

**DEPARTMENT OF  
CITY PLANNING**

**CITY PLANNING COMMISSION**

DAVID H. J. AMBROZ  
PRESIDENT

RENEE DAKE WILSON  
VICE-PRESIDENT

CAROLINE CHOE  
VAHID KHORSAND  
SAMANTHA MILLMAN  
MARC MITCHELL  
VERONICA PADILLA-CAMPOS  
DANA M. PERLMAN  
VACANT

ROCKY WILES  
COMMISSION OFFICE MANAGER  
(213) 978-1300

**CITY OF LOS ANGELES**  
CALIFORNIA



ERIC GARCETTI  
MAYOR

**EXECUTIVE OFFICES**  
200 N. SPRING STREET, ROOM 525  
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP  
DIRECTOR  
(213) 978-1271

KEVIN J. KELLER, AICP  
EXECUTIVE OFFICER  
(213) 978-1272

LISA M. WEBBER, AICP  
DEPUTY DIRECTOR  
(213) 978-1274

<http://planning.lacity.org>

**DEPARTMENT OF CITY PLANNING**  
**APPEAL REPORT**

**Date:** May 22, 2018  
**Time:** After 2:30 P.M.  
**Place:** Los Angeles City Hall  
200 N. Spring Street, Third Floor  
Los Angeles, CA 90012

**Public Hearing Completed:** February 17, 2018  
**Appeal Status:** Appealed  
**Expiration Date:** May 22, 2018  
**Appeal Status:** Pursuant to LAMC Section 11.5.7, the Appeal is no longer appealable

**Case No.:** APCC-2015-3032-SPE-SPPA-SPP-MS-1A  
**CEQA No.:** ENV-2015-3033-EIR  
**SCH No.:** 2016031029  
**Incidental Cases:** n/a  
**Related Cases:** None  
**Council No.:** 1 – Councilmember Cedillo  
**Plan Area:** Westlake  
**Specific Plan:** Central City West  
**Certified NC:** Westlake North  
**General Plan:** *Regional Center Commercial; Community Commercial; and High Density Residential*  
**Zone:** *C4(CW)-U/4.5; C2(CW)-U/3; and R5(CW)-U/6*  
**Applicant:** Albert Taban, Sapphire Equity, LLC.  
**Representative:** Alex Irvine, Irvine & Associates, Inc.  
**Appellants:** Carpenters/Contractors Cooperation Committee; and Sapphire Equity, LLC.

**PROJECT LOCATION:** 1101-1135 W. 6th Street; 1324-1342 W. 5th St, and 517-521 S. Bixel St.

**PROPOSED PROJECT:** A mixed-use development consisting of up to 369 residential units and up to 22,000 square feet (sf) of ground floor retail use. The project would consist of the construction of two buildings (North Building and South Building) that would be connected by a footbridge spanning above the adjacent alleyway. The North Building would include 142 apartment units within seven levels and would front on 5th Street. The South Building would include 22,000 sf of ground-floor retail and 227 apartment units within six levels above the ground-floor retail

and would front both 6th Street and Bixel Street. Both buildings include seven stories above grade and two levels of subterranean parking. In total, the project would contain approximately 348,430 sf of floor area.

As part of the project, the existing structures on-site, including a three-level parking structure, one five-story commercial office and medical office building, and one four-story commercial office and medical office building, will be demolished.

#### REQUESTED ACTIONS:

- 1) An appeal of the entire decision of the Central Area Planning Commission in approving the following actions:
  - a. Pursuant to Sections 21082.1(c) and 21081.6 of the Public Resources Code, the Central Area Planning Commission has reviewed and considered the information contained in the Environmental Impact Report prepared for this project, which includes the Draft EIR and Revised Draft EIR, No. ENV-2015-3033-EIR (SCH No. 2016031029), the Final EIR, dated January 12, 2018 (Sapphire EIR), as well as the whole of the administrative record, and

Certified the following:

The Sapphire EIR has been completed in compliance with the California Environmental Quality Act (CEQA);  
 The Sapphire EIR was presented to the Central Area Planning Commission as a decision-making body of the lead agency; and  
 The Sapphire EIR reflects the independent judgment and analysis of the lead agency.

**ADOPTED** the following:

The related and prepared Sapphire Environmental Findings;  
 The Statement of Overriding Considerations; and  
 The Mitigation Monitoring Program prepared for the Sapphire EIR.

- 2) An appeal of Condition No. 15 to require that the project be subject to Section 11 of the Central City West Specific Plan to comply with Inclusionary Housing Requirements.

#### RECOMMENDED ACTIONS:

**Deny** the appeals, and sustain the following actions of the Central Area Planning Commission in approving the project:

1. Pursuant to Sections 21082.1(c) and 21081.6 of the Public Resources Code, **find**, that the Central Area Planning Commission, has reviewed and considered the information contained in the Environmental Impact Report No. ENV-2015-3033-EIR, SCH No. 2016031029, dated July, 2017 and the Final EIR, dated January 12, 2018 and Errata, dated March, 2018 (collectively, the Sapphire Project EIR) as well as the whole of the administrative record.

**Certified** that:

- a. The Sapphire Project EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
- b. The Sapphire Project EIR was presented to the Central Area Planning Commission as a decision-making body of the lead agency; and
- c. The Sapphire Project EIR reflects the independent judgment and analysis of the lead agency.

