

APPLICATIONS



APPEAL APPLICATION Instructions and Checklist

RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

PURPOSE

This application is for the appeal of Los Angeles City Planning determinations, as authorized by the LAMC, as well as first-level Building and Safety Appeals.

APPELLATE BODY

Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.

- Area Planning Commission (APC) City Planning Commission (CPC) City Council
 Zoning Administrator (ZA) Director of Planning (DIR)

CASE INFORMATION

Case Number: ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI

Project Address: 754 South Hope Street; 609 - 625 West 8th Street

Final Date to Appeal: VTT-74864-CN-1A - October 6; CPC-2017-505-TDR-ZV-SPPA-DD-SPR - October 11

APPELLANT

For main entitlement cases, except for Building and Safety Appeals:

Check all that apply.

- Person, other than the Applicant, Owner or Operator claiming to be aggrieved
 Representative Property Owner Applicant Operator of the Use/Site

For Building and Safety Appeals only:

Check all that apply.

- Person claiming to be aggrieved by the determination made by **Building and Safety**¹
 Representative Property Owner Applicant Operator of the Use/Site

¹ Appellants of a Building and Safety Appeal are considered the Applicant and must provide the Noticing Requirements identified on page 4 of this form at the time of filing. Pursuant to LAMC Section 12.26 K, an appeal fee shall be required pursuant to LAMC Section 19.01 B.2.

APPELLANT INFORMATION

Appellant Name: CREED LA c/o Aidan P. Marshall

Company/Organization: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco State: CA Zip Code: 94080

Telephone: (650) 589-1660 E-mail: amarshall@adamsbroadwell.com

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

Self Other: CREED LA

Is the appeal being filed to support the original applicant's position?

YES NO

REPRESENTATIVE / AGENT INFORMATION

Representative/Agent Name (if applicable): Aidan P. Marshall

Company: Adams, Broadwell, Joseph & Cardozo

Mailing Address: 601 Gateway Blvd. Ste. 1000

City: South San Francisco State: CA Zip Code: 94080

Telephone: (650) 589-1660 E-mail: amarshall@adamsbroadwell.com

JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part?

Entire Part

Are specific Conditions of Approval being appealed?

YES NO

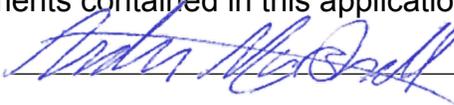
If Yes, list the Condition Number(s) here: All Conditions

On a separate sheet provide the following:

- Reason(s) for the appeal
- Specific points at issue
- How you are aggrieved by the decision
- How the decision-maker erred or abused their decision

APPLICANT'S AFFIDAVIT

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

Appellant Signature:  Date: 10/5/23

GENERAL NOTES

A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

The appellate body must act on the appeal within a time period specified in the LAMC Section(s) pertaining to the type of appeal being filed. Los Angeles City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.

THIS SECTION FOR CITY PLANNING STAFF USE ONLY

Base Fee: \$166.00

Reviewed & Accepted by (DSC Planner): Steven Wechsler

Receipt No.: 071023C18-FBFFSEES-4C5E Date: 10-6-23

Determination authority notified Original receipt and BTC receipt (if original applicant)

CPC-2017-505 → TDR-ZV-SPPA-DD-SRR-1A

GENERAL APPEAL FILING REQUIREMENTS

If dropping off an appeal at a Development Services Center (DSC), the following items are required. See also additional instructions for specific case types. To file online, visit our [Online Application System \(OAS\)](#).

APPEAL DOCUMENTS

1. Hard Copy

Provide three sets (one original, two duplicates) of the listed documents for each appeal filed.

- Appeal Application
- Justification/Reason for Appeal
- Copy of Letter of Determination (LOD) for the decision being appealed

2. Electronic Copy

- Provide an electronic copy of the appeal documents on a USB flash drive. The following items must be saved as individual PDFs and labeled accordingly (e.g., “Appeal Form”, “Justification/Reason Statement”, or “Original Determination Letter”). No file should exceed 70 MB in size.

3. Appeal Fee

- Original Applicant.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(a), or a fee equal to 85% of the original base application fee. Provide a copy of the original application receipt(s) to calculate the fee.
- Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b).

4. Noticing Requirements (Applicant Appeals or Building and Safety Appeals Only)

- Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per the LAMC for all Applicant appeals. Appellants for BSAs are considered Original Applicants.
- BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning’s mailing contractor (BTC).

See the Mailing Procedures Instructions ([CP-2074](#)) for applicable requirements.

SPECIFIC CASE TYPES

ADDITIONAL APPEAL FILING REQUIREMENTS AND / OR LIMITATIONS

DENSITY BONUS (DB) / TRANSIT ORIENTED COMMUNITIES (TOC)

Appeal procedures for DB/TOC cases are pursuant to LAMC Section 12.22 A.25(g).

- Off-Menu Incentives or Waiver of Development Standards are not appealable.
- Appeals of On-Menu Density Bonus or Additional Incentives for TOC cases can only be filed by adjacent owners or tenants and is appealable to the City Planning Commission.
 - Provide documentation confirming adjacent owner or tenant status is required (e.g., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, driver's license, bill statement).

WAIVER OF DEDICATION AND / OR IMPROVEMENT

Procedures for appeals of Waiver of Dedication and/or Improvements (WDIs) are pursuant to LAMC Section 12.37 I.

- WDIs for by-right projects can only be appealed by the Property Owner.
- If the WDI is part of a larger discretionary project, the applicant may appeal pursuant to the procedures which govern the main entitlement.

[VESTING] TENTATIVE TRACT MAP

Procedures for appeals of [Vesting] Tentative Tract Maps are pursuant LAMC Section 17.54 A.

- Appeals must be filed within 10 days of the date of the written determination of the decision-maker.

BUILDING AND SAFETY APPEAL

First Level Appeal

Procedures for an appeal of a determination by the Los Angeles Department of Building and Safety (LADBS) (i.e., Building and Safety Appeal, or BSA) are pursuant LAMC Section 12.26 K.1.

- The Appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

1. Appeal Fee

- Appeal fee shall be in accordance with LAMC Section 19.01 B.2 (i.e., the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code, plus surcharges).

2. Noticing Requirement

- Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 12.26 K.3. Appellants for BSAs are considered Original Applicants.

- BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

See the Mailing Procedures Instructions ([CP-2074](#)) for applicable requirements.

Second Level Appeal

Procedures for a appeal of the Director's Decision on a BSA Appeal are pursuant to LAMC Section 12.26 K.6. The original Appellant or any other aggrieved person may file an appeal to the APC or CPC, as noted in the LOD.

1. Appeal Fee

- Original Applicant.* Fees shall be in accordance with the LAMC Section 19.01 B.1(a).

2. Noticing Requirement

- Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 12.26 K.7. Appellants for BSAs are considered Original Original Applicants.
- BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

See the Mailing Procedures Instructions ([CP-2074](#)) for applicable requirements.

NUISANCE ABATEMENT / REVOCATIONS

Appeal procedures for Nuisance Abatement/Revocations are pursuant to LAMC Section 12.27.1 C.4. Nuisance Abatement/Revocations cases are only appealable to the City Council.

1. Appeal Fee

- Applicant (Owner/Operator).* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(a).

For appeals filed by the property owner and/or business owner/operator, or any individuals/agents/representatives/associates affiliated with the property and business, who files the appeal on behalf of the property owner and/or business owner/operator, appeal application fees listed under LAMC Section 19.01 B.1(a) shall be paid, at the time the appeal application is submitted, or the appeal application will not be accepted.

- Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b).

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

October 5, 2023

VIA ONLINE SUBMISSION

Los Angeles City Council

Online Portal: <https://plncts.lacity.org/oas>

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner

City of Los Angeles

Department of City Planning

221 N. Figueroa St., Suite 1350

Los Angeles, CA. 90012

Email: polonia.majas@lacity.org

Re: Appeal of City Planning Commission Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN).

Dear City Council President Krekorian, Councilmembers, and Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the City of Los Angeles (“City”) City Planning Commission (“Commission”) September 26, 2023 approvals of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) (“Project”), proposed by Mitsui Fudosan America (“Applicant”). On September 26, 2023, the Commission issued three separate Letters of Determination (“LOD”) for Case Numbers VTT-74876-CN, CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and ZA-2021-7053-ZAI. This appeal concerns Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR.

The scope of the Commission’s determination for Case No. VTT-74876-CN includes approval of a Vesting Tentative Tract Map; certification of an Environmental Impact Report (“EIR”); adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program (“MMRP”); denying the appeal in part and granting the appeal in part, and sustained the decision of the Advisory Agency dated May 26, 2023. The scope of the

L5887-014j

October 5, 2023

Page 2

Commission's determination for Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR includes approval of zone variances, approval of Specific Plan Project Permit Adjustments, approval of a Director's Decision to allow 79 trees to be planted on-site, Site Plan Review, and a recommendation to City Council to approve a Transfer of Floor Area Rights ("TFAR"). The Commission issued its LOD on September 26, 2023.

CREED LA submitted comments on the Project's Draft EIR ("DEIR") on January 5, 2022 during the public review period required by Section 15087 of the California Environmental Quality Act ("CEQA") Guidelines.¹ CREED LA's comments on the DEIR demonstrated that the DEIR fails to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. The City included responses to comments in the Final EIR ("FEIR") pursuant to Section 15088 of the CEQA Guidelines. CREED LA submitted comments explaining that the DEIR's flaws were not remedied in the City's FEIR. Subsequently, a public hearing for the Project was held by the Deputy Advisory Agency and Hearing Officer on behalf of the City Planning Commission on February 15, 2023. The Advisory Agency's LOD was mailed on May 26, 2023. CREED LA appealed the Advisory Agency's determination to the Commission. CREED LA's appeal and other approvals were considered by the Commission at its July 13, 2023, meeting.

CREED LA hereby appeals all actions taken by the Commission with regard to the Project as described in the LODs for Case Numbers VTT-74876-CN and CPC-2017-505-TDR-ZV-SPPA-DD-SPR. This appeal is timely filed in compliance with the LAMC. The reasons for this appeal are set forth herein and in the attachments, which include CREED LA's comments on the DEIR and FEIR,² appeal to the Advisory Agency,³ and letter to the Advisory Agency responding to the staff report

¹14 Cal. Code Regs. §§ 15000 et seq.; *see* Cal. Pub. Res. Code §§ 21000 et seq.

² **Attachment A:** Letter from Adams Broadwell Joseph & Cardozo to City re: Comments on 8th, Grand and Hope FEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (February 15, 2023); Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

³ **Attachment B:** Appeal of Advisory Agency Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN). (June 2, 2023)

October 5, 2023

Page 3

prepared for the Project.⁴ We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.⁵

As explained herein and in the attached comments, the Commission abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.⁶

I. STANDING TO APPEAL

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

⁴ **Attachment C:** Letter from ABJC to City Re: Agenda Item 8 and 10 – 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI) (July 11, 2023).

⁵ We reserve the right to supplement these comments at later hearings and proceedings on the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121,

⁶ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

Section 17.06 of the LAMC, “Tentative Map and Appeals,” provides that “[t]he subdivider, the Mayor, any member of the City Council, the Advisory Agency, or any other interested person adversely affected by the proposed subdivision may appeal any action of the Appeal Board⁷ with respect to the tentative map or the kinds, nature or extent of the improvements required by the Appeal Board to the City Council.” CREED LA and its members are interested persons who would be adversely affected by the Vesting Tentative Tract Map approved by the Advisory Agency.

Section 12.27(O) of the LAMC, “Variances,” provides that “[a]n appeal from a decision of the Area Planning Commission granting or affirming the grant of a variance may be filed by the applicant or any person aggrieved by the decision.” CREED LA and its members are aggrieved by the Commission’s decision. And Section 11.5.7(J) of the LAMC, “Specific Plan Procedures,” provides for appeal of Area Planning Commission decisions to the City Council.

As CREED LA’s appeal is timely filed, CREED LA has standing to appeal the Commission’s decision to City Council.

II. REASONS FOR APPEAL

A. The Commission’s Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record

The Subdivision Map Act (“SMA”) provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

⁷ LAMC Section 17.02 defines “Appeal Board” as “The Area Planning Commission where the map is located for any parcel map or tentative map that: (a) creates or results in less than 50,000 gross square feet of nonresidential floor area; or (b) creates or results in fewer than 50 dwelling units, guest rooms, or combination of dwelling units and guest rooms; or (c) involves a lot with fewer than 65,000 square feet of lot area. Otherwise, the City Planning Commission.”

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

LAMC Section 17.15(c)(2), “Vesting Tentative Maps,” provides that “a permit, approval, extension, or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines:

- (a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or

(b) The condition or denial is required in order to comply with state or federal law.

Here, approval of the vesting tentative tract map would place the community in a condition dangerous to its health and safety.

First, CREED LA's comments on the EIR explained that the EIR failed to adequately disclose and analyze significant health impacts on the community from exposure to Diesel Particulate Matter ("DPM") generated by construction activities or Project operations. Specifically, the EIR failed to analyze impacts on all sensitive receptors, including children. Analysis of impacts on children is essential due to the increased sensitivity of children to Toxic Air Contaminants like DPM. As discussed in CREED LA's comments on the FEIR, Dr. James Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million cancer risk significance threshold. Dr. Clark's analysis found that for a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

Second, the Project would have significant construction noise impacts. As explained in CREED LA's comments, excessive noise or significant increases in noise can impact public health. The City must adopt all feasible mitigation measures to reduce these noise impacts before the Project can be approved. CREED LA's expert identified mitigation measures which would reduce the magnitude of these impacts. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and the SMA unless this impact is mitigated to the fullest extent feasible.⁸

For these reasons, and others discussed in CREED LA's comments, approval of the Project is likely to cause significant air quality, public health, greenhouse gas, and noise impacts. The Commission therefore lacked substantial evidence to make the necessary findings. The City must correct the errors in the EIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must

⁸ Government Code, section 66474.01.
L5887-014j

provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

B. The Commission's Approval of Project Permit Adjustments Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant LAMC Section 11.5.7(E), a Specific Plan Project Permit Adjustment for a Director's Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide, as well as a Specific Plan Project Permit Adjustment to allow a deviation from Section 5 of the Downtown Design Guide to allow building and balcony projections up to nine feet and 25 feet into the sidewalk easements along Hope Street and Grand Avenue respectively, and allow projections to begin at an elevation of 25 feet above grade along Hope Street and Grand Avenue.

LAMC Section 11.5.7 (E)(3) requires the following findings to be made in order to approve a Project Permit Adjustment, in addition to any other required specific plan findings that may pertain to the Project Permit Compliance:

- (a) That there are special circumstances applicable to the project or project site which make the strict application of the specific plan regulation(s) impractical;
- (b) That in granting the Project Permit Adjustment, the Director has imposed project requirements and/or decided that the proposed project will substantially comply with all applicable specific plan regulations;
- (c) That in granting the Project Permit Adjustment, the Director has considered and found no detrimental effects of the adjustment on surrounding properties and public rights-of-way; and
- (d) That the project incorporates mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.

As summarized herein and in the attachments, the Project would have detrimental health risk, air quality, greenhouse gas, noise, and other impacts on the

surrounding properties. The Project fails to incorporate the requisite mitigation measures to mitigate the negative environmental effects of the Project to the extent physically feasible. As a result, the Commission could not make the requisite findings to approve the Project Permit Adjustments.

C. The Commission's Approval of Zone Variances Was Contrary to Law and Unsupported by the Record

The Commission approved, pursuant to LAMC Section 12.27, a Zone Variance to allow relief from providing an additional 10-inch clear space to the parking stall widths when adjoined on their longer dimension by an obstruction, and a Zone Variance to allow relief to allow reduced drive aisle widths of 24 feet in lieu of the required drive aisle width.

LAMC Section 12.27(D) requires the following findings to be made in order to approve a Zone Variance.

1. that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
2. that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
3. that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
4. that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
5. that the granting of the variance will not adversely affect any element of the General Plan.

Additionally, Section 12.27(E) provides that the decisionmaker may impose those conditions it deems necessary to remedy a disparity of privileges and

October 5, 2023

Page 9

necessary to protect the public health, safety or welfare and assure compliance with the objectives of the General Plan and the purpose and intent of the zoning.

The Commission approved the Project's Zone Variances despite the Project's health risk, air quality, greenhouse gas, noise, and other impacts. These impacts are materially detrimental to the public welfare. These impacts precluded the Commission from making the requisite findings to approve the Project Permit Adjustments. And the Commission failed to use its authority to adopt the necessary conditions to protect the public health, safety and welfare.

D. The Project's Environmental Review Fails to Comply with CEQA

CREED LA's comments on the EIR demonstrated that the EIR fails to comply with CEQA. As explained more fully in CREED LA's comments on the DEIR and FEIR, the EIR failed to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas emissions. The EIR failed to support its significance findings with substantial evidence, and failed to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot adopt a statement of overriding considerations pursuant to CEQA.⁹

III. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the City Council uphold this appeal and vacate the City Planning Commission's approval of the Project.

Sincerely,



Aidan P. Marshall

APM:lj1

⁹ Pub. Resources Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.
L5887-014j

ATTACHMENT A

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

February 15, 2023

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner
Vince Bertoni, Director of Planning
City of Los Angeles
Department of City Planning
221 N. Figueroa St., Suite 1350
Los Angeles, CA. 90012
Email: polonia.majas@lacity.org;
vince.bertoni@lacity.org

Re: Agenda Item 1: Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN)

Dear Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments on the Final Environmental Impact Report (“FEIR”) and related entitlements for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (“Project”), proposed by Mitsui Fudosan America (“Applicant”), and prepared pursuant to the California Environmental Quality Act (“CEQA”)¹ by the City of Los Angeles (“the City”). The Project’s FEIR and entitlements will be considered at the February 15, 2023 Deputy Advisory Agency, Hearing Officer, and Zoning Administrator hearing as Agenda Item #1.

The Applicant proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would be located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles, California (Assessor’s Parcel Numbers 5144-011-009 and 5144-011-016).

¹ Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. (“C.C.R.”) §§ 15000 *et seq.*

On January 5, 2021, we submitted comments on the Draft EIR (“DEIR”) prepared for the Project.² Our comments of the DEIR demonstrated that the DEIR failed to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project’s significant impacts to the greatest extent feasible, in violation of CEQA. As will be explained herein, these flaws have not been remedied in the City’s FEIR, which contains inadequate responses to our comments. As a result of these unresolved deficiencies, the Project’s environmental review still does not meet the standards of CEQA.

Several discretionary approvals are required to implement the Project, including a Vesting Tentative Tract Map pursuant to Los Angeles Municipal Code (“LAMC”) Section 17.03 and 17.15; a Transfer of Floor Area Rights pursuant to LAMC Section 14.5.6; Zone Variances pursuant to LAMC Section 12.27, Specific Plan Project Adjustments pursuant LAMC Section 11.5.7 E; Director's Decision to allow 79 trees to be planted on-site in lieu of the otherwise required 145 trees pursuant to LAMC Section 12.21 G.2(a)(3); Site Plan Review pursuant to LAMC Section 16.05, Zoning Administrator's Interpretation pursuant to LAMC Section 12.21 A.2 (collectively, “Approvals”). Due to the Project’s inadequate environmental review, the City cannot make the requisite findings to approve the Project Approvals under the City’s municipal codes, or to certify the FEIR or adopt a statement of overriding considerations pursuant to CEQA.³

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D.,⁴ and noise expert Derek Watry of Wilson Ihrig.⁵ Their comments are fully incorporated herein and submitted to the City herewith.

