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September 23, 2019

Sergio Ibarra, City Planner
City of Los Angeles
Department of City Planning
200 North Spring Street, Suite 721
Los Angeles, CA 90012

RE: Responses to UNITE HERE Local 11 Appeal Comments for the Olympic Tower Project

Dear Mr. Ibarra:

On September 16, 2019, UNITE HERE Local 11 (Local 11) filed an appeal (refer to Attachment A) to the Letter of Determination (LOD) issued Advisory Agency for the Olympic Tower Project on September 6, 2019. The Appellant asserts in comments provided as part of the appeal that "Substantive evidence demonstrates flaws in the Project's environmental analysis including failure to properly analyze land use inconsistency relating to a lack of affordable housing and a failure to study an alternative including housing, failure to include multiple mitigation measures recommended by Caltrans and Metro, and an improper greenhouse gas (GHG) analysis as set forth in expert comments in the record. Because of this, the AA erred and abused its discretion when approving the EIR."

On behalf of Olymfig23, LLC (Project Applicant), CAJA Environmental Services, LLC. (CAJA) has prepared responses to the appeal comments. As demonstrated in the responses, Local 11 provides no substantial evidence to support its assertions, and the Advisory Agency did not err or abuse its discretion in certifying the Draft EIR for the Olympic Tower Project.

If you have any questions or concerns regarding this issue, please contact Kerrie Nicholson at 310-469-6706 or kerrie@ceqa-nepa.com. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Nicholson".

Kerrie Nicholson
Principal

Attachments

Comment 1

UNITE HERE Local 11 (Local 11) hereby respectfully appeals the September 6, 2019 Letter of Determination (LOD) regarding the Advisory Agency's (AA) approval of the above-referenced hotel and residential development (Project) proposed by Olymfig26, LLC (Applicant), located at 813-815 W. Olympic Blvd. (Site). Under the Los Angeles Municipal Code (LAMC) and the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 et seq., Local 11 appeals: 1) the Project's CEQA Environmental Impact Report (EIR) (State Clearinghouse No. 2016061048) under City Case No. ENV-2015-4558-EIR; and 2) Vesting Tentative Tract No. 73966-CN (VTT), including the related approvals for the deviation from AA parking policies and haul route, under City Case No. VTT 73966-CN. The September 6, 2019 LOD is submitted herewith.

Justification for Appeal of CEQA EIR

Substantive evidence demonstrates flaws in the Project's environmental analysis including failure to properly analyze land use inconsistency relating to a lack of affordable housing and a failure to study an alternative including housing, failure to include multiple mitigation measures recommended by Caltrans and Metro, and an improper greenhouse gas (GHG) analysis as set forth in expert comments in the record. Because of this, the AA erred and abused its discretion when approving the EIR.

Response to Comment 1

Regarding the Project's consistency with affordable housing objectives, goals, and policies, the Appellant is referred to Response to Comment 2.

Regarding a Project alternative that includes housing, the Appellant is referred to Response to Comment 3.

Regarding mitigation measures recommended by Caltrans and Metro, the Appellant is referred to Response to Comment 4.

Regarding the greenhouse gas (GHG) emissions analysis included in the Draft EIR and the analysis prepared by SWAPE that was included in a comment letter on the Draft EIR, the Appellant is referred to Response to Comment 5.

Based on these responses and other evidence in the record for this matter, the EIR prepared for the Project is legally adequate, and the Advisory Agency did not err or abuse its discretion in certifying the EIR.

Comment 2

1. Failure to Disclose and Analyze Land Use Inconsistency Due to Lack of Affordable Housing.

The Project's Final EIR fails to properly analyze land use inconsistency, stemming from its lack of even a single affordable housing unit. While the Project includes 374 condo units including studios to 3-bed penthouses,¹ the EIR and Project findings contain no indication that any will be affordable. The lack of housing in this area of Downtown is a major issue under the Central City Community Plan.² So too, does the lack of affordable units runs counter to numerous goals, objectives, and policies under applicable land use plans:

City Housing Element 2013-2021 Goals and Policies³
Goal 1: A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs.
Policy 1.1.1: Expand affordable homeownership opportunities and support current homeowners in retaining their homeowner status.
Policy 1.1.2: Expand affordable rental housing for all income groups that need assistance.
Policy Objective 2.5: Promote a more equitable distribution of affordable housing opportunities
Policy Objective 2.5.1: Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed-use development, Transit Oriented Districts and designated Centers.
Policy Objective 2.5.2: Foster the development of new affordable housing units Citywide and within each planning area.
General Plan Framework Element
Chapter 4: Housing⁴
Policy 4.2.1 states the City should "offer incentives to include housing for very low- and low-income households in mixed-use developments"
Chapter 7: Economic Development⁵
Objective 7.9 states the City should seek to "[e]nsure that the available range of housing opportunities is sufficient, in terms of location, concentration, type, size, price/rent range" and
Policy 7.9.1 states that the City should promote "the provision of affordable housing through means which require minimal subsidy levels and which, therefore, are less detrimental to the City's fiscal structure" ⁶
Central City Community Plan⁷
Residential Issues
Create a significant increase in housing for all incomes, particularly of middle-income households.
Lack of affordable housing for workers in the industrial sector thus aggravating the jobs-housing imbalance.
Purpose of Plan
Creates residential neighborhoods; while providing a variety of housing opportunities with compatible new housing.
Objectives & Policies
Objective 1-3: To foster residential development which can accommodate a full range of incomes.
Policy 9-1.1: Preserve the existing affordable housing stock through rehabilitation and develop new affordable housing options.

The EIR improperly fails to identify inconsistency with these affordable housing policies, and the AA therefore erred and abused its discretion in approving the CEQA document. The LOD never comes to terms with the Project's lack of affordable housing.

Response to Comment 2

As outlined on page IV.H-7 of the Draft EIR, the Project could have a significant impact if the Project were to “Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”¹ As demonstrated in Section IV.H (Land Use and Planning) of the Draft EIR, the Project would be substantially consistent with the Housing Element, Framework Element, and Central City Community Plan. The Draft EIR explains that the legal standard that governs consistency determinations states that a project must only be in “harmony” with the applicable land use plan to be consistent with that plan. (See *Sequoyah Hills Homeowners Assn. v. City of Oakland* (“Sequoyah”) (1993) 23 Cal.App.4th 704, 717-18.) As the Court explained in *Sequoyah Hills Homeowners Assn.*, “state law does not require an exact match between a proposed subdivision and the applicable general plan.” (Id. at p. 717.) To be “consistent” with a land use plan, a project must be “compatible with the objectives, policies, general land uses, and programs specified in the applicable plan,” meaning the project must be “in agreement or harmony with the applicable plan.” (Id. at p. 717-18; see also *Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 406; *San Franciscans Upholding the Downtown Plan*, 102 Cal.App.4th at p. 678.) Further, “[a]n action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal. App. 4th 807, 817.) This rule recognizes the legislative body’s unique competence to interpret its own policies. (*Save Our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 142.) Notably, no “project could completely satisfy every policy stated in the [General Plan], and the State law does not impose such a requirement.” (*Sequoyah*, supra, 23 Cal.App.4th at 719.) However, “[b]ecause policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan’s policies when applying them, and it has broad discretion to construe its policies in light of the plan’s purposes.” (*Save Our Peninsula Comm.*, supra, 87 Cal.App.4th at 142.) Accordingly, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be “in harmony” with the land use policies. (*Sequoyah*, supra, 23 Cal.App.4th at 719.)

Consistent with their “broad discretion,” the City determined that the Project is consistent with applicable land use policies. The Draft EIR found that the Project would be substantially consistent

¹ *This Appendix G question has since been revised as follows: “Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.” In that regard, many of the objectives, goals, and policies of the City’s General Plan Housing Element and Framework Element and the Central City Community Plan referenced in the comment were not adopted for the purpose of avoiding or mitigating an environmental effect.*

with the General Plan Framework Element (DEIR pp. IV.H-17–20), General Plan Health and Wellness Element (DEIR pp. IV.H-20–31), General Plan Housing Element (DEIR pp. IV.H-31–33), and the Central City Community Plan (DEIR pp. IV.H-33–36), as well as other land use policies. In particular, the Draft EIR found the Project would “further the goals and objectives of the Housing Element by providing additional housing stock.” (DEIR p. IV.H-6) Further, although the Project does not include affordable housing, the Project includes a request for approval of a Transfer of Development Rights, which will require the payment of approximately \$22,158,132 in fees for community benefits. The Project proposes to designate approximately \$9,971,159 (45 percent) of the fees to the Department of Housing & Community Development Affordable Housing Trust Fund, Skid Row Housing Trust, and LAMP Community for the provision of affordable housing. As such, the Project would further City objectives, goals, and policies related to affordable housing. It should also be noted that there are no applicable City regulations requiring the Project to include affordable housing., For these reasons, the EIR did not improperly fail to identify inconsistency of the Project with affordable housing policies, nor did the Advisory Agency err or abuse its discretion in certifying the EIR.

Comment 3

2. Failure to Include and Study a Project Alternative Consistent with TOC Guidelines.

Here, the AA erred and abused its discretion in approving an EIR that improperly failed to include an alternative for a Project consistent with the City's Transit Oriented Community or "TOC" Guidelines, which would have incorporated affordable housing units and directly serve all seven project objectives, including the ability to meet the City's Regional Housing Needs Assessment ("RHNA") allocation (DEIR, pp. 111-50, VI-1).

In November 2016, City voters approved Measure JJJ, which led to the adoption of TOC Guidelines in 2017 (codified at LAMC § 12.22.A.31 et seq.). Under the TOC Guidelines, residential projects within one-half mile of a major transit stop can obtain additional incentives, such as increased FAR from base zoning if the development meets various affordable housing requirements. According to the City's most recent housing report, Measure JJJ and the TOC Guidelines have created over 1,500 restricted-affordable units since 2017.⁸

Here, while the DEIR analyzed a project alternative without TFAR and no hotel (DEIR, p. VI-4), it did not include an alternative that would utilize the increased density pursuant TOC Guidelines that would create affordable housing units on Site. The inclusion of affordable housing units on-site would:

- Lessen the Project's inconsistency with affordable housing goals, objectives, and policies under applicable land use plans;
- Reduce vehicle miles traveled or "VMTs" and, thus, lessen the Project's traffic and GHG impacts stemming from mobile emissions; and
- Serve as a meaningful project benefit to City stakeholders seeking real affordable housing options during the City's unprecedented housing crises.

The EIR should have included an alternative consistent with TOC Guidelines with affordable units. The approval of the CEQA document without this is an error and abuse of discretion.

Response to Comment 3

The City's Transit Oriented Community Affordable Housing Incentive Program Guidelines (TOC Guidelines) was not in effect when the CEQA process for the Project commenced and its requirements are not applicable to the Project. On November 8, 2016, voters in the City approved and passed Measure JJJ, which imposed minimum affordable housing requirements and labor regulations on projects requesting certain entitlements. The requirements of Measure JJJ were codified in LAMC Section 11.5.11, which became effective on December 13, 2016. The Director of Planning for the City of Los Angeles issued a Memorandum dated December 13, 2016, providing clarity on which development projects would be subject to Measure JJJ's requirements based on the effective date of December 13, 2016. (Refer to Attachment B.) That Memorandum states the following:

Any development project that 1) will result in ten or more residential dwelling units, and 2) requires a General Plan Amendment, Zone Change, and/or Height District Change that results in increased allowable residential floor area, density, height, or allows a residential use where previously not allowed, is subject to the provisions of Measure JJJ, with the exception of a project with a Vesting Zone Change, Vesting Tentative Map, or Vesting Conditional use Permit, the applications for which were deemed complete by the Department of City Planning as of December 13, 2016. (December 13, 2016, Memorandum [emphasis added].)

In December 2015, the Applicant submitted the application for several entitlements to proceed with the Project, including a Conditional Use Permit, a Zone Variance, a Transfer of Floor Area Rights, Site Plan Review, and a Vesting Tentative Tract Map. (Refer to the planning receipt in Attachment C.) Based on controlling law, the application is deemed complete if the city did not send a letter stating that the application was incomplete within the time period specified by statute. Since such a letter was never sent by the City, the application was deemed complete prior to the effective date of Measure JJJ. In addition, because the Project sought approval of a Vesting Tentative Tract Map, the Subdivision Map Act governs what ordinances, policies, and standards will apply to the Project. Under the Subdivision Map Act, the ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete shall apply to a project. (Gov. Code, § 66474.2.) Thus, the provisions of the Subdivision Map Act confirm that Measure JJJ's requirements do not apply to the Project.