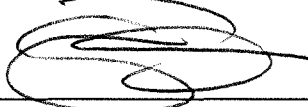
**Adopted** the following:

- a. The related and prepared Sapphire Project Environmental Findings;
- b. The Statement of Overriding Considerations; and,

- a. The related and prepared Sapphire Project Environmental Findings;
- b. The Statement of Overriding Considerations; and,
- c. The Mitigation Monitoring Program prepared for the Sapphire Project EIR.

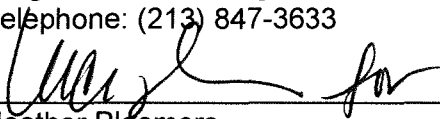
**APCC-2015-3032-SPE-SPPA-SPP-MS-1A**

- 2. **Approved the Project Permit Compliance review;**
- 3. **Approved the Specific Plan Exceptions:**
  - a. From **CCWSP Section 6.F-2** to allow a (0) zero front yard setback in lieu of the 15 ft. for the North Building;
  - b. to allow a (0) zero side yard setbacks for the east and west property lines in lieu of 10 ft. setback for the North Building;
  - c. and to allow a (0) zero rear yard setback in lieu of 19 ft. (15 ft.+ 1 ft. above the 3<sup>rd</sup> floor) of the 7 story building setback for the North Building,
  - d. from **CCWSP Section 6.F-6** to allow a (0) zero rear yard setback in lieu of the 19 ft. for the South Building. (15 ft. above the 3<sup>rd</sup> floor of the 7 story building),
- 4. **Approved a Specific Plan Project Permit Adjustment** to average or reallocate the permitted density and floor area within the South Building portion of the site.
- 5. **Approved a Director's Determination** to allow for a 10% increase in the qualifying area of interior open space for a maximum of 35%, in lieu of the 25% of the total required usable open space required by 12.21-G,2(a)4,i.
- 6. **Approved a Specific Plan Exception** from **CCWSP Appendix C.1.K** to deviate from the street standards of Fifth Street to be consistent with the newly adopted Mobility Element.



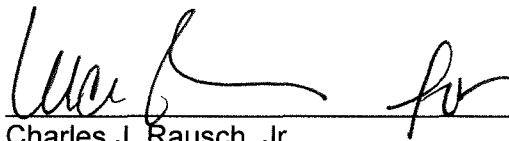

---

Sergio Ibarra, Hearing Officer  
 Telephone: (213) 847-3633




---

Heather Bleemers  
 Senior City Planner




---

Charles J. Rausch, Jr.  
 Interim Chief Zoning Administrator

**ADVICE TO PUBLIC:** \*The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the *Commission Secretariat, 200 North Spring Street, Room 532, Los Angeles, CA 90012* (Phone No. 213-978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent out the week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to this programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request not later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at (213) 978-1300.

## TABLE OF CONTENTS

**Project Analysis ..... A-1**

Project Summary  
Background  
Conclusion

**Appeal ..... B-1**

Summary of Appellant Comments and Staff Response

**Exhibits:**

A – Appeal Documents

## PROJECT SUMMARY

The project site as a whole is located in the Crown Hill District identified in the CCWSP. This District, situated just to the west of the Harbor Freeway and Financial District, is currently undergoing redevelopment activity, principally high-density residential and mixed-use projects. The subject property is also located within the Central City Revitalization Zone.

The topography of the site has an approximately 13-foot slope, which ranges from approximately 373 feet above sea level on the northern portion of the site to 360 feet above sea level in the 6th Street portion of the site. The North Building portion currently contains a 3-story parking structure. The South Building portion currently contains one 4-story and one 5-story medical office building. All existing structures on this site would be demolished as part of the project.

The applicant, Sapphire Equity, LLC., is proposing a mixed-use project on an approximately 1.92-acre (83,659.0 SF) site bounded by Bixel Street to the east, Sixth Street to the south, and Fifth Street to the north. The Applicant proposes to demolish three existing structures and redevelop the site with two buildings collectively consisting of 369 dwelling units and 22,000 square feet of ground floor, neighborhood serving commercial space.

The South Building would replace two existing multi-story medical office buildings and would contain 227 dwelling units over 22,000 square feet of commercial ground floor space. The North Building would replace a multi-story parking structure and would contain 142 dwelling units.

Automobile parking would be provided in conformance with residential requirements of the Central City Parking Exception Area pursuant to LAMC Section 12.21.A.4.p and commercial requirements of the State identified Enterprise Zone, incorporating allowable reductions for provision of bicycle parking under LAMC Section 12.21.A.4. 251 automobile parking spaces are proposed for the South Building, and 139 automobile parking spaces are proposed for the North Building.

Include narrative as to when the APCC approved the project and when the appeals were filed.

Work with Shana and Jane to include a blurb about when the Inclusionary Zoning came into effect and why the project is subject to it.

### On-Site Land Use & Zoning

The South Building is a single, integrated building combining access, parking, residential uses, and ground floor, neighborhood serving retail that straddles the C4(CW)-U/4.5 and C2(CW)-U/3 zones, which have different height and density districts. The C4(CW)-U/4.5 zone permits an FAR of 4.5 times the buildable area of the lot. The C2(CW)-U/3 zone permits an FAR of 3 times the buildable area of the lot.

The North Building is a single, integrated building combining access, parking, and residential uses, with one zone designation, R5(CW)-U/6, which permits an FAR of 6 times the buildable area of the lot.