Based upon our review of the FEIR and supporting documentation, we conclude that the FEIR fails to comply with the requirements of CEQA. Although the City revised its air quality analysis and prepared a quantified health risk analysis (“HRA”) in response to our DEIR comments, our review demonstrates that the FEIR’s air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete. As a result, the FEIR still fails to adequately disclose and mitigate the Project’s significant public health, air quality,

² **Attachment C:** Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

³ Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁴ Comments and curriculum vitae of Mr. Clark are attached to this letter as **Attachment A**.

⁵ Mr. Watry’s comments and curriculum vitae are included as **Attachment B**.

and noise impacts. Like the DEIR, the FEIR still lacks substantial evidence to support its conclusions and still fails to properly mitigate the Project's significant environmental impacts. Further, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised DEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the DEIR before any further action is taken on the Project.

Additionally, the agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. As will be explained below, the hearing must be continued to a later date to be properly noticed.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members.

Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. BROWN ACT

The agenda for this hearing was uploaded to the City website on February 14, less than 72 hours prior to the hearing, in violation of the Brown Act. The Brown Act provides that members of the public have the right to review the agenda of a board's upcoming meeting in advance of the meeting. Government Code section 54954.2 specifically requires that the governing body post the agenda for a regular meeting 72 hours before the meeting and 24 hours before a special meeting. This includes posting the agenda in a physical location and on the agency's "primary internet homepage."⁶ In addition to making the agenda available, materials related to agenda items and used by the governing body during a meeting must also be made available for review.⁷

Today's hearing is a regular meeting of the Department of City Planning Subdivisions and Hearing Officer. It is not a special meeting. Accordingly, the City was required to post the agenda for public review no later than 72 hours prior to the hearing, by February 12, 2023 at 10:00a.m. The City failed to timely post the agenda. On February 14, we emailed the Department of City Planning and explained that the agenda and staff report for the Project's hearing were not available online. Later that day, these documents were uploaded to the City website.⁸ Here, the screenshot below of the agenda's⁹ document properties shows

⁶ Gov. Code § 54954.2)(a)(2)(A).

⁷ Gov. Code, § 54957.5, subd. (b)(2).

⁸ <https://planning.lacity.org/dcpapi/meetings/document/73909>.

⁹ The digital agenda is available at <https://planning.lacity.org/dcpapi/meetings/document/73909>.

that the agenda was last modified on February 13, 2023, which demonstrates that it was not uploaded any earlier than February 13:

Document properties

| | |
|----------------|------------------------------------|
| File name: | 73909 |
| File size: | 119 KB |
| <hr/> | |
| Title: | 2/15 DAA/HO AGENDA |
| Author: | - |
| Subject: | - |
| Keywords: | - |
| Created: | 2/7/23, 8:32:27 AM |
| Modified: | 2/13/23, 1:07:24 PM |
| Application: | - |
| <hr/> | |
| PDF producer: | Skia/PDF m111 Google Docs Renderer |
| PDF version: | 1.6 |
| Page count: | 3 |
| Page size: | 8.50 × 11.00 in (portrait) |
| <hr/> | |
| Fast web view: | Yes |

Close

The document properties above show that the agenda was last modified on 2/13, indicating that it was not uploaded 72 hours before the February 15th hearing. Similarly, below is a screenshot of the staff report's¹⁰ document properties, also showing that the agenda was last modified on February 13, 2023.

¹⁰ Staff report, https://planning.lacity.org/plndoc/Staff_Reports/2023/02-13-2023/VTT_74876.pdf

Document properties

| | |
|----------------|-----------------------------------|
| File name: | VTT_74876.pdf |
| File size: | 801 KB |
| <hr/> | |
| Title: | - |
| Author: | Robert Keatinge |
| Subject: | - |
| Keywords: | - |
| Created: | 2/13/23, 10:18:51 AM |
| Modified: | 2/13/23, 12:50:55 PM |
| Application: | Microsoft® Word for Microsoft 365 |
| <hr/> | |
| PDF producer: | Microsoft® Word for Microsoft 365 |
| PDF version: | 1.7 |
| Page count: | 90 |
| Page size: | 8.50 × 11.00 in (portrait) |
| <hr/> | |
| Fast web view: | Yes |

Close

The City’s failure to timely post the agenda in a physical location and on the agency’s “primary internet homepage”¹¹ is a violation of the Brown Act. This violation prejudiced CREED LA and other members of the public’s ability to attend the hearing and respond to the agenda and staff report for the Project. The 90-page staff report contains Findings regarding the Project’s Approvals, and necessary details of the Approvals sought. Without the necessary notice required by the Brown Act, the public has not had sufficient time to review and comment on the Project’s Approvals. Per the requirements of the Brown Act, the hearing must be continued to a later date to be properly noticed.

¹¹ Gov. Code § 54954.2)(a)(2)(A).

III. THE FEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.¹² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹³

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.¹⁴ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹⁵ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹⁶

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."¹⁷

CEQA requires that a lead agency evaluate and prepare written responses to comments in an FEIR.¹⁸ Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."¹⁹ When a comment raises a "significant environmental issue," the written responses must describe the

¹² 14 CCR § 15064(b).

¹³ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

¹⁴ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

¹⁵ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹⁶ *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

¹⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355.

¹⁸ PRC § 21091(d); 14 CCR §§ 15088(a), 15132.

¹⁹ *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

disposition of each such issue raised by commentators.²⁰ Specifically, the lead agency must address the comment “in detail giving reasons why” the comment was “not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.”²¹

A. The FEIR Still Fails to Recognize the City’s Legal Duty to Analyze Health Risks from Construction and Operational Emissions

In our previous comments on the DEIR, we explained that the City was required to prepare a quantified HRA for the Project because CEQA requires that a project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”²²

In response, the City prepared an HRA for the Project’s construction and operations and included it in the FEIR.²³ But the City maintains that the HRA was only conducted for informational purposes, and continues to assert that a HRA is not required by CEQA.²⁴ The FEIR, in Response to Comment 3-6, reasons that construction emissions of Diesel Particulate Matter (“DPM”) need not be analyzed in an HRA because they occur over a shorter time period than 70 years.²⁵ This reasoning is flawed and should be struck from the FEIR. Individual cancer risk is not just affected by the duration of exposure to TACs, but also the concentration of the individual’s unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA²⁶ guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.²⁷

B. The FEIR’s HRA Fails to Analyze Health Risk Impacts on All Groups of Sensitive Receptors

²⁰ PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).

²¹ 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 (“*Laurel II*”); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.

²² *Id.* at 518.

²³ Appendix FEIR-2.

²⁴ FEIR, pg. II-33; Appendix FEIR-2, pg. 2.

²⁵ FEIR, pg. II-31.

²⁶ OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

²⁷ See “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 (“OEHHA Guidance”), p. 8-18.

CEQA requires analysis of human health impacts. Its fundamental purpose is to maintain a quality environment for “the people “of the state. CEQA’s statutory scheme and legislative intent include an express mandate that agencies consider and analyze human health impacts, acknowledges that human beings are an integral part of the “environment”, and mandates that public agencies determine whether a the “*environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly*,”²⁸ and to “take immediate steps to identify any critical thresholds for the *health and safety of the people* of the state and take all coordinated actions necessary to prevent such thresholds being reached.”²⁹

The HRA prepared in response to CREED LA’s comments fails to analyze impacts on all sensitive receptors, and therefore remains inadequate. Health risk impacts on children are measured using Age Sensitivity Factors (“ASFs”).³⁰ As stated in the FEIR, ASFs “account for increased sensitivity of early-life exposure to carcinogens.”³¹ ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project’s estimated emissions of Toxic Air Contaminants (“TACs”). In the Project’s HRA, the City fails to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project’s health risk impacts on this group of sensitive receptors. The Project site is surrounded by residential and mixed-use land uses that can hold children, as identified in the EIR’s environmental setting.³²

The FEIR incorrectly states that relevant guidance does not support the use of ASFs to analyze health impacts of DPM generated by construction activities or Project operations.³³ This response is a red herring which ignores CEQA’s legal requirement to analyze whether the “environmental effects of a project will cause substantial adverse effects on *human beings*, either directly or indirectly,”³⁴ which necessarily includes children and infants. Children and infants are more sensitive to acute exposure to TACs, and suffer greater health impacts over short periods of exposure. ASFs are a scientifically accepted method of quantifying the risk to children and infants. The City provides no alternative analysis.

²⁸ Pub. Res. Code (“PRC”) § 21083(b)(3), (d) [emphasis added].

²⁹ See PRC §21000 et seq. [emphasis added]

³⁰ Appendix FEIR-2, pg. 4.

³¹ Appendix FEIR-2, pg. 4; see also City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

³² DEIR, pg. III-2.

³³ Appendix FEIR-2, pg. 4-6.

³⁴ PRC § 21083(b)(3), (d) (emphasis added).

The FEIR considers guidance by California Office of Environmental Health Hazard Assessment (“OEHHA”), acknowledging that it recommends an age-weighting factor be applied to all carcinogens regardless of purported mechanism of action.³⁵ Since DPM is carcinogenic, the OEHHA guidance provides that ASFs should be applied to analyze this Project’s DPM impacts on children.³⁶ But the FEIR argues that the OEHHA guidance should not be considered because it has not been adopted by SCAQMD as a CEQA significance threshold.³⁷ This argument is flawed because the City does not identify any supporting evidence demonstrating that OEHHA’s scientific conclusions regarding children’s heightened susceptibility to TACs such as DPM should be overlooked. The FEIR’s argument also overlooks the City’s ability to select its own methodology, independent of those used by regulatory agencies, if the methodology is supported by substantial evidence, as with OEHHA’s.³⁸ Further, the City elects to rely on guidance from U.S. EPA,³⁹ which like the OEHHA guidance, also has not been adopted by SCAQMD as a CEQA significance threshold, rendering the FEIR’s justification for omitting ASFs specious.

The FEIR elects to rely on U.S. EPA guidance⁴⁰ related to early life exposure adjust factors whereby the adjustment factors are only considered when carcinogens act “through the mutagenic mode of action.”⁴¹ The FEIR concludes that DPM is not mutagenic because only some of its constituent particles are mutagenic – and as a result, use of ASFs is not required for measuring DPM health impacts. In support, the FEIR cites to the U.S. EPA’s Integrated Risk Information System (“IRIS”). However, the FEIR’s interpretation of this guidance is incorrect. IRIS Chemical Assessment Summary for Diesel Particulate Matter states that DPM is mutagenic:

[D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: [...] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or

³⁵ Appendix FEIR-2, pg. 4.

³⁶ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

³⁷ Appendix FEIR-2, pg. 4-5.

³⁸ *N. Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642-643.

³⁹ Appendix FEIR-2, pg. 6.

⁴⁰ U.S. EPA. 2006. Memorandum – Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance – Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action.

⁴¹ Appendix FEIR-2, pg. 6.

carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.⁴² [emphasis added]

The U.S. EPA clearly identifies DPM as a mutagenic carcinogen. Thus, even by the City's preferred methodology, the effect of the Project's DPM emissions on children must be analyzed using ASFs. Further, Dr. Clark identifies additional guidance from the Scientific Review Panel identifying DPM as mutagenic.⁴³ And the City of Los Angeles's own Air Quality And Health Effects guidance provides that exposure to DPM may be particularly harmful to children, whose lungs are still developing.⁴⁴

As demonstrated above, health impacts on children are not disclosed without use of ASFs due to the increased sensitivity of children to the harmful effects of DPM. Because the City's HRA omitted application of ASFs, the Project's health risk impacts on especially-sensitive populations has not been analyzed. The omission of information regarding the Project's health effects on children constitutes an ongoing failure to analyze a potentially significant impact under CEQA.

C. Substantial Evidence Demonstrates that the Project will have a Significant Health Risk Impact on Children

The FEIR's HRA concludes that the Project's impacts will not exceed the City's significance threshold, which provides that health impacts are significant when the Project exposes sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.⁴⁵ But as explained above, this HRA fails to apply ASFs to evaluate impacts on children. Dr. Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million threshold.

Dr. Clark conducted this analysis using the concentrations of DPM calculated by the City, but incorporating ASFs to evaluate impacts on children.⁴⁶ This analysis finds that for a resident living near the Project site, the risk for a child born and living during the 1st two years of life will exceed 60 in 1,000,000, which exceeds the

⁴² U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at https://iris.epa.gov/static/pdfs/0642_summary.pdf.

⁴³ Clark Comments, pg. 4.

⁴⁴ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10, available at https://planning.lacity.org/odocument/e1a00fbf-6134-4fa9-b6fd-54eee631effb/City_of_LA_-_Air_Quality_and_Health_Effects_and_Attachments.pdf.

⁴⁵ Appendix FEIR-2, Executive Summary, pg. 1.

⁴⁶ Clark Comments, pg. 5.

10 in 1 million threshold.⁴⁷ Thus, the Project would have a significant health risk impact unanalyzed in the EIR. Thus, the FEIR must be revised and recirculated.

D. The FEIR Fails to Mitigate the Project's Significant Health Risk Impact to a Less-Than-Significant Level

As demonstrated in Dr. Clark's comments, the Project would have a significant health risk impact as of result of DPM emitted during Project construction and operations. The mitigation measures identified in the FEIR's Mitigation Monitoring Program ("MMRP") fail to reduce these impacts to a less-than-significant level. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts.⁴⁸ To fully mitigate the Project's significant health risk impacts, the FEIR must be revised to identify measures that limit DPM emissions during construction. For example, requiring use of construction equipment that meets EPA Tier 4 engine emissions standards would reduce emissions of PM and NO_x over uncontrolled emissions.⁴⁹ Use of such equipment is feasible and effective.⁵⁰

E. The FEIR Fails to Analyze and Mitigate Potentially Significant Health Risks from Exposure to Natural Gas

The Project's operations would involve residential use of natural gas.⁵¹ The Project's operations would consume a total of 4,859,882 cf of natural gas each year.⁵² Although the Project will not use natural gas fireplaces, the Project's EIR does not preclude use of other gas appliances like stoves.⁵³

Substantial evidence demonstrates that residential natural gas use has potentially significant health risks on residents.⁵⁴ In a 1992 meta-analysis of

⁴⁷ Clark Comments, pg. 5.

⁴⁸ Pub. Resources Code § 21002.

⁴⁹ See Emissions Standards, US Nonroad Diesel Engines, available at <https://dieselnet.com/standards/us/nonroad.php>.

⁵⁰ 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.

⁵¹ DEIR, IV.B-15.

⁵² DEIR, IV.B-25.

⁵³ FEIR, IV-3.

⁵⁴ <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>;

studies on this topic, scientists at the EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.⁵⁵ Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis of 41 studies found that gas cooking increases the risk of asthma in children and that NO₂ exposure is linked with currently having a wheeze.⁵⁶ Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.⁵⁷ Dr. Clark's comments present further evidence demonstrating the potentially significant nature of this impact. The City cannot approve the Project unless this impact is analyzed and mitigated.

To mitigate this impact, the City must analyze the feasibility of measures which reduce the toxicity of operational natural gas use. These may include building electrification measures. The City's project design feature AIR-PDF-2, which precludes use of gas-powered fireplaces, does not implicate stoves in residential units. And GHG-PDF-1, which calls for the use of Energy Star-labeled appliances, would not reduce natural gas emissions from stoves, as "[t]here is no Energy Star label for residential ovens, ranges, or microwave ovens at this time."⁵⁸

F. The FEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Noise Impacts

The FEIR acknowledges that the Project would have significant construction noise impacts. In our initial comments, Mr. Watry identified additional feasible mitigation measures that would reduce the Project's significant construction noise impacts. Mr. Watry recommended that the FEIR's mitigation measure be revised to provide either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction in order to further reduce noise above the FEIR's proposed noise barrier.⁵⁹

⁵⁵ Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; Journal of the Air & Waste Management Association Volume 42, 1992 - Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.

⁵⁶ Lin et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, International Journal of Epidemiology, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>.

⁵⁷ Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, Int. J. Environ. Res. Public Health 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>.

⁵⁸ https://www.energystar.gov/products/appliances/microwaves_ovens_and_ranges.

⁵⁹ Watry DEIR Comments, pp. 2-3.

In Responses 3-39 and 3-40, the City argues that these measures would be infeasible. The City first reasons that the project Applicant does not own the affected buildings, and thus cannot require the implementation of Mr. Watry's proposed measures. But Mr. Watry explains that the Applicant can make offers to neighboring residents to install noise-attenuating barriers. Mr. Watry points to other projects that implemented similar mitigation, demonstrating their general feasibility.⁶⁰

The City also reasons that constructing the proposed noise barriers would in and of itself would create a significant noise impact. But Mr. Watry's comments explain that temporarily installing clear plexiglass or acrylic panels around balconies that face the project site would not be expected to generate a significant noise impact.⁶¹ The City must consider this mitigation in a revised FEIR.

IV. THE PROJECT DOES NOT PROVIDE AFFORDABLE HOUSING, IN CONFLICT WITH LOCAL LAND USE GOALS, OBJECTIVES, AND POLICIES

The Project proposes to construct 580 residential units, but fails to provide any of the residential units at a below-market rate.⁶² The Project's lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing. CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans," which includes regional housing plans.⁶³ Therefore, the Project's inconsistency with applicable goals, objectives, and policies is also a violation of CEQA.

A. The Project is Inconsistent with the Housing Element Update of the General Plan

The Regional Housing Needs Assessment ("RHNA") is the California State-required process that seeks to ensure cities and counties plan for enough housing in their Housing Element cycle to accommodate all economic segments of the community.⁶⁴ Accordingly, the Housing Element of the City's General Plan

⁶⁰ Watry FEIR Comments, pg. 2.

⁶¹ Watry FEIR Comments, pg. 2.

⁶² DEIR, pg. IV.D-26, Appendix D, Table 4, pg. 6; FEIR, Section II, Responses to Comments; Planning Department Staff Report (these documents discuss the Project's consistency with housing policies but fail to identify any low-income housing provided by the Project).

⁶³ See also *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

⁶⁴ Cal. Gov. Code Section 65580 – 65589.9; see City of Los Angeles, Draft Housing Element 2021-2019: What to Know about: RHNA, Site Selection, and Rezoning, available at

identifies the City’s housing conditions and needs, evaluates the City’s ability to meet its RHNA numbers, establishes the goals, objectives, and policies of the City’s housing strategy, and provides an array of programs to create mixed-income neighborhoods across the City.⁶⁵ The Housing Element Annual Progress Report (“APR”), as required by Government Code Section 65400, requires jurisdictions to report on the annual progress towards meeting the RHNA during the calendar year, as well as on the status of implementation programs identified in the Housing Element.

The City’s 2021 Housing Element APR shows that the City has not produced enough housing in the lower and moderate-income categories. As shown in the excerpted tables below from the 2021 APR, Los Angeles was obligated to identify capacity for 82,002 new units of housing in the 2013-2021 RHNA cycle.⁶⁶ And while the City produced more than 82,002 new units (118,604 total), the City failed to produce enough very-low, low, and moderate-income housing, with a deficit of 32,491 units.⁶⁷

| Income Level | | RHNA Allocation by Income Level | 2021 | Total Units to Date (all years) | Total Remaining RHNA by Income Level |
|--------------------|---------------------|---------------------------------|---------------|---------------------------------|--------------------------------------|
| Very Low | Deed Restricted | 20,427 | 1,979 | 8,991 | 11,436 |
| | Non-Deed Restricted | | - | | |
| Low | Deed Restricted | 12,435 | 536 | 4,263 | 8,172 |
| | Non-Deed Restricted | | - | | |
| Moderate | Deed Restricted | 13,728 | 18 | 845 | 12,883 |
| | Non-Deed Restricted | | - | | |
| Above Moderate | | 35,412 | 13,082 | 118,604 | - |
| Total RHNA | | 82,002 | | | |
| Total Units | | | 15,615 | 132,703 | 32,491 |

In the current cycle (2021-2029), Los Angeles is obligated to identify capacity for 456,643 new units of housing.⁶⁸ 115,978 of this total must be for very-low income

[https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What to Know about RHNA, Site Selection, and Rezoning - Updated.pdf](https://planning.lacity.org/odocument/9feedc9d-07b6-479f-8ad9-84e93192c97a/What%20to%20Know%20about%20RHNA,%20Site%20Selection,%20and%20Rezoning%20-%20Updated.pdf)

⁶⁵ City of Los Angeles, Draft Housing Element 2021-2019, Executive Summary, pg. 16-17, available at [https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive Summary \(Adopted\).pdf](https://planning.lacity.org/odocument/3d0775b4-6e54-4294-ad5a-85df6b8eaf82/Executive%20Summary%20(Adopted).pdf).

