

THE RIGHT OF APPEAL



City of West Sacramento City Clerk's Office (916) 617-4500
1110 West Capitol Ave., West Sacramento, CA 95691

GENERAL INSTRUCTIONS

In order to appeal a City decision, the party must file a letter of appeal together with an appeal fee with the City Clerk within fifteen (15) calendar days of the decision.

Pursuant to Government Code Section 66452.5, appeals of a Planning Commission action on tentative maps must be filed with the City Clerk within ten (10) days of Planning Commission action.

APPEALABLE DECISIONS

Any decision made by the staff, the Planning Commission, or the Hearing Officer are appealable.

METHOD OF APPEAL

File a letter or a copy of the attached Application for Appeal form, together with the required fee* within fifteen (15) calendar days of the action taken with the City Clerk for appeals to the City Council or the Board of Appeals, or with the Community Development Department for appeals to the Planning Commission. You should state your reason for appeal clearly and attach any material which you believe to be supportive to your appeal.

WHO HEARS THE APPEAL & FILING FEE (not a complete list)

- 1) Appeal of the Zoning Administrator or staff decision is heard by the Planning Commission. (\$100)
- 2) Appeal of Building Code interpretation by staff is heard by the Board of Appeals. (\$100)
- 3) Appeal of a Planning Commission decision is heard by the City Council. (\$100)
- 4) Denial of certain permits and licenses are heard by the Hearing Officer. (\$50)
- 5) Denial of a Fireworks Sellers permit is heard by the City Council. (\$100)

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FEB 06 2025

City of West Sacramento
City Manager's Office

* This may not be applicable for some decisions; verify with the Community Development Department. Hardship waivers may be requested. This fee does not include billable staff or consultant time which is the responsibility of the project related to the appeal.

APPLICATION FOR APPEAL



City of West Sacramento (916) 617-4500
1110 West Capitol Ave., West Sacramento, CA 95691

Appeal Filing Fee: \$ 100

File Number (Staff Use Only): _____

Please understand that after you have made your application for an appeal, staff will place your appeal on the agenda at the earliest possible legal date and will prepare a brief report to accompany your appeal. The more information you can provide, the more complete your appeal will be at the time it is heard.

According to the City of West Sacramento Municipal Code, this appeal will be heard by:

_____ Planning Commission

_____ Board of Appeals

x City Council

_____ Hearing Officer

1. Taylor, Wiley, & Keasling on behalf of Mark Gill (916) 929-5545

 Name of Applicant Telephone
500 Capitol Mall, Suite #1150 Sacramento, CA 95814

 Street Address City, State & Zip Code

2. State what you, or the applicant, requested to do that was denied/approved that you wish to appeal:
An appeal of the Planning Commission's January 30, 2025 decision to (1) certify the Liberty Project's Environmental Impact Report ("EIR") and (2) approve the Liberty Project's tentative subdivision map.

3. Give the location (street address, general location, etc.): Northeast Village of Southport

4. Provide the Assessor's Parcel Number(s): APNs 046-050-084, 046-100-015

5. State in detail the reasons for your appeal (if additional room is needed, please use an additional sheet of paper): _____

- 1. The Liberty Project EIR does not comply with state requirements and should not have been certified (see Attached letter re: specific violations).
- 2. The Liberty Project's approved tentative subdivision map does not comply with clear provisions of the Liberty Specific Plan, subsection 5.2.1.1.

I certify that the above statements are correct and that all accompanying documents and maps are accurate.

February 5, 2025
Date

Mark Gill for Taylor, Wiley, & Keasling
Signature

Notice: Within ten days after the filing of a valid application, the City Clerk shall set a subsequent date for a hearing thereon. In most situations the hearing will be no later than forty-five days after the filing of a valid application. Notice of the time and place of the hearing shall be given to the applicant and all other know interested parties and shall state which city body or officer will hear the applicant's appeal. The notice shall be mailed at least five days before the hearing date. Refer to section 1.08 050 of the City's Municipal Code for more information.

TAYLOR, WILEY & KEASLING

A PROFESSIONAL CORPORATION

ATTORNEYS

500 CAPITOL MALL, SUITE 1150
SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 929-5545

JOHN M. TAYLOR
JAMES B. WILEY
MATTHEW S. KEASLING
JESSE J. YANG
MARISSA C. FUENTES

January 29, 2025

Planning Commissioners
City of West Sacramento
1110 W. Capitol Ave. 2nd Floor
West Sacramento, CA 95691

Re: Liberty Specific Plan Environmental Impact Report (SCH # 2016052012)

Dear Chair Delgado and Commissioners:

Taylor, Wiley & Keasling represents residents of Parella Estates, which is a large-lot neighborhood that has been constructed over the last several years in West Sacramento. Parella Estates is located close to the Liberty Specific Plan Project (“Project”), along the Project’s western border, and many of the Parella Estates homes back up to the project site.