For the South Building, the Applicant is requesting to average floor area afforded by the C4(CW)-U/4.5 and C2(CW)-U/3 zones. The CCWSP permits floor area averaging in Section 6.1.3 when a project complies with the unified development standards enumerated in LAMC Section 12.24.W.19. The South Building constitutes a unified development as a single building combining access, parking, residential uses and amenities and ground floor, neighborhood serving retail. It has a single integrated architectural design and landscape features allowing it to appear as a consolidated and unified project. The South Building would comply with height and other applicable limitations for the C2(CW)-U/3 and C4(CW)-U/4.5 zones and,

notwithstanding averaging, would still have less total floor area than is permitted by each zone, as shown in the table above, outlining gross lot area and maximum FAR by zone.

The North Building would comply with the height and other applicable limitations of the R5(CW)-U/6 zone and, taken as whole with the South Building, would have significantly less floor area than is allowed for both buildings. The two buildings will be connected by a foot bridge above the abutting alley as shown in the proposed plan below:

### **Adjacent Land Uses**

The project area is characterized by a mix of commercial, residential, office, and multi-residential uses. Adjacent uses consist of mid-rise mixed-use residential and commercial buildings to the west, including a 2-story commercial building and Para Los Niños 3-story education center. To the north is a 2- to 4-story multiple residential building on the north side of 5th Street between Lucas Avenue and Bixel Street. To the south is an 8-story adaptively reused building with dwelling units and retail and a multi-phase, mixed use project under construction, covering most of the block between 6th Street, Bixel Street, Wilshire Boulevard, and Lucas Avenue. To the southwest is the Good Samaritan Hospital just west of Lucas Avenue and on the south side of 6th Street. The hospital consists of various buildings ranging in height from 2- to 8-stories. To the east are surface parking lots located east of Bixel Street between 5th and 6th Streets. The surrounding area is zoned CW for the Central City West Specific Plan, with a combination of properties designated as RC5 (Multiple Residential), CR (Commercial), R5 (Multiple Residential), and C2 (Commercial).

## **PROJECT BACKGROUND**

### **Zoning and Land Use Designation**

The Project comprises three parcels and contains approximately 83,659 net square feet (1.92 acres) of lot area. The site is bounded by 6th Street to the southwest, 5th Street to the northeast, and Bixel Street to the southeast. The site is located within the Westlake Community Plan Area and Central City West Specific Plan.

The CCWSP defines three zoning designations on the Project site. The North Building portion fronting 5th Street, is zoned R5(CW)-U/6, allowing a 6.0:1 FAR. The South Building portion fronting 6th Street is zoned C2(CW)-U/3, allowing a 3.0:1 FAR, and C4(CW)-U/4.5, allowing a 4.5:1 FAR. Pursuant to the Westlake Community Plan, there are three zones and three General Plan land use designations:

South Building portion: C4(CW)-U/4.5 (APNs 5152-001-023 and 5152-001-014; Lots 18, 7, and 6)

Land Use Designation: Regional Center Commercial

Corresponding Zones: C4, C2, C1, CR, RAS3, RAS4, P, PB

South Building portion: C2(CW)-U/3 (APN 5152-001-014; Lots 4 and 5)

Land Use Designation: Community Commercial

Corresponding Zones: C4, C2, C1, CR, RAS3, RAS4, P, PB

North Building portion: R5(CW)-U/6 (APN 5152-001-021)

Land Use Designation: High Density Residential

Corresponding Zone: R5.

## APPEAL ANALYSIS

### Sapphire Appeal

The two Appellants' statements have been summarized in the following categories (see attached Exhibits for the appellants' entire letter).

#### Appeal No. 1 – Applicant Appeal of Condition No. 15

##### Appellant's Statements:

- *Condition 15 unlawfully attempts to apply the inclusionary housing requirement of Section 11.C the Central City West Specific Plan ("Specific Plan") to the Project's rental units, requiring the Project to provide 15 percent of its 369 rental dwelling units – 56 units in total – as restricted affordable units or pay an lieu fee.*

##### Staff Response:

The Central City West Specific Plan (Plan) was adopted in 1991 and as a mitigation measure, the Plan includes the inclusionary housing requirements for all residential projects, including rental and for sale housing. These requirements include: 1) Replacement of any existing units on the site, or a 15% set aside of units for low income households, whichever is greater, or 2) the payment of an in-lieu fee. Per Section 2.D of the Plan, one of the goals was to protect Central City West's "existing residential community from further displacement, replace dwelling units previously removed from the Specific Plan area, and provide new housing in proportion to the need, by household size and income, associated with the existing community and new jobs generated in the Plan area."

As a result of a lawsuit in 2009, the State appellate court precluded the City from enforcing the Plan's inclusionary requirement against Palmer's mixed use project. It concluded that the Plan's inclusionary set aside conflicted with and is preempted by the vacancy decontrol provisions of the Costa-Hawkins Rental Housing Act (Civ.Code, § 1954.50 et seq. (the Costa-Hawkins Act or the Act)), which allows residential landlords to set the initial rent levels at the commencement of a tenancy.

In September 2017, a State Law passed changing this. Assembly Bill No. 1505 was adopted, which reaffirms the right of a legislative body of any county or city to adopt ordinances to require inclusionary affordable housing, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households or by persons and families of low or moderate income, as specified, and would declare the intent of the Legislature in adding this provision.

*(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.*

AB 1505 became effective January 1, 2018. All applicants with projects that were not vested through a vesting tract map, other vesting entitlement, or filing of plan check with LADBS have been notified of the fact that the inclusionary requirement in the Plan is now applicable to their project.