⁶⁶ City of Los Angeles, 2021 Housing Element Progress Report, Table B, [https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los Angeles 2021 APR - Summary.pdf](https://planning.lacity.org/odocument/e7ecf035-0003-4474-995b-b7a1a9f3cef8/Los%20Angeles%202021%20APR%20-%20Summary.pdf).

⁶⁷ *Id.*

⁶⁸ SCAG 6th Cycle Final RHNA Allocation Plan (approved by HCD on 3/22/21 and modified on 7/1/21), pg. 3, available at <https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-final-allocation-plan.pdf?1625161899>.

housing, 68,743 for low income housing, and 75,091 for moderate housing.⁶⁹ But the City's models show that the City is not on track to meet this RHNA requirement. AB 1397 (2017) requires the City to model the new housing units permitted during the upcoming cycle. However, the Housing Element concludes that the "model's prediction of approximately 47,000 new units being permitted in the city within the bonus-zoned cap in the span of 8 years falls an order of magnitude short of the city's upcoming cycle RHNA of 456,643 units."⁷⁰ The City estimates that affordable housing benefits would raise the 8- year prediction for new units permitted within the bonus-zoned cap from 47,208 to 61,158, which still falls short.⁷¹

Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City's RHNA are inconsistent with the City's Housing Element, a primary goal of which is to meet the RHNA. The Project does not provide any affordable units, and is therefore inconsistent with the Housing Element affordable housing goals. Specifically, Objective 2.2 states: "Promote sustainable neighborhoods that have mixed-income housing, jobs, amenities, services and transit." The City claims that the Project is consistent with this Objective because the Applicant would construct a mixed-use development with residential units at varying cost levels.⁷² But the EIR fails to require the range of cost levels to include low-income units. The City does not acknowledge that while Objective 2.2 plainly promotes mixed-income housing, the Project fails to include any mixed-income affordable units. Thus, the Project is inconsistent with Objective 2.2.

Objective 2.5 provides that the City must "[p]romote a more equitable distribution of affordable housing opportunities throughout the city." Accordingly, Policy 2.5.2 provides: "Foster the development of new affordable housing units citywide and within each Community Plan area." The City failed to analyze the Project's consistency with Objective 2.5 and Policy 2.5.2.⁷³ To analyze consistency with these provisions, the City must revise the EIR to disclose the availability of affordable housing opportunities in the Central City Community Plan area, and analyze whether the Community Plan area has sufficient affordable housing relative to the rest of the City. Here, because the Project fails to provide any affordable housing, there is no evidence that the Project contributes to an equitable distribution of affordable housing opportunities throughout the City.

⁶⁹ *Id.*

⁷⁰ Housing Element 2021-2029, Appendix 4.6-3, available at https://planning.lacity.org/odocument/15117d38-35ca-416b-9980-25eb20201ba2/Appendix_4.6_-_Regression_Methodology.pdf.

⁷¹ *Id.*

⁷² DEIR, Appendix D, Table 4, pg. 26.

⁷³ DEIR, Appendix D, Table 4.

Policy 2.5.1 further provides: “Target housing resources, policies and incentives to include affordable housing in residential development, particularly in mixed use development, Transit Oriented Districts and designated Centers.” The City also failed to analyze the Project’s consistency with this policy.⁷⁴ Here, the Project proposes residential units in a Transit Oriented Communities Area and designated High Quality Transit Area (“HQTA”).⁷⁵ But, whereas Policy 2.5.1 promotes locating affordable housing in such areas, the Project fails to include any affordable units and fails to take advantage of affordable housing incentives. Thus, the Project is inconsistent with Policy 2.5.1.

Further, the Project is not consistent with the Housing Element Update, which was adopted on June 14, 2022. Housing Element Update Policy 1.1.2 states: “Plan for appropriate land use designations and density to accommodate an ample supply of housing units by type, **cost**, and size within the City to meet housing needs, according to Citywide Housing Priorities and the City’s General Plan.” [emphasis added]. Here, the City produced enough above-moderate housing units in 2013 through 2021, but fell short in production of very-low, low, and moderate income housing. By proposing 580 residential units, but zero affordable housing units, the Project fails to provide an ample supply of housing units by costs which meet the City’s housing needs, as required by the Housing Element.

Objective 1.2 states: “Facilitate the production of housing, especially projects that include Affordable Housing and/or meet Citywide Housing Priorities.” Accordingly, Policy 1.2.1 provides: “Expand rental and for-sale housing for people of all income levels. Prioritize housing developments that result in a net gain of Affordable Housing and serve those with the greatest needs.” Because the instant Project fails to provide affordable housing, approval of the Project would be inconsistent with the Policy 1.2.1’s prioritization of affordable housing development.

Objective 3.2 states: “Promote environmentally sustainable buildings and land use patterns that support a mix of uses, housing for various income levels and provide access to jobs, amenities, services and transportation options.” Accordingly, Policy 3.2.2 provides: “Promote new multi-family housing, particularly Affordable and mixed-income housing, in areas near transit, jobs and Higher Opportunity Areas, in order to facilitate a better jobs-housing balance, help shorten commutes, and reduce greenhouse gas emissions.” Here, the Project proposes residential units in a designated HQTA.⁷⁶ But whereas Policy 3.2.2 promotes locating affordable and

⁷⁴ DEIR, Appendix D, Table 4.

⁷⁵ DEIR, Section IV.D-17.

⁷⁶ DEIR, Section IV.D-17.

mixed-income housing in such areas, the Project fails to include affordable units. Thus, the Project is inconsistent with Policy 3.2.2.

As a result of these inconsistencies, the Project fails to comply with the Housing Element of the General Plan. The FEIR further fails to disclose and mitigate the above inconsistencies, in violation of CEQA. The FEIR must be revised and recirculated before the Project can be approved.

B. City of Los Angeles General Plan Framework

Policy 4.1.1 of the City of Los Angeles General Plan Framework states: “Provide sufficient land use and density to accommodate an adequate supply of housing units by type and cost within each City subregion to meet the twenty-year projections of housing needs.” Here, the Project fails to propose any affordable residential units while the City fails to meet its RHNA. Thus, this Project fails to contribute to an adequate supply of housing units by cost.

V. CONCLUSION

As is explained herein, timely access to the hearing’s agenda and staff report is required for the public to have an adequate opportunity to review and comment on the Project’s Approvals. The hearing must be continued to a later date to comply with the Brown Act.

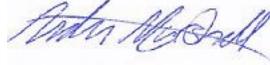
Further, the FEIR’s air quality, health risk, noise, and land use analyses remain substantially inaccurate and incomplete, failing to comply with the requirements of CEQA. As a result, the FEIR still fails to adequately disclose and mitigate the Project’s significant public health, air quality, and noise impacts. As a consequence of these impacts, the City cannot make the requisite findings under the LAMC to make the requested Approvals because these impacts remain significant and unmitigated.

The City cannot approve the Project until the errors and omissions in the FEIR are remedied, and a revised FEIR is recirculated for public review and comment which fully discloses and mitigates the Project’s potentially significant environmental and public health impacts. CREED LA urges the Deputy Advisory

February 15, 2023
Page 19

Agency, Hearing Office, and Zoning Administrator require the City revise and recirculate the FEIR before any further action is taken on the Project.

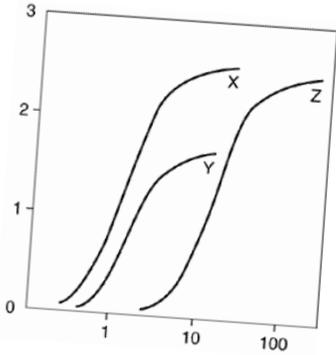
Sincerely,

A handwritten signature in blue ink, appearing to read "Aidan P. Marshall".

Aidan P. Marshall

Attachments
APM:acp

ATTACHMENT A



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

January 8, 2023

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

Attn: Mr. Aidan Marshall

Subject: Comments On Final Environmental Impact Report (FEIR) For 8th, Grand, and Hope Street Project (ENV-2017-506-EIR) State Clearinghouse No. 2019050010

Dear Mr. Marshall,

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the January 2023 City of Los Angeles Final Environmental Impact Report (FEIR) of the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

The Project involves the construction of a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished. Upon completion, the total building floor area would be 554,927 square feet with a maximum height of 592 feet and a Floor Area Ratio (FAR) of approximately 9.25:1.

The Project is located at 754 South Hope Street and 609 and 625 West 8th street in the City of Los Angeles. The parcels that comprise the Project Site are rectangular in share and the site is comprised of two tax assessor parcels (APNs: 5144-011-009 and 5144-011-016), which encompass a total of approximately 34,679 square feet of lot area (0.83 acre). The Project Site is currently developed with a low-rise four-story parking structure and a surface parking lot that is entirely paved and devoid of landscaping. The currently existing commercial parking structure provides 324 parking spaces.

The maximum depth of the subterranean levels (parking) for the Project would be approximately 63 feet below ground level. The building would include levels 1 through 50 with a maximum height of 592 feet above grade to the top of the parapet. The ground floor of the new building would be occupied by a residential lobby on 8th Street, as well as commercial/retail/restaurant uses, which will be located on the corner of Hope Street and 8th Street and at the corner of Grand Avenue and 8th Street.

Construction of the Project would commence with site clearance and demolition of the existing parking structure and parking lot, resulting in approximately 15,000 cubic yards of demolition debris, followed by grading and excavation for the subterranean levels. Construction is anticipated to occur over a 36-month period and is anticipated to be completed in 2025. Approximately 89,750 cubic yards of soil would be exported and hauled away from the Project Site during the excavation phase.

In response to comments from the community on the DEIR, the City has added two mitigation measures to the FEIR related to air quality. Project Design Feature AIR-PDF-1 requires the use of electricity from power poles or solar powered generators where possible rather than temporary diesel or gasoline generators during construction. Project Design Feature AIR-PDF-2 prohibits the use of natural gas-fueled fireplaces in the residential units. Neither of these PDFs will provide sufficient decreases in the air quality impacts during the construction and operational phases of the project.

The conclusion from the City that all other potential impacts would be less than significant is in fact without merit. There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised environmental impact report (REIR).

Specific Comments:

1. The City’s Air Quality Analysis Includes A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And Operational Phase Of The Project For The Nearest Sensitive Receptor(s) That Fails To Include An Analysis Of The Most Sensitive Receptors (Infants and Children), Underestimating The Potential Health Impacts

The City has failed to conduct a numerical health risk analysis (HRA) for Project. According to the HRA in Appendix 2 of the FEIR:

“Exhaust emissions from construction and operational equipment were treated as a set of side-by-side elevated volume sources. The release height was assumed to be 12 feet. This represents the mid-range of the expected plume rise from frequently used construction equipment and operational heavy-duty trucks during daytime atmospheric conditions. All construction exhaust emissions were assumed to take place over a 36- month (3 year) duration on weekdays between 7 A.M. to 3 P.M. (8-hour period). Operational exhaust emissions were assumed to take place 6-days per week between 7 A.M. to 3 P.M. (8-hour period) and included 15 minutes of idle time to account for ingress, egress, and travel on-site.

Emergency generator emissions were assumed to take place for up to 200 hours per year. Operating hours were assumed to occur at any time of the year (24-hours a day). The release height was assumed to be 15 feet high, with a stack diameter of 6 inches, and an exit temperature of 852°F or 455°C.”¹

In the spreadsheet provided in the HRA² which the City cites a cumulative risk of 3.9 in 1,000,00 it is clear that the input values for the HRA do not reflect the construction and operational phases of the Project nor do the breathing rates reflect the current assumptions outlined by OEHHA.

¹ City of Los Angeles. 2023. FEIR. Appendix 2. Pg 14

² City of Los Angeles. 2023. FEIR. Appendix 2. Pg 14 of 95

Residential Receptor - 70 year Exposure Duration

| Diesel Particulate Matter Emission Rate Calculation / Scaler | | | |
|---|--------------|------------|----------|
| | Construction | Operations | |
| Year --> | 2022-2025 | 2025-2092 | |
| Average Annual Emission Rate (g/s) ^a | 7.96E-03 | - | |
| Scaler Concentration (ug/m3) ^b | 27.10 | - | |
| Diesel Particulate Concentration (ug/m3) | 0.216 | 0.0001 | |
| Cancer Risk Calculations - DPM | | | |
| Parameter | 2022-2025 | 2026-2092 | Total |
| Breathing Rate | 393 | 393 | |
| Exposure Frequency (EF) | 350 | 350 | |
| Exposure Duration (ED) (years) | 3.00 | 67.00 | 70 |
| AT | 25550 | 25550 | |
| 70-Year (Lifetime) Concentration (ug/m3) | 2.16E-01 | 1.25E-04 | |
| 70-Year (Lifetime) Dose (mg/kg-d) | 8.13E-05 | 4.72E-08 | |
| Carcinogen Potency (CPF) (mg/kg-d) ⁻¹ | | | |
| - Diesel Particulate Matter | 1.1 | 1.1 | |
| Cancer Risk | 3.83E-06 | 4.97E-08 | 3.88E-06 |
| Risk per Million (DPM) | 3.8 | 0.05 | 3.9 |

^a Emissions based on a 4-year average
^b Scaler concentration based on an AERMOD emission rate of 1 g/s, 8-hours per day

The averaged breathing rate assumed in the HRA, 393 Liters per kilogram of body weight (L/kg) is not reflected in the current Air Toxic Hot Spots Program Guidance Manual (Dated February 2015) list of residential daily breathing rates.

Table 5.6 Point Estimates of Residential Daily Breathing Rates for 3rd trimester, 0<2, 2<9, 2<16, 16<30 and 16-70 years (L/kg BW-day)

| | 3 rd Trimester ^a | 0<2 years | 2<9 years | 2<16 years | 16<30 years | 16<70 years |
|-----------------|--|-----------|-----------|------------|-------------|-------------|
| L/kg-day | | | | | | |
| Mean | 225 | 658 | 535 | 452 | 210 | 185 |
| 95th Percentile | 361 | 1090 | 861 | 745 | 335 | 290 |

^a 3rd trimester **breathing rates** based on breathing rates of pregnant women using the assumption that the dose to the fetus during the 3rd trimester is the same as that to the mother.

The HRA fails to consider the impact that the age of exposure will have on residents near the site. In its 1998 Report On Diesel Exhaust,³ the Scientific Review Panel (SRP) staffed by members of the California Air Resources Board (CARB) and the Office of Environmental Health Hazard Assessment (OEHHA) has concluded that “Diesel exhaust contains genotoxic compounds in both the vapor phase and the particle phase. Diesel exhaust particles or extracts of diesel exhaust particles are

³ CARB. 2022. Findings of the Scientific Review Panel on The Report On Diesel Exhaust as adopted at the Panel’s April 22, 1998, Meeting. Site reviewed August 11, 2022. <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/de-fnds.pdf>

mutagenic (emphasis added) in bacteria and in *mammalian cell systems*, and *can induce chromosomal aberrations, aneuploidy, and sister chromatid exchange in rodents and in human cells in vitro*. Diesel exhaust particles induced unscheduled DNA synthesis in vitro in mammalian cells.”⁴

In the SCAQMD’s recent MATES V (Multiple Air Toxics Exposure Study in the South Coast AQMD) study in the risk characterization section of the study AQMD noted that the method utilized combined exposure factor that accounted for the exposure factor for each assigned age bin. Each assigned age bin was made up of the daily breathing rate, exposure duration of the age bin, fraction of time at home, and *an age sensitivity factor*.⁵ SCAQMD is stating that they included the use of the ASFs that were previously identified for DPM.

Therefore, to be consistent with the State’s designation of DPM as a mutagenic chemical and SCAQMD’s quantification of health risks in the Air Basin, the City must evaluate the health risk from exposure to DPM in a manner consistent with the guidance from the State. To that end, ASFs of 10 for exposures prior to age 2, ASFs of 3 for exposure from age 2 to 16 , and an ASF of 1 for exposures to DPM for adults should have been performed. The City must re-evaluate the risk using the ASFs in the calculation of the risks to the residents nearby.

Using the concentrations estimated in the FEIR and incorporating the ASFs, it is clear that the exposure of residents near the site will exceed 10 in 1,000,000 from the construction phase of the Project when the actual duration of construction (3years) and operation are accurately expressed.

| Age Group | Risk | Age Sensitivity | FAH | ED | CPF | Dose Air | Cair | BR/BW |
|---------------|----------|-----------------|------|------|-----|----------|-------|-------|
| 3rd Trimester | 2.50E-06 | 10 | 0.85 | 0.25 | 1.1 | 7.48E-05 | 0.216 | 361 |
| 0<2 | 6.03E-05 | 10 | 0.85 | 2 | 1.1 | 2.26E-04 | 0.216 | 1090 |
| 2<9 | 4.54E-06 | 3 | 0.72 | 0.75 | 1.1 | 1.78E-04 | 0.216 | 861 |
| 2<16 | 0.00E+00 | 3 | 0.72 | 0 | 1.1 | 1.54E-04 | 0.216 | 745 |
| 16<30 | 0.00E+00 | 1 | 0.73 | 0 | 1.1 | 6.94E-05 | 0.216 | 335 |
| 16-70 | 0.00E+00 | 1 | 0.73 | 0 | 1.1 | 6.01E-05 | 0.216 | 290 |

For a resident living near the Project site, the risk for a child born and living during the 1st two years of life, the risk will exceed 60 in 1,000,000 based on the City’s air model. The City must update

⁴ CARB. 2022. Findings of the Scientific Review Panel on The Report On Diesel Exhaust as adopted at the Panel’s April 22, 1998, Meeting. Site reviewed August 11, 2022. <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/de-fnds.pdf>

⁵ SCAQMD. 2022. MATES V Study. <http://www.aqmd.gov/docs/default-source/planning/mates-v/mates-v-final-report-9-24-21.pdf?sfvrsn=6>

it's HRA to accurately reflect the risks based on the guidance from OEHHA that it cited in it's own HRA. This update must be presented in a revised EIR.

2. The Air Quality Analysis For The Project Fails To Include An Analysis Of The Impacts Of Natural Gas Features Included in the Project's Residential Units.

The Project proposes to construct 580 residential units. These residential uses would consume a portion of the Project's total operational natural gas consumption of 4,859,882 cf of natural gas each year.⁶ This residential nature gas use would include use of appliances that would result in unintended degradation of indoor air quality by introducing volatile organic compounds into each of the residential units. In 1996, the State of California Department of Health Services (CDHS) released guidance on reducing the exposure of occupants to VOCs. Under the Health Effects of VOCs, the State notes that "exposure to VOCs may result in short- and long-term health effects at concentrations typically measured in non-industrial environments. The United States Environmental Protection Agency (USEPA) reported that long-term health effects "...can be severely debilitating or fatal" and "...may show up years after exposure has occurred or only after long or repeated periods of exposure" (USEPA, 1993a). According to the USEPA, long-term health effects include respiratory diseases and cancer. Short-term health effects are usually treatable and "...may appear after a single, high-dose exposure or repeated exposures" (USEPA, 1993a). Short-term health effects include "...irritation of eyes, nose, and throat, headaches, dizziness, and fatigue" (USEPA, 1993a)."⁷

CDHS further stated that "VOC exposures can result in adverse health effects at concentrations typically measured in non-industrial environments (Franck, 1986; Kjærgaard et al., 1990; Mølhave, 1990). These effects are typically concurrent with the exposure and may include: (a) sensory detection, often by odor, of the air contaminants; (b) physiological irritation or inflammation of exposed skin, eyes, and mucous membranes; and (c) stress reactions to the perceived chemical (Mølhave, 1990). Tearing of the eyes; runny nose; stinging, itching, or tingling feelings in exposed tissues; changes in skin temperature; headache; and drowsiness are some common symptoms seen

⁶ DEIR, IV.B-25.