Regarding analysis of alternatives, an EIR is required only to analyze a reasonable range of alternatives that would feasibly attain most of the basic objectives *and* avoid or substantially lessen the project's significant environmental impacts. (Pub. Resources Code, § 21002; Cal. Code of Regs., tit. 14 ["CEQA Guidelines"], § 15126.6, subd. (a).) "[A] lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal." (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1166.) "There is no ironclad rule governing the nature or scope of the alternatives to be

discussed.” (CEQA Guidelines, § 15126.6, subd. (a).) Rather, the analysis is guided by a “rule of reason,” with the focus on whether the “range of alternatives fosters informed decisionmaking and public participation.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 354.) “Absolute perfection is not required . . . [and] [w]hen an EIR discusses a reasonable range of alternatives sufficient to foster informed decisionmaking, it is not required to discuss additional alternatives substantially similar to those discussed.” (*Id.*) “[A]n EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.” (*Residents Ad Hoc Stadium Comm. v. Bd. of Trustees* (1979) 89 Cal.App.3d 274, 287.) Courts uphold the selection of alternatives unless the challenger demonstrates that they are “manifestly unreasonable.” (*Id.*)

Further, alternatives to a project are required to identify ways to substantially reduce or avoid significant project impacts, while meeting most to the basic project objectives. The Appellant asserts that the Draft EIR should have included “an alternative that would utilize the increased density pursuant [the] TOC Guidelines that would create affordable housing on the Project Site.” The Appellant asserts that such an alternative would lessen the Project’s inconsistency with affordable housing goals, objectives, and policies; reduce vehicle miles traveled (VMT) and associated traffic and GHG emissions impacts; and serve as a benefit to City stakeholders. As discussed in Response to Comment 2, the Project is not inconsistent with applicable land use plans and, therefore, there is no need to include an alternative to the Project that includes affordable housing. Further, although some affordable housing generates fewer daily and peak-hour trips than does market-rate housing, the Appellant provides no evidence that the affordable housing alternative described in the comment would substantially reduce or avoid the Project’s significant and unavoidable traffic impact or the less than significant GHG emissions impact identified in the Draft EIR. As a benefit to the City, one-half of the TFAR fee will go toward the development of affordable housing in the City. For these reasons, an affordable housing alternative is not required for the EIR.

Comment 4

3. Failure to Incorporate Transportation Mitigation Measures Recommended by CalTrans and Metro.

The AA erred and abused its discretion in approving a Final EIR that failed to incorporate several mitigation measures recommended by CalTrans and Metro to address access for pedestrian and the disabled, as well as traffic impacts from heavy-duty trucks during the Project’s four-and-a-half-year construction phase.

For example, out of concern for pedestrian safety and ADA access, CalTrans recommended the City require pedestrian accessibility improvements at some ramp intersections, construct missing and old ADA curb ramps, and include freeway trailblazers.⁹ However, these Caltrans recommendations are not included in the Project’s Mitigation Monitoring Reporting Program, or “MMRP.” Additionally, out of concern for congestion on state highways, CalTrans recommended that use of oversized-transport vehicles and other large-size truck trips be limited to off peak-hour periods.¹⁰ This recommendation would apply to the 50-plus daily round-trips from dump trucks exporting debris and soil from the Project Site during the Projects demolition and grading phase.¹¹

However, this Caltrans recommendation is not included in the Project's Mitigation Measures L-2 requiring preparation of a Construction Traffic Management Plan¹²

Metro also commented on the Draft EIR and "strongly encourage[d]" the installation of bus shelters with benches, wayfinding signage, enhanced crosswalks and ramps compliant with the ADA, as well as pedestrian lighting and shade trees in paths of travel to access bus stops and other amenities that improve safety and comfort for transit riders.¹³ However, the Project's Mitigation Measure L-1 requires preparation of the Transit Design Management (TDM) Program that makes only limited commitments to any particular TDM strategies¹⁴--none of which implements the above-mentioned Caltrans/Metro recommendations.

In sum, the EIR must require the implementation of Caltrans and Metro recommendations in the Project's MMRP, and enforceable conditions of approval requiring (1) pedestrian accessibility improvements at specified ramp intersections, (2) construction of missing and old ADA curb ramps, and (3) inclusion of freeway trailblazers. The Project must also commit to meaningful TDM strategies that are most effective at mitigating traffic impacts and provide real benefits to City stakeholders, such as:

- Enhancements to public transit stops,
- Upgrade outdated traffic signals controllers,
- Mandatory convenient parking for carpool and bicycle riders, and
- A thoroughly flushed out local hiring program.

Response to Comment 4

The Appellant is referred to Section III (Responses to Comments) of the Final EIR for responses to all Caltrans and Metro comments on the Draft EIR, including the same comments regarding the issues raised by the Appellant.

Regarding Caltrans facilities enhancement recommendations, since no significant impacts related to pedestrian safety or ADA access were identified in the Draft EIR, no mitigation measures are required. As discussed in Response to Caltrans Comment-3 on page III-4 of the Final EIR, based on the review conducted as part of the traffic analysis prepared for the Draft EIR, the amount of Project traffic expected to occur on the freeway system would not meet any of the criteria referenced in Comment Caltrans-3. Thus, no further analysis of potential impacts to the freeway system is required. Further, while the amount of Project traffic expected to occur on nearby Caltrans facilities does not meet the criteria for additional focused analysis of I-10 Freeway and I-110 Freeway mainline segments and nearby off-ramps based on the Caltrans NOP response letter dated July 22, 2016, additional analysis was undertaken and was included in the Draft EIR (refer to pages IV.L-46 through IV.L-49 of the Draft EIR). The analysis of Caltrans facilities that was included in the Draft EIR concluded that the Project would not result in impacts to state facilities. CEQA Guidelines Section 15126.4(a)(3) states, "Mitigation measures are not required for effects which are not found to be significant." Thus, the Project Applicant is not required to make a fair-share contribution to the enhancements mentioned in the comment. For these

reasons, Caltrans facilities enhancement recommendations were not required to be included as mitigation measures for the Project.

Regarding Comment Caltrans-6 related to limiting large size truck trips to non-peak commute periods, the Project Applicant would be required to implement Mitigation Measure MM-L-2 (refer to pages V-13 and V-14 Section V [Mitigation Monitoring Program] of the Final EIR), which requires preparation and compliance of a Construction traffic Management Plan. As part of this plan, the Project Applicant will be required to obtain a Haul Route Approval from the Department of Building and Safety. The Department of Building and Safety will dictate the hours for hauling in the Haul Route Approval. Because this issue will be addressed through the City's existing process, the recommendation from Caltrans to limit hauling to non-peak commute periods was not needed as a mitigation measure for the Project.

Regarding Comment Metro-8 related to installation of compliant with the Americans with Disabilities Act (ADA), as well as pedestrian lighting and shade trees in paths of travel to access bus stops and other amenities that improve safety and comfort for transit riders. No impacts related to traffic were identified in the Draft EIR, and as such, no mitigation measures are required. Thus, the recommendations made by Metro are not required to be included as mitigation measures for the Project. Additionally, as discussed in Response to Comment Metro-8, transit amenities will be considered as strategies to encourage transit use, further supporting a shift from single-occupancy vehicle trips to transit trips, in the Transportation Demand Management (TDM) Plan that the Project Applicant is required to prepare and implement as outlined in Mitigation Measure MM-L-1 on pages V-11 and V-11 in Section V (Mitigation Monitoring Program) of the Final EIR. The purpose of the TDM Plan is to reduce vehicle use and to increase other forms of travel. The strategies that will be chosen as part of the TDM Plan will be those that are most effective toward this purpose and are not necessarily the enhancements and amenities suggested by Metro or Caltrans. The specific strategies that will be implemented as part of the TDM Plan will be decided by the Los Angeles Department of Transportation (LADOT) and could include those suggested by Metro and the Appellant.

Comment 5

4. Failure to Properly Assess and Mitigate GHG Impacts.

The AA abused its discretion in approving a Final EIR that fails to adequately address expert GHG comments submitted during the Draft EIR comment period¹⁵ (and incorporated in their entirety by this reference), and which therefore ignores the Project's significant GHG impacts and appropriate mitigation.

For example, expert environmental consultants SWAPE commented to the City on December 4, 2018 that the EIR improperly relied on consistency with plans that do not qualify as GHG-reduction plan commonly referred to as a Climate Action Plan or "CAP."¹⁶ None of the plans cited in the EIR include CAP hallmarks identified under the CEQA Guidelines,¹⁷ such as:

- Creating a monitoring program to ensure the CAP's efficacy for the City to reach its limit.

For this reason, the Project's purported consistency with these plans do not establish the Project will have a less than significant GHG impact or serve as a basis for the City to ignore other relevant thresholds routinely used by the City to determine significance.

As another example, the EIR shows that the Project will exceed GHG thresholds not only proposed by South Coast AQMD but routinely used by the City for similarly situated projects. For example, notwithstanding incorporation of solar panels,¹⁸ the Project will emit 11,442 metric tons of GHG emissions annually,¹⁹ which exceeds South Coast AQMD's most lenient threshold of 10,000 annual GHG emissions for industrial projects. Alternatively, given the Project will serve 1,265 employees and res.idents²⁰ and approximately 448 hotel patrons²¹ the Project would have an efficiency threshold of 6.67 annual GHG emissions per person served by the Project.²² This exceeds SCAQMD's proposed efficiency thresholds of 4.8 and 3.0 annual GHG emissions for target years 2020 and 2035, respectively. In sum, the EIR cannot utilize non-CAP plans and ignore thresholds routinely used by the City. The Project will have significant GHG impact that must be mitigated to the fullest extent. This should include mitigation measures that acutely address the Project's GHG emissions from energy and mobile sources, which accounts for more than 90 percent of the Project's GHG emissions. The AA erred and abused its discretion in finding otherwise, and the LOD does not address any of these expert comments about GHG with substantial evidence.

Response to Comment 5

The Appellant is referred to Section III (Responses to Comments) of the Final EIR for responses to all SWAPE comments on the Draft EI, including the comments regarding the issues raised by the Appellant.

Regarding SWAPE's comments related to reliance on consistency with GHG-reduction plans, the Appellant is referred to Comment CREED LA 2/SWAPE AQ-I, which raises the same issue that is raised in this comment, and Response to Comment CREED LA 2/SWAPE AQ-I on pages III-78 and III-79 of the Final EIR. As discussed there, the analysis of GHG emissions in the Draft EIR meets the requirements of Section 15064.4(c) of the CEQA Guidelines by demonstrating the Project's compliance "with regulations or requirements adopted to implement a Statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions."² Specifically, the analysis focuses on consistency with the AB 32 Scoping Plan and SCAG's 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016-2040 RTP/SCS), both appropriate plans that demonstrate a reduction and/or mitigation of GHG emissions and were adopted through a public review process. Specifically, the GHG emissions analysis in the Draft EIR shows the Project's consistency with 18 strategies from the AB 32 Scoping Plan that address

² *To qualify, such a plan or program must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Examples of such programs include a "water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plans [and] plans or regulations for the reduction of greenhouse gas emissions."*

a number of source categories, some of which are applicable to local development projects. In addition, the Draft EIR shows the Project's consistency with 13 actions and strategies from the regional GHG emissions reduction plan (the 2016-2040 RTP/SCS).

The Draft EIR provides further evidence of the Project's consistency with the call for Statewide GHG emissions reductions beyond the requirements of CEQA Guidelines Section 15064.4(c) by assessing the Project's consistency with applicable local GHG emissions reductions programs. This includes disclosing the Project's consistency with the City of Los Angeles' ClimateLA Plan, Green Building Ordinance, Mobility 2035 Plan, and Green LA Plan. The assessment provides additional evidence of the Project's consistency with Statewide policies that govern GHG emissions reductions. This includes a comparison with Executive Order B-30-15 that focuses on a 2030 horizon and Executive Order S-3-05. It should be noted that comparisons to these local plans and Statewide mandates are not used as the basis for any significance finding but rather provide additional evidence and context for the Draft EIR's finding that the Project is consistent with the AB 32 Scoping Plan and the 2016-2040 RTP/SCS, as well as the City's applicable plans.

Additionally, as stated in Response to Comment CREED LA 2/SWAPE AQ-I, as there is no adopted threshold from CARB, SCAQMD, the City, or any other relevant agency, the analysis of GHG emissions in the Draft EIR meets the requirements of Section 15064.4(c) of the CEQA Guidelines by demonstrating the Project's compliance "with regulations or requirements adopted to implement a Statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." This is the threshold of significance used by the City of Los Angeles as the Lead Agency. No other significance thresholds are routinely used by the City for determining the significance of the GHG emissions impacts. The South Coast Air Quality Management District's (SCAQMD) interim GHG emissions significance threshold referenced by the Appellant has never been adopted and is not used as a significance threshold by the City. As stated in the Draft EIR, the Project would be consistent with the plans identified above, and impacts related to GHG emissions would be less than significant. For these reasons, the Advisory Agency did not err or abuse its discretion in accepting the conclusions of the EIR for the Project. All of the comments on the Draft EIR (including those referenced by the Appellant) have been addressed in the Final EIR.

Comment 6

5. Improper VTT and Related Land Use Findings

The AA erred and abused its discretion in making the land use findings for the Project. In connection with the approval of the VTT, the City must make findings pursuant to LAMC §§ 17.03 and 17.15 and sections 66473.1, 66474.60, .61 and .63 of the Cal. Gov. Code, including:

- The proposed map is consistent with applicable general and specific plans.
- The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
- The site is physically suitable for the type of development.

- The site is physically suitable for the proposed density of development.
- The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; and
- The design of the subdivision or type of improvements is not likely to cause serious public health problems.

These findings cannot be made here. As noted above, the Project's lack of affordable housing is in direct conflict with the City's General Plan Framework and Housing Element, so plan consistency findings required for tract maps under the Municipal and Government Code cannot be made.

Response to Comment 6

The Appellant claims that the subdivision findings required by the Los Angeles Municipal Code (LAMC) and the State Government Code cannot be made because the Project does not provide affordable housing, which is in direct conflict with the General Plan Framework and Housing Element. The Appellant is referred to the Letter of Determination (LOD) for the Vesting Tentative Tract Map No. 73966 issued by the Project that provides detailed findings for each of the eight required findings. The Appellant has submitted no substantial evidence to contradict any of the findings in the record.