##### Appellant's Statements:

- *Condition 15 was imposed in a fundamentally unfair manner. After working hand-in-hand with the City for approximately three years to approve the Project, the Applicant first*

*learned about Condition 15 just two hours prior to the scheduled start of the Project's second and final public hearing before the CAPC on February 26, 2018. Condition 15 thus imposed a surprise, multi-million dollar burden on the Project at its final approval hearing with no notice and no warning at the very end of a three-year entitlement process.*

Staff Response:

It is extremely unlikely that Land Use experts and attorneys were unaware of this law given that Governor Brown's 15 affordable housing bills were covered widely by media outlets and were widely available since Fall, 2017.

Appellant's Statements:

- *In 2009, in Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396, 1412 ("Palmer"), the Court of Appeal ruled that Specific Plan Section 11.C's inclusionary housing provision and in lieu fee that were imposed on the Project's rental units via Condition 15 were preempted by the state Costa-Hawkins Rental Housing Act as applied to rental units, and were thus void.*

Staff Response:

As stated above, the State appellate court precluded the City from enforcing the Plan's inclusionary requirement against Palmer's mixed use project. While the court did determine that the City was preempted in imposing an inclusionary housing requirement on Palmer's project, the decision was limited to the facts of that case involving that particular project.

Appellant's Statements:

*The City has taken no legislative actions to implement AB 1505. Instead, the CAPC, on advice from the City Planning Department, has apparently taken the untenable position that the City may enforce the provision of the Specific Plan invalidated by the Court of Appeal in 2009 because AB 1505 allowed cities to adopt inclusionary housing ordinances as of January 1, 2018.*

Staff Response

The CCWSP contained regulations that are not new; the inclusionary requirement was always in the specific plan but it lay dormant for almost a decade as the city decided, in light of the Court's decision on the Palmer project, to refrain from enforcing the inclusionary component of the CCWSP.

Appellant's Statements:

*The legal effect of the Palmer decision was to permanently void Section 11.C of the Specific Plan as it applies to rental units – no subsequent legislative enactment such as AB 1505 could revive it. Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 544 (Ordinance found void and preempted by a court not automatically revived by later change in law); McClung v. Employment Development Dept. (2004) 34 Cal.4th 467, 468 (In light of the judiciary's authority to interpret laws, if a law is subject to judicial determination, a later legislative enactment to change the judicial result constitutes a change of law and can have no retroactive effect even if the Legislature states its intent was to clarify existing law).*



Staff Response

As previously summarized, Assembly Bill No. 1505 specifically superseded the holding and dicta in the 2009 Palmer Court decision. Assembly Bill No. 1505 declares the intent of the Legislature in adding these provisions as follows:

*(d) It is the intent of the Legislature to reaffirm the authority of local jurisdictions to include within these inclusionary housing ordinances requirements related to the provision of rental units.*

*(e) The Legislature declares its intent in adding subdivision (g) to Section 65850 of the Government Code, pursuant to Section 1 of this act, to supersede the holding and dicta in the court decision of Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code, as added pursuant to Section 1 of this act.*

Appellant's Statements:

*Neither the findings of fact, nor any other part of the over 100 page Letter of Determination addresses affordable housing. The Letter of Determination also does not mention Palmer nor AB 1505. Despite its multi-million dollar impact on the Project, Condition 15 appears to have been thrown into the Conditions of Approval at the last minute with no attempt at providing any written justification.*

Staff Response

The Central City West Specific Plan includes the inclusionary housing requirement for all residential projects, including rental and for sale housing, therefore the requirement for affordable housing would have been required regardless of whether Condition 15 was a part of the Letter of Determination or not. As a result, the findings of fact for the project do not need to be revised as the Central City West Specific Plan is simply being enforced.

Appellant's Statements:

*Since January 1, 2018, the City has approved at least one multi-family residential rental unit project in the Specific Plan area that does not require compliance with the invalidated Specific Plan inclusionary housing requirement. (See 2/16/2018 LOD in Case No. DIR-2017-1127-SPP). Accordingly, the City has not applied this invalid, economically devastating requirement in a fair and evenhanded manner.*

Staff Response

The applicant for the project at 1246 W Court Street filed for plan check and paid the fees on or around July 3, 2017. This vests them under LAMC Section 12.26 A 3, which grants a vested right for the project to proceed with its development in substantial compliance with the zoning, and development rules, regulations, ordinances and policies in force the date that the plan check fee was paid.

Appeal No. 2 - Carpenters/Contractors Cooperation Committee AppealAppellant's Statements:

*An EIR Must Inform, Analyze, and Mitigate Project Impacts*

*An EIR is “the heart of CEQA.” (Laurel Heights Improvement Ass’n v. Regents of University of California, (1988) 47 Cal.3d 376, 392 (“Laurel Heights”).) CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. (CEQA Guidelines § 15151; Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692.) “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Res. Code § 21061.) An EIR should provide sufficient analysis to inform the public about a proposed project’s adverse impacts and to allow decision-makers to make intelligent judgments. (Laurel Heights, supra, 41 Cal.3d 376.) The public and decision-makers need to fully understand the implications of the choices related to the proposed project, mitigation measures, and alternatives. (Laurel Heights, supra, 41 Ca1.3d 376.)*

Staff Response:

The Appellant’s comment has been noted for the record. In this comment, the Appellant restates the purpose of an EIR and cites several cases pertaining to the CEQA process. However, no specific concerns with respect to the Project or environmental analysis contained in the Draft EIR are identified. Therefore, no further response is warranted.