⁷ CDHS. 1996. Reducing Occupant Exposure To Volatile Organic Compounds (VOCs) from Office Building Construction Materials: Non-binding Guidelines.

with exposure to VOCs in nonindustrial environments. Some health effects, such as nose and throat irritation, may occur with the first exposure to indoor VOCs, whereas other health effects, such as systemic and carcinogenic effects, may be delayed for years. Health effects more serious and long-term than immediate irritation have been suggested to occur with repeated exposure to indoor VOCs. These include a wide range of systemic effects such as asthma and other chronic respiratory illnesses, reproductive effects, and cancer.”⁸

VOC exposure at low levels has been associated with an increase in the risk of asthma. Because there are so many VOCs in the air, measuring total VOC concentrations in the indoor environment may not represent the exposure of individual compounds.^{9,10} Exposure to VOCs is associated with an increase in the IL-4 producing Th2 cells and a reduction in IFN- γ producing Th1 cells. Thus, the mechanism of action of VOC exposure may be allergic sensitization mediated by a Th2 cell phenotype¹¹. Different individual variations in discomfort, from no response to excessive response, were seen in one of the studies. These variations may be due to the development of tolerance during exposure¹². The author concluded that some VOCs may cause inflammatory reactions in the airways and may be the reason for asthmatic symptoms.^{13, 14}

⁸ CDHS. 1996. Reducing Occupant Exposure To Volatile Organic Compounds (VOCs) from Office Building Construction Materials: Non-binding Guidelines.

⁹ Rumchev K, Spickett J, Bulsara M, et al. (April 2004). "Association of domestic exposure to volatile organic compounds with asthma in young children.". *british medical journal* **59** (9): 746–751

¹⁰ Jeong-Hee Kim,1 Ja-Kyoung Kim,1 Byong-Kwan Son, (April 2005). "Effects of Air Pollutants on Childhood Asthma". *Yonsei Med J.* **46** (2): 239–244

¹¹ Lehmann I, Rehwagen M, Diez U, (2001). "Enhanced in vivo IgE production and T cell polarization toward the type 2 phenotype in association with indoor exposure to VOC: results of the LARS study". *International Journal of Hygiene and Environmental Health* **204** (4): 211–221.

¹² Harving H, Dahl R, Mølhave L. (October 1991). "Lung function and bronchial reactivity in asthmatics during exposure to volatile organic compounds.". *Am Rev Respir Dis.* **143** (4): 751–4.

¹³ Wieslander G, Norbäck D, Björnsson E, et al. (1997). "Asthma and the indoor environment: the significance of emission of formaldehyde and volatile organic compounds from newly painted indoor surfaces.". *Int Arch Occup Environ Health* **69** (2): 115–24.

¹⁴ Wieslander G, Norbäck D, Edling C, (1996). "Airway Symptoms Among House Painters In Relation To Exposure To Volatile Organic Compounds (VOCS)—A Longitudinal Study". *The Annals of Occupational Hygiene* **41** (2): 155–166.

There is substantial evidence in the literature that demonstrates that residential natural gas use has health risk impacts on residents.¹⁵ In a 1992 meta-analysis of studies on this topic, scientists at the U.S. EPA and Duke University found that nitrogen dioxide exposure that is comparable to that from a gas stove increases the odds of children developing a respiratory illness by about 20 percent.¹⁶ Since then, numerous other studies have documented the effects of gas stove exposure on respiratory health. A 2013 meta-analysis of 41 studies found that gas cooking increases the risk of asthma in children and that NO₂ exposure is linked with currently having a wheeze.¹⁷ Most recently, a study published last December found that 12.7 percent of childhood asthma cases in the U.S. can be attributed to gas stove use.¹⁸

The most recent study of the impact of residential sources using natural gas by researchers at the Harvard T.H. Chan School of Public Health, evaluated whether air pollutants were present in unburned natural gas. Between December 2019 and May 2021, researchers collected over 200 unburned natural gas samples from 69 unique kitchen stoves and building pipelines across Greater Boston. From these samples, researchers detected 296 unique chemical compounds, 21 of which are federally designated as hazardous air pollutants. They also measured the concentration of odorants in consumer-grade natural gas – the chemicals that give gas its characteristic smell – and found that leaks containing about 20 parts per million methane may not have enough odorant for people to detect them. Key findings of the study included:

1. Consumer-grade natural gas supplied to Massachusetts contains varying levels of at least 21 different hazardous air pollutants, as defined by the U.S. EPA, including benzene, toluene, ethylbenzene, xylene, and hexane. Benzene, toluene, ethylbenzene, and hexane are all listed by the State of California under Proposition 65 as carcinogens or reproductive toxins.

¹⁵ <https://www.washingtonpost.com/politics/2023/01/06/gas-stove-pollution-causes-127-childhood-asthma-study-finds/>; <https://www.scientificamerican.com/article/the-health-risks-of-gas-stoves-explained/>;

¹⁶ Hasselblad et al., Synthesis of Environmental Evidence: Nitrogen Dioxide Epidemiology Studies; *Journal of the Air & Waste Management Association* Volume 42, 1992 - Issue 5, available at <https://www.tandfonline.com/doi/abs/10.1080/10473289.1992.10467018>.

¹⁷ Lin et al., Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, *International Journal of Epidemiology*, Volume 42, Issue 6, December 2013, Pages 1724–1737 <https://academic.oup.com/ije/article/42/6/1724/737113?login=false>

¹⁸ Gruenwald et al., Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States, *Int. J. Environ. Res. Public Health* 2023, 20(1), 75, available at <https://www.mdpi.com/1660-4601/20/1/75>

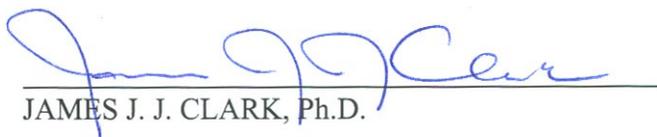
2. Concentrations of hazardous air pollutants in natural gas varied depending on location and time of year, with the highest concentrations found in the winter.
3. Based on odorant concentrations, small leaks can be undetectable by smell – leaks up to 10 times naturally occurring levels may be undetectable, equating to a methane concentration of about 20 parts per million.
4. When gas leaks occur, even small amounts of hazardous air pollutants could impact indoor air quality because natural gas is used by appliances in close proximity to people. Persistent outdoor gas leaks located throughout the distribution system may also degrade outdoor air quality as precursors to particulate matter and ozone.

The Project will expose residents to a source of contaminants that has not been fully assessed. The Project cannot be approved unless this potentially significant impact is accurately assessed and mitigated.

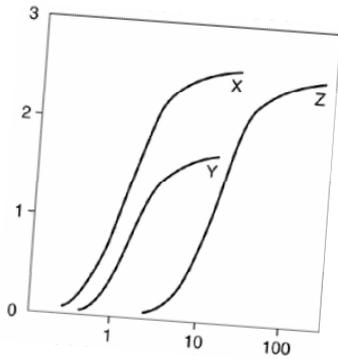
Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the final environmental impact report is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised environmental impact report.

Sincerely,



JAMES J. J. CLARK, Ph.D.



Clark & Associates
Environmental Consulting, Inc

OFFICE

12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

PHONE

310-907-6165

FAX

310-398-7626

EMAIL

jclark.assoc@gmail.com

James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009

Client: Environmental Litigation Group, Birmingham, Alabama

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Summary judgment for defendants.

Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

Case Result: Settlement in favor of defendant.

Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247

Client: Richard G. Berger Attorney At Law, Buffalo, New York

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Judgement in favor of defendant.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client – City of Santa Monica, Santa Monica, California

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client: Omnitrans, San Bernardino, California

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

Client: Confidential, San Francisco, California

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

Client: Confidential, Minneapolis, Minnesota

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

Client – United Kingdom Environmental Agency

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: Ameren Services, St. Louis, Missouri

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment*.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Confidential, San Francisco, California

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

Client: Confidential, San Francisco, California

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

Client: Confidential, San Francisco, California

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client – United Kingdom Environmental Agency

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (MtBE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MtBE. The results of the evaluation have been used as a briefing tool for public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of MtBE, and is suspected to be the primary cause of MtBE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

Client – Ministry of Environment, Lands & Parks, British Columbia

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

Client: Confidential, Los Angeles, California

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Client: Confidential, Atlanta, Georgia

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

Client: Confidential, Escondido, California

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

Client: Confidential, San Francisco, California

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

Client: Confidential, Bogotá, Columbia

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia. The risk assessment was used as the basis for the remedial goals and closure of the site.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)
Association for Environmental Health and Sciences (AEHS)
American Chemical Society (ACS)
California Redevelopment Association (CRA)
International Society of Environmental Forensics (ISEF)
Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

- Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.
- Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.
- Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.
- Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.
- Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.
- Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.
- Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
- McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.
- Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

ATTACHMENT B



14 February 2023

Aidan Marshall, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: *8th, Grand and Hope Project, Los Angeles, California*
Final Environmental Impact Report
Comments on Responses to DEIR Noise Analysis Comments

Dear Mr. Marshall,

In January 2022, we reviewed and provided comments on the information and noise impact analyses in the following document:

8th, Grand and Hope Project, Los Angeles, California
Draft Environmental Impact Report ("DEIR")
November 2021

The City of Los Angeles responded to our comments in:

8th, Grand and Hope Project, Los Angeles, California
Final Environmental Impact Report ("FEIR")
Environ. Case: ENV-2017-506-EIR
January 2023

This letter contains our comments on the FEIR responses.

Comments on Construction Noise Mitigation

In our comments on the DEIR, we concurred with the project sponsor's conclusion that construction noise impacts would be significant at upper floor residences in tall buildings surrounding the project site without mitigation, however, we disagreed that there was not feasible mitigation. We noted that options that were not considered include installing scaffolding outside the buildings from which to hang noise barrier blankets (Comment 3-39) and temporarily installing clear plexiglass or acrylic panels around balconies that face the project site (Comment 3-40).

In its response to Comment 3-39, the City takes the positions that:

1. The project Applicant does not own the affected buildings (the ones that require mitigation), and

2. That erecting the scaffolding would require the use of heavy equipment that would in and of itself would create a significant noise impact.

Starting with the second point, there are matters of degree. According to the DEIR, “construction of the Project is anticipated to take approximately 36 months”. [DEIR at p. IV.E-20] Erecting scaffolding, in contrast, takes a matter of days. I think it is reasonable to assert that people who would otherwise be subjected to 36 months of construction noise would not object to a few days of construction noise to provide mitigation for the longer term.

As to building ownership, this is not necessary to make the offer to provide noise mitigation. An example of a project offering to modify the homes of neighboring residents – homes not owned by the project developer – is provided by the *Modelo Project EIR*¹:

MM-NOI-4 The Project applicant shall offer to upgrade windows on the façades of homes facing Zindell Avenue. Increasing the sound attenuation of these windows would more than offset the increases in traffic noise from Project-generated trips along Zindell Avenue. [Modelo DEIR at p. 3.11-20]

The DEIR recognizes that because this offer may not be accepted by all homeowners, it was insufficient to render the noise impact less than significant:

However, because the City is not able to ensure acceptance/compliance of a window upgrade offer by property owners, Project-related traffic noise exposure level increases for residences along Zindell Avenue would remain significant and unavoidable. [Modelo DEIR at p. 3.11-18]

As stated in my comment letter on the DEIR for this project, I was personally involved with a project in San Francisco in which the project developer arranged to have scaffolding attached to a neighboring 8-story building and then fit with noise control blankets for the duration of project construction.

The City’s response to Comment 3-40 is very similar to that for Comment 3-39. In Comment 3-40, I suggest that individual balconies could be fit with clear plexiglass or acrylic panels for the duration of the construction. The City’s response state that the Applicant doesn’t own the buildings and that installing the temporary barriers would itself make noise. As such, my comments on these responses are the same as those regarding Response 3-39: It is not necessary to own the building to make an offer and suffering a few days of construction noise to mitigate 36 months of construction noise seems like a reasonable accommodation. I will add that of my two suggestions, this seems the more practical for two reasons. First, it enables individual residents to make decisions about receiving mitigation rather than requiring approval by the building community as a whole. Second, it would be far easier to implement. There would be no need to block off a street to erect scaffolding; the work could probably be done by accessing the balcony through the residence. Finally, it would not block light and views the way scaffolding and blankets would.

¹ DRAFT *Modelo Project EIR*, City of Commerce, July 2020

Comments on Relativistic Threshold of Significance

In Comments 3-41 and 3-42, I noted that the DEIR noise analysis indicates that the project will push the noise environment at some residences from the “conditionally acceptable” Noise Compatibility Land Use category into the “normally unacceptable” category and that this alone should constitute a significant noise impact. The reason is that sole use of a relative, “ambient plus increment” threshold of significance (as is used in the project DEIR) is inherently incapable of limiting noise exposure over the long term because the baseline is continually reset after each project is completed. I am not an expert in other contaminants such as water pollution or air pollution, but my understanding is that there are absolute amounts of impurities above which even one more molecule or part per million is considered significant. The California Department of Transportation (Caltrans) – which is very much an expert in the noise world given its need to continually construct noise barrier walls – recognizes that sole use of an “ambient plus” criterion is insufficient so also uses absolute Noise Abatement Criteria. [Caltrans *Traffic Noise Analysis Protocol*, April 2020, p. 3-2] If the implementation of a highway results in noise levels that approach or exceed the Noise Abatement Criteria (and other feasibility criteria are met), then the roadway will be constructed with noise barrier walls as substantial cost. The Federal Highway Administration uses similar absolute criteria.

Response 3-42 avoids the substance of the comment, as so many responders do, by citing the common notion that noise level increases less than 3 dBA are not perceptible. The response states,

The comment appears to suggest using a threshold of significance that is based on the change in the land use noise compatibility category only (e.g., a noise level change from “acceptable” to “unacceptable” without accounting for the incremental change). This approach would not be reasonable. [FEIR at p. II-86]

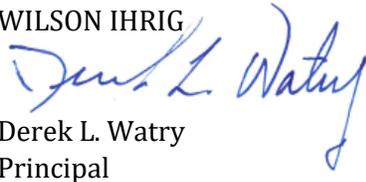
First, I want to confirm that using a threshold of significance based on the City’s own land use compatibility guidelines is precisely what I am suggesting. At some point, the City determined that noise exposure levels above 70 dBA CNEL is “normally unacceptable” for residences, and this project will be the straw that breaks that camel’s back. The City needs to recognize, just as Caltrans does, that absolute criteria are required to halt what will otherwise be an environment in which all residents are living in conditions that are fundamental unacceptable. This is not a cumulative noise impact issue as much as it is a malleable baseline issue. If every project is allowed to use only “ambient plus increment” threshold, there is theoretically no limit to the noise exposure. Only absolute thresholds can accomplish that, and the City has some at its ready disposal.



Please contact me if you have any questions about these comments on responses made to our prior comments on the 8th, *Grand and Hope Project DEIR* noise analysis.

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

2023-02-14 - 8th-grand-hope - feir noise - d watry.docx

DEREK L. WATRY

Principal

Since joining Wilson Ihrig in 1992, Derek has gained experienced in many areas of practice including environmental, construction, forensic, architectural, and industrial. For all of these, he has conducted extensive field measurements, established acceptability criteria, and calculated future noise and vibration levels. In the many of these areas, he has prepared CEQA and NEPA noise technical studies and EIR/EIS sections. Derek has a thorough understanding of the technical, public relations, and political aspects of environmental noise and vibration compliance work. He has helped resolve complex community noise issues, and he has also served as an expert witness in numerous legal matters.

Education

- M.S. Mechanical Engineering, University of California, Berkeley
- B.S. Mechanical Engineering, University of California, San Diego
- M.B.A. Saint Mary's College of California

Project Experience

12th Street Reconstruction, Oakland, CA

Responsible for construction noise control plan from pile driving after City received complaints from nearby neighbors. Attendance required at community meetings.

525 Golden Gate Avenue Demolition, San Francisco, CA

Noise and vibration monitoring and consultation during demolition of a multi-story office building next to Federal, State, and Municipal Court buildings for the SFDPW.

911 Emergency Communications Center, San Francisco, CA

Technical assistance on issues relating to the demolition and construction work including vibration monitoring, developing specification and reviewing/recommending appropriate methods and equipment for demolition of Old Emergency Center for the SFDPW.

Central Contra Costa Sanitary District, Grayson Creek Sewer, Pleasant Hill, CA

Evaluation of vibration levels due to construction of new sewer line in hard soil.

City of Atascadero, Review of Walmart EIR Noise Analysis, Atascadero, CA

Review and Critique of EIR Noise Analysis for the Del Rio Road Commercial Area Specific Plan.

City of Fremont, Ongoing Environmental Services On-Call Contract, Fremont, CA

Work tasks primarily focus on noise insulation and vibration control design compliance for new residential projects and peer review other consultant's projects.

City of Fremont, Patterson Ranch EIR, Fremont, CA

Conducted noise and vibration portion of the EIR.

City of King City, Silva Ranch Annexation EIR, King City, CA

Conducted the noise portion of the EIR and assessed the suitability of the project areas for the intended development. Work included a reconnaissance of existing noise sources and receptors in and around the project areas, and long-term noise measurements at key locations.

Conoco Phillips Community Study and Expert Witness, Rodeo, CA

Investigated low frequency noise from exhaust stacks and provided expert witness services representing Conoco Phillips. Evaluated effectiveness of noise controls implemented by the refinery.

Golden Gate Park Concourse Underground Garage, San Francisco, CA

Noise and vibration testing during underground garage construction to monitor for residences and an old sandstone statue during pile driving for the City of San Francisco.

Laguna Honda Hospital, Clarendon Hall Demolition, San Francisco, CA

Project manager for performed vibration monitoring during demolition of an older wing of the Laguna Honda Hospital.

Loch Lomond Marina EIR, San Rafael, CA

Examined traffic noise impacts on existing residences for the City of San Rafael. Provided the project with acoustical analyses and reports to satisfy the requirements of Title 24.

Mare Island Dredge and Material Disposal, Vallejo, CA

EIR/EIS analysis of noise from planned dredged material off-loading operations for the City of Vallejo.

Napa Creek Vibration Monitoring Review, CA

Initially brought in to peer review construction vibration services provided by another firm, but eventually was tapped for its expertise to develop a vibration monitoring plan for construction activities near historic buildings and long-term construction vibration monitoring.

San Francisco DPW, Environmental Services On-Call, CA

Noise and vibration monitoring for such tasks as: Northshore Main Improvement project, and design noise mitigation for SOMA West Skate Park.

San Francisco PUC, Islais Creek Clean Water Program, San Francisco, CA

Community noise and vibration monitoring during construction, including several stages of pile driving. Coordination of noise and ground vibration measurements during pile driving and other construction activity to determine compliance with noise ordinance. Coordination with Department of Public Works to provide a vibration seminar for inspectors and interaction with Construction Management team and nearby businesses to resolve noise and vibration issues.