When the Advisory Agency made findings approving the Project, it did so consistent with its "broad discretion" to determine whether the Project is "in harmony" with City land use policies. (See *Save Our Peninsula Comm.*, *supra*, 87 Cal.App.4th at 142; *Sequoyah*, *supra*, 23 Cal.App.4th at 719.) As explained in the Draft EIR, the Project is consistent with the City's General Plan Framework and Housing Element (IV.H-31–33), which provides the basis for the Advisory Agency's finding regarding land use consistency as identified by the commenter. Refer to Response to Comment 2 in this letter. Further, the following summary of the land use analysis in the Draft EIR (refer to Section IV.H [Land Use and Planning]) is provided:

(a) City of Los Angeles General Plan

The City of Los Angeles General Plan (General Plan), adopted December 1996 and re-adopted August 2001, provides general guidance on land use issues for the entire City. The General Plan consists of a Framework Element, a Land Use Element, and 10 citywide elements. (DEIR p. IV.H-5)

City of Los Angeles Framework Element

The City's General Plan Framework Element, adopted in December 1996 and readopted in August 2001, contains goals, policies, and objectives that address land use and serves as a guide to update the community plans and the citywide elements. The Framework Element provides a base relationship between land use and transportation, and provides guidance for future updates to the various elements of the General Plan, but does not supersede the more detailed community

and specific plans. The Land Use chapter of the Framework Element contains Long Range Land Use Diagrams that depict the generalized distribution of centers, districts, and mixed-use boulevards throughout the City, but the community plans determine the specific land use designations. The Land Use Element of the General Plan is contained within 35 community plans. (DEIR p. IV.H-5)

Land Use

The Project is consistent with the Land Use goals, objectives, and policies identified in the Framework Element. To wit: “It is the intent of the General Plan Framework Element to encourage new development in proximity to rail and bus transportation corridors and stations.”

- Policy 3.1.1

Identify areas on the Long-Range Land Use Diagram and in the community plans sufficient for the development of a diversity of uses that serve the needs of existing and future residents (housing, employment, retail, entertainment, cultural/institutional, educational, health, services, recreation, and similar uses), provide job opportunities, and support visitors and tourism.

The Project is consistent with this policy. The Project would introduce a mixed-use development to the Project Site. The Project Site is within walking and/or biking distance of an existing job center (Downtown Los Angeles) and the retail uses located at Figueroa Street and Olympic Boulevard. The Project would provide housing and employment opportunities, as well as commercial and hotel uses, to serve current residents in the Project Site area and future residents and other users of the Project Site. (DEIR p. IV.H-17)

- Policy 3.2.2

Establish, through the Framework Long-Range Land Use Diagram, community plans, and other implementing tools, patterns and types of development that improve the integration of housing with commercial uses and the integration of public services and various densities of residential development within neighborhoods at appropriate locations.

The Project is consistent with this policy. The Project is an infill development that includes redevelopment of the Project site with a mixed-use development, including an integration of 374 residential dwelling units, retail/commercial, office, and hotel and associated conference center/ballroom. The Project site is in close proximity to existing bus lines (including Metro 14, 20, 28, 30/330, 37, 51/52/352, 60, 66, 70, 71, 76, 78/79/378, 81, 96, 442, 450, 460, 728, and 733; Metro Expo, Blue, Purple, Red and Silver Lines; Commuter Express 409, 419, 422, 423, 437, 438, 448, and 534; Foothill Transit 493, 495, 497, 498, 499, and 699; DASH A, B, E, and F; OCTA 701 and 721; Big Blue Bus 10; and Torrance Express 4) and with easy access to the 7th Street/Metro Center Station at Figueroa Street. Also, Historic Streetcar service along Figueroa Street is anticipated to be in service when the Project becomes operational. In addition, the Project would be located near commercial uses and employment areas in Downtown Los Angeles. Finally, the Project would encourage bicycling with the inclusion of approximately 571 bicycle parking spaces and a bicycle repair station. (DEIR pp. IV.H-17-18)

- Policy 3.2.3

Provide for the development of land use patterns that emphasize pedestrian/bicycle access and use in appropriate locations.

The Project is consistent with this policy. The Project site is located in the South Park district of the Central City Community Plan area, which has been observed to experience a high level of pedestrian activity, particularly along the key corridors such as Figueroa Street and Olympic Boulevard near the Project site. Based on the existing level of pedestrian activity in the area and the proximity of the nearby LA Live/Convention Center area, it is anticipated that there would continue to be a high level of pedestrian activity in the area as well as to and from the Project site.

The Project would be designed to encourage pedestrian activity and walking as a transportation mode. As indicated on Figure III-5 (refer to Section III, Project Description), the Project would be designed to provide connections to the adjacent public sidewalks and would include site enhancements to promote walkability. The Project site would be accessible from nearby public bus and rail transit stops as well as other amenities along nearby major corridors. The majority of pedestrian access to the Project site would occur via the existing public sidewalks provided along every street in the Downtown Los Angeles area. The Project site is located near the LA Live/Convention Center area, which offers a wide variety of entertainment, retail, and restaurant opportunities. Further, as noted previously, the Project would include outdoor plaza space such as landscaping, water features, and outdoor dining areas. A portion of the plaza space would be accessible to pedestrian visitors, thereby contributing to a pedestrian-oriented environment. The outdoor plaza space would provide an outdoor gathering space enhance the project by providing outdoor areas for employees, residents, guests, and visitors.

Bicycle access to the Project site would be facilitated by the City's bicycle roadway network. Existing or proposed bicycle facilities (e.g., Class I Bicycle Path, Class II Bicycle Lanes, Class III Bicycle Routes, Proposed Bicycle Routes, Bicycle Friendly Streets, etc.) identified in the City's 2010 Bicycle Plan are located within an approximate one-mile radius from the Project site.³ In addition, cycle tracks and buffered bicycle lanes are proposed along portions of Figueroa Street and 11th Street in the immediate project vicinity as part of the City's Figueroa Streetscape (My Figueroa [or MyFig]) project. Further, bicycles can be rented at a station located at Figueroa Street and 9th Street (approximately one block north of the Project site) as part of Metro's Bicycle Share Program.

Use of bicycles as a transportation mode to and from the Project site would be encouraged as Part of the Project by the provision of ample and safe parking (refer to "Bicycle Parking," below). The type of spaces and dimensions would be provided based on LAMC Sections 12.21.A.16 and 12.21 A.4(c), as well as to meet the needs of a variety of bicycles. The bicycle spaces would be

³ Sources: City of Los Angeles Mobility Plan 2035 (2015), and City of Los Angeles Bicycle Parking Plan; www.labikeplan.org. As noted in the Mobility Plan 2035, the 2010 Bicycle Plan and policies have been folded into the Mobility Plan to reflect a commitment to a balanced, multi-modal viewpoint.

provided in a readily accessible location(s). Appropriate lighting would be provided to increase safety and provide theft protection during nighttime parking. The short-term and long-term bicycle parking requirements of the LAMC would be satisfied both for the residential and commercial land use components of the Project. (DEIR pp. IV.H-18-19)

- Policy 3.4.1

Conserve existing stable residential neighborhoods and lower-intensity commercial districts and encourage the majority of new commercial and mixed-use (integrated commercial and residential) development to be located (a) in a network of neighborhood districts, community, regional, and downtown centers, (b) in proximity to rail and bus transit stations and corridors, and (c) along the City's major boulevards, referred to as districts, centers, and mixed-use boulevards, in accordance with the Framework Long-Range Land Use Diagram.

The Project is consistent with this policy. The Project is an infill development that includes redevelopment of the Project site in Downtown Los Angeles with a mixed-use development, including a 374 residential dwelling units, retail/commercial, office, and hotel and associated conference center/ballroom. The Project site is in close proximity to existing bus lines (including Metro 14, 20, 28, 30/330, 37, 51/52/352, 60, 66, 70, 71, 76, 78/79/378, 81, 96, 442, 450, 460, 728, and 733; Metro Expo, Blue, Purple, Red and Silver Lines; Commuter Express 409, 419, 422, 423, 437, 438, 448, and 534; Foothill Transit 493, 495, 497, 498, 499, and 699; DASH A, B, E, and F; OCTA 701 and 721; Big Blue Bus 10; and Torrance Express 4) and with easy access to the 7th Street/Metro Center Station at Figueroa Street. Also, Historic Streetcar service along Figueroa Street is anticipated to be in service when the Project becomes operational. In addition, the Project would be located near commercial uses and employment areas in Downtown Los Angeles. Finally, the Project would encourage bicycling with the inclusion of approximately 571 bicycle parking spaces and a bicycle repair station. (DEIR pp. IV.H-19-20)

Housing Element

The Housing Element of the City's General Plan identifies as its overall goal the creation of a city of livable and sustainable neighborhoods with a range of housing types and costs in mutual proximity to jobs, infrastructure and services.

On December 3, 2013, the City Council adopted the update to the Housing Element of the General Plan for the period of 2013-2021. The Housing Element provides the number of housing units each community must plan and accommodate during the 8-year period pursuant to the Regional Housing Needs Assessment (RHNA) allocation. The Housing Element does not alter the development potential of any site in the City, nor modify land use of the Zoning Code. It also does not undermine, in any way, neighborhood-planning efforts such as Community Plans, Specific Plans, or Historic Preservation Overlay Zones. While the State requires the City to evaluate and plan for the existing capacity to accommodate future projected growth, the Housing Element does not have any material effect on development patterns, nor specify areas for increased height or density.

An objective of the Housing Element is to promote an equitable distribution of affordable housing opportunities throughout the City by providing incentives to include affordable housing in residential development. The Project would further the goals and objectives of the Housing Element by providing additional housing stock. (DEIR p. IV.H-6)

- Policy 1.1.3

Facilitate new construction of a variety of housing types that address current and projected needs of the city's households.

- Policy 1.1.4

Expand opportunities for residential development, particularly in designated Centers, Transit Oriented Districts and along Mixed-Use Boulevards.

- Policy 1.3.5

Provide sufficient land use and density to accommodate an adequate supply of housing units by type and cost within the City to meet the projections of housing needs, according to the policies and objectives of the City's Framework Element of the General Plan.

- Policy 2.2.2

To accommodate projected growth to 2014 in a sustainable way, encourage housing in centers and near transit, in accordance with the General Plan Framework Element, as reflected in Map ES.1.

The Project is consistent with these policies. The City's Housing Element has identified a need for approximately 17,893 dwelling units in the Central City Community Plan area. The Project includes development of 374 residential dwelling units (including 24 studio units, 200 1-bedroom units, 120 2-bedroom units, 30 3-bedroom units) at the Project site, which is in the Central City Community Plan area. (DEIR p. IV.H-32)

- Policy 2.2.3

Promote and facilitate a jobs/housing balance at a citywide level.

- Policy 2.4.1

Provide sufficient services and amenities to support the planned population while preserving the neighborhood for those currently there.

The Project is consistent with these policies. The Project is an infill, mixed-use development to Downtown Los Angeles, including 374 residential dwelling units, retail/commercial, office, and hotel and associated conference center/ballroom, providing housing, employment, and retail opportunities to the existing and future community within walking distance to existing bus lines and with easy access to the 7th Street/Metro Center Station at Figueroa Street. (DEIR p. IV.H-33)

- Policy 2.4.2

Develop and implement design standards that promote quality development.

The Project is consistent with this policy. As part of the entitlement approval process for the Project, the City would review the Project in light of the Downtown Design Guidelines to confirm that the Project meets the City's applicable design standards.

Central City Community Plan

The Central City Community Plan (Community Plan) area is located south of Sunset Boulevard/Cesar Chavez Avenue, north of the Santa Monica Freeway (Interstate 10), east of the Harbor Freeway (Interstate 110) and west of Alameda Street. It is bordered by the communities of Central City North, Silver Lake-Echo Park, Westlake, Southeast and South Central Los Angeles. Central City is the second smallest community plan area, representing less than one percent of the land in the City (approximately 2,161 acres or 3.38 square miles). Since this area is the governmental, financial, and the industrial hub of Los Angeles, land has primarily dedicated to these uses. Consequently this area has a smaller residential population in comparison with the rest of the City, though dwelling units and resident population are growing as people find a renewed interest in urban living and existing vacant and often historic commercial and industrial buildings are being converted to residential uses.

The Community Plan promotes an arrangement of land use, infrastructure, and services intended to enhance the economic, social, and physical health, safety, welfare, and convenience of the people who live, work and invest in the community. By serving to guide development, the Plan encourages progress and change within the community to meet anticipated needs and circumstances, promotes balanced growth, builds on economic strengths and opportunities while protecting the physical, economic, and social investments in the community to the extent reasonable and feasible. (DEIR pp. IV.H-6-7)

Residential

- Policy 1-1.1

Maintain zoning standards that clearly promote housing and limit ancillary commercial to that meets the needs of neighborhood residents or is compatible with residential uses.

The Project is consistent with this policy. The Project is an infill, mixed-use development to Downtown Los Angeles, including 374 residential dwelling units, retail/commercial, office, and hotel and associated conference center/ballroom, providing housing, employment, and retail opportunities to the existing and future community within walking distance to existing bus lines and with easy access to the 7th Street/Metro Center Station at Figueroa Street. The uses proposed as part of the Project are allowed existing land use designation and zoning for the Project site. The Project would be compatible with other high-rise mixed-use/residential building in the vicinity of the Project site, including the 717 Olympic Residences, Apex The One Apartments, and the Ritz Carlton Residences. (DEIR pp. IV.H-33-34)

- Policy 1-2.1

Promote the development of neighborhood work/live housing.

