-2008-3169), available at <http://planning.lacity.org/caseinfo/casesummary.aspx?case=DIR-2003-1372-SPP-SPPA> and <http://planning.lacity.org/caseinfo/casesummary.aspx?case=DIR-2008-3169-DB>.