San Francisco PUC, Richmond Transport Tunnel Clean Water Program, San Francisco, CA

Environmental compliance monitoring of vibration during soft tunnel mining and boring, cut-and-cover trenching for sewer lines, hard rock tunnel blasting and site remediation. Work involved long-term monitoring of general construction activity, special investigations of groundborne vibration from pumps and bus generated ground vibration, and interaction with the public (homeowners).

Santa Clara VTA, Capitol Expressway Light Rail (CELR) Bus Rapid Transit (BRT) Update EIS, CA

Reviewed previous BRT analysis and provide memo to support EIS.

Shell Oil Refinery, Martinez, CA

Identified source of community noise complaints from tonal noise due to refinery equipment and operations. Developed noise control recommendations. Conducted round-the-clock noise measurements at nearby residence and near to the property line of the refinery and correlated results. Conducted an exhaustive noise survey of the noisier pieces of equipment throughout the refinery to identify and characterize the dominant noise sources that were located anywhere from a quarter to three-quarters of a mile away. Provided a list of actions to mitigate noise from the noisiest pieces of refinery equipment. Assisted the refinery in the selection of long-term noise monitoring equipment to be situated on the refinery grounds so that a record of the current noise environment will be documented, and future noise complaints can be addressed more efficiently.

Tyco Electronics Corporation, Annual Noise Compliance Study, Menlo Park, CA

Conducted annual noise compliance monitoring. Provided letter critiquing the regulatory requirements and recommending improvements.

University of California, San Francisco Mission Bay Campus Vibration Study, CA

Conducted measurements and analysis of ground vibration across site due to heavy traffic on Third Street. Analysis included assessment of pavement surface condition and propensity of local soil structure.

ATTACHMENT C

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062
dkey@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

January 5, 2021

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California.
Licensed in Colorado.

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner
Vince Bertoni, Director of Planning
City of Los Angeles
Department of City Planning
221 N. Figueroa St., Suite 1350
Los Angeles, CA. 90012
Email: polonia.majas@lacity.org;
vince.bertoni@lacity.org

Re: Comments on the Draft Environmental Impact Report for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR)

Dear Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments on the Draft Environmental Impact Report (“DEIR”) for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (“Project”), proposed by Mitsui Fudosan America (“Applicant”), and prepared pursuant to the California Environmental Quality Act (“CEQA”)¹ by the City of Los Angeles (“the City”).

The Project proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would be located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles, California (Assessor’s Parcel Numbers 5144-011-009 and 5144-011-016).

Our review of the DEIR demonstrates that the DEIR fails to comply with CEQA. As explained more fully below, the DEIR fails to accurately disclose the

¹ Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. (“C.C.R.”) §§ 15000 *et seq.* L5887-004acp

January 5, 2022

Page 2

extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas ("GHG") emissions. The DEIR fails to support its significance findings with substantial evidence, and fails to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot make the requisite findings to approve the Project under the City's municipal codes or to adopt a statement of overriding considerations pursuant to CEQA.²

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and noise expert Derek Watry of Wilson Ihrig. Comments and curriculum vitae of Mr. Clark are attached to this letter as Attachment A.³ Mr. Watry's comments and curriculum vitae are included as Attachment B.⁴ Attachments A and B are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A and B.

For the reasons discussed herein, and in the attached expert comments, CREED LA urges the City to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment.⁵

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California

² Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

³ **Attachment A:** Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022) ("Clark Comments").

⁴ **Attachment B:** 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022), Comments on Noise Section by Wilson Ihrig ("Watry Comments").

⁵ We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.⁶ The EIR is a critical informational document, the "heart of CEQA."⁷ "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the

⁶ Public Resources Code § 21100.

⁷ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (citation omitted).

fullest possible protection to the environment within the reasonable scope of the statutory language.”⁸

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁹ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹⁰ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”¹¹ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹²

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.¹³ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁴ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to

⁸ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

⁹ Public Resources Code § 21061; 14 C.C.R. §§ 15002(a)(1); 15003(b)–(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

¹⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights*, 47 Cal.3d at 392.

¹¹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

¹² 14 C.C.R. § 15003(b).

¹³ 14 C.C.R. § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

¹⁴ 14 C.C.R. § 15002(a)(2).

the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁵

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”¹⁶ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁷ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁸

III. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

A. The DEIR Fails to Disclose and Analyze the Health Risk Posed by the Project’s Air Emissions from Construction and Operation

The DEIR fails to disclose and analyze health risks from construction emissions and lacks a quantified health risk analysis (“HRA”), in violation of CEQA.

¹⁵ Public Resources Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁶ *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), quoting *Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

¹⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

¹⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”¹⁹ In particular, a project’s health risks must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”²⁰

Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.²¹ In *Bakersfield*, the court found that the EIRs’ description of health risks were insufficient and that after reading them, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”²² Likewise in *Sierra Club*, the Supreme Court held that the EIR’s discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.²³ Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”²⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.²⁵

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.²⁶ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or

¹⁹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

²⁰ *Id.* at 518.

²¹ *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

²² *Id.* at 1220.

²³ *Sierra Club*, at 521.

²⁴ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

²⁵ *Sierra Club*, 6 Cal.5th at 518–522.

²⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.²⁷ Courts reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."²⁸

The DEIR claims that emissions of toxic air contaminants ("TACs") will be less than significant without including a detailed or quantitative HRA to disclose the adverse health impacts that will be caused by exposure to TACs from the Project's construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant health risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to include the necessary analysis disclosing the extent and severity of the Project's health risk, and fails to compare the Project's TAC emissions to applicable significance thresholds, the DEIR lacks substantial evidence to support its conclusion that the Project will not have significant health impacts from human exposure to diesel particulate matter ("DPM") emissions generated during Project construction and operation.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. However, the DEIR failed to perform a quantitative assessment of the Project's DPM emissions, instead concluding that the Project's cancer risk from exposure to DPM would be less than significant based on the DEIR's conclusion that the Project's *criteria pollutant* emissions are less than significant.²⁹

The DEIR's failure to quantify the health risk from DPM exposure is a failure to proceed in the manner required by law. CEQA expressly requires that an EIR discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.³⁰ When a project results in exposure to toxic

²⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

²⁸ *Id.* (internal quotations omitted).

²⁹ Clark Comments, pp. 4-5.; DEIR, p. IV.A-45.

³⁰ 14 C.C.R. § 15126.2(a).

contaminants, this analysis requires a “human health risk assessment.”³¹ OEHHA³² guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.³³ Construction of the instant Project will last at least 36 months, as the DEIR puts forth a timeline for construction of 2022 through 2025.³⁴ A detailed health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

1. The DEIR Fails to Evaluate the Project’s TAC Emissions Against Applicable Significance Thresholds.

The DEIR relies on the South Coast Air Quality Management District’s (“SCAQMD”) cancer risk significance thresholds for TACs to evaluate the Project’s health risk, which includes the following:

Maximum incremental cancer risk 10 in 1 million
Cancer Burden >0.5 excess cancer cases (in areas \geq 1 in 1 million)
Chronic and acute hazard index 1.0 (project increment).³⁵

SCAQMD Rule 1401 health risk thresholds apply to operational impacts from the Project’s diesel backup generator (“BUG”). Those thresholds provide that permits to operate may not be issued when emissions of TACs result in a maximum incremental cancer risk greater than 1 in 1 million without application of best available control technology for toxics (“T-BACT”), or a maximum incremental cancer risk greater than 10 in 1 million with the application of T-BACT, or if the cumulative cancer burden (i.e., increase in cancer cases in the population) from all

³¹ *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project's emissions and human health impacts).

³² OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

³³ See “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 (“OEHHA Guidance”), p. 8-18.

³⁴ DEIR, p. IV.A-52

³⁵ See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).
L5887-004acp

TACs emitted from a single piece of equipment exceeds 0.5, or a health hazard index (chronic and acute) greater than 1.0.³⁶

The DEIR concludes that Project construction “would not result in any substantial emissions of acute or chronic TACs during construction activities,”³⁷ and regarding Project operation, concludes that “the proposed project would not release substantial TACs.”³⁸ However, as discussed above, the DEIR failed to quantify the Project’s DPM emissions from construction or operation.³⁹ The City also failed to perform the necessary step of comparing the Project’s DPM emissions to the applicable significance thresholds to determine whether or not they exceed the thresholds, nor could it have because the DEIR lacks the emissions calculations with which to do so. The City, therefore, lacks any quantitative evidence demonstrating that the Project’s DPM emissions will not exceed thresholds.

The DEIR also fails to address that the Applicant would be required to work with the SCAQMD to obtain permits to operate for the BUG, and does not address any of SCAQMD’s future analysis to determine whether or not the BUG poses a significant health risk.⁴⁰ This approach is prohibited by CEQA. The lead agency may not completely defer analysis of potential environmental impacts to an outside regulatory scheme, as the City has done here.⁴¹

The DEIR must be revised and recirculated to accurately analyze the health risks from the Project, determine whether they exceed the applicable SCAQMD significance thresholds, and to incorporate binding mitigation to reduce potentially significant health risk impacts to less than significant levels.⁴²

³⁶ See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).

³⁷ DEIR, p. IV.A-57.

³⁸ DEIR, p. IV.A-61.

³⁹ The DEIR includes an assumption that the BUG will operate 12 hours/year for testing, but did not quantify any other operational use of the BUG, or any other operational emissions that may result in TAC emissions.

⁴⁰ DEIR IV.A.

⁴¹ See *Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 (court rejected assertion that noise level under proposed project would be insignificant simply by virtue of being consistent with general plan standards for zone in question).

⁴² *Sierra Club*, 6 Cal.5th at 520.

2. The DEIR’s Analysis of Emissions From the On-Site Back Up Generator Ignores Substantial Emissions that Are Reasonably Likely to Occur From Non-Testing Operational Periods

The DEIR’s analysis of the air quality impacts from the BUG makes two improper assumptions. First, it assumes the BUG will be maintained and tested for no more than 12 hours per year even though SCAQMD permits up to 200 hours of testing per year.⁴³ As Dr. Clark explains, the “City’s assumption that the BUG would operate at a substantially reduced rate ignores the legally acceptable threshold outlined in SCAQMD Rule 1470.”⁴⁴ The City has therefore failed to properly measure the potential impact of DPM emissions from the BUG on the receptors nearby, and from BUG emissions of NOx. Thus, the DEIR’s conclusion that there will be less than significant impacts from the BUG is unsupported.

Secondly, the DEIR fails to analyze all uses that stem from the reasonably foreseeable increase of generator use during Public Safety Power Shutoff (“PSPS”) events and extreme heat events (“EHEs”). The recent rise of Extreme Heat Events in the State has increased the amount of PSPS events and thus increased the amount of time generators are being run.⁴⁵

Dr. Clark explains that EHEs “are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.”⁴⁶ In 2021 alone, the Governor released one Executive Order regarding EHEs and one Proclamation for a State of Emergency with the intention to help avoid PSPS events.⁴⁷ CARB notes though that the number of Extreme Heat Events is likely to

⁴³ SCAQMD Rule 1407.

⁴⁴ Clark Comments, p. 6.

⁴⁵ SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

⁴⁶ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021; Clark Comments, pp. 6-7.

⁴⁷ Cal. Governor Executive Order N-11-21, <https://www.gov.ca.gov/wp-content/uploads/2021/07/EO-N-11-21-Extreme-Heat-Event-07.10.21.pdf>; Cal. Governor Proclamation of a State of Emergency, June 16, 2021, <https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf>.

increase, and thereby PSPS events, with the continuing change in climate that the State is currently undergoing.⁴⁸

According to the California Public Utilities Commission (“CPUC”) de-energization report⁴⁹ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB’s data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.⁵⁰ Dr. Clark notes that CARB concluded that PSPS events in October of 2019 alone generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.⁵¹

Dr. Clark concludes that “power produced [from generators] during PSPS or extreme heat events is expected to come from [diesel] engines” and would result in increased DPM that the DEIR did not analyze.

While the City is not required to analyze the worst case scenarios, there is substantial evidence demonstrating that PSPS events and EHE are reasonably foreseeable events which will require the use of the BUG beyond mere testing operations. A detailed analysis of the emissions and noise from these additional hours of BUG operation should be included in a revised EIR, including the extra time the BUG will need to run to account for EHEs and PSPS.

B. The DEIR Fails to Accurately Disclose and Mitigate Significant GHG Impacts

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.⁵² The analysis must

⁴⁸ CARB 2017 Scoping Plan, p. 6,

https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

⁴⁹ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁵⁰ CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁵¹ Clark Comments p. 7.

⁵² See 14 C.C.R. § 15064.4(a) (lead agencies “shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the L5887-004acp

“reasonably reflect evolving scientific knowledge and state regulatory schemes.”⁵³ In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.”⁵⁴

The DEIR claims that GHG emissions impacts will be less than significant because the Project is consistent with the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.⁵⁵ Specifically, Appendix R1: CAP Consistency Checklist states that the Project’s inclusion of bike parking, electric vehicle charging infrastructure, designated parking spaces, and a Transportation Demand Management Program satisfies CAP Strategy 3: Bicycling, Walking, Transit & Land Use.⁵⁶ However, as explained below, the Project is inconsistent with the CAP and Regional Transportation Plan in key ways and the DEIR’s GHG analysis is also deficient for its failure to consider and mitigate significant long-term GHG impacts.

1. The City’s Greenhouse Gas (GHG) Analysis Fails To Account For The Significant Increase in GHG Emissions That Will Be Realized With The Operation Of The BUGS Beyond 12 Hours Of Test Per Year.

The City’s GHG analysis calculates that BUGs at the Project Site will generate 1.3757 tons per year of CO₂ equivalent for each 12 hours of operation.

environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, *either directly or indirectly*, that may have a significant impact on the environment.”) (emphasis added).

⁵³ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

⁵⁴ 14 C.C.R. § 15064.4(b)(1), (3).

⁵⁵ DEIR, p. IV.C-48

⁵⁶ DEIR, Appendix R1: Climate Action Plan Consistency Checklist (“CAP Checklist”), pp. 7–10, Attachment D.

Therefore, a revised DEIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current GHG analysis and then compare those results against the goals in the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.

2. The City’s Greenhouse Gas Analysis Relies On An Unsupported Threshold

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project’s GHG impacts would be less than significant based on the Project’s consistency with the goals and actions to reduce GHG emissions found in the City’s Green New Deal, and the 2017 California Climate Change Scoping Plan. While the City claims compliance with AB 32 Cap-and-Trade, the Project is not subject to Cap-and-Trade. Claims by the City that the compliance by third parties (those they are reliant on for energy) to reduce GHG emissions will reduce the Project’s GHG emissions are unsupported and cannot be viewed as a reliable mitigation measure.⁵⁷ Furthermore, the City relies on “project design features” and credits when analyzing the Project’s GHG impacts even though these measures are not legally enforceable like mitigation measures are.⁵⁸ The City must correct these assumptions regarding the GHG analysis in a revised EIR.

3. The DEIR Relies on Project Design Features to Reduce GHG Impacts and Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts

The Project includes Project Design Feature GHG-PDF-1 which includes many measures to help reduce the overall GHG impact of the Project. As a Project design feature though, there is no requirement that the Project follows through with these designs once the proper permitting has been approved. The only way to make these features legally enforceable is to make them mitigation measures under CEQA.⁵⁹ This, combined with the unaccounted for GHG emissions above, places the

⁵⁷ DEIR. 2021. Appendix IV.C. pg IV.C-78; IV.C-45; *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.

⁵⁸ DEIR, p. IV.C-46.

⁵⁹ PRC § 21081.6(b); 14 C.C.R. § 15126.4(a)(2); *Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

burden on the City to explain specifically why the proposed mitigation is not feasible.⁶⁰ All feasible mitigation should be adopted in a revised DEIR.

C. The DEIR Fails to Accurately Disclose and Mitigate Significant Noise Impacts

The CEQA Guidelines require an EIR to consider “whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . .”⁶¹ The DEIR’s noise analysis fails to accurately disclose the Project’s noise impacts for several reasons.

1. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Impacts

Mr. Watry concludes that the mitigation measures for construction noise offered by the DEIR may be insufficient. While Mr. Watry agrees that the temporary sound barriers would not reduce noise impacts to levels above the barrier.⁶² Mr. Watry’s analysis identified additional feasible mitigation that would further reduce the Project’s construction noise impacts, which are not discussed in the DEIR. Mr. Watry recommends that the DEIR’s mitigation measure be revised to provide either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction in order to further reduce noise above the DEIR’s proposed noise barrier.⁶³

The DEIR’s failure to implement all feasible mitigation measures to reduce construction noise impacts before declaring them significant and unavoidable is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible, including but not limited to those recommended by Mr. Watry.⁶⁴

⁶⁰ See *Covington*, 43 Cal.App.5th at 879–883 (holding that revised EIR was required where respondent failed to explain why the petitioners’ proposed mitigation measure was not feasible).

⁶¹ CEQA Guidelines, Appendix G, Sec. XII(d).

⁶² Watry Comments, p. 2.

⁶³ Watry Comments, pp. 2-3.

⁶⁴ *Covington*, 43 Cal.App.5th at 883.

D. The DEIR Fails to Adequately Analyze the Project's Cumulative Impacts

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR.⁶⁵ The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur.⁶⁶ While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are “individually limited but cumulatively considerable.”⁶⁷

The DEIR's cumulative impact analysis fails to comply with CEQA in at least two major ways. First, the DEIR fails to analyze the cumulative health risk of the Project with other nearby projects that are within 1000 feet of the Project site and may undergo concurrent construction, including the Arts Club Project and 9034 Sunset, both of which have pending CEQA documents before the City.⁶⁸

1. The DEIR Fails to Evaluate Cumulative Air Quality Impacts

CEQA requires analysis of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”⁶⁹ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”⁷⁰ Cumulatively considerable means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”⁷¹ CEQA Guidelines section 15130(b)(1)

⁶⁵ 14 §§ C.C.R 15130(a); 15065(a); 15355(b); *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 109.

⁶⁶ 14 C.C.R § 15130(b); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729 (EIR inadequate for failure to include “some data” on cumulative groundwater impacts).

⁶⁷ PRC § 21083(b)(2); 14 C.C.R §§ 15064(h)(1), 15065(a)(3); 14 C.C.R § 15130(b).

⁶⁸ See City environmental docs list: <https://www.weho.org/city-government/city-departments/planning-and-development-services/current-and-historic-preservation-planning/environmental-documents>.

⁶⁹ 14 C.C.R. § 15355.

⁷⁰ 14 C.C.R. § 15355(b).

⁷¹ 14 C.C.R. § 15064(h)(1).

provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or” (B) summarize “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”⁷² “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.”⁷³

The DEIR neglects to consider the amount of emissions associated with the cumulative projects in the vicinity of the Project. As a result, the DEIR fails to evaluate the severity of the Project’s cumulative impacts on air quality, GHGs, or noise. These omissions are particularly glaring given that the DEIR itself identified 74 other related cumulative projects near the Project site.⁷⁴

The DEIR similarly fails to evaluate the Project’s cumulative impacts through its relationship with the LA Green New Deal or how compliance with the plan will ensure impacts are not cumulatively considerable. Thus, the DEIR fails to conduct the cumulative air quality, GHG, and noise impacts analysis as required by CEQA.

The law is clear that individually insignificant incremental contributions to air pollution are part of a cumulatively considerable impact requiring analysis in an EIR.⁷⁵ In *Kings County Farm Bureau v. City of Hanford*, the City of Hanford prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant.⁷⁶ Notwithstanding the fact that the EIR found that the project region was out of attainment for PM₁₀ and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”⁷⁷ The Court held that it was an error for the City to not take

⁷² 14 C.C.R. § 15130(b)(1).

⁷³ *Id.*; see *id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

⁷⁴ DEIR, p. III-7 to -13, Table III-1.

⁷⁵ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

⁷⁶ *Id.* at 706.