The Project is consistent with this policy. The Project is an infill development that includes redevelopment of the Project site in Downtown Los Angeles with a mixed-use development, including an integration of 374 residential dwelling units, retail/commercial, office, and hotel and associated conference center/ballroom. The Project would reduce dependence on car travel and air pollutants generated by car traffic through the Project site's close proximity to existing bus lines (including Metro 14, 20, 28, 30/330, 37, 51/52/352, 60, 66, 70, 71, 76, 78/79/378, 81, 96, 442, 450, 460, 728, and 733; Metro Expo, Blue, Purple, Red and Silver Lines; Commuter Express 409, 419, 422, 423, 437, 438, 448, and 534; Foothill Transit 493, 495, 497, 498, 499, and 699; DASH A, B, E, and F; OCTA 701 and 721; Big Blue Bus 10; and Torrance Express 4) and with easy access to the 7th Street/Metro Center Station at Figueroa Street. Also, Historic Streetcar service along Figueroa Street is anticipated to be in service when the Project becomes operational. In addition, the Project would be located near commercial uses and employment areas in Downtown Los Angeles. Finally, the Project would encourage bicycling with the inclusion of approximately 571 bicycle parking spaces and a bicycle repair station. (DEIR p. IV.H-34)

Commercial

- Policy 1-5.1

Monitor the supply of low-income housing stock to guard against loss of units through demolition, conversion, and deterioration of units.

The Project is consistent with this policy. The Project site is currently developed with a carwash and other commercial land uses; these uses would be removed as part of the Project. The Project would not affect any existing low-income housing. (DEIR p. IV.H-34)

- Policy 2-1.2

To maintain a safe, clean, attractive, and lively environment.

The Project is consistent with this policy. The Project includes infill development of multi-family residential commercial land uses that are allowed under the existing land use designation and zoning in downtown Los Angeles. The Project would include on-site maintenance and security systems. The Project would be designed and constructed to meet the City's design and landscaping standards. Additionally, the Project includes 25,794 square feet of public outdoor open space and 16,946 square feet of public indoor open space. (DEIR p. IV.H-35)

- Policy 2-2.1

Focus on attracting businesses and retail uses that build on existing strengths of the area in terms of both the labor force, and businesses.

The Project is consistent with this policy. The Project includes neighborhood-serving retail that would support the proposed residential land uses and would provide employment. The Project's proposed hotel also would provide employment and would support visitors to the nearby Los Angeles Convention Center, the Staples Center, the L.A. Live entertainment complex, and other visitors to the Downtown area. (DEIR p. IV.H-35)

- Policy 2-2.3

Support the growth of neighborhoods with small, local retail services.

The Project is consistent with this policy. The Project includes neighborhood-serving retail that would support the proposed residential land uses, as well as existing residents in the Project site area, and will provide employment. (DEIR p. IV.H-35)

Comment 7

Additionally, as noted above, the Project's CEQA analysis is flawed with regard to transportation mitigation and GHG significance. The AA therefore erred and abused its discretion in making required tract map findings including but not limited to "the site is physically suitable for the type of development;" "the site is physically suitable for the proposed density of development;" "the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage ... ;" and "the design of the subdivision or type of improvements is not likely to cause serious public health problems." These findings cannot be made upon a foundation of a CEQA document that has insufficient transportation mitigation and unsubstantiated GHG analysis.

Response to Comment 7

Regarding previous comments related to transportation mitigation and GHG emissions impact significance, the Appellant is referred to Response to Comments 4 and 5.

Comment 8

Moreover, we believe the long delay in the Project should have resulted in the termination of the application and submission of a new application subject to newly enacted housing laws, such as the City's Affordable Housing Linkage Fee.²³ Here, the Project's application was filed in December 2015. Yet, the Draft EIR was not released until almost three years later. This type of inactivity has resulted in the City Planning Department's unilateral termination of other project applications.²⁴ This should have occurred here, requiring Applicant to submit new applications subject to current zoning regulations, such as the City's Affordable Housing Linkage Fee that apply to residential and non-residential uses "including hotels."²⁵ As the City's Linkage Fee Implementation Memo of July 16, 2018 points out, the Project Site is within the Medium-High Residential Market Area and High-Nonresidential Market Area, subject to \$1 per square foot and \$5 per square foot linkage fee, which was phased in starting February 2018.²⁶ The City should ensure that the Project's long-

delay does not result in a circumvention of the City's Affordable Housing Linkage Fee program and an undue windfall for the Applicant.

Response to Comment 8

In terms of the “new housing laws” identified by the commenter, the commenter is referred to Response to Comment 3. As the Project was approved pursuant to a Vesting Tentative Tract Map, the Subdivision Map Act governs what ordinances, policies, and standards will apply to the Project. Under the Subdivision Map Act, the ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete shall apply to a project. (Gov. Code, § 66474.2.) Thus, the provisions of the Subdivision Map Act dictate that any “new housing laws” passed by the City after the application for the Project was deemed complete on January 16, 2016, do not apply to the Project. This would include the City’s Affordable Housing Linkage Fee Ordinance, which became effective on February 17, 2018. (See LAMC, § 19.18.) It does not appear the commenter has identified any other City laws regarding housing that the commenter believes apply to the Project.

The Appellant also claims that the entitlement applications should have been terminated due to inactivity. However, the examples cited by the commenter as justifying termination of the Project application are not analogous. The commenter has cited no statutory provision or ordinance that would justify termination of this case. In the first case cited by the commenter, the case had “been held pending receipt of the requested additional materials/information,” which the applicant had not provided after 166 days. In the second case cited by the commenter, the applicant “stated that a revised expanded initial study and revised plan would be submitted, however, no further communication was received” after 327 days and the case was terminated. The circumstances for this Project are different. Throughout the entitlement process, the Project applicant has diligently pursued its approvals and timely submitted whatever information has been requested by the City and its agencies and staff. The applicant submitted the land use entitlement applications on December 16, 2015 and has worked diligently to proceed through the Planning Department’s review process. The Applicant submitted an Initial Study of Environmental Review in June 2016 and the City issued a Notice of Preparation of a Draft Environmental Impact Report (DEIR) on June 23, 2016. The City conducted a scoping hearing on the DEIR on July 7, 2016. A Water Supply Assessment was prepared and approved by the Department of Water and Power on June 6, 2017. Subsequent to this, the environmental consultant worked to prepare the DEIR and it was circulated for public review on October 4, 2018. After receiving public comments on the DEIR, the City prepared a Final EIR and that was completed on August 8, 2019. These were all necessary steps with the Applicant’s active participation to enable the Project to be ready to be considered at the Advisory Agency hearing on August 28, 2018.

In addition to these steps, the applicant has been actively working with other City departments to advance the application material over the course of the last three years. The Applicant held meetings with the Department of Transportation, Bureau of Engineering, and City Planning Department throughout the application process and met with the Neighborhood Council on February 16, 2016. The Project was reviewed by the City’s Professional Volunteer Program (PVP) in late 2017. All this activity shows that the Project was not inactive and that the Planning Department had no reason to terminate the applications for inactivity.

It is important to note that the Planning Department does have the authority to terminate cases due to inactivity but has never indicated that the subject case has been inactive. One of the cases cited in the Appellants brief indicates that Case ENV-2018-2919 was terminated due to inactivity. While this environmental case was terminated, the Project itself (Case DIR-2018-2918-TOC) was not terminated. It was approved with a different Environmental Case (ENV-2018-2888-CE) used instead as the CEQA documentation for the entitlement application. Thus, this case is not a good example of inactivity that fits the fact pattern of the subject case.

The application was submitted before the Affordable Housing Linkage Fee Ordinance became effective on February 17, 2018. In accordance with the terms of the Ordinance, applications submitted to the City Planning Department before this date are not subject to the provisions of the Ordinance. The Project has not circumvented the requirements of Affordable Housing Linkage Fee Ordinance. It was merely submitted over two years before the ordinance came into existence and has just taken a long time to wind its way through the entitlement process. Projects of this size often take three years to complete the land use entitlement process when an Environmental Impact Report is required to be prepared. This Project is not unusual in this regard. Thus, there was no reason for the Planning Department to have ever terminated the applications due to inactivity, and there is no basis for applying subsequently-enacted regulations to a project with vested rights that pre-date the enactment of the Linkage Fee Ordinance.

Comment 9

The VTT and related entitlements are discretionary, not by right. Absent compliance with the CEQA deficiencies addressed herein, and with zero affordable housing, the City cannot make the required Municipal and Government Code land use findings and, therefore, this appeal should be granted.

Response to Comment 9

As discussed in Responses to Comments 2 through 8, the Appellant has not identified any “CEQA deficiencies.” Given that the City has complied with CEQA for the Olympic Tower Project, the City’s findings are supported by substantial evidence.

Attachment A

- UNITE HERE Local 11 Appeal Comment Letter

UNITEHERE! Local 11

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Appeal Justification 813 Olympic Blvd. Hotel Project (813-815 W. Olympic Blvd. and 947-951 S. Figueroa St.); VTT 73966-CN, ENV-2015-4558-EIR; AA Approval Made Effective by September 6, 2019 Letter of Determination (LOD)

UNITE HERE Local 11 (Local 11) hereby respectfully appeals the September 6, 2019 Letter of Determination (LOD) regarding the Advisory Agency’s (AA) approval of the above-referenced hotel and residential development (Project) proposed by Olymfig26, LLC (Applicant), located at 813-815 W. Olympic Blvd. (Site). Under the Los Angeles Municipal Code (LAMC) and the California Environmental Quality Act (CEQA), Pub. Res. Code § 21000 *et seq.*, Local 11 appeals: 1) the Project’s CEQA Environmental Impact Report (EIR) (State Clearinghouse No. 2016061048) under City Case No. ENV-2015-4558-EIR; and 2) Vesting Tentative Tract No. 73966-CN (VTT), including the related approvals for the deviation from AA parking policies and haul route, under City Case No. VTT 73966-CN. The September 6, 2019 LOD is submitted herewith.

Justification for Appeal of CEQA EIR

Substantive evidence demonstrates flaws in the Project’s environmental analysis including failure to properly analyze land use inconsistency relating to a lack of affordable housing and a failure to study an alternative including housing, failure to include multiple mitigation measures recommended by Caltrans and Metro, and an improper greenhouse gas (GHG) analysis as set forth in expert comments in the record. Because of this, the AA erred and abused its discretion when approving the EIR.

1. Failure to Disclose and Analyze Land Use Inconsistency Due to Lack of Affordable Housing.

The Project’s Final EIR fails to properly analyze land use inconsistency, stemming from its lack of even a single affordable housing unit. While the Project includes 374 condo units including studios to 3-bed penthouses,¹ the EIR and Project findings contain no indication that any will be affordable. The lack of housing in this area of Downtown is a major issue under the Central City Community Plan.² So too, does the lack of affordable units runs counter to numerous goals, objectives, and policies under applicable land use plans:

City Housing Element 2013-2021 Goals and Policies ³
Goal 1: A City where housing production and preservation result in an adequate supply of ownership and rental housing that is safe, healthy and affordable to people of all income levels, races, ages, and suitable for their various needs.
Policy 1.1.1: Expand affordable homeownership opportunities and support current homeowners in retaining their homeowner status.
Policy 1.1.2: Expand affordable rental housing for all income groups that need assistance.
Policy Objective 2.5: Promote a more equitable distribution of affordable housing opportunities throughout the City.

¹ FEIR, cover page; DEIR, p. III-1, III-42.

² Central City Community Plan, p. I-14.

³ https://planning.lacity.org/HousingInitiatives/HousingElement/Text/HousingElement_20140321_HR.pdf.

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Policy Objective 2.5.1: Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed-use development, Transit Oriented Districts and designated Centers.
Policy Objective 2.5.2: Foster the development of new affordable housing units Citywide and within each planning area.
General Plan Framework Element
Chapter 4: Housing⁴
Policy 4.2.1 states the City should “offer incentives to include housing for very low- and low-income households in mixed-use developments”
Chapter 7: Economic Development⁵
Objective 7.9 states the City should seek to “[e]nsure that the available range of housing opportunities is sufficient, in terms of location, concentration, type, size, price/rent range” and
Policy 7.9.1 states that the City should promote “the provision of affordable housing through means which require minimal subsidy levels and which, therefore, are less detrimental to the City's fiscal structure” ⁶
Central City Community Plan⁷
Residential Issues
Create a significant increase in housing for all incomes, particularly of middle-income households.
Lack of affordable housing for workers in the industrial sector thus aggravating the jobs-housing imbalance.
Purpose of Plan
Creates residential neighborhoods; while providing a variety of housing opportunities with compatible new housing.
Objectives & Policies
Objective 1-3: To foster residential development which can accommodate a full range of incomes.
Policy 9-1.1: Preserve the existing affordable housing stock through rehabilitation and develop new affordable housing options.



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(Cont.)

The EIR improperly fails to identify inconsistency with these affordable housing policies, and the AA therefore erred and abused its discretion in approving the CEQA document. The LOD never comes to terms with the Project’s lack of affordable housing.

2. Failure to Include and Study a Project Alternative Consistent with TOC Guidelines.

Here, the AA erred and abused its discretion in approving an EIR that improperly failed to include an alternative for a Project consistent with the City’s Transit Oriented Community or “TOC” Guidelines, which would have incorporated affordable housing units and directly serve all seven project objectives,

⁴ General Plan Framework, Ch. 4, Housing, <https://planning.lacity.org/cwd/framwk/chapters/04/04.htm>.