Appellant’s Statements:

*The EIR Fails to Discuss, Analyze, and Mitigate the Project’s Air Quality Impacts on Local Residents, the Community, and Construction Workers.*

*Basing its air quality findings on an assumption, the Sapphire EIR fails to provide the necessary facts and analysis to allow the City and the public to make informed decisions on the Project. In finding that the Project’s construction impact on air quality will be less than significant, the EIR assumes without any discussion or analysis that “[a]11 construction activity would be performed in accordance with all applicable state and federal laws and City Codes and policies with respect to building activities.” (DEIR section IV.B p. 30.)*

*The EIR’s assumption that Developer will comply with construction laws fails to meet the requirements and intent of CEQA for three reasons. First, the EIR does not provide the necessary facts and analysis allowing for an informed decision. For example, and with the exception of SCAQMD particulate mitigation rule 403, the document does not discuss which air quality related construction laws and rules the Project will be required to comply with and does not provide an analysis of how the Developer may be able to comply with the laws and rules. The EIR simply assumes that applicable laws can and will be observed. (DEIR section IV.B p. 30.) Second, the EIR fails to provide targeted mitigation measures focused at protecting specific groups, including community members and construction workers. Third, the EIR assumes the Project will comply with all applicable construction laws - even though Developer has a history of hiring subcontractors with a record for non-compliance with construction labor laws. (Leonoff v. Monterey County Bd. of Supervisors (1990) 222 Cal.App.3d 1337, 1355 “[a] condition requiring compliance with [] regulations ... [is] only proper where the public agency [has] meaningful information reasonably justifying an expectation of mitigation”.)*

Staff Response

The Appellant’s claim with respect to the adequacy of the analysis as presented in Section IV.B Air Quality of the Draft EIR is unsubstantiated. The Draft EIR provides a thorough analysis with respect to project impacts and implementation of regulatory code compliance. As discussed on Page IV.B-32 of the Draft EIR, the daily on-site construction emissions generated by the Project are analyzed against the SCAQMD’s localized significance thresholds to determine whether the emissions would cause or contribute to adverse localized air quality resulting in impacts to sensitive receptors. These calculations assume that appropriate dust control measures would

be implemented as part of the Project during each phase of development, as specified by SCAQMD Rule 403 (Fugitive Dust). Rule 403 control requirements include, but are not limited to, applying water in sufficient quantities to prevent the generation of visible dust plumes, applying soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project Site, and maintaining effective cover over exposed areas. The EIR also cited compliance with SCAQMD Rule 1113. As stated on page IV.B-7 of the DEIR, SCAQMD Rule 1113 sets forth specific VOC content standards (in grams per liter) for all products used in the application of architectural coatings that are sold or applied within the District.

With respect to the Appellant's concerns regarding implementation of regulatory compliance and mitigation, the Applicant would be required to implement all mitigation measures imposed on the Project and comply with all regulatory code compliance measures. The Appellant's claims that the lead agency approved the project without any mechanisms to monitor and enforce compliance with construction, safety, and labor laws do not relate to environmental impacts upon the environment and are not a CEQA issue. California labor laws are regulated by the State of California Labor Commission. Workplace health and safety is regulated by the State of California Division of Occupational Safety and Health (Cal/OSHA). Issues pertaining to construction of structures are regulated and enforced by the City of Los Angeles Department of Building and Safety. With respect to compliance with all applicable laws during construction, "[a]ll construction activities would be performed in accordance with all applicable state and federal laws and City Codes and policies with respect to building construction and activities." See DEIR at page II-47. Furthermore, Condition 20 on page C-3 of the Letter of Determination for the Project (Case No. APPCC-2015-3032-SPE-SPPA-SPP-MSC) specifically provides an enforcement provision that requires the developer to comply with the stated conditions of approval to the satisfaction of the Planning Department and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto. Furthermore, Condition 11 on page C-2 of the Letter of Determination provides enforcement provisions to ensure for the ongoing monitoring of implementation of project design features and mitigation measures during construction activities consistent with the monitoring phase and frequency set forth in this Mitigation Monitoring Program (MMP). Specifically, Condition 11 states the following:

11. Mitigation Monitor. During the construction phase and prior to the issuance of building permits, the applicant shall retain an independent Construction Monitor (either via the City or through a third-party consultant), approved by the Department of City Planning, who shall be responsible for monitoring implementation of project design features and mitigation measures during construction activities consistent with the monitoring phase and frequency set forth in this MMP.

The Construction Monitor shall also prepare documentation of the applicant's compliance with the project design features and mitigation measures during construction every 90 days in a form satisfactory to the Department of City Planning. The documentation must be signed by the applicant and Construction Monitor and be included as part of the applicant's Compliance Report. The Construction Monitor shall be obligated to immediately report to the Enforcement Agency any non-compliance with the mitigation measures and project design features within two businesses days if the applicant does not correct the non-compliance within a reasonable time of notification to the applicant by the monitor or if the noncompliance is repeated. Such non-compliance shall be appropriately addressed by the Enforcement Agency.

Thus, the Appellant's assertion that the Project was approved without a mechanism to monitor and enforce compliance with construction, safety, and labor laws is unfounded. No further analysis is warranted.