⁷⁷ *Id.* at 719.

into account the nonattainment with air quality standards.⁷⁸ Regarding ozone, the Court reasoned that “[t]he relevant question to be addressed in the EIR is not the relative amount of [ozone] precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”⁷⁹ In addition, the Court generally held that the EIR improperly sidestepped the cumulative impacts analysis when it “focused on the individual project’s relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.”⁸⁰

Here, the DEIR acknowledges that the SCAQMD is in nonattainment for state air quality standards for O₃, PM_{2.5}, and PM₁₀.⁸¹ Given these background conditions, even marginal contributions of O₃, PM_{2.5}, and PM₁₀ from the Project and other projects in the vicinity can have a significant cumulative effect of exacerbating the already serious nonattainment of air quality standards. Under *Kings County*, the Project’s small and incremental contribution to air pollution in the SCAB must be understood in the context of poor air quality that currently exists.⁸² Yet the DEIR does not even mention O₃, PM_{2.5}, and PM₁₀ in its discussion of Cumulative Impacts.⁸³ The DEIR must be revised to consider the circumstances of the O₃, PM_{2.5}, and PM₁₀ problem in the region in conjunction with the cumulatively considerable air quality effects from this source of O₃, PM_{2.5}, and PM₁₀ emissions.

The DEIR must be revised and recirculated to analyze all cumulative projects in the City of Los Angeles and Los Angeles County generally which may have relevant cumulative air quality, health risk, GHGs, and noise impacts when combined with the Project’s impacts.

⁷⁸ *Id.* at 718–721.

⁷⁹ *Id.* at 718.

⁸⁰ *Id.* at 721.

⁸¹ DEIR, p. IV.A-10.

⁸² *Kings County*, 221 Cal.App.3d at 718–721.

⁸³ DEIR, p. IV.A-10.

IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT'S LOCAL LAND USE PERMITS AND THE VESTING TENTATIVE MAP

The Project requires a Specific Plan Adjustment.⁸⁴ This adjustment requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed throughout this letter, the DEIR fails to disclose the Project's potentially significant, unmitigated impacts on air quality, health risk, and noise. These impacts create inconsistencies with the Specific Plan Project Permit adjustment and the VTTM which the DEIR fails to disclose and mitigate. As a result of these impacts, the City is unable to make the necessary findings under the City's municipal codes and State land use laws to approve the Project's local land use permits.

A. The City Cannot Make the Required Findings for a Specific Plan Project Permit Adjustment

In order to approve the Project's conditional use permits, the City's Municipal Code requires the City to make a finding that the permit sought will "incorporate mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible."⁸⁵

As discussed herein, the Project has potentially significant, unmitigated impacts on air quality, health risk, and noise that are likely to harm public health and welfare if not fully mitigated. In particular, the DEIR's proposed finding that the Project will result in significant and unavoidable construction noise impacts⁸⁶ demonstrates that the Project's construction noise will constitute an ongoing menace to local sensitive receptors from noise throughout the Project's 3-year construction period. Furthermore, as Mr. Watry notes, existing ambient noise levels at two receptors near the Project will move from "conditionally acceptable" to "normally unacceptable" due to noise emanating from the Project. As such the City should not approve the Specific Plan Project Permit unless those noise levels can be mitigated to conditionally acceptable levels.⁸⁷

⁸⁴ DEIR, p. II-36.

⁸⁵ LAMC Section 12.22-A,30(e)

⁸⁶ DEIR, p. IV.E-42.

⁸⁷ Watry Comments, pp. 3-4.

L5887-004acp

These unmitigated impacts render the Project inconsistent with the use permit standards set forth in the Municipal Code. The City therefore cannot make the necessary findings under the Code to approve the Project's Specific Plan Project Permit adjustment until these deficiencies in the DEIR are corrected, and until these impacts are fully mitigated.

B. The City Cannot Make the Required Findings for a Vesting Tentative Map Due to the Substantial Environmental Damage Caused By the Project

The Subdivision Map Act ("SMA") provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts.

Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(Emphasis added.)

Furthermore, where an EIR has been prepared, and demonstrates that there will be significant and unavoidable environmental impacts, a Vesting Tentative Map (“VTM”) can be certified only if the decision makers issue a statement of overriding considerations, per Government Code, section 66474.01:

Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.⁸⁸

Government Code, section 66474, subsections (e) and (f) implicate CEQA, and prohibit decision makers from approving a tract map where the project is “likely to cause substantial environmental damage” or “cause serious public health problems.”⁸⁹ And the City is unable to make a statement of overriding considerations for the Project under CEQA because the City has not mitigated the Project’s construction noise impacts to the greatest extent feasible, and has not

⁸⁸ Gov. Code, § 66474.01.

⁸⁹ Gov. Code, § 66474, subs. (e), (f).

demonstrated that the Project's benefits outweigh its costs, including providing employment opportunities for highly trained workers.⁹⁰

Here, approval of the project is likely to cause substantial impacts to air quality, public health, and noise. The City's decision makers therefore cannot make the necessary SMA findings based on the record before it. The City must correct the errors in the DEIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

V. CONCLUSION

For the reasons discussed above, the DEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for public review. Until the DEIR has been revised and recirculated, as described herein, the City may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,

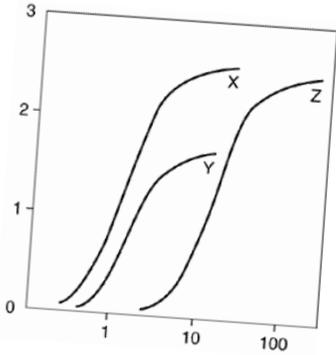
Darien Key

DKK:acp

Attachments

⁹⁰ Pub. Res. Code § 21081(a)(3), (b).
L5887-004acp

ATTACHMENT A



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

January 5, 2022

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

Attn: Mr. Darien Key

Subject: Comments On Draft Environmental Impact Report (DEIR) For 8th, Grand, and Hope Street Project (ENV-2017-506-EIRP)

Dear Mr. Key:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Mitigated Draft Environmental Impact Report (DEIR) of the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

The Project involves the construction of a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished. Upon completion, the total building floor area would be 554,927 square feet with a maximum height of 592 feet and a Floor Area Ratio (FAR) of approximately 9.25:1.

The Project is located at 754 South Hope Street and 609 and 625 West 8th street in the City of Los Angeles. The parcels that comprise the Project Site are rectangular in share and the site is comprised of two tax assessor parcels (APNs: 5144-011-009 and 5144-011-016), which encompass a total of approximately 34,679 square feet of lot area (0.83 acre). The Project Site is currently developed with a low-rise four-story parking structure and a surface parking lot that is entirely paved and devoid of landscaping. The currently existing commercial parking structure provides 324 parking spaces.

The maximum depth of the subterranean levels (parking) for the Project would be approximately 63 feet below ground level. The building would include levels 1 through 50 with a maximum height of 592 feet above grade to the top of the parapet. The ground floor of the new building would be occupied by a residential lobby on 8th Street, as well as commercial/retail/restaurant uses, which will be located on the corner of Hope Street and 8th Street and at the corner of Grand Avenue and 8th Street.

Construction of the Project would commence with site clearance and demolition of the existing parking structure and parking lot, resulting in approximately 15,000 cubic yards of demolition debris, followed by grading and excavation for the subterranean levels. Construction is anticipated to occur over a 36-month period and is anticipated to be completed in 2025. Approximately 89,750 cubic yards of soil would be exported and hauled away from the Project Site during the excavation phase.

According to the City's DEIR, the Project would result in significant and unavoidable impacts related to on-site noise during construction and on-site vibration during construction (pursuant to the threshold for human annoyance). Cumulative impacts with respect to off-site construction traffic noise would also be significant and unavoidable. All other potential impacts would be less than significant or mitigated to less-than-significant levels. The assessment from the City provided in the DEIR misses the significant impacts associated with air quality that have been ignored by the City.

**Table I-2
Summary of Impacts Under the Project**

| Environmental Issue | Proposed Project Impact |
|---|--|
| A. AIR QUALITY | |
| Construction | |
| <i>Regional Emissions</i> | Less Than Significant |
| <i>Localized Emissions</i> | Less Than Significant |
| <i>Toxic Air Contaminants</i> | Less Than Significant |
| Operation | |
| <i>Regional Emissions</i> | Less Than Significant |
| <i>Localized Emissions</i> | Less Than Significant |
| <i>Toxic Air Contaminants</i> | Less Than Significant |
| B. ENERGY | |
| Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources | |
| <i>Construction</i> | Less Than Significant |
| <i>Operation</i> | Less Than Significant |
| Conflict with Plans for Renewable Energy or Energy Efficiency | |
| C. GREENHOUSE GAS EMISSIONS | |
| Less Than Significant | |
| D. LAND USE | |
| Physical Division of a Community | |
| Less Than Significant | |
| Conflict with Land Use Plans | |
| Less Than Significant | |
| E. NOISE | |
| Construction | |
| <i>On-Site Noise</i> | Significant and Unavoidable⁴ |
| <i>Off-Site Noise</i> | Less Than Significant ⁵ |
| <i>On-Site Vibration (Building Damage)</i> | Less Than Significant with Mitigation |
| <i>On-Site Vibration (Human Annoyance)</i> | Significant and Unavoidable |
| <i>Off-Site Vibration (Building Damage)</i> | Less Than Significant |
| <i>Off-Site Vibration (Human Annoyance)</i> | Significant and Unavoidable⁶ |
| Operation | |
| <i>On-Site Noise</i> | Less Than Significant |
| <i>Off-Site Noise</i> | Less Than Significant |
| <i>Vibration</i> | Less Than Significant |

Specific Comments:

1. **The City's Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And Operational Phase Of The Project For The Nearest Sensitive Receptor(s)**

The City has failed to conduct a numerical health risk analysis (HRA) for Project. The DEIR states that, for the purposes of assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.¹ For the Criteria Pollutants assessed under CEQA, this is correct. For toxic air contaminants (TACs), there are no LSTs, nor levels of significance based on the pounds per day. Instead, the determination of a significance threshold is based on a *quantitative risk analysis* that requires the City to perform a multistep, quantitative health risk analysis.

TACs, including diesel particulate matter (DPM)², contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

¹ City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-58

² Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.^{3,4,5} Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.⁶ Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.⁷ DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM_{2.5} and PM₁₀.⁸

The inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions.

There are several sensitive receptors in the direct vicinity of the Project site, including residences and businesses located near the Project site. The two closest residential/sensitive receptors to the Project Site are located at the Eighth and Grand development (a mid-rise residential complex with a ground floor market at 788 S. Grand Avenue) and the 8th and Hope Apartments (located at 801 South

³ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM.and%20other%20adverse%20health%20effects>.

⁴ U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

⁵ Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

⁶ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

⁷ Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

⁸ Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

Hope Street). Both receptors are less than 200 feet (61 meters) from the Project Site location. The nearest commercial receptors are located across 8th Avenue (approximately 80 feet or 25 meters).

These receptors would be exposed to TACs released during Project construction and operation, including DPM. No effort is made in the DEIR to quantify the potential health impacts from DPM generated by construction activities or operational activities from the Project on these sensitive receptors. The DEIR incorrectly states that it is not necessary to evaluate long-term cancer impacts from construction activities which occur over a relatively short duration.⁹ The City's failure to perform such an analysis is clearly a major flaw in the DEIR and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.

2. The Air Quality Analysis For The Project Fails To Include The Impacts From The Emergency Generator That Will Be Installed Onsite.

In Appendix B to City's DEIR of Project, the air quality analysis assumes that the back up generator (BUG) on site will only be operated for 12 hours a year (testing and maintenance). According to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. The City must revise its air quality analysis to include the use of BUGs onsite in a EIR.

In addition to the testing emissions the air quality analysis must include the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.¹⁰ From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event¹¹. In Los Angeles County two circuits had 4 PSPS events during that period lasting an average of 35 to 38 hours. The total duration of the PSPS events in Los Angeles lasted between 141 hours to 154 hours in 2019. In 2021, the Governor of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The

⁹ City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-57

¹⁰ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

¹¹ SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).¹² Of particular concern are health effects related to emissions from diesel back-up engines. DPM has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make people more susceptible to further injury.

According to the California Public Utilities Commission (CPUC) de-energization report¹³ in October 2019, there were almost **806 PSPS events** (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.¹⁴ Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs were declared. For the June 17, 2021 EHE, stationary generator owners were allowed to use their BUGs for 48 hours. For the July 9, 2021 EHE, the stationary generator owners were allowed to use their BUGs for 72 hours. These two events would have increased 10 fold the calculated DPM emissions from the Project if only the 12 hours of testing claimed in the DEIR were to be true. An EIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

¹² CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.

¹³ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

¹⁴ CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

3. Using the South Coast Air Quality Management District's Rule 1401 the City's emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to TACs, in particular DPM, released during Project construction and operation. This broad-brushed, non-quantitative approach ignores the substantial health impacts from criteria pollutants and TACs that will be emitted from the Project's BUG. **Given The Proximity Of Sensitive Receptors To The Site And The Nature of The Toxic Air Contaminants Emitted, The Operational Emissions From The Back Up Generator Will Cause A Significant Health Risk To Residents Near The Project Site.**

According to the DEIR¹⁵, the proposed project would not result in non-permitted stationary sources that would emit substantial air pollutants or TACs. Routine testing and maintenance of the diesel emergency generator would result in emissions of DPM. However, the applicant would be required to work with the SCAQMD in order to obtain permits to operate. As part of the permit process, the SCAQMD will evaluate compliance with Rule 1401, New Source Review of Toxic Air Contaminants, and Rule 1401.1, Requirements for New and Relocated Facilities Near Schools. Rule 1401.1 identifies acceptable risk levels and emissions control requirements for new and modified facilities that may emit additional TACs. Under Rule 1401, permits to operate may not be issued when emissions of TACs result in a maximum incremental cancer risk greater than 1 in 1 million without application of best available control technology for toxics (TBACT), or a maximum incremental cancer risk greater than 10 in 1 million with application of T-BACT, or if the cumulative cancer burden (i.e., increase in cancer cases in the population) from all TACs emitted from a single piece of equipment exceeds 0.5, or a health hazard index (chronic and acute) greater than 1.0 (SCAQMD 2017b).

According to the DEIR, the proposed emergency generator would be operated for a limited time (12 hours or less per year for testing and maintenance) and would be required to meet the required emissions rates for DPM at the time of installation, and must be demonstrated to meet the requirements of all applicable rules before the SCAQMD can issue the permits to operate stationary source equipment.

¹⁵ City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-58

Using the SCAQMD's Rule 1401 Risk Assessment Programs Risk Tool V1.103 software, it is possible to generate a site-specific screening level HRA for emissions from the back-up generator (BUG). Assuming the system is restricted to maintenance and testing for 12 hours per year or less, the model calculates emissions of DPM of approximately 1.07 lbs per year. This value is the same as the amount reported in the DEIR for the operational analysis of the site.

Assuming the generator's emissions will be vented at the ground level, the vent to the generator would be approximately 14 feet above grade level. For the Risk Tool inputs, the stack height (exit point of the generator) was set to 14 feet above grade.

Based on the emission of 1.07 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 3.08 in 1,000,000 for residents living within 180 feet (60.96 meters) of the Project Site. Commercial workers located within 80 feet (25 meters) of the site face a potential health risk of 6.26 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator.

Assuming the system is maintained and operated for 200 hours per year or less, the model calculates emissions of DPM of approximately 17.8 lbs per year.

Based on the emission of 17.8 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 51.4 in 1,000,000 for residents living within 180 feet (60.96 meters) of the Project Site. Commercial workers located within 80 feet (25 meters) of the site face a potential health risk of 104 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator.

All of the results for this analysis are presented in Exhibit B to this letter. The City must address this significant error in their air quality analysis in a revised EIR.

4. The City's Greenhouse Gas (GHG) Analysis Fails To Account For The Significant Increase in GHG Emissions That Will Be Realized With The Operation Of The BUGS Beyond 12 Hours Of Test Per Year.

The City's GHG analysis calculates that BUGs at the Project Site will generate 1.3757 tons per year of CO₂ equivalent for each 12 hours of operation. As is demonstrated in Comment 3, operation of the BUGs is likely to exceed 17 times the number assumed in the DEIR (12 hours). Therefore a revised DEIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current GHG analysis.

5. The City's Greenhouse Gas Analysis Relies On An Unsupported Threshold

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, and the 2017 California Climate Change Scoping Plan. While the City claims compliance with AB 32 Cap-and-Trade, the Project is not subject to Cap-and-Trade. Claims by the City that the compliance by third parties (those they are reliant on for energy) to reduce GHG emissions will reduce the Project's GHG emissions are unsupported and cannot be viewed as a reliable mitigation measure.¹⁶ The City must correct these assumptions regarding the GHG analysis in a revised EIR.

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the draft environmental impact report is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised environmental impact report.

Sincerely,



JAMES J. J. CLARK, Ph.D.

¹⁶ DEIR. 2021. Appendix IV.C. pg IV.C-78.

TIER 1 SCREENING RISK ASSESSMENT REPORT
 (Procedure Version 8.1 & Package N, September 1, 2017)

Application deemed complete date: 10/1/2017

A/N , 8th Hope and Grand

Equipment Type Other No T-BACT
 Nearest Receptor Distance (actual) 25 meters
 Receptor Distance (Table 1 Emission look up) 25 meters

| Tier 1 Results | |
|---------------------------|---------------|
| Cancer/Chronic ASI | Acute ASI |
| 3.69E+02 FAILED | PASSED |

APPLICATION SCREENING INDEX CALCULATION

| Compound | Average Annual Emission Rate (lbs/yr) | Max Hourly Emission Rate (lbs/hr) | Cancer/Chronic Pollutant Screening Level (lbs/yr) from Table 1 | Acute Pollutant Screening Level (lbs/hr) from Table 1 | Cancer/Chronic Pollutant Screening Index (PSI) | Acute Pollutant Screening Index (PSI) |
|--|---------------------------------------|-----------------------------------|--|---|--|---------------------------------------|
| Particulate Emissions from Diesel-Fueled Engines | 1.78E+01 | 8.92E-02 | 4.83E-02 | | 3.69E+02 | |
| TOTAL (APPLICATION SCREENING INDEX) | | | | | 3.69E+02 | |

TIER 2 SCREENING RISK ASSESSMENT REPORT
(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.103

A/N: _____

Fac: 8th Hope and Grand

Application deemed complete date: 10/1/2017

1. Stack Data

Equipment Type Generator

Combustion Eff 0.0
No T-BACT

Operation Schedule 2 hrs/day
2 days/week
50 weeks/year

Stack Height 14 ft

Distance to Residential 60.96 m

Distance to Commercial 25 m

Meteorological Station USC/Downtown L.A.

2. Tier 2 Data

| Dispersion Factors tables | Point Source |
|---------------------------|--------------|
| For Chronic X/Q | Table 6 |
| For Acute X/Q max | Table 6.4 |

Dilution Factors

| Receptor | X/Q ($\mu\text{g}/\text{m}^3$)/(tons/yr) | X/Qmax ($\mu\text{g}/\text{m}^3$)/(lbs/hr) |
|---------------------|---|--|
| Residential | 7.73 | 234.66 |
| Commercial - Worker | 45.34 | 676.64 |

Intake and Adjustment Factors

| | Residential | Worker |
|--|-------------|--------|
| Year of Exposure | 30 | |
| Combined Exposure Factor (CEF) - Table 4 | 677.40 | 55.86 |
| Worker Adjustment Factor (WAF) - Table 5 | 1 | 4.20 |

5a. MICR

MICR Resident = CP (mg/(kg-day))⁻¹ * Q (ton/yr) * (X/Q) Resident * CEF Resident * MP Resident * 1e-6 * MWAF

MICR Worker = CP (mg/(kg-day))⁻¹ * Q (ton/yr) * (X/Q) Worker * CEF Worker * MP Worker * WAF Worker * 1e-6 * MWAF

| Compound | Residential | Commercial |
|--|-----------------|-----------------|
| Particulate Emissions from Diesel-Fueled Eng | 5.14E-05 | 1.04E-04 |
| Total | 5.14E-05 | 1.04E-04 |
| | FAIL | FAIL |

5b. Is Cancer Burden Calculation Needed (MICR >1E-6)?