⁵ General Plan Framework, Ch. 7, Economic Development, <https://planning.lacity.org/cwd/framwk/chapters/07/07.htm>.

⁶ See also e.g., General Plan Framework Element Goals 4a, 7G, Objective 4.1, Policies 4.1.2, 4.1.6, and Implementation Policy P29; General Plan Housing Element Goal 1, Objectives 1.1, 2.5, and Policies 1.1.1, 1.1.2, 1.1.3, 1.1.7, 1.2.5, 2.5.1; General Plan Health and Wellness Element Policies 1.2, 1.3, 1.6, 1.7, and Guiding Principal 22; Central City Community Plan Objectives 1-3.

⁷ <https://planning.lacity.org/complan/pdf/CCYCPTXT.PDF>.

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including the ability to meet the City's Regional Housing Needs Assessment ("RHNA") allocation (DEIR, pp. III-50, VI-1).

In November 2016, City voters approved Measure JJJ, which led to the adoption of TOC Guidelines in 2017 (codified at LAMC § 12.22.A.31 *et seq.*). Under the TOC Guidelines, residential projects within one-half mile of a major transit stop can obtain additional incentives, such as increased FAR from base zoning if the development meets various affordable housing requirements. According to the City's most recent housing report, Measure JJJ and the TOC Guidelines have created over 1,500 restricted-affordable units since 2017.⁸

Here, while the DEIR analyzed a project alternative without TFAR and no hotel (DEIR, p. VI-4), it did not include an alternative that would utilize the increased density pursuant TOC Guidelines that would create affordable housing units on Site. The inclusion of affordable housing units on-site would:

- Lessen the Project's inconsistency with affordable housing goals, objectives, and policies under applicable land use plans;
- Reduce vehicle miles traveled or "VMTs" and, thus, lessen the Project's traffic and GHG impacts stemming from mobile emissions; and
- Serve as a meaningful project benefit to City stakeholders seeking real affordable housing options during the City's unprecedented housing crises.

The EIR should have included an alternative consistent with TOC Guidelines with affordable units. The approval of the CEQA document without this is an error and abuse of discretion.

3. Failure to Incorporate Transportation Mitigation Measures Recommended by CalTrans and Metro.

The AA erred and abused its discretion in approving a Final EIR that failed to incorporate several mitigation measures recommended by CalTrans and Metro to address access for pedestrian and the disabled, as well as traffic impacts from heavy-duty trucks during the Project's four-and-a-half-year construction phase.

For example, out of concern for pedestrian safety and ADA access, CalTrans recommended the City require pedestrian accessibility improvements at some ramp intersections, construct missing and old ADA curb ramps, and include freeway trailblazers.⁹ However, these Caltrans recommendations are not included in the Project's Mitigation Monitoring Reporting Program, or "MMRP."

Additionally, out of concern for congestion on state highways, CalTrans recommended that use of oversized-transport vehicles and other large-size truck trips be limited to off peak-hour periods.¹⁰ This recommendation would apply to the 50-plus daily round-trips from dump trucks exporting debris and soil from the Project Site during the Projects demolition and grading phase.¹¹ However, this Caltrans

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(Cont.)

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⁸ https://planning.lacity.org/documents/ExternalAffairs/HousingProgressRpt/Q3_2018/Q3.pdf.

⁹ FEIR, III-4.

¹⁰ FEIR, p. III-7.

¹¹ FEIR, p. IV-15; DEIR, Tbl. IV.I-14.

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recommendation is not included in the Project's Mitigation Measures L-2 requiring preparation of a Construction Traffic Management Plan.¹²

Metro also commented on the Draft EIR and "strongly encourage[d]" the installation of bus shelters with benches, wayfinding signage, enhanced crosswalks and ramps compliant with the ADA, as well as pedestrian lighting and shade trees in paths of travel to access bus stops and other amenities that improve safety and comfort for transit riders.¹³ However, the Project's Mitigation Measure L-1 requires preparation of the Transit Design Management (TDM) Program that makes only limited commitments to any particular TDM strategies¹⁴--none of which implements the above-mentioned Caltrans/Metro recommendations.

In sum, the EIR must require the implementation of Caltrans and Metro recommendations in the Project's MMRP, and enforceable conditions of approval requiring (1) pedestrian accessibility improvements at specified ramp intersections, (2) construction of missing and old ADA curb ramps, and (3) inclusion of freeway trailblazers. The Project must also commit to meaningful TDM strategies that are most effective at mitigating traffic impacts and provide real benefits to City stakeholders, such as:

- Enhancements to public transit stops,
- Upgrade outdated traffic signals controllers,
- Mandatory convenient parking for carpool and bicycle riders, and
- A thoroughly flushed out local hiring program.

4. Failure to Properly Assess and Mitigate GHG Impacts.

The AA abused its discretion in approving a Final EIR that fails to adequately address expert GHG comments submitted during the Draft EIR comment period¹⁵ (and incorporated in their entirety by this reference), and which therefore ignores the Project's significant GHG impacts and appropriate mitigation.

For example, expert environmental consultants SWAPE commented to the City on December 4, 2018 that the EIR improperly relied on consistency with plans that do not qualify as GHG-reduction plan commonly referred to as a Climate Action Plan or "CAP."¹⁶ None of the plans cited in the EIR include CAP hallmarks identified under the CEQA Guidelines,¹⁷ such as:

- Inventorying existing and future GHG emissions within the City,
- Establishing a numeric limit of total GHG emission for the City,
- Identifying specific mitigation measures with performance standards that can be implemented on a project-by-project basis that would achieve the City limit, and

¹² FEIR, pp. V-13 – V-14

¹³ FEIR, p. III-18.

¹⁴ FEIR, p. V-11; Errata, pp. 3-6 (only requiring applicant to provide one-time contribution to City's Bicycle Plan, provide unspecific "amenities" to LADOT Mobility Hub, and some CCTV/fiber optic cable upgrades).

¹⁵ Final EIR, Appendix A, starting at PDF pp. 69, <https://planning.lacity.org/eir/OlympicTower/FEIR/FEIR%20Appendices/Appendix%20A%20-%20Comment%20Letters.pdf>.

¹⁶ FEIR, p. III-78.

¹⁷ CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1).

4
(Cont.)

5

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- Creating a monitoring program to ensure the CAP's efficacy for the City to reach its limit.

For this reason, the Project's purported consistency with these plans do not establish the Project will have a less than significant GHG impact or serve as a basis for the City to ignore other relevant thresholds routinely used by the City to determine significance.

As another example, the EIR shows that the Project will exceed GHG thresholds not only proposed by South Coast AQMD but routinely used by the City for similarly situated projects. For example, notwithstanding incorporation of solar panels,¹⁸ the Project will emit 11,442 metric tons of GHG emissions annually,¹⁹ which exceeds South Coast AQMD's *most lenient threshold* of 10,000 annual GHG emissions for industrial projects. Alternatively, given the Project will serve 1,265 employees and residents²⁰ and approximately 448 hotel patrons,²¹ the Project would have an efficiency threshold of 6.67 annual GHG emissions per person served by the Project.²² This exceeds SCAQMD's proposed efficiency thresholds of 4.8 and 3.0 annual GHG emissions for target years 2020 and 2035, respectively. In sum, the EIR cannot utilize non-CAP plans and ignore thresholds routinely used by the City. The Project will have significant GHG impact that must be mitigated to the fullest extent. This should include mitigation measures that acutely address the Project's GHG emissions from energy and mobile sources, which accounts for more than 90 percent of the Project's GHG emissions. The AA erred and abused its discretion in finding otherwise, and the LOD does not address any of these expert comments about GHG with substantial evidence.

5
(Cont.)

5. Improper VTT and Related Land Use Findings

The AA erred and abused its discretion in making the land use findings for the Project. In connection with the approval of the VTT, the City must make findings pursuant to LAMC §§ 17.03 and 17.15 and sections 66473.1, 66474.60, .61 and .63 of the Cal. Gov. Code, including:

- The proposed map is consistent with applicable general and specific plans.
- The design or improvement of the proposed subdivision is consistent with applicable general and specific plans.
- The site is physically suitable for the type of development.
- The site is physically suitable for the proposed density of development.
- The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; and
- The design of the subdivision or type of improvements is not likely to cause serious public health problems.

6

These findings cannot be made here. As noted above, the Project's lack of affordable housing is in direct conflict with the City's General Plan Framework and Housing Element, so plan consistency findings required for tract maps under the Municipal and Government Code cannot be made.

¹⁸ FEIR, p. V-7.

¹⁹ DEIR, Tbl. IV.F-5.

²⁰ DEIR, p. IV.J-9.

²¹ Calculated: (373 rooms) x (1.5 patrons per room [used in other City EIRs]) x (80 percent vacancy rate [as widely reported by the City]) = (447.6 hotel patrons).

²² Calculated: (11,442 MTCO₂e/yr) / (1713 service population) = (6.67 MTCO₂e/yr/sp).

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Additionally, as noted above, the Project's CEQA analysis is flawed with regard to transportation mitigation and GHG significance. The AA therefore erred and abused its discretion in making required tract map findings including but not limited to "the site is physically suitable for the type of development;" "the site is physically suitable for the proposed density of development;" "the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage. . .;" and "the design of the subdivision or type of improvements is not likely to cause serious public health problems." These findings cannot be made upon a foundation of a CEQA document that has insufficient transportation mitigation and unsubstantiated GHG analysis.

7

Moreover, we believe the long delay in the Project should have resulted in the termination of the application and submission of a new application subject to newly enacted housing laws, such as the City's Affordable Housing Linkage Fee.²³ Here, the Project's application was filed in December 2015. Yet, the Draft EIR was not released until almost three years later. This type of inactivity has resulted in the City Planning Department's unilateral termination of other project applications.²⁴ This should have occurred here, requiring Applicant to submit new applications subject to current zoning regulations, such as the City's Affordable Housing Linkage Fee that apply to residential and non-residential uses "including hotels."²⁵ As the City's Linkage Fee Implementation Memo of July 16, 2018 points out, the Project Site is within the Medium-High Residential Market Area and High-Nonresidential Market Area, subject to \$1 per square foot and \$5 per square foot linkage fee, which was phased in starting February 2018.²⁶ The City should ensure that the Project's long-delay does not result in a circumvention of the City's Affordable Housing Linkage Fee program and an undue windfall for the Applicant.

8

The VTT and related entitlements are discretionary, not by right. Absent compliance with the CEQA deficiencies addressed herein, and with zero affordable housing, the City cannot make the required Municipal and Government Code land use findings and, therefore, this appeal should be granted.

9

²³ Ordinance 185342, codified at LAMC § 19.18 *et seq.*

²⁴ See *e.g.*, DCP Termination Letter (10/31/18) ENV-2018-2919 (166 days of inactivity), [http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/MjczMmVjMmQtNGE5My00MWEyLTg3NTQtYzRhNDkzMjExNzdlO](http://planning.lacity.org/PdisCaseInfo/Home/GetDocument/NjcyMDIwNTAtYml2My00NDgyLTk1YjltMGMOYzMOYzM5MDExO; DCP Termination Letter (2/22/17) CPC-2014-2398 (327 days of inactivity), <a href=).

²⁵ See DCP Memo (7/16/18) Affordable Housing Linkage Fee Ordinance and Updated Fee Schedule, p. 4, <https://planning.lacity.org/ordinances/docs/ahlf/ImplementationMemo.pdf>.

²⁶ Department of City Planning (7/16/18) AHLF Ordinance and Updated Fee Schedule, <https://planning.lacity.org/ordinances/docs/ahlf/ImplementationMemo.pdf>.



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December 4, 2018

Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: Comments on the Olympic Towers Project

Dear Ms. Caro,

We have reviewed the October 2018 Draft Environmental Impact Report (DEIR) for the Olympic Tower Project ("Project") located in the City of Los Angeles ("City"). The Project proposes to demolish and remove the existing 13,130 square foot building that is currently on the Project site, which contains a carwash, restaurant, and ticket broker, in order to construct a 58-story high-rise tower building containing up to 65,074 square feet of retail/commercial space. Specifically, the Project will contain 33,498 square feet of office space (in six stories); 10,801 square feet of hotel conference center/ballroom space (on one story); 8,448 square feet of residential condominium amenities (on the same story as the hotel conference center); 373 hotel rooms (216,065 square feet in 17 stories, including lobby/amenities level); 374 residential condominium units (435,731 square feet in 24 stories); and 9,556 square feet of penthouse amenity area (in two stories). A six-level subterranean parking garage would be located beneath the building, and eight levels of above ground parking would be provided within podium level of the building. Six levels of the above ground parking would be wrapped with office uses on the Olympic Boulevard street frontage. Two additional stories dedicated to mechanical facilities would also be included in the proposed structure.

A

Our review concludes that the DEIR fails to adequately evaluate the Project's Air Quality and Greenhouse Gas (GHG) impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately mitigated. A revised Environmental Impact Report (EIR) should be prepared to adequately assess and mitigate the potential significant air quality, health risk, and GHG impacts the Project is likely to have on the surrounding environment.