#### Appellant's Statements:

*The EIR Fails to Inform, Analyze, and Mitigate the Impacts of the Project's Hazardous Materials on Local Residents, the Community, and Construction Workers*

*The Project's demolition and construction phase is expected to expose local residents, the community, and construction workers to asbestos, solvents, volatile chemicals, and other hazardous materials. (DEIR section IV.F p. 8 ["due to the age of the existing buildings proposed for demolition, asbestos-containing materials and lead based paint may be present"].) Failing to inform, analyze, and appropriately mitigate the impacts of hazardous materials the Sapphire EIR assumes that "[a]ll potentially hazardous materials used during demolition and construction activities would be handled, contained, stored, and used in accordance with all applicable local, State, and federal regulations, which include requirements for disposal of hazardous materials at a facility licensed to accept such waste based on its waste classification and the waste acceptance criteria of the permitted disposal facilities." (Id. at p. 14.)*

*Similarly to air quality, the EIR's assumption that the Project will comply with applicable laws when handling and disposing hazardous materials fails to meet the requirements and intent of CEQA for three reasons. First, the EIR does not provide the necessary facts and analysis allowing for an informed decision. For example, and with the exception of minimal discussion on SCAQMD rule 1403 concerning asbestos and HUD's Construction Safety Order 1532.1, the document does not discuss which laws and rules the Project will be required to comply with and does not provide an analysis of how the Developer may be able to comply with the laws and rules. The EIR simply assumes that applicable laws and rules can and will be observed. (DEIR section IV.F pp. 14-15.) Second, the EIR fails to provide targeted mitigation measures focused at protecting specific groups, including community members and construction workers. Third, the EIR assumes the Project will comply with construction laws even though Developer has a history of hiring subcontractors with a record of non-compliance with construction labor laws. (Leonoff v. Monterey County Bd. of Supervisors (1990) 222 Cal.App.3d 1337, 1355 ["[a] condition requiring compliance with [] regulations ... [is] only proper where the public agency [has] meaningful information reasonably justifying an expectation of mitigation"].)*

#### Staff Response

The Draft EIR provides a thorough analysis with respect to project impacts and implementation of regulatory code compliance. See generally Draft EIR Section IV.F. As disclosed in the Draft EIR, during the construction phase, the Project is anticipated to require the routine transport, use and disposal of cleaning solvents, fuels, paints and paint-related products, waste oil, spent solvents, oily rags and other potentially hazardous materials commonly associated with construction activities. Construction activities would likely involve the use and storage in small quantities of potentially hazardous materials, including vehicle fuels, oils, and transmission fluids. Due to the age of the existing buildings proposed for demolition, asbestos-containing materials and lead based paint may be present. Asbestos and lead have negative health impacts, and employees that currently work at the Project Site and construction personnel may be exposed to asbestos fibers and lead during demolition activities. The abatement and removal of asbestos is regulated by the South Coast Air Quality Management District's Rule 1403. Lead-based paint materials exposure is regulated by the California Occupational Safety and Health Administration (CalOSHA) regulations. California Code of Regulations Section 1532.1, requires testing and monitoring of potential containments and disposal of lead based paint materials such that exposure levels do not exceed CalOSHA standards for worker exposure. All potentially hazardous materials used during demolition and construction activities would be

handled, contained, stored, and used in accordance with all applicable local, State, and federal regulations, which include requirements for disposal of hazardous materials at a facility licensed to accept such waste based on its waste classification and the waste acceptance criteria of the permitted disposal facilities. Adherence to all applicable rules and regulations pertaining to the use, storage, and transport of potentially hazardous materials would reduce potentially significant impacts to less-than-significant levels. See Draft EIR pp. IV.F-13 to -18, and F-20. With respect to Appellant's concerns regarding implementation of regulatory compliance and mitigation, please refer to Response to Comment Nos. 3, 4 and 5.

#### Appellant's Statements:

*The EIR for the Wilshire Crescent Heights Project is an Example of How an EIR Can and Must Inform, Analyze, and Help Mitigate the Impacts of Construction on Local Residents, Communities, and Construction Workers*

*The final EIR for the Wilshire Crescent Heights project, a project half the size of the Sapphire Project with a shorter construction schedule, provides an example of how an EIR can and must inform, analyze, and help mitigate construction impacts on air quality and hazardous materials. (DEIR section II p. 1 [Crescent Heights' 175,000 sf total floor area is about half the size of Sapphire's 350,000 sf total floor area].) In the Crescent Heights EIR, and even though the document found that construction related emissions and hazardous materials exposure would be less than significant, the EIR provides a discussion and analysis of mitigation measures to be adopted by the project. For air quality, the Crescent Heights EIR provides roughly 20 mitigation efforts addressing particulates. (Exh. A.) For hazardous materials, the Crescent Heights EIR provides about 15 mitigation measures addressing several substances, including asbestos, lead paint, and methane. (Exh. B.)*

*Even though the Crescent Heights project was a smaller project with a shorter construction schedule - its EIR appropriately discusses, analyzes, and imposes mitigation efforts to limit the impact of construction on air quality and hazardous material. The Sapphire EIR must similarly discuss, analyze, and adopt mitigation measures to limit the impact of construction on air quality and hazardous material. The Sapphire EIR can and must mitigate the impacts of construction on local residents, the community, and construction workers.*

#### Staff Response

The Appellant's opinions have been noted for the record. As discussed above in Response to Comment No. 9 and No. 10, the Appellant provides no substantial evidence, pursuant to Public Resources Code Section 21080(e) (2), to support its claims regarding the alleged inadequacy of the environmental analysis of the Draft EIR with respect to significant impacts. Furthermore, there is no nexus between the Wilshire Crescent Heights Project and the Project that would warrant the adoption of additional mitigation measures that are not already included in the MMP of the Final EIR, or mandated through compliance with regulatory codes. With implementation of regulatory code and mitigation, impacts with respect to air quality and handling of hazardous materials during construction were found to be less than significant for the Project.