YES

New X/Q at which MICR_{70yr} is one-in-a-million [(µg/m³)/(tons/yr)]:

4.34E-01

New Distance, interpolated from X/Q table using New X/Q (meter):

227.31

Zone Impact Area (km²):

1.62E-01

Zone of Impact Population (7000 person/km²):

1.14E+03

Cancer Burden:

1.19E-01

Cancer Burden is less than or equal to 0.5

PASS

6. Hazard Index Summary

A/N: _____

Application deemed complete date: 10/01/17

HIA = [Q(lb/hr) * (X/Q)_{max} * MWAF] / Acute REL

HIC = [Q(ton/yr) * (X/Q) * MP * MWAF] / Chronic REL

HIC 8-hr= [Q(ton/yr) * (X/Q) * WAF * MWAF] / 8-hr Chronic REL

| Target Organs | Acute | Chronic | 8-hr Chronic | Acute Pass/Fail | Chronic Pass/Fail | 8-hr Chronic Pass/Fail |
|--------------------------------|-------|----------|--------------|-----------------|-------------------|------------------------|
| Alimentary system (liver) - AL | | | N/A | Pass | Pass | Pass |
| Bones and teeth - BN | | | N/A | Pass | Pass | Pass |
| Cardiovascular system - CV | | | N/A | Pass | Pass | Pass |
| Developmental - DEV | | | N/A | Pass | Pass | Pass |
| Endocrine system - END | | | N/A | Pass | Pass | Pass |
| Eye | | | N/A | Pass | Pass | Pass |
| Hematopoietic system - HEM | | | N/A | Pass | Pass | Pass |
| Immune system - IMM | | | N/A | Pass | Pass | Pass |
| Kidney - KID | | | N/A | Pass | Pass | Pass |
| Nervous system - NS | | | N/A | Pass | Pass | Pass |
| Reproductive system - REP | | | N/A | Pass | Pass | Pass |
| Respiratory system - RESP | | 8.09E-02 | N/A | Pass | Pass | Pass |
| Skin | | | N/A | Pass | Pass | Pass |

A/N: _____

Application deemed complete date: 10/01/17

6a. Hazard Index Acute - Resident

HIA = [Q(lb/hr) * (X/Q)max resident * MWAF] / Acute REL

| Compound | HIA - Residential | | | | | | | | | |
|--|-------------------|----|-----|-----|-----|-----|----|-----|------|------|
| | AL | CV | DEV | EYE | HEM | IMM | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | |
| Total | | | | | | | | | | |

6a. Hazard Index Acute - Worker

A/N: _____

Application deemed complete date: 10/01/17

$HIA = [Q(\text{lb/hr}) * (X/Q)\text{max Worker} * M\text{WAF}] / \text{Acute REL}$

| Compound | HIA - Commercial | | | | | | | | | |
|--|------------------|----|-----|-----|-----|-----|----|-----|------|------|
| | AL | CV | DEV | EYE | HEM | IMM | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | |
| Total | | | | | | | | | | |

A/N: _____

Application deemed complete date: 10/01/17

6b. Hazard Index Chronic - Resident

HIC = [Q(ton/yr) * (X/Q) Resident * MP Chronic Resident * MWAF] / Chronic REL

| Compound | HIC - Residential | | | | | | | | | | | | |
|--|-------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|----------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | 1.38E-02 | |
| Total | | | | | | | | | | | | 1.38E-02 | |

A/N: _____

Application deemed complete date: 10/01/17

6b. Hazard Index Chronic - Worker

HIC = [Q(ton/yr) * (X/Q) * MP Chronic Worker * MWAF] / Chronic REL

| Compound | HIC - Commercial | | | | | | | | | | | | |
|--|------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|----------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | 8.09E-02 | |
| Total | | | | | | | | | | | | 8.09E-02 | |

6c. 8-hour Hazard Index Chronic - Resident

A/N: _____

Application deemed complete date: 10/01/17

HIC 8-hr = [Q(ton/yr) * (X/Q) Resident * WAF Resident * MWAF] / 8-hr Chronic REL

| Compound | HIC - Residential | | | | | | | | | | | | |
|--|-------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | |

DIESEL ENGINE DATA

A/N , 8th Hope and G

(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.103

| | | |
|---|------|----------|
| Engine Horse Power | 300 | bhp |
| Engine Year Built | 2022 | |
| Generator Engine ? | YES | |
| Emission Factor from applicant or engine manufacturer's specification (*) | | g/bhp-hr |
| EPA's PM non-road exhaust emission standards (**) | 0.15 | g/bhp-hr |

| Compound | R1 (Uncontrolled) (lbs/hr) (***) | Efficiency | R2 (Controlled) (lbs/hr) |
|--|----------------------------------|------------|--------------------------|
| Particulate Emissions from Diesel-Fueled Engines | 9.91E-02 | 0.1 | 8.92E-02 |

(*) From applicant or engine manufacturer's specifications.

(**) From EPA non-road engine exhaust emission standards for Diesel ICE based on engine HP, engine year built and engine type.
<http://www.arb.ca.gov/msprog/offroad/offroad.htm> & <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>)

(***) Uncontrolled emission R1 is calculated as followed:

$$R1 = \text{Engine Power [BHP]} \times \text{Emission Factor [g/BHP-hr]} \times 1 \text{ lb/454 g}$$

A/N: _____

Application deemed complete date: 10/01/17

6c. 8-hour Hazard Index Chronic - Worker

HIC 8-hr = [Q(ton/yr) * (X/Q) Worker * WAF Worker * MWAF] / 8-hr Chronic REL

| Compound | HIC - Commercial | | | | | | | | | | | | |
|--|------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | |

TIER 1 SCREENING RISK ASSESSMENT REPORT
 (Procedure Version 8.1 & Package N, September 1, 2017)

Application deemed complete date: 10/1/2017

A/N , 8th Hope and Grand

Equipment Type Other No T-BACT
 Nearest Receptor Distance (actual) 25 meters
 Receptor Distance (Table 1 Emission look up) 25 meters

| Tier 1 Results | |
|---------------------------|---------------|
| Cancer/Chronic ASI | Acute ASI |
| 2.22E+01 FAILED | PASSED |

APPLICATION SCREENING INDEX CALCULATION

| Compound | Average Annual Emission Rate (lbs/yr) | Max Hourly Emission Rate (lbs/hr) | Cancer/Chronic Pollutant Screening Level (lbs/yr) from Table 1 | Acute Pollutant Screening Level (lbs/hr) from Table 1 | Cancer/Chronic Pollutant Screening Index (PSI) | Acute Pollutant Screening Index (PSI) |
|--|---------------------------------------|-----------------------------------|--|---|--|---------------------------------------|
| Particulate Emissions from Diesel-Fueled Engines | 1.07E+00 | 8.92E-02 | 4.83E-02 | | 2.22E+01 | |
| TOTAL (APPLICATION SCREENING INDEX) | | | | | 2.22E+01 | |

TIER 2 SCREENING RISK ASSESSMENT REPORT
(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.103

A/N: _____

Fac: 8th Hope and Grand

Application deemed complete date: 10/1/2017

1. Stack Data

Equipment Type Generator

Combustion Eff 0.0
No T-BACT

Operation Schedule 1 hrs/day
1 days/week
12 weeks/year

Stack Height 14 ft

Distance to Residential 60.96 m

Distance to Commercial 25 m

Meteorological Station USC/Downtown L.A.

2. Tier 2 Data

| Dispersion Factors tables | Point Source |
|---------------------------|--------------|
| For Chronic X/Q | Table 6 |
| For Acute X/Q max | Table 6.4 |

Dilution Factors

| Receptor | X/Q ($\mu\text{g}/\text{m}^3$)/(tons/yr) | X/Qmax ($\mu\text{g}/\text{m}^3$)/(lbs/hr) |
|---------------------|---|--|
| Residential | 7.73 | 234.66 |
| Commercial - Worker | 45.34 | 676.64 |

Intake and Adjustment Factors

| | Residential | Worker |
|--|-------------|--------|
| Year of Exposure | 30 | |
| Combined Exposure Factor (CEF) - Table 4 | 677.40 | 55.86 |
| Worker Adjustment Factor (WAF) - Table 5 | 1 | 4.20 |

5a. MICR

MICR Resident = CP (mg/(kg-day))⁻¹ * Q (ton/yr) * (X/Q) Resident * CEF Resident * MP Resident * 1e-6 * MWAF

MICR Worker = CP (mg/(kg-day))⁻¹ * Q (ton/yr) * (X/Q) Worker * CEF Worker * MP Worker * WAF Worker * 1e-6 * MWAF

| Compound | Residential | Commercial |
|--|-----------------|-----------------|
| Particulate Emissions from Diesel-Fueled Eng | 3.08E-06 | 6.26E-06 |
| Total | 3.08E-06 | 6.26E-06 |
| | FAIL | FAIL |

5b. Is Cancer Burden Calculation Needed (MICR >1E-6)?

YES

New X/Q at which MICR_{70yr} is one-in-a-million [(µg/m³)/(tons/yr)]:

7.24E+00

New Distance, interpolated from X/Q table using New X/Q (meter):

63.46

Zone Impact Area (km²):

1.27E-02

Zone of Impact Population (7000 person/km²):

8.86E+01

Cancer Burden:

5.55E-04

Cancer Burden is less than or equal to 0.5

PASS

6. Hazard Index Summary

A/N: _____

Application deemed complete date: 10/01/17

HIA = [Q(lb/hr) * (X/Q)_{max} * MWAF] / Acute REL

HIC = [Q(ton/yr) * (X/Q) * MP * MWAF] / Chronic REL

HIC 8-hr= [Q(ton/yr) * (X/Q) * WAF * MWAF] / 8-hr Chronic REL

| Target Organs | Acute | Chronic | 8-hr Chronic | Acute Pass/Fail | Chronic Pass/Fail | 8-hr Chronic Pass/Fail |
|--------------------------------|-------|----------|--------------|-----------------|-------------------|------------------------|
| Alimentary system (liver) - AL | | | N/A | Pass | Pass | Pass |
| Bones and teeth - BN | | | N/A | Pass | Pass | Pass |
| Cardiovascular system - CV | | | N/A | Pass | Pass | Pass |
| Developmental - DEV | | | N/A | Pass | Pass | Pass |
| Endocrine system - END | | | N/A | Pass | Pass | Pass |
| Eye | | | N/A | Pass | Pass | Pass |
| Hematopoietic system - HEM | | | N/A | Pass | Pass | Pass |
| Immune system - IMM | | | N/A | Pass | Pass | Pass |
| Kidney - KID | | | N/A | Pass | Pass | Pass |
| Nervous system - NS | | | N/A | Pass | Pass | Pass |
| Reproductive system - REP | | | N/A | Pass | Pass | Pass |
| Respiratory system - RESP | | 4.85E-03 | N/A | Pass | Pass | Pass |
| Skin | | | N/A | Pass | Pass | Pass |

A/N: _____

Application deemed complete date: 10/01/17

6a. Hazard Index Acute - Resident

$HIA = [Q(\text{lb/hr}) * (X/Q)_{\text{max resident}} * MWAF] / \text{Acute REL}$

| Compound | HIA - Residential | | | | | | | | | |
|--|-------------------|----|-----|-----|-----|-----|----|-----|------|------|
| | AL | CV | DEV | EYE | HEM | IMM | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | |
| Total | | | | | | | | | | |

6a. Hazard Index Acute - Worker

A/N: _____

Application deemed complete date: 10/01/17

$HIA = [Q(\text{lb/hr}) * (X/Q)\text{max Worker} * M\text{WAF}] / \text{Acute REL}$

| Compound | HIA - Commercial | | | | | | | | | |
|--|------------------|----|-----|-----|-----|-----|----|-----|------|------|
| | AL | CV | DEV | EYE | HEM | IMM | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | |
| Total | | | | | | | | | | |

A/N: _____

Application deemed complete date: 10/01/17

6b. Hazard Index Chronic - Resident

HIC = [Q(ton/yr) * (X/Q) Resident * MP Chronic Resident * MWAF] / Chronic REL

| Compound | HIC - Residential | | | | | | | | | | | | |
|--|-------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|----------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | 8.28E-04 | |
| Total | | | | | | | | | | | | 8.28E-04 | |

A/N: _____

Application deemed complete date: 10/01/17

6b. Hazard Index Chronic - Worker

HIC = [Q(ton/yr) * (X/Q) * MP Chronic Worker * MWAF] / Chronic REL

| Compound | HIC - Commercial | | | | | | | | | | | | |
|--|------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|----------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | 4.85E-03 | |
| Total | | | | | | | | | | | | 4.85E-03 | |

6c. 8-hour Hazard Index Chronic - Resident

A/N: _____

Application deemed complete date: 10/01/17

HIC 8-hr = [Q(ton/yr) * (X/Q) Resident * WAF Resident * MWAF] / 8-hr Chronic REL

| Compound | HIC - Residential | | | | | | | | | | | | |
|--|-------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | |

A/N: _____

Application deemed complete date: 10/01/17

6c. 8-hour Hazard Index Chronic - Worker

HIC 8-hr = [Q(ton/yr) * (X/Q) Worker * WAF Worker * MWAF] / 8-hr Chronic REL

| Compound | HIC - Commercial | | | | | | | | | | | | |
|--|------------------|----|----|-----|-----|-----|-----|-----|-----|----|-----|------|------|
| | AL | BN | CV | DEV | END | EYE | HEM | IMM | KID | NS | REP | RESP | SKIN |
| Particulate Emissions from Diesel-Fueled Eng | | | | | | | | | | | | | |
| Total | | | | | | | | | | | | | |

DIESEL ENGINE DATA

A/N , 8th Hope and G

(Procedure Version 8.1 & Package N, September 1, 2017) - Risk Tool V1.103

| | | |
|---|------|----------|
| Engine Horse Power | 300 | bhp |
| Engine Year Built | 2022 | |
| Generator Engine ? | YES | |
| Emission Factor from applicant or engine manufacturer's specification (*) | | g/bhp-hr |
| EPA's PM non-road exhaust emission standards (**) | 0.15 | g/bhp-hr |

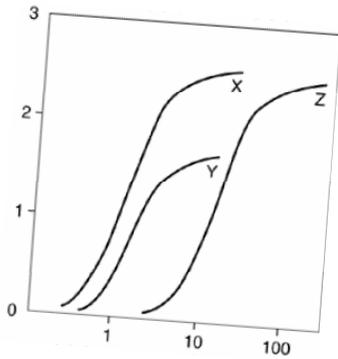
| Compound | R1 (Uncontrolled) (lbs/hr) (***) | Efficiency | R2 (Controlled) (lbs/hr) |
|--|----------------------------------|------------|--------------------------|
| Particulate Emissions from Diesel-Fueled Engines | 9.91E-02 | 0.1 | 8.92E-02 |

(*) From applicant or engine manufacturer's specifications.

(**) From EPA non-road engine exhaust emission standards for Diesel ICE based on engine HP, engine year built and engine type.
<http://www.arb.ca.gov/msprog/offroad/offroad.htm> & <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>)

(***) Uncontrolled emission R1 is calculated as followed:

$$R1 = \text{Engine Power [BHP]} \times \text{Emission Factor [g/BHP-hr]} \times 1 \text{ lb/454 g}$$



Clark & Associates
Environmental Consulting, Inc

OFFICE

12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

PHONE

310-907-6165

FAX

310-398-7626

EMAIL

jclark.assoc@gmail.com

James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well recognized toxicologist, air modeler, and health scientist. He has 20 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: James Harold Caygle, et al, v. Drummond Company, Inc. Circuit Court for the Tenth Judicial Circuit, Jefferson County, Alabama. Civil Action. CV-2009

Client: Environmental Litigation Group, Birmingham, Alabama

Dr. Clark performed an air quality assessment of emissions from a coke factory located in Tarrant, Alabama. The assessment reviewed include a comprehensive review of air quality standards, measured concentrations of pollutants from factory, an inspection of the facility and detailed assessment of the impacts on the community. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Rose Roper V. Nissan North America, et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. NC041739

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to multiple chemicals, including benzene, who later developed a respiratory distress. A review of the individual's medical and occupational history was performed to prepare an exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to respiratory irritants. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: O'Neil V. Sherwin Williams, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to petroleum distillates who later developed a bladder cancer. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Summary judgment for defendants.

Case: Moore V., Shell Oil Company, et al. Superior Court of the State Of California for the County Of Los Angeles

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to chemicals while benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Raymond Saltonstall V. Fuller O'Brien, KILZ, and Zinsser, et al. United States District Court Central District of California

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to benzene who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a quantitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Richard Boyer and Elizabeth Boyer, husband and wife, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-7G.

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: JoAnne R. Cook, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-9R

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of an individual exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Patrick Allen And Susan Allen, husband and wife, and Andrew Allen, a minor, V. DESCO Corporation, et al. Circuit Court of Brooke County, West Virginia. Civil Action Number 04-C-W

Client: Frankovitch, Anetakis, Colantonio & Simon, Morgantown, West Virginia.

Dr. Clark performed a toxicological assessment of a family exposed to chlorinated solvents released from the defendant's facility into local drinking water supplies. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to chlorinated solvents. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Michael Fahey, Susan Fahey V. Atlantic Richfield Company, et al. United States District Court Central District of California Civil Action Number CV-06 7109 JCL.

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Settlement in favor of plaintiff.

Case: Constance Acevedo, et al., V. California Spray-Chemical Company, et al., Superior Court of the State Of California, County Of Santa Cruz. Case No. CV 146344

Dr. Clark performed a comprehensive exposure assessment of community members exposed to toxic metals from a former lead arsenate manufacturing facility. The former manufacturing site had undergone a DTSC mandated removal action/remediation for the presence of the toxic metals at the site. Opinions were presented regarding the elevated levels of arsenic and lead (in attic dust and soils) found throughout the community and the potential for harm to the plaintiffs in question.

Case Result: Settlement in favor of defendant.

Case: Michael Nawrocki V. The Coastal Corporation, Kurk Fuel Company, Pautler Oil Service, State of New York Supreme Court, County of Erie, Index Number I2001-11247

Client: Richard G. Berger Attorney At Law, Buffalo, New York

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to refined petroleum hydrocarbons who later developed a leukogenic disease. A review of the individual's medical and occupational history was performed to prepare a qualitative exposure assessment. The exposure assessment was evaluated against the

known outcomes in published literature to exposure to refined petroleum hydrocarbons. The results of the assessment and literature have been provided in a declaration to the court.

Case Result: Judgement in favor of defendant.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model will be used to estimate acute and chronic exposure concentrations to multiple contaminants and will be incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

Client – Los Angeles Alliance for a New Economy (LAANE), Los Angeles, California

Dr. Clark is advising the LAANE on air quality issues related to current flight operations at the Los Angeles International Airport (LAX) operated by the Los Angeles World Airport (LAWA) Authority. He is working with the LAANE and LAX staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client – City of Santa Monica, Santa Monica, California

Dr. Clark is advising the City of Santa Monica on air quality issues related to current flight operations at the facility. He is working with the City staff to develop a comprehensive strategy for meeting local community concerns over emissions from flight operations and to engage federal agencies on the issue of local impacts of community airports.