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The DEIR relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.1 ("CalEEMod").¹ CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but both CalEEMod and the California Environmental Quality Act (CEQA) requires that such changes be justified by substantial evidence.² Once all values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters were utilized in calculating the Project's air pollutant emissions, and identify which default values were changed, as well as provide justification for the values selected.³

B

When we reviewed the Project's CalEEMod output files, provided in Appendix C, we found that several of the values inputted into the model were not consistent with information disclosed in the DEIR. As a result, the Project's construction and operational emissions are greatly underestimated. A revised EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

DEIR Contains Unsupported Assumptions Regarding the Use of Tier 4 Final Mitigated Engines

The DEIR's air quality analysis concludes that Project construction activities would generate 141 pounds per day (lbs/day) of NO_x emissions, which exceeds the South Coast Air Quality Management District's (SCAQMD) significance threshold of 100 lbs/day (Table IV.C-7, pp. 156). In order to reduce construction emissions to less than significant levels, the Project Applicant proposes mitigation (p. 160). According to Mitigation Measure C-1 ("MM C-1"),

"All off-road construction equipment greater than 50 hp shall meet USEPA Tier 4 emission standards, **where available**, to reduce NO_x, PM₁₀, and PM_{2.5} emissions at the Project site. In addition, all construction equipment shall be outfitted with Best Available Control Technology devices certified by CARB. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations. At the time of

C

¹ CalEEMod Model 2016.3.1, available at: <http://www.caleemod.com/>

² CalEEMod User Guide, p. 1, 11, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/01_user-39-s-guide2016-3-1.pdf?sfvrsn=2 (Section 3.4 Altering Default Data: "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA.")

³ CalEEMod User Guide, p. 7, 8, available at: http://www.aqmd.gov/docs/default-source/caleemod/upgrades/2016.3/01_user-39-s-guide2016-3-1.pdf?sfvrsn=2 (A key feature of the CalEEMod program is the "remarks" feature, where the user explains why a default setting was replaced by a "user defined" value. These remarks are included in the report.)

mobilization of each applicable unit of equipment, a copy of each unit’s certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided” (pp. 160-161, (emphasis added)).

As seen above, the DEIR states that this mitigation will be applied only “where available”. The DEIR provides no supporting analysis to determine the actual availability of Tier 4 equipment for use on the Project site, whether the Applicant has procured or sought to procure Tier 4 equipment, and fails to explain how the term “where available” will be applied to the Project or enforced during Project construction.

Furthermore, the Project Applicant then models the Project’s construction emissions assuming emissions reductions from the use of 100% Tier 4 Final equipment (Appendix C, pp. 29 -30). This analysis is unsupported because Mitigation Measure C-1 fails to actually mandate the use of Tier 4 equipment. By purporting to require the use of Tier 4 Final or Tier 4 Interim engines only “where available,” the DEIR fails to require any Tier 4 equipment at all.⁴ Readily available evidence demonstrates that the availability of Tier 4 Final and Tier 4 Interim engines varies greatly depending on location, time of year, project budgeting, and other factors (see section titled “Application of Limited Tier 4 Final Engines When Estimating Construction Emissions”). The DEIR lacks any evidence to demonstrate that the Applicant has addressed or overcome any of these factors, or that the Applicant has actually sought or procured any Tier 4 equipment for use on the Project site, let alone 100% of its construction equipment. As a result, the DEIR’s reliance on emissions reductions afforded by Tier 4 Final engines to estimate emissions is unsupported. The DEIR cannot assume unsubstantiated emissions reductions from cleaner burning equipment without first mandating the use of that equipment as binding mitigation the DEIR. If the City intends to rely on emissions reductions in the DEIR, Mitigation Measure C-1 must be revised to remove the term “where feasible” and require the Applicant to procure 100% Tier 4 equipment for the Project. Otherwise, emissions must be calculated without relying on Tier 4 emissions reductions.

C
(Cont.)

The DEIR Fails to Substantiate Its Reliance on Tier 4 Final Engines When Estimating Construction Emissions

Before the City can assume any emissions reductions based on the use of Tier 4 equipment, the City or the Applicant must first provide documentation demonstrating that Tier 4 equipment can be feasibly obtained for the Project, how many pieces of Tier 4 equipment will be obtained, whether the equipment will be Tier 4 Interim or Tier 4 Final, and whether there will be any gaps in supply that would necessitate the use of lower-tier or other conventional construction equipment. Any subsequent emissions

⁴ The Applicant modeled emissions assuming Tier 4 Final engines would be used. However, there is also a substantial difference in emissions reductions between the two in terms of NOx. Tier 4 Interim engines reduce PM emissions by 90% and NOx emissions by 45%. Tier 4 Final engines reduce PM emissions by 90% and NOx emissions by 90%. Thus, because MM C-1 does not explicitly state whether Tier 4 I or Tier 4 F engines will be used, we believe that the City cannot reasonably argue that the use of CARB BACT VDECS would achieve the same emissions reductions if the Applicant used Tier 4 I instead of Tier 4 F.

reductions calculated in a revised EIR must correlate directly with the number and type of Tier 4 engines that have been demonstrated to be feasibly available for use at the Project site.

The DEIR fails to meet this requirement because it fails to address the feasibility of obtaining the large quantity of Tier 4 equipment required for Project construction. Due to the limited number of Tier 4 construction equipment available, the DEIR should have assessed the feasibility in obtaining construction equipment equipped with Tier 4 engines. By failing to demonstrate how the Project will comply with this Mitigation Measure C-1, the measure is unenforceable and thus, the City cannot claim the Tier 4 emissions reductions assumed in the DEIR's Air Quality analysis.

The U.S. EPA's 1998 nonroad engine emission standards were structured as a three-tiered progression. Tier 1 standards were phased-in from 1996 to 2000 and Tier 2 emission standards were phased in from 2001 to 2006. Tier 3 standards, which applied to engines from 37-560 kilowatts (kW) only, were phased in from 2006 to 2008. The Tier 4 emission standards were introduced in 2004 and were phased in from 2008 to 2015.⁵ These tiered emission standards, however, are only applicable to newly manufactured nonroad equipment. According to the U.S. EPA, "if products were built before EPA emission standards started to apply, they are generally not affected by the standards or other regulatory requirements."⁶ Therefore, pieces of equipment manufactured prior to 2000 are not required to adhere to Tier 2 emission standards, and pieces of equipment manufactured prior to 2006 are not required to adhere to Tier 3 emission standards. Construction equipment often lasts more than 30 years; as a result, Tier 1 equipment and non-certified equipment are currently still in use.⁷ It is estimated that of the two million diesel engines currently used in construction, 31 percent were manufactured before the introduction of emissions regulations.⁸

C
(Cont.)

Although Tier 4 engines are currently being produced and installed in new off-road construction equipment, the vast majority of existing diesel off-road construction equipment in California is not equipped with Tier 4 engines.⁹ In a 2010 white paper, the California Industry Air Quality Coalition estimated that approximately 7% and less than 1% of all off-road heavy duty diesel equipment in California was equipped with Tier 2 and Tier 3 engines, respectively.¹⁰ Similarly, based on information and data provided in the *San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects*, the availability of Tier 3 equipment is extremely limited. In 2014, 25% of all off-

⁵ Emission Standards, Nonroad Diesel Engines, *available at:* <https://www.dieselnet.com/standards/us/nonroad.php#tier3>

⁶ "Frequently Asked Questions from Owners and Operators of Nonroad Engines, Vehicles, and Equipment Certified to EPA Standards." United States Environmental Protection Agency, August 2012. *Available at:* <http://www.epa.gov/oms/highway-diesel/regs/420f12053.pdf>

⁷ "Best Practices for Clean Diesel Construction." Northeast Diesel Collaborative, August 2012. *Available at:* <http://northeastdiesel.org/pdf/BestPractices4CleanDieselConstructionAug2012.pdf>

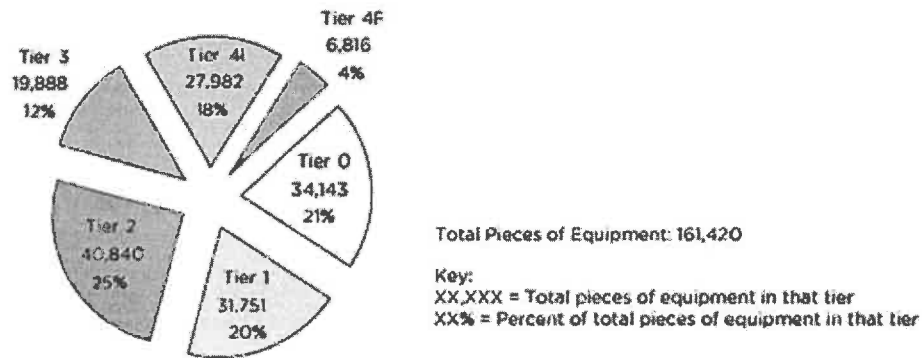
⁸ Northeast Diesel Collaborative Clean Construction Workgroup, *available at:* <http://northeastdiesel.org/construction.html>

⁹ California Industry Air Quality Coalition White Paper, p. 3, *available at:* http://www.agc-ca.org/uploadedFiles/Member_Services/Regulatory-Advocacy-Page-PDFs/White_Paper_CARB_OffRoad.pdf

¹⁰ "White Paper: An Industry Perspective on the California Air Resources Board Proposed Off-Road Diesel Regulations." Construction Industry Air Quality Coalition, *available at:* http://www.agc-ca.org/uploadedFiles/Member_Services/Regulatory-Advocacy-Page-PDFs/White_Paper_CARB_OffRoad.pdf

road equipment in the state of California were equipped with Tier 2 engines, approximately 12% were equipped with Tier 3 engines, approximately 18% were equipped with Tier 4 Interim engines, and only 4% were equipped with Tier 4 Final engines (see excerpt below).¹¹

Figure 4: 2014 Statewide All Fleet Sizes (Pieces of Equipment)



As demonstrated in the figure above, Tier 4 Interim and Tier 4 Final equipment only account for 18% and 4%, respectively, of all off-road equipment currently available in the state of California. Thus, by stating that the Project proposes to use Tier 4 equipment during construction, the DEIR’s analysis is relying on a fleet of construction equipment that accounts for just 22% of all off-road equipment currently available in the state of California. Additionally, if the Project intends to use all Tier 4 Final equipment, as modeled in CalEEMod, the Project would be relying on a fleet of construction equipment that only accounts for 4% of all off-road equipment currently available in the state of California. Tier 4 equipment therefore comprises less than 30% of all commercial construction equipment that is currently available on the market, and Tier 4 Final equipment – on which the DEIR relies – comprises an even smaller fraction of this Tier 4 equipment. Therefore, before the City can assume that Tier 4 Final (or Interim) equipment will be used for the Project, it must first demonstrate that the equipment can actually be procured. By failing to evaluate the feasibility of implementing Tier 4 mitigation into the Project’s construction phases, the DEIR’s calculations of the Project’s construction emissions are unsupported. Thus, the significance determination made within the Air Quality analysis should not be relied upon to determine Project significance.

C
(Cont.)

The DEIR Underestimates Hauling Trip Length

Review of the Project’s CalEEMod output files demonstrates that an underestimated hauling truck trip length was used to estimate the Project’s construction-related emissions. As a result, the construction emissions are underestimated and should not be used to determine Project significance.

D

¹¹ “San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects.” August 2015, available at: https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p.

The DEIR states that anticipated that the “demolition, export, and construction debris will be transported to either the Chiquita Canyon Landfill in Castaic, approximately 40 miles from the Project site, or to the Manning Pit in Irwindale, approximately 23 miles from the Project site” (pp. 96; DEIR, p. III-49). The DEIR fails to disclose what percentage of waste will be hauled to either site. However, since the DEIR lists both landfills as haul routes, it is reasonable to assume that Project waste will be sent to both landfills. Review of the “User Entered Comments & Non-Default Data” table in the Project’s CalEEMod output files, however, demonstrates that the Project Applicant estimated the Project’s construction emissions assuming that the hauling truck trip length for all demolition hauling trips would be 23.9 miles and that the hauling truck trip length for all grading hauling trips would be 25 miles (see excerpt below) (Appendix C, pp. 39).

Trips and VMT

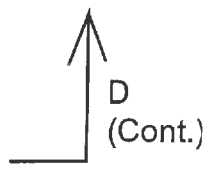
Phase Name	Offroad Equipment Count	Worker Trip Number	Vendor Trip Number	Hauling Trip Number	Worker Trip Length	Vendor Trip Length	Hauling Trip Length
Demolition	16	30.00	8.00	109.00	14.70	6.90	23.90
Site Preparation	12	30.00	2.00	0.00	14.70	6.90	20.00
Grading	12	60.00	2.00	1,437.50	14.70	6.90	25.00
Building Construction	50	600.00	10.00	0.00	14.70	6.90	20.00
Architectural Coating	8	800.00	30.00	0.00	14.70	6.90	20.00
Paving	13	40.00	10.00	0.00	14.70	6.90	20.00

D
(Cont.)

This is incorrect and, as a result, underestimates the construction mobile-source emissions that the Project will generate. Estimating emissions assuming that all hauling trucks will deliver waste to, what appears to be the Manning Pit location, is completely incorrect and unsubstantiated, as the DEIR clearly states that “demolition, export, and construction debris will be transported to *either* the Chiquita Canyon Landfill in Castaic, approximately 40 miles from the Project site, *or to* the Manning Pit in Irwindale, approximately 23 miles from the Project site.” (p. III-49 (emphasis added)) Furthermore, the DEIR provides contradicting information regarding where the demolition debris will be disposed of, as it states in one section that demolition, export, and construction debris will be transported to one of two locations – either the Chiquita Canyon Landfill or the Manning Pit (pp. III-49, 96) – then in Table III-6 (pp. 96), Table IV.C-6 (pp. IV.C-6), and Table IV.I-14 (pp. 482) the DEIR instead states that “2,400 tons of development hauling off-site to *three off-site locations* an average of 23.9 miles away”. The DEIR does not mention a third off-site location anywhere else in the report. Thus, the Applicant’s assertion that hauling truck trips with an average trip length of 23.9 miles will be used to dispose of this debris is entirely unsubstantiated.