We have many concerns about the Environmental Impact Report (“EIR”) for the Project – with the overarching issue being the substantial time that has elapsed since the analysis was conducted coupled with changes to the regulatory and physical environments that occurred during the 7.5-year period of stagnation. To elaborate, the Draft EIR for the Project was released in August 2017, more than seven years ago. The City recently published the Final EIR for the Project in October 2024. However, the Final EIR did very little to update the now outdated and legally deficient EIR. For the reasons addressed below, the EIR does not comply with the California Environmental Quality Act (CEQA) and should not be certified by your Commission.

Recirculation. A lead agency is required to recirculate an EIR when significant new information is added to the EIR or becomes available after the Draft EIR is published but before the Final EIR is certified. (CEQA Guidelines § 15088.5(a).) “Significant new information” requiring recirculation include information concerning the following:

- 1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

- 2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce the impact to a level of insignificance.
- 3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- 4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(CEQA Guidelines § 15088.5(a).) As discussed below, the EIR should be recirculated to address significant new information that has occurred as a result of changes in the regulatory and physical environment since the publication of the Draft EIR in 2017 and because of a new significant and unavoidable impact identified for the first time in the Final EIR published in October 2024.

Chapter 3.1. Aesthetics. The aesthetics chapter of the EIR does not address the visual impacts of the Project on the adjacent and nearby development that occurred after the publication of the Draft EIR in 2017. The EIR should be revised and recirculated to address the subsequent development of Parella Estates and Capital Estates, which introduced new sensitive receptors immediately west of the project site. The proposed project could result in a substantial degradation of the existing character or quality of the project site or its surroundings and light and glare impacts, two impacts already identified as significant and unavoidable without consideration of the additional impacts on Parella Estates and Capital Estates.

Chapter 3.3. Air Quality. The air quality chapter of the EIR should be revised and recirculated to address the requirement of the California Supreme Court's decision in *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, i.e., the "Friant Ranch" decision, which required EIRs to address the health effects of proposed projects. Also, the air quality modeling should be updated to incorporate any changes in air quality modeling that have occurred since the Draft EIR was published seven years ago.

Chapter 3.4. Biological Resources. The Final EIR included one minor change to the Draft EIR, noting that the Yolo County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP) was adopted 2018. However, the Final EIR does not address other regulatory changes that have occurred since the Draft EIR was published in 2017, such as the change in how "waters of the United States" are defined under the U.S. Supreme Court's decision in *Sackett v. Environmental Protection Agency*

(2023) 598 U.S. 651. Moreover, new biological resources surveys should be conducted and incorporated in the EIR to address any changes in the physical environment that have occurred since the Draft EIR was published seven years ago, including but not limited to, considerable growth of habitat located on the Project site, establishment and maturity of the adjacent bypass levee riparian habitat, and the documented presence of new species foraging such as the bald eagle.

Chapter 3.7. Greenhouse Gas Emissions. The greenhouse gas chapter of the EIR should be updated and recirculated to address changes in greenhouse gas analysis, thresholds, and mitigation that have occurred since the Draft EIR was published in 2017.

Chapter 3.8, Hazards and Hazardous Materials. In recent California court decision, *Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222, the Court of Appeal found that an EIR for a mixed-use development project in Lake County violated CEQA for, among other things, failing to adequately analyze and/or mitigate for that project's impacts on evacuation routes and wildfire risk. In the case of Liberty Specific Plan, the EIR concluded that the Project would result in less-than-significant impacts related to both evacuation plans (Impact HAZ-7) and wildfire risk (Impact HAZ-8). However, in light of *Bonta v. County of Lake* and given the Project having only a single evacuation route (Village Parkway) and potential for flooding impacts, as discussed below, the EIR should be recirculated to address impacts on evacuation routes and wildfire risk.