Client: Omnitrans, San Bernardino, California

Dr. Clark managed a public health survey of three communities near transit fueling facilities in San Bernardino and Montclair California in compliance with California Senate Bill 1927. The survey included an epidemiological survey of the effected communities, emission surveys of local businesses, dispersion modeling to determine potential emission concentrations within the communities, and a comprehensive risk assessment of each community. The results of the study were presented to the Governor as mandated by Senate Bill 1927.

Client: Confidential, San Francisco, California

Summarized cancer types associated with exposure to metals and smoking. Researched the specific types of cancers associated with exposure to metals and smoking. Provided causation analysis of the association between cancer types and exposure for use by non-public health professionals.

Client: Confidential, Minneapolis, Minnesota

Prepared human health risk assessment of workers exposed to VOCs from neighboring petroleum storage/transport facility. Reviewed the systems in place for distribution of petroleum hydrocarbons to identify chemicals of concern (COCs), prepared comprehensive toxicological summaries of COCs, and quantified potential risks from carcinogens and non-carcinogens to receptors at or adjacent to site. This evaluation was used in the support of litigation.

Client – United Kingdom Environmental Agency

Dr. Clark is part of team that performed comprehensive evaluation of soil vapor intrusion of VOCs from former landfill adjacent residences for the United Kingdom's Environment

Agency. The evaluation included collection of liquid and soil vapor samples at site, modeling of vapor migration using the Johnson Ettinger Vapor Intrusion model, and calculation of site-specific health based vapor thresholds for chlorinated solvents, aromatic hydrocarbons, and semi-volatile organic compounds. The evaluation also included a detailed evaluation of the use, chemical characteristics, fate and transport, and toxicology of chemicals of concern (COC). The results of the evaluation have been used as a briefing tool for public health professionals.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: Ameren Services, St. Louis, Missouri

Managed the preparation of a comprehensive human health risk assessment of workers and residents at or near an NPL site in Missouri. The former operations at the Property included the servicing and repair of electrical transformers, which resulted in soils and groundwater beneath the Property and adjacent land becoming impacted with PCB and chlorinated solvent compounds. The results were submitted to U.S. EPA for evaluation and will be used in the final ROD.

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark is managing the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark is assisting the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of perchlorate in environment. Dr. Clark evaluated the production, use, chemical characteristics, fate and transport, toxicology, and remediation of perchlorate. Perchlorates form the basis of solid rocket fuels and have recently been detected in water supplies in the United States. The results of this research

were presented to the USEPA, National GroundWater, and ultimately published in a recent book entitled *Perchlorate in the Environment*.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Confidential, San Francisco, California

Identified and analyzed fifty years of epidemiological literature on workplace exposures to heavy metals. This research resulted in a summary of the types of cancer and non-cancer diseases associated with occupational exposure to chromium as well as the mortality and morbidity rates.

Client: Confidential, San Francisco, California

Summarized major public health research in United States. Identified major public health research efforts within United States over last twenty years. Results were used as a briefing tool for non-public health professionals.

Client: Confidential, San Francisco, California

Quantified the potential multi-pathway dose received by humans from a pesticide applied indoors. Part of team that developed exposure model and evaluated exposure concentrations in a comprehensive report on the plausible range of doses received by a specific person. This evaluation was used in the support of litigation.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client – United Kingdom Environmental Agency

Oversaw a comprehensive toxicological evaluation of methyl-*tertiary* butyl ether (MtBE) for the United Kingdom's Environment Agency. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MtBE. The results of the evaluation have been used as a briefing tool for public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of *tertiary* butyl alcohol (TBA) in municipal drinking water system. TBA is the primary breakdown product of MtBE, and is suspected to be the primary cause of MtBE toxicity. This evaluation will include available information on the production, use, chemical characteristics, fate and transport in the environment, absorption, distribution, routes of detoxification, metabolites, carcinogenic potential, and remediation of TBA. The results of the evaluation were used as a briefing tool for non-public health professionals.

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane

rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been used as a briefing tool for non-public health professionals.

Client – Ministry of Environment, Lands & Parks, British Columbia

Dr. Clark assisted in the development of water quality guidelines for methyl tertiary-butyl ether (MTBE) to protect water uses in British Columbia (BC). The water uses to be considered includes freshwater and marine life, wildlife, industrial, and agricultural (e.g., irrigation and livestock watering) water uses. Guidelines from other jurisdictions for the protection of drinking water, recreation and aesthetics were to be identified.

Client: Confidential, Los Angeles, California

Prepared physiologically based pharmacokinetic (PBPK) assessment of lead risk of receptors at middle school built over former industrial facility. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Client: Confidential, Atlanta, Georgia

Researched potential exposure and health risks to community members potentially exposed to creosote, polycyclic aromatic hydrocarbons, pentachlorophenol, and dioxin compounds used at a former wood treatment facility. Prepared a comprehensive toxicological summary of the chemicals of concern, including the chemical characteristics, absorption, distribution, and carcinogenic potential. Prepared risk characterization of the carcinogenic and non-carcinogenic chemicals based on the exposure assessment to quantify the potential risk to members of the surrounding community. This evaluation was used to help settle class-action tort.

Client: Confidential, Escondido, California

Prepared comprehensive Preliminary Endangerment Assessment (PEA) of dense non-aqueous liquid phase hydrocarbon (chlorinated solvents) contamination at a former printed circuit board manufacturing facility. This evaluation was used for litigation support and may be used as the basis for reaching closure of the site with the lead regulatory agency.

Client: Confidential, San Francisco, California

Summarized epidemiological evidence for connective tissue and autoimmune diseases for product liability litigation. Identified epidemiological research efforts on the health effects of medical prostheses. This research was used in a meta-analysis of the health effects and as a briefing tool for non-public health professionals.

Client: Confidential, Bogotá, Columbia

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of a 13.7 hectares plastic manufacturing facility in Bogotá, Colombia. The risk assessment was used as the basis for the remedial goals and closure of the site.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally cadmium) and VOCs from soil and soil vapor at 12-acre former crude oilfield and municipal landfill. The site is currently used as a middle school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and was used as the basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner

that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

Client: Confidential, Los Angeles, California

Prepared comprehensive human health risk assessment of students, staff, and residents potentially exposed to heavy metals (principally lead), VOCs, SVOCs, and PCBs from soil, soil vapor, and groundwater at 15-acre former manufacturing facility. The site is currently used as a year round school housing approximately 3,000 children. The evaluation determined that the site was safe for the current and future uses and will be basis for regulatory closure of site.

Client: Confidential, Los Angeles, California

Prepared comprehensive evaluation of VOC vapor intrusion into classrooms of middle school that was former 15-acre industrial facility. Using the Johnson-Ettinger Vapor Intrusion model, the evaluation determined acceptable soil gas concentrations at the site that did not pose health threat to students, staff, and residents. This evaluation is being used to determine cleanup goals and will be basis for regulatory closure of site.

Client –Dominguez Energy, Carson, California

Prepared comprehensive evaluation of the potential health risks associated with the redevelopment of 6-acre portion of a 500-acre oil and natural gas production facility in Carson, California. The risk assessment was used as the basis for closure of the site.

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

California Redevelopment Association (CRA)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

Clark, J.J.J. 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

Clark, J.J.J. 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

Clark, J.J.J. 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.

- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In Situ and On-Site Bioremediation, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.
- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
- McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.
- Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute

Ozone Exposures in Residents of Los Angeles County. American Review of Respiratory Disease. 141(4):A70.

Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

ATTACHMENT B



4 January 2022

Darien K. Keys, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: *8th, Grand and Hope Project, Los Angeles, California*
Draft Environmental Impact Report
Review and Comment on Noise Analysis

Dear Mr. Keys,

As requested, we have reviewed the information and noise impact analyses in the following document:

8th, Grand and Hope Project, Los Angeles, California
Draft Environmental Impact Report ("DEIR")
November 2021

This letter reports our comments on the noise analysis in the subject document.

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 56 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Adverse Effects of Noise¹

Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive.

Noise-Induced Hearing Loss. If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high

¹ More information on these and other adverse effects of noise may be found in *Guidelines for Community Noise*, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (<https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>)

levels of industrial noise.

Speech Interference. Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result. The problems and irritation that are associated with speech disturbance have become more pronounced during the COVID-19 pandemic because many people find themselves and the people they live with trying to work and learn simultaneously in spaces that were not designed for speech privacy.

Sleep Disturbance. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

Cardiovascular and Physiological Effects. Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

Impaired Cognitive Performance. Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes) and it makes reading, paying attention, solving problems, and memorizing more difficult. This is why there are standards for classroom background noise levels and why offices and libraries are designed to provide quiet work environments. While sheltering-in-place during the COVID-19 pandemic, many people are finding working and learning more difficult because their home environment is not as quiet as their office or school was.

Comments on Construction Noise Mitigation

The construction noise analysis in the DEIR is thorough, transparent, and reasonable. The DEIR correctly includes that, *sans* mitigation, the on-site construction noise impacts would be significant under CEQA at five nearby noise-sensitive receptors. [DEIR at p. IV.E-30] In Mitigation Measure NOI-MM-1, the DEIR commits to erecting a number of sound barriers around the site to reduce construction noise to levels less than the threshold of significance at ground-level receptors. However, the DEIR preparers recognize that these walls will not provide any noise relief to residents on the upper floors of neighboring buildings:

However, the temporary sound barriers would not be effective in reducing the construction-related noise levels for the upper levels of these residential buildings, including the 7-story apartment building at receptor location R1, the 33-story apartment building at receptor location R2, the 9-story apartment building at receptor location R4, the 24-story apartment building at receptor location R5, and the 22-story apartment building at receptor location R6. [DEIR at p. IV.E-42]

The DEIR states that it is infeasible to build sound barriers at the edge of the Project site that are tall enough to block the construction noise at the higher elevations, and that it is also infeasible to use “movable noise barriers”. I concur with the infeasibility of both of these noise control methods, however, there are two other options not discussed in the DEIR which may be feasible.

The first is to erect scaffolding to support construction noise control blankets at the façades of impacted receptors (R1, R2, R4, R5, and R6). R1, R5, and R6 are literally across the street from the Project site. Because scaffolding attaches directly to the buildings for lateral support, it is reasonably economical to erect tall “sound barrier” walls. The light and aesthetic issues may be somewhat ameliorated by using clear vinyl for at least some of the “panels”. This was done (using standard construction noise control blankets) in San Francisco some years ago to shield the headquarters of a major financial company from noise during construction of a large project nearby. The financial building is 8-stories high. R1 is 9-stories high, which is similar, and it may not be necessary for the scaffolding to extend the full height of the R5 (24-story) or R6 (22-story) buildings.

A second option which may be feasible would be to install heavy Plexiglass or other clear panels around the edges of balconies that face the Project site to act as sound barriers without much affecting the light or view. As the photographs in Figure 1 below show, the balconies at R1 and R6 already have glass in the parapets, so it would simply be a matter of fitting Plexiglass on the upper portions. Because noise would reflect off the bottom of the balcony above, the panels would likely need to extend from the existing parapet to the balcony floor above with only a small opening for ventilation. The panels would need to be able to withstand wind loads, and there may be other code requirements. Determining the exact number of balconies that would require treatment would require a detailed noise analysis.

Comments on Relativistic Threshold of Significance

Beginning on page IV.E-38, the DEIR presents the “composite” noise level impact analysis from Project operations. This analysis, all too often not done, considers the summation of noise from all of the individual operational noises that had previously been analyzed: traffic, mechanical, parking, loading, trash compacting, and outdoor spaces. The results of the analysis are presented in Table IV.E-20 of the DEIR [p. IV.E-40]. A footnote in the table explains that

Significance criteria are equivalent to the existing ambient plus 3 dBA if the estimated noise levels (ambient plus Project) fall with the “normally unacceptable” or “clearly unacceptable” land use categories or ambient plus 5 dBA if the estimated noise levels fall with the “normally acceptable”

or “conditionally acceptable” land use categories, per the City of Los Angeles Noise Element. [DEIR at p. IV.E-40, Table IV.E-20]

The obvious problem with this relativistic approach is that there is effectively no limit to noise exposure. For example, this approach would allow three successive projects that each add 2.9 dBA (the baseline resetting to the new post-project noise level after each), resulting in a total increase of 9.7 dBA which is clearly unacceptable. This illustrates how the relativistic threshold of significance utilized in the DEIR is incapable of preventing the continual degradation of the noise environment because it is always relative to the then-existing environment.

The obvious solution to this problem is to also incorporate absolute thresholds, and the City of Los Angeles Guidelines for Noise Compatible Land Use are ideal for this use. [The Guidelines are presented in Table IV.E-2 of the DEIR at p. IV.E-7]. Currently, the existing ambient noise levels in the Project area are “conditionally acceptable” ($60 \leq \text{CNEL} < 70$) at five of the receptors analyzed and “normally unacceptable” ($70 \leq \text{CNEL} < 75$) at the other four as seen in the excerpt from DEIR Table IV.E-20 below (Figure 2).² Also seen in Figure 2, the composite noise from the Project will cause two of the receptors (R5 and R9) to crossover from the “conditionally acceptable” category (yellow) to the “normally unacceptable” category (red). The very fact that these receptors have been pushed from a category that is fundamentally “acceptable” to one that is fundamentally “unacceptable” should in and of itself be a threshold of significance. Incorporating an absolute threshold of significance is the only way to identify the indefinite degradation of the noise environment in Los Angeles.

Conclusion

The DEIR correctly identifies that Project construction will cause a significant noise impact to residents in the area, but claims that there is no feasible mitigation. I suggest that either scaffolding-supported noise control blankets/panels or temporary Plexiglass barriers on individual balconies may be feasible options. Either of these would certainly work from a technical standpoint.

The DEIR follows the Los Angeles CEQA Threshold Guidelines which, for composite operational noise, is a relativistic standard based on the existing ambient. The repeated use of a relativistic standard means, effectively, there is no limit to how loud an area can become. Meanwhile, the Los Angeles General Plan Noise Element has absolute guidelines for land use compatibility given the noise exposure, and the Project noise would cause the noise environments at one residential building and one hotel to degrade from an “acceptable” category to an “unacceptable” category. Despite the fact that the relative increases fail to exceed the adopted relative threshold of significance, this absolute degradation should be a separate and distinct threshold. As such, the Project noise should be identified as significant.

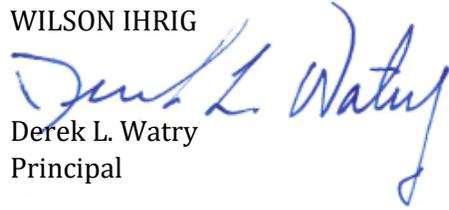


² These are the values for “Residential – Multi-Family” buildings. “Conditionally acceptable” levels are highlighted in yellow; “normally unacceptable” levels are highlighted in red.

Please contact me if you have any question about this review of the noise analysis in the *8th, Grand and Hope Project DEIR*.

Very truly yours,

WILSON IHRIG



Derek L. Watry
Principal

2022-01-04 - 8th-grand-hope - noise - d watry.docx



FIGURE 1 BALCONIES AT RESIDENTIAL RECEPTORS R1 AND R6

| Receptor Location | Existing Ambient Noise Levels (CNEL (dBA)) (A) | Calculated Project-Related Noise Sources (CNEL (dBA)) | | | | | Project Composite Noise Levels (CNEL (dBA)) (G=B+C+D+E+F) ^b | Ambient Plus Project Composite Noise Levels (CNEL (dBA)) (H=A+G) ^b | Increase in Noise Levels due to Project (CNEL (dBA)) (H-A) |
|-------------------|--|---|-----------------|-----------------|-------------------------------|---------------------------------|--|---|--|
| | | Traffic (B) | Mechanical (C) | Parking (D) | Loading & Trash Compactor (E) | Outdoor Spaces ^c (F) | | | |
| R1 | 70.7 | 57.4 | 49.0 | 43.3 | 51.8 | 55.4 | 60.6 | 71.1 | 0.4 |
| R2 | 70.2 | 44.1 | 52.8 | 40.7 | 25.8 | 52.6 | 56.1 | 70.4 | 0.2 |
| R3 | 68.4 | 54.8 | 44.2 | 32.3 | 24.7 | 45.7 | 55.6 | 68.6 | 0.2 |
| R4 | 69.5 | 54.8 | 45.1 | 45.5 | 44.6 | 51.9 | 57.4 | 69.8 | 0.3 |
| R5 | 69.4 | 45.2 | 49.9 | 48.3 | 28.6 | 68.4 | 68.5 | 72.0 | 2.6 |
| R6 | 71.5 | 45.7 | 52.2 | 46.8 | 23.1 | 67.3 | 67.5 | 73.0 | 1.5 |
| R7 | 72.4 | 47.7 | 47.4 | 51.1 | 19.6 | 63.4 | 63.9 | 73.0 | 0.6 |
| R8 | 67.8 | 53.0 | 51.3 | 46.1 | 27.4 | 52.0 | 57.3 | 68.2 | 0.4 |
| R9 | 69.4 | 44.1 | 50.7 | 44.6 | 40.7 | 61.3 | 61.9 | 70.1 | 0.7 |

FIGURE 2 EXCERPT OF DEIR TABLE IV.E-20: COMPOSITE NOISE IMPACTS

DEREK L. WATRY

Principal

Since joining Wilson Ihrig in 1992, Derek has gained experienced in many areas of practice including environmental, construction, forensic, architectural, and industrial. For all of these, he has conducted extensive field measurements, established acceptability criteria, and calculated future noise and vibration levels. In the many of these areas, he has prepared CEQA and NEPA noise technical studies and EIR/EIS sections. Derek has a thorough understanding of the technical, public relations, and political aspects of environmental noise and vibration compliance work. He has helped resolve complex community noise issues, and he has also served as an expert witness in numerous legal matters.

Education

- M.S. Mechanical Engineering, University of California, Berkeley
- B.S. Mechanical Engineering, University of California, San Diego
- M.B.A. Saint Mary's College of California

Project Experience

12th Street Reconstruction, Oakland, CA

Responsible for construction noise control plan from pile driving after City received complaints from nearby neighbors. Attendance required at community meetings.

525 Golden Gate Avenue Demolition, San Francisco, CA

Noise and vibration monitoring and consultation during demolition of a multi-story office building next to Federal, State, and Municipal Court buildings for the SFDPW.

911 Emergency Communications Center, San Francisco, CA

Technical assistance on issues relating to the demolition and construction work including vibration monitoring, developing specification and reviewing/recommending appropriate methods and equipment for demolition of Old Emergency Center for the SFDPW.

Central Contra Costa Sanitary District, Grayson Creek Sewer, Pleasant Hill, CA

Evaluation of vibration levels due to construction of new sewer line in hard soil.

City of Atascadero, Review of Walmart EIR Noise Analysis, Atascadero, CA

Review and Critique of EIR Noise Analysis for the Del Rio Road Commercial Area Specific Plan.

City of Fremont, Ongoing Environmental Services On-Call Contract, Fremont, CA

Work tasks primarily focus on noise insulation and vibration control design compliance for new residential projects and peer review other consultant's projects.

City of Fremont, Patterson Ranch EIR, Fremont, CA

Conducted noise and vibration portion of the EIR.

City of King City, Silva Ranch Annexation EIR, King City, CA

Conducted the noise portion of the EIR and assessed the suitability of the project areas for the intended development. Work included a reconnaissance of existing noise sources and receptors in and around the project areas, and long-term noise measurements at key locations.

Conoco Phillips Community Study and Expert Witness, Rodeo, CA

Investigated low frequency noise from exhaust stacks and provided expert witness services representing Conoco Phillips. Evaluated effectiveness of noise controls implemented by the refinery.

Golden Gate Park Concourse Underground Garage, San Francisco, CA

Noise and vibration testing during underground garage construction to monitor for residences and an old sandstone statue during pile driving for the City of San Francisco.

Laguna Honda Hospital, Clarendon Hall Demolition, San Francisco, CA

Project manager for performed