At a minimum, the Project Applicant should have estimated mobile-source emissions by using the average distance between the two identified locations and the Project site (which would be approximately 31.5 miles). As a result, construction emissions associated with the Project are

significantly underestimated and should not be used to determine Project significance. An updated CalEEMod model should be prepared in a revised project-specific EIR.



The DEIR Underestimates the Number of Hauling Truck Trips Expected to Occur During Demolition and Grading

According to Table IV.I-14, the Project will result in 2,400 tons of demolition debris will be hauled off site during the demolition phase of construction and the Project will remove 115,500 cubic yards of soil from the Project site using 10-cubic yard capacity trucks during grading (see excerpt below) (Table IV.I-14, pp. 482).

**Table IV.I-14
Estimated Project Construction Schedule**

Phase	Duration ¹	Notes
Demolition	55 days	2,400 tons of demolition material hauled off-site to three off-site locations an average of 23.9 miles away
Site Preparation	33 days	
Grading	194 days	Up to 115,500 cubic yards of soil export using haul trucks with average 10-cubic yard capacity ¹
Building Construction	545 days	
Paving	44 days	
Architectural Coatings	328 days	

¹ Some of the construction phases overlap.

Source: DKA Planning, 2017



Using haul trucks with an average capacity of 10 cubic yards, the Applicant states that 59 truck trips per day will be needed to remove the 115,500 cubic yards of soil (pp. 483). Therefore, the Project would require approximately 22,892 hauling truck trips to remove the soil during grading.¹² In order to accurately estimate emissions, the Applicant should have inputted this value into the CalEEMod model. Review of the model outputs, however, demonstrates that the Applicant failed to account for all the material export required by the Project when estimating emissions (see excerpt below) (Appendix C, pp. 39).

¹² 59 x 194 = 11,446 one-way trips. In order to calculate the total number of hauling truck trips needed to remove the soil, which includes a way one trip to and from the Project site, we multiplied the number of hauling trips by 2 (11,446 one-way trips x 2 = 22,892 total hauling truck trips).

Trips and VMT

Phase Name	Offroad Equipment Count	Worker Trip Number	Vendor Trip Number	Hauling Trip Number
Demolition	16	30.00	8.00	109.00
Site Preparation	12	30.00	2.00	0.00
Grading	12	60.00	2.00	1,437.50
Building Construction	50	600.00	10.00	0.00
Architectural Coating	8	800.00	30.00	0.00
Paving	13	40.00	10.00	0.00

As seen above, the Applicant significantly underestimates the number of hauling truck trips needed to remove all material during grading. Furthermore, review of the output files demonstrates that the Applicant manually reduced the CalEEMod default number of hauling truck trips needed to remove the demolition debris from the site, without providing any reasoning for doing so, thereby further underestimating the Project’s construction emissions (Appendix C, pp. 39).

E
(Cont.)

Additionally, the DEIR fails to account for bulking – the swell of excavated materials to a greater size than the size of the hole or holes that were dug. The amount of bulking depends on the material excavated. For instance, ordinary soil or dry gravel swells to a volume 20 to 30 percent greater than the size of the excavation; dolomite swells to a 50 to 60 percent greater volume than the hole; limestone and sandstone swell to volumes 75 to 80 percent greater than the size of the hole.¹³ The DEIR fails to state whether bulking of excavated materials is accounted for. If it is not, then the DEIR is likely to have underestimated the number of construction hauling trucks required to haul excavated materials off-site even further, which could result in a more severe underestimation of the Project’s mobile-source and fugitive dust emissions than the calculations included below.

As a result of the DEIR’s failure to accurately quantify the number of haul truck trips required for the Project, the DEIR significantly underestimates the Project’s construction-related emissions that will be generated during the demolition and grading phases of Project construction as a result of hauling trips. and the air pollution model within the DEIR should not be relied upon to determine significance.

Updated Analysis Demonstrates Significant Pollutant Emissions

In an effort to accurately quantify the Project’s construction emissions, we prepared an updated CalEEMod model that includes more site-specific information and correct input parameters, as

F

¹³ For more extended information on bulking and swell of excavated materials see www.engineeringtoolbox.com/soil-rock-bulking-factor-d_1557.html.

described in the DEIR. In the updated model, we omitted the use of Tier 4 mitigated engines, since the DEIR provides no supporting analysis to determine the actual availability of Tier 4 equipment for use on the Project site, whether the Applicant has procured or sought to procure Tier 4 equipment, and fails to explain how the term “where available” will be applied to the Project or enforced during Project construction. Additionally, we inputted a total of 22,892 hauling truck trips during the grading phase and 384 total hauling truck trips during the demolition phase of construction, consistent with information provided in the DEIR. Finally, we adjusted the hauling truck trip length to an average length of 31.5 miles for the demolition and grading phases, since the DEIR specifically states that the material will be transported to *either* the Chiquita Canyon Landfill in Castaic, approximately 40 miles from the Project site, or to the Manning Pit in Irwindale, approximately 23 miles from the Project site.

When correct, site-specific input parameters are used to model emissions, we find that the Project’s construction criteria air pollutant emissions increase significantly when compared to the DEIR’s model. Furthermore, we find that the Project’s construction-related NO_x emissions exceed the 100 pounds per day (lbs/day) threshold set forth by the South Coast Air Quality Management District (SCAQMD) by an additional 72 pounds per day over the NO_x emissions estimated in the DEIR, as follows:

Unmitigated Maximum Daily Construction Emissions (lbs/day)	
Model	NO_x
DEIR	139.8
SWAPE	211.8
SCAQMD Thresholds (lbs/day)	
	100
Exceed?	Yes

F
(Cont.)

As demonstrated above, when correct, site-specific input parameters are used to model emissions, NO_x emissions increase by approximately 52 percent and exceed the SCAQMD’s established threshold. Our calculations represent the Project’s unmitigated emissions. Since the City failed to demonstrate that Tier 4 mitigated equipment will be available for use during Project construction, no emissions reduction was credited for mitigated emissions using Tier 4 equipment. Once the City documents the number of pieces of Tier 4 mitigated equipment that will be used for the Project, the City may then prepare an updated air pollution model to determine whether the use of this Tier 4 equipment would reduce the Project’s construction-related NO_x emissions to below thresholds. If the Applicant is unable to procure adequate Tier 4 equipment to reduce construction-related NO_x emissions below levels of significance, then the City must identify and require additional mitigation measures in a revised EIR to effectively reduce the Project’s significant NO_x emissions to a less-than-significant level.¹⁴

¹⁴ See section titled “Feasible Mitigation Measures Available to Reduce Operational Emissions” on p. 30 of this letter. These measures would effectively reduce operational ROG, NO_x, and DPM emissions, as well as GHG emissions.

Diesel Particulate Health Risk Emissions Inadequately Evaluated

The DEIR fails to evaluate the cancer risk impacts resulting from diesel particulate matter (DPM) emission generated during Project construction and operation, but nevertheless concludes that impacts are less than significant. We find the DEIR’s health risk determination to be incorrect and unsupported. In an effort to justify the omission of a construction and operational HRA, the DEIR states,

“The Project would not result in any substantial emissions of TACs during the construction or operations phase. During the construction phase, the primary emissions would be associated with the combustion of diesel fuels, which produce exhaust-related particulate matter that is considered a TAC by CARB based on chronic exposure to these emissions. However, construction activities would not produce chronic, long-term exposure to diesel particulate matter. With regard to long-term Project operations, the Project does not include typical sources of acutely and chronically hazardous TACs, such as industrial manufacturing processes and automotive repair facilities. As a result, the Project would not create substantial concentrations of TACs. In addition, the SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. The Project would not generate a substantial number of truck trips. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities. Therefore, Project impacts related to TACs would be less than significant (pp. 158- 159).

This reasoning and justification for why the Project Applicant omitted a construction and operational HRA is erroneous and incorrect for several reasons.

First, the Applicant cannot simply state that construction activities will result in “the combustion of diesel fuels, which produce exhaust-related particulate matter that is considered a TAC by CARB” then subsequently assert that Project activities “would not produce chronic, long-term exposure to diesel particulate matter” without providing any evidence or factual data to support this conclusion. Without preparing a proper HRA, there is no supporting evidence that emissions resulting from construction will not result in a significant health-related impact.

Second, simply because the Applicant asserts that “the Project does not include typical sources of acutely and chronically hazardous TACs” does not mean that the Project will inherently have a less than significant health risk impact. Furthermore, the while it is true that the SCAQMD recommends that HRAs be prepared for truck stops and warehouse distribution facilities, the SCAQMD does not limit the preparation of an HRA to these land uses. The “Mobile Source Toxics Analysis” webpage on the SCAQMD’s website states that “it is suggested that projects with diesel powered mobile sources use the following guidance document to quantify potential cancer risks from the diesel particulate emissions”.¹⁵

¹⁵ <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>

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The website itself does not restrict operational health risks to be performed only for land uses that will generate excessive amounts of trucking or idling emissions. The Project’s proposed land uses will generate truck trips to the Project site from vendors and thus require an operational health risk assessment.

Third, by failing to prepare and HRA, the DEIR is inconsistent with guidance provided by the Office of Environmental Health Hazard Assessment’s (OEHHA), the organization responsible for providing guidance on how to conduct health risk assessments in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015.¹⁶ This guidance document describes the types of projects that warrant the preparation of a health risk assessment. Construction activities for the proposed Project will produce emissions of DPM through the exhaust stacks of the construction equipment that will be used throughout the Project’s construction period. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.¹⁷ Once construction is complete, Project operation will generate truck trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to DPM emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).¹⁸ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, per SCAQMD and OEHHA guidelines, health risk impacts from Project construction and operation should be included in a revised CEQA evaluation for the Project.

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It is critical that an HRA for the proposed Project be conducted, since the DEIR specifically admits that exhaust-related particulate matter will be generated as a result of Project activities (pp. 158). Additionally, as discussed in the sections above, we identified several incorrect input parameters that the Project Applicant used to model the Project’s emissions, therefore, it is very likely that, in particular, the Project’s construction-related emissions are much higher than the emissions estimates provided within the DEIR’s air pollution model. As such, these emissions should be evaluated in order to provide a comprehensive analysis of the potential health-related impacts the Project could pose to nearby sensitive receptors.

For the reasons mentioned above, we find the DEIR’S evaluation, or lack thereof, of the Project’s health risk impact to be inadequate and unreliable. The DEIR should have conducted some sort of quantitative analysis of the Project’s potential health-related impact and should have compared the results of this analysis to applicable thresholds. The SCAQMD provides a specific numerical threshold of 10 in one

¹⁶ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

¹⁷ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

¹⁸ “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

million for determining a project's health risk impact.¹⁹ Therefore, the DEIR should have conducted an assessment that compares the Project's combined construction and operational health risks to this threshold in order to determine the Project's health risk impact. By failing to prepare an HRA, the IS/MND fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to the Project's potentially substantial air pollutant emissions.

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Updated Health Risk Assessment Demonstrates Significant Health Impacts

In an effort to demonstrate the potential risk posed by Project construction and operation to nearby sensitive receptors, we prepared a simple screening-level health risk assessment. The results of our assessment, as described below, provide substantial evidence that the Project's construction and operational DPM emissions may result in a potentially significant health risk impact that was not previously identified. As such, a revised EIR should be prepared to adequately evaluate the proposed Project's health risk impacts, and additional mitigation measures should be identified and incorporated into the Project design, where necessary.

As of 2011, the Environmental Protection Agency (EPA) recommends AERSCREEN as the leading air dispersion model, due to improvements in simulating local meteorological conditions based on simple input parameters.²⁰ The model replaced SCREEN3, and AERSCREEN is included in the OEHHA²¹ and the California Air Pollution Control Officers Associated (CAPCOA)²² guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

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We prepared a preliminary health risk screening assessment of the Project's construction-related impact to sensitive receptors using the annual PM₁₀ exhaust estimates from our SWAPE CalEEMod model. According to the DEIR, there are sensitive receptors approximately 100 feet, or approximately 30 meters from to the Project site (pp. 157, DEIR p. IV.C-16). Consistent with recommendations set forth by OEHHA, we used a residential exposure duration of 30 years, starting from the third trimester stage of life. We also assumed that construction and operation of the Project would occur in quick succession, with no gaps between each Project phase. The SWAPE CalEEMod model's annual emissions indicate that construction activities will generate approximately 1,743 pounds of DPM over the 1,080-day construction period. The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the

¹⁹ http://www.valleyair.org/transportation/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf

²⁰ "AERSCREEN Released as the EPA Recommended Screening Model," USEPA, April 11, 2011, available at: http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

²¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

²² "Health Risk Assessments for Proposed Land Use Projects," CAPCOA, July 2009, available at: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf

variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation.