#### Appellant's Statements:

*The Commission's Specific Plan Exception Eliminated all Setbacks - Exposing Local Residents, the Community, and Construction Workers to Safety Risks*

*For the South Parcel, the Commission reduced the rear yard setback for the portion of the west property line not abutting the alley from 19 feet to zero. (Exh. C.) For the North Parcel, the Commission reduced a 16 feet rear yard setback, a 5 feet side yard setback, and a 15 feet front yard setback to zero. (Exh. C.) As described below, decreasing the required setbacks where the Project's property line abuts another property without requiring Project compliance with*

*construction, safety, and labor laws exposes local residents, the community, and construction workers to a safety risk. (Exh. D.)*

#### Staff Response

The Appellant does not provide substantial evidence to support the claim that granting a specific plan exception, with respect to setbacks for the Project, would expose local residents, the community, and construction workers to a safety risk. See also response to comment 3, above.

#### Appellant's Statements:

##### *Required Findings for Approving a Specific Plan Exception*

*Pursuant to LAMC, the City cannot grant a specific plan exception unless it finds "[t]hat the granting of an exception will not be detrimental to the public welfare or injurious to the property or improvements adjacent to or in the vicinity of the subject property." (Los Angeles Mun. Code, § 11.5.7.F.2(d).) Additionally, "the granting of an exception [must be] consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan." (Los Angeles Mun. Code, § 11.5.7.F.2(e).)*

#### Staff Response

The Appellant does not provide substantial evidence to support the claim that granting a specific plan exception with respect to setbacks for the Project would result in detrimental effects to the public welfare, or would be inconsistent with the goals of the specific plan or general plan. As provided on pages 7 to 10 of the Letter of Determination, dated March 14, 2018<sup>1</sup>, the specific plan findings were made to address the setback standards and granted exceptions and no further response is required with respect to the environmental analysis of the project.

#### Appellant's Statements:

##### *The Reduced Setbacks Will Be Detrimental to the Public Welfare and Injurious to Adjacent Properties*

*The municipal code requires that a Specific Plan Exception not "be detrimental to the public welfare or injurious to[] property or improvements adjacent to" the Project. (Los Angeles Mun. Code, § 11.5.7.F.2(d).) Here, eliminating the required setbacks for property lines abutting other properties will be detrimental to the public welfare and injurious to neighboring properties - it creates a safety risk. Benefiting local residents, the community, and construction workers - setbacks serve as a safety feature for construction projects providing three main benefits. First, setbacks ensure that firefighters and first responders have access to the site during fires and emergencies. Second, setbacks provide construction workers with space to flea [sic] in the case of an emergency. Lastly, setbacks provide a safety buffer between the construction site and buildings abutting the property. The safety benefits provided by setbacks are especially important here because the Sapphire project will be a 7-story wood frame project. (Planning Com. Findings p. 9 [Project using wood framing to reduce costs].)*

#### Staff Response

The Appellant's argument with respect to the Project's setbacks are unsubstantiated. The Appellant provides no evidence that reduced setbacks on the Project Site would result in a safety risk. The existing westerly building along 6<sup>th</sup> Street and the parking garage maintain zero setbacks with the adjacent properties. There would not be a decrease in the setbacks compared to the existing baseline condition. As discussed on page 6 of the Central Los Angeles Planning Commission Letter of Determination, dated March 14, 2018, granting of the

---

• 1 Central Los Angeles Area Planning Commission, Letter of Determination, Case No: APCC-2015-3032-SPE-SPPA-MS, ENV-2015-3033-EIR, SCH No. 2016031029, dated March 14, 2018.

exceptions would not be detrimental to the public welfare, injurious to property or improvement to property in the surrounding neighborhood. See also Responses to Comment No. 3 and 13, above. With respect to fire risk and accessibility for first responders, it should be noted that the Project would be required to maintain appropriate emergency access pursuant to the Los Angeles Fire Code, LAMC Sections 57.09.01 through 57.09.11. Furthermore, the Project will comply with all applicable construction-related and operational fire safety and emergency access requirements of the LAFD and the City of Los Angeles in order to adequately mitigate fire protection impacts. No further analysis with respect to the Draft EIR is required.

#### Appellant's Statements:

*As proposed, the Project and the Exception are Not Consistent with the Goals and Intent of the General Plan*

*The municipal code requires "[t]hat the granting of an exception [be] consistent with the principles, intent and goals of the specific plan and any applicable element of the general plan." (Los Angeles Mun. Code, § 11.5.7.F.2(e).) As proposed, the Project does not conform to the purpose, intent, and provisions of the General Plan for several reasons. A guiding principle of the General Plan is to "reduc[e] income inequities through the creation of safe, quality jobs." (General Plan, Health and Wellness Element p. 141.) Pursuant to General Plan Policy 1.3, the City is to "promote healthy communities by focusing on prevention, interventions, and by addressing the root causes of health disparities and inequities in Los Angeles". (Id. at p. 28.) Under Policy 1.3, "[t]he City's intent is to take steps to prevent health issues by using policies and programs to improve access to ... quality family-supporting jobs...." (Ibid.) General Plan Policy 6.6 directs the City to "[s]upport policies ... that create family-supporting, career-ladder jobs.. oo" (Id. at p. 77.) As the General plan explains, "[t]he most effective anti-hunger strategy is a job that pays a family-supporting and livable wage." (Ibid.) Lastly, one of the goals of the General Plan is minimize the "potential injury, loss of life, property damage and disruption of the social and economic life of the City due to fire, water related hazard [and] release of hazardous materials...." (General Plan, Safety Element p. 111-1.)*