Chapter 3.9. Hydrology and Water Quality. The Draft EIR identified a significant impact associated with the placement of housing within a 100-year flood hazard area (Impact WQ-7). However, the Draft EIR concluded that the impact could be mitigated to a less-than-significant level with the implementation of Mitigation Measure WQ-7, which would require phasing of residential developments to occur after the flood protection goal is achieved. (Draft EIR, pp. 3.9-33 to 34.) The Final EIR changed the significance of Impact WQ-7 to significant and unavoidable, noting: "The reason for these changes is to correct typographical errors that were made in preparing the Draft EIR that resulted in conclusions inconsistent with those reached in the General Plan Update Final EIR." (Final EIR, p. 3-8.) The Final EIR also made substantial modifications to Mitigation Measure WQ-7, which now allows for the payment of in-lieu fees instead of phasing the residential components of the project until the completion of the necessary flood protection measures. (Final EIR, p. 3-9.) These are not mere "typographical" corrections, as suggested in the Final EIR. Rather, the changes introduced for the first time in the Final EIR represent "new significant information" that warrants recirculation of the EIR, because they involve a new significant and unavoidable impact and a substantial increase

in the severity of a previously identified impact with respect to Impact WQ-7. (CEQA Guidelines § 15088.5(a).)

Chapter 3.10. Land Use. Since the Draft EIR was published in 2017, substantial land use changes have occurred in the vicinity of the project site including the development of Parella Estates, Capital Estates, the completing and utilization of Village Pkwy, and the continued development of Newport Meadows. These substantial new developments constitute significant new information that warrants the recirculation of the EIR. The land use chapter of the EIR should be recirculated to address potential land use compatibility issues with Parella Estates and Capital Estates.

Chapter 3.12. Noise. Since the Draft EIR was published in 2017, the development of Parella Estates and Capital Estates has introduced new sensitive receptors in the project vicinity. These new noise receptors constitute significant new information that requires recirculation of the EIR. Thus, the noise chapter of the EIR should be recirculated to address potential noise impacts of the Project on nearby residents of Parella Estates and Capital Estates.

Chapter 3.16. Transportation/Traffic. The transportation/traffic chapter should be revised and recirculated to provide analysis consistent with CEQA Guidelines § 15064.3, which was adopted in 2018, after the Draft EIR was published. The revised chapter should provide a more comprehensive evaluation of vehicle miles traveled (VMT) impacts in light of new local and regional VMT thresholds that have been developed since the Draft EIR was published in 2017. The EIR's discussion of VMT - to the extent that one exists - is grossly inadequate, uses an inappropriate baseline of the Southport Framework Plan, and does not comply with current legal standards. In addition, the analysis of traffic operations should be updated based on current traffic volumes and conditions. Since preparation of the traffic operations analysis, Village Parkway has been completed and has become a major corridor for commuters during the AM and PM peak hours. Traffic is no longer speculative and should be analyzed given the now existing conditions plus the Project. Furthermore, we are confident that updated analysis of the intersections of South River Road at 15th Street and at the Eastbound I-80 onramp in the existing plus Project condition and under the cumulative condition with the addition of the Oakland Athletics will identify new significant impacts.

Finally, and of great importance, “[p]ublic participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement...” (CEQA Guidelines § 15201.) The exorbitant amount of

Planning Commissioners

January 29, 2025

Page 5

time that elapsed between the public review period on the Draft EIR to the now proposed certification has served to exclude participation by many members of the public that will be impacted by this Project. Effectively, the more than seven-year delay has deprived the public of its legal right to participate in the CEQA process.

For the reasons discussed above, the EIR does not comply with CEQA. The EIR should be recirculated to include the information described above and to ensure that the public has an opportunity to review and comment with respect to the new significant and unavoidable impact related to flood protection. Accordingly, we respectfully request that the Planning Commission recommend that City staff recirculate the EIR to address the issues outlined above prior to voting to recommend approval or denial of the Project.

Very truly yours,

A handwritten signature in black ink that reads "Matthew Keasling". The signature is written in a cursive, slightly slanted style.

Matthew S. Keasling

cc: Ashley Rossi and Mark Gill
Jesse J. Yang, Taylor, Wiley, & Keasling

TAYLOR, WILFY & KEASLING
A PROFESSIONAL CORPORATION
ATTORNEYS
500 CAPITOL MALL SUITE 1150
SACRAMENTO, CA 95814

★ ★ ★
FIVE STAR BANK
www.fivestarbank.com
★ ★ ★

3100 Zinfandel Dr., Ste 100
Rancho Cordova, CA 95670

90-4303/1211

30812

2/5/2025

PAY TO THE ORDER OF City of West Sacramento

\$ **100.00

One Hundred and 00/100 ***** DOLLARS

City of West Sacramento
City Clerk's Office
1110 West Capitol Ave
West Sacramento, CA 95691

Matthew F. Keasling
AUTHORIZED SIGNATURE

MEMO

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

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