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{1,743 \text{ lbs}}{1080 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.008471 \text{ g/s}$$

Using this equation, we estimated a construction emission rate of 0.008471 grams per second (g/s). The SWAPE annual CalEEMod output files indicate that operational activities will generate approximately 255 pounds of DPM per year over the 27-years of operation. Applying the same equation used to estimate the construction DPM emission rate, we estimated the following emission rate for Project operation.

$$\text{Emission Rate} \left(\frac{\text{grams}}{\text{second}} \right) = \frac{255 \text{ lbs}}{365 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lbs}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} = 0.003662 \text{ g/s}$$

Using this equation, we estimated an operational emission rate of 0.003662 g/s. Construction and operational activity was simulated as a 1.7-acre rectangular area source in AERSCREEN, with dimensions of 92 meters by 76 meters. A release height of three meters was selected to represent the height of exhaust stacks on construction and operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.²³ For example, for the MEIR the single-hour concentration estimated by AERSCREEN for Project construction is approximately 23.31 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 2.331 µg/m³ for Project construction at the MEIR. For Project operation, the single-hour concentration at the MEIR estimated by AERSCREEN is approximately 10.07 µg/m³ DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 1.007 µg/m³ for Project operation at the MEIR.

We calculated the excess cancer risk to the residential receptors located closest to the Project site using applicable health risk assessment methodologies prescribed by OEHHA and the SCAQMD. Consistent with the construction schedule proposed by the DEIR, the annualized average concentration for construction was used for the first 0.25 years during the 3rd trimester of pregnancy, the entirety of the infantile stage of life (0 to 2 years), and the first 0.71 years of the child stage of life (2 to 16 years). The annualized average concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remainder of the child stages of life and adult states of life (16 to 30 years).

²³ http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf

Consistent with OEHHA guidance, we used Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.²⁴ According to the updated guidance, quantified cancer risk should be multiplied by a factor of ten during the 3rd trimester of pregnancy and the first two years of life (infant) and should be multiplied by a factor of three during the child stage of life (2 to 16 years). Furthermore, in accordance with guidance set forth by OEHHA, we used 95th percentile breathing rates for infants.²⁵ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. Finally, according to SCAQMD guidance, we used a Fraction of Time at Home (FAH) value of 1 for the 3rd trimester, infant, and child receptors and we used a FAH Value of 0.73 for the adult receptors.²⁶ The results of our calculations are shown below.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)

Activity	Duration (years)	Concentration (µg/m ³)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	0.25	2.331	361	10	3.17E-05
3rd Trimester Duration	0.25			3rd Trimester Exposure	3.17E-05
Construction	2.00	2.331	1090	10	7.7E-04
Infant Exposure Duration	2.00			Infant Exposure	7.7E-04
Construction	0.71	2.331	572	3	4.3E-05
Operation	13.29	1.007	572	3	3.5E-04
Child Exposure Duration	14.00			Child Exposure	3.9E-04
Operation	14.00	1.007	261	1	4.0E-05
Adult Exposure Duration	14.00			Adult Exposure	4.0E-05
Lifetime Exposure Duration	30.00			Lifetime Exposure	1.23E-03

The excess cancer risk to adults, children, infants, and 3rd trimester of pregnancy at the MEIR located approximately 25 meters away, over the course of Project construction and operation are 40, 390, 770, and 31.7 in one million, respectively. Furthermore, the excess cancer risk over the course of a residential lifetime (30 years) at the MEIR is approximately 1,230 in one million. Consistent with OEHHA guidance, exposure was assumed to begin in the 3rd trimester of pregnancy to provide the most conservative

²⁴ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

²⁵ "Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics 'Hot Spots' Information and Assessment Act," June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19

"Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>

²⁶ "Risk Assessment Procedures for Rules 1401, 1401.1, and 212." SCAQMD, August 2017, available at: http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1401/riskassessmentprocedures_2017_080717.pdf, p. 7

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estimates of air quality hazards. The 3rd trimester, infant, child, adult, and lifetime cancer risks exceed the SCAQMD’s threshold of 10 in one million.

It should be noted that our analysis represents a screening-level health risk assessment, which is known to be more conservative, and tends to err on the side of health protection.²⁷ The purpose of a screening-level HRA, however, is to determine if a more refined HRA needs to be conducted. If the results of a screening-level health risk are above applicable thresholds, then the Project needs to conduct a more refined HRA that is more representative of site specific concentrations. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. As a result, a refined HRA must be prepared to examine air quality impacts generated by Project construction and operation using site-specific meteorology and specific equipment usage schedules. A revised EIR must be prepared to adequately evaluate the Project’s health risk impact, and should include additional mitigation measures to reduce these impacts to a less-than-significant level.

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Greenhouse Gas

Failure to Adequately Evaluate the Project’s Greenhouse Gas Emissions

The DEIR concludes that the proposed Project would result in a less than significant GHG impact because the Project will be consistent with several regulatory plans and policies to reduce GHG emissions (pp. 263). Specifically, the DEIR states that the Project would have a significant impact if it would conflict with any of the following plans, policies, or regulations: Executive Orders S-3-05 and B-30-15, Assembly Bill 32 (AB 32) Scoping Plan, SCAG’s 2016-2040 RTP/SCS, City of Los Angeles Mobility 2035 Plan, City of Los Angeles ClimateLA Implementation Plan, and the City of Los Angeles Green Building Ordinance (pp. 256-257).

However, the DEIR’s reliance on compliance with these plans, policies, and regulations, in particular the City’s ClimateLA Implementation Plan and Green Building Ordinance, to determine Project significance, is incorrect. While the DEIR mentions Green Building Ordinance standards, and points to various Project characteristics required by City ordinances or state statutes to conserve energy, the Green Building Ordinance and ClimateLA Implementation Plan do not meet the criteria for an officially adopted GHG reduction target for use as a threshold of significance for GHG emissions as required by GUIDELINES § 15064.4(b)(3). No actual, quantified, or evidence-supported GHG emissions reductions to meet current GHG reduction targets in a plan “adopted by the relevant public agency through a public review process” [GUIDELINES § 15064.4(b)(3)] are claimed, much less proven, for these measures, precluding their use to establish a lack of significant impact. Therefore, the DEIR’s reliance on compliance with these regulatory plans and policies is incorrect and should not be used as a threshold with which to determine the significance of the Project’s GHG impact. By using these plans to determine Project

²⁷ http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf p. 1-5

significance, the DEIR fails to adequately evaluate and mitigate the Project's impacts. An updated GHG analysis must be prepared in a revised EIR that adequately evaluates the Project's GHG impact.

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Sincerely,



Hadley Nolan

HADLEY KATHRYN NOLAN



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

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EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES B.S. ENVIRONMENTAL SCIENCES & ENVIRONMENTAL SYSTEMS AND SOCIETY JUNE 2016

PROJECT EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE

SANTA MONICA, CA

AIR QUALITY SPECIALIST

SENIOR PROJECT ANALYST: CEQA ANALYSIS & MODELING

- Modeled construction and operational activities for proposed land use projects using CalEEMod to quantify criteria air pollutant and greenhouse gas (GHG) emissions.
- Organized presentations containing figures and tables that compare results of criteria air pollutant analyses to thresholds.
- Quantified ambient air concentrations at sensitive receptor locations using AERSCREEN, a U.S. EPA recommended screening level dispersion model.
- Conducted construction and operational health risk assessments for residential, worker, and school children sensitive receptors.
- Prepared reports that discuss adequacy of air quality and health risk analyses conducted for proposed land use developments subject to CEQA review by verifying compliance with local, state, and regional regulations.

SENIOR PROJECT ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Evaluated environmental impact reports for proposed projects to identify discrepancies with the methods used to quantify and assess GHG impacts.
- Quantified GHG emissions for proposed projects using CalEEMod to produce reports, tables, and figures that compare emissions to applicable CEQA thresholds and reduction targets.
- Determined compliance of proposed land use developments with AB 32 GHG reduction targets, with GHG significance thresholds recommended by Air Quality Management Districts in California, and with guidelines set forth by CEQA.

PROJECT ANALYST: ASSESSMENT OF AIR QUALITY IMPACTS FROM PROPOSED DIRECT TRANSFER FACILITY

- Assessed air quality impacts resulting from implementation of a proposed Collection Service Agreement for Exclusive Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services for a community.
- Organized tables and maps to demonstrate potential air quality impacts resulting from proposed hauling trip routes.
- Conducted air quality analyses that compared quantified criteria air pollutant emissions released during construction of direct transfer facility to the Bay Area Air Quality Management District's (BAAQMD) significance thresholds.
- Prepared final analytical report to demonstrate local and regional air quality impacts, as well as GHG impacts.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF LEAD PRODUCTS FOR PROPOSITION 65 COMPLIANCE DETERMINATION

- Calculated human exposure and lifetime health risk for over 300 lead products undergoing Proposition 65 compliance review.
- Compiled and analyzed laboratory testing data and produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 Maximum Allowable Dose Levels (MADLs) to determine level of compliance.
- Prepared final analytical lead exposure Certificate of Merit (COM) reports and organized supporting data for use in environmental enforcement statute Proposition 65 cases.

ACCOMPLISHMENTS

- Academic Honoree, Dean's List, University of California, Los Angeles

MAR 2013, MAR 2014, JAN 2015, JAN 2016

Attachment B

- Clarification on Development Projects Subject to Measure JJJ Memo




DEPARTMENT OF CITY PLANNING

City Hall • 200 N. Spring Street, Room 525 • Los Angeles, CA 90012

December 13, 2016

TO: All Staff
Other Interested Parties

FROM: Vincent P. Bertoni, AICP 
Director
Department of City Planning

**SUBJECT: CLARIFICATION OF DEVELOPMENT PROJECTS SUBJECT TO
MEASURE JJJ**

On November 8, 2016, voters in the City of Los Angeles approved and passed Measure JJJ, the *Build Better LA* initiative. Among other provisions, this ballot initiative will impose minimum affordable housing requirements and labor regulations on certain development projects requiring certain General Plan Amendments, Zone Changes, and Height District Changes. As a result of the Council's action on December 13, 2016 to certify the election results, the provisions of the initiative are now in effect.

The purpose of this memorandum is to clarify which development projects are subject to the affordable housing and labor requirements specified in Sections 3 and 5 of Measure JJJ. A subsequent memorandum will provide details on the implementation of the measure's other provisions.

Any development project that 1) will result in ten or more residential dwelling units, and 2) requires a General Plan Amendment, Zone Change, and/or Height District Change that results in increased allowable residential floor area, density, height, or allows a residential use where previously not allowed, is subject to the provisions of Measure JJJ, with the exception of a project with a Vesting Zone Change, Vesting Tentative Map, or Vesting Conditional Use Permit, the applications for which were deemed complete by the Department of City Planning as of December 13, 2016. A project with approved entitlements as of December 13, 2016 may be exempt depending upon the facts.

Projects not exempt shall comply with all the housing, labor, and wage requirements detailed in Section 3 and 5 of the Measure JJJ initiative as codified in LAMC Sections 11.5.6 and 11.5.11.

Attachment C

- Planning Fee Receipt

Office: Downtown
Applicant Copy
 Application Invoice No: 27304

City of Los Angeles
 Department of City Planning



Scan this QR Code® with a barcode reading app on your Smartphone. Bookmark page for future reference.

City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

Applicant: OLYMFIG26, LLC - NEMAN, BEN (B:213-7657700)
Representative: PSOMAS - WILLIAMS, ANNE S. (B:213-2231447)
Project Address: 811 W OLYMPIC BLVD, 90015

NOTES:

ENV-2015-4558-EAF			
Item	Fee	%	Charged Fee
EAF-Initial Study to ND/MND *	\$2,280.00	100%	\$2,280.00
Publication Fee for ND/MND	\$946.00	100%	\$946.00
Case Total			\$3,226.00
VTT-73966-CN			
Item	Fee	%	Charged Fee
Multi-Family (100 units or more) *	\$17,611.00	100%	\$17,611.00
Case Total			\$17,611.00
ZA-2015-4557-MCUP-CUX-ZV-TDR-SPR			
Item	Fee	%	Charged Fee
Approval of Transfer of Floor Area Plan (each) *	\$16,292.00	100%	\$16,292.00
Conditional Use by ZA (Alcohol [on or off-site sales], Entertainment [dance halls, hostess dance halls, massage parlors]) *	\$6,459.00	50%	\$3,229.50
Conditional Use by ZA (All other uses, including wireless) *	\$5,358.00	25%	\$1,339.50
Variances (all) *	\$6,448.00	25%	\$1,612.00
Case Total			\$22,473.00

Item	Charged Fee
*Fees Subject to Surcharges	\$42,364.00
Fees Not Subject to Surcharges	\$946.00
Plan & Land Use Fees Total	\$43,310.00
Expediting Fee	\$0.00
OSS Surcharge (2%)	\$847.28
Development Surcharge (6%)	\$2,541.84
Operating Surcharge (7%)	\$2,965.48
General Plan Maintenance Surcharge (5%)	\$2,118.20
Grand Total	\$51,782.80
Total Invoice	\$51,782.80
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$51,782.80

LA Department of Building and Safety
 LA ESTE 104076527 12/16/2015 3:20:00 PM

PLAN & LAND USE \$51,782.80

Sub Total: \$51,782.80

Receipt #: 0104524864

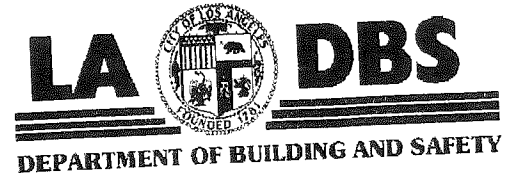


LA Department of Building and Safety
LA ESTE 104076527 12/16/2015 3:20:00 PM

Receipt #: 0104524864 \$51,782.80

Total: \$51,782.80

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LA Department of Building and Safety
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PLAN & LAND USE \$51,782.80

Sub Total: \$51,782.80

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