*The Project and Developer do not conform to and do not share the goal and intent of the General Plan for two reasons. First, the Developer has a history of hiring subcontractors with a record of non-compliance with construction labor laws. Second, one of the goals of the General Plan is minimize "potential injury, loss of life, property damage and disruption of the social and economic life of the City due to fire...." (General Plan, Safety Element p. III-1.) As proposed, the decreased setbacks create a fire risk that must be mitigated.*

#### Staff Response

The Appellant's claims that the Project is not in conformance with the General Plan is not substantiated with any relevant facts. The Appellant's first claim regarding the Applicant's alleged history of non-compliance with construction labor laws is not relevant to the General Plan and/or EIR, per CEQA. It is unfounded speculation, not supported by evidence that this Project would not comply with construction labor laws. Moreover, labor laws are enforced by the State of California. Thus, any issues pertaining to the alleged non-compliance of labor laws would be referred to the State's Labor Commission. To the extent that (CCCC) maintains that labor law compliance is an environmental issue, CEQA Guidelines Section 15131(a) states that economic or social effects of a project shall not be treated as significant effects on the environment.... The focus of the analysis shall be on the physical changes." The Appellant's second claim asserts that the decreased setbacks would create a fire risk that must be mitigated. There is no evidence in the record to support the claim that emergency access would be compromised by the approved setbacks. The Approval of a zero foot front yard setback for the North building would not compromise emergency access and the entire front of the North building is directly accessible via 5<sup>th</sup> Street. The approval of zero foot side yards for the North

building would also not compromise emergency access as the building would be accessible along its entire length via the alley on the building's south side and 5<sup>th</sup> Street along the north side. The approval of zero rear yard setbacks for the North and South buildings would also not compromise emergency access as the alley that bifurcates the North and South buildings would remain as a point of access between Lucas Avenue and Bixel Street. See also Draft EIR p. IV.K-44 for an analysis of emergency access that demonstrates that the Project would have a less than significant impact. Thus emergency access would not be compromised by a reduction in rear yard setbacks. No further analysis with respect to the Draft EIR is required.

Appellant's Statements:

**MITIGATION MEASURES**

*To ensure that all construction, safety, and labor laws are observed, for compliance with the General Plan, and to mitigate the impacts of construction on residents, the community, and construction workers - the City must impose the following three conditions on the Project.*

***I. Air Quality and Hazardous Materials Mitigation Measures***

*As an alternative to amending the EIR, the City can, as a condition of approval, impose air quality and hazardous materials mitigation measures similar to the mitigation measures imposed on the Wilshire Crescent Heights Project. In summary, the measures must address air quality and hazardous materials impacts on local residents, the community, and the Project's construction workers. Exhibit F provides the suggested language for air quality and hazardous materials mitigation measures to be imposed by Council. (Exh. E.)*

Staff Response

The Appellant's opinions have been noted for the record. As discussed above in Response to Comments No. 9 and No. 10 the Appellant does not provide any substantial evidence, pursuant to Public Resources Code Section 21080(e) (2), to support its claims regarding the adequacy of the environmental analysis of the Draft EIR with respect to the Project's impacts to air quality and hazardous materials. There is no nexus between the Wilshire Crescent Heights Project and the Project that would warrant the adoption of additional mitigation measures that are not already included in the MMP of the Final EIR, or mandated through compliance with regulatory codes. With implementation of regulatory code and mitigation, impacts with respect to air quality and handling of hazardous materials during construction were found to be less than significant for the Project.

Appellant's Statements:

***II. Setback Mitigation Measure to Ensure the Safety of Local Residents, the Community, and Construction Workers***

***Developer must be required to abide by all construction, safety, and labor laws as a condition of development. Requiring that Developer observe all construction, safety, and labor laws will mitigate the safety risks created by the decreased setbacks.***



Staff Response

The Applicant is required by law to abide by all construction, safety, and labor laws. The Appellant's concerns regarding safety risks created by the decreased setbacks are speculative and unsubstantiated and do not warrant mitigation measures.

Appellant's Statements:***III. Jobsite Monitor Program to Ensure Developer Complies with All Laws and Mitigation Measures***

*As a condition of development, the Commission's Mitigation Monitor condition must be fine-tuned into a Jobsite Monitor Program. The honed monitor program must provide the City a mechanism to effectively monitor and enforce mitigation measures and construction, safety, and labor laws. The Jobsite Monitor Program must empower City staff with a simple tool to ensure that Developer does not externalize construction costs. (Exh. F.)*

Staff Response

The purpose of the Mitigation Monitoring Program (MMP) is to monitor and enforce implementation and recordation of project design features and mitigation measures as identified in the EIR during operation and construction activities consistent with the monitoring phase and frequency set forth in this MMP. Workplace safety and labor laws are regulated by the Department of Building and Safety and Cal OSHA and are not CEQA issues.

As demonstrated in the responses above, the Appellant has provided no substantial evidence, pursuant to Public Resources Code Section 21080(e)(2), with respect to the environmental analysis as presented in Draft EIR which would warrant the need for additional analysis or changes to the MMP. The Appellant's opinions and concerns will be forwarded to the decision makers for their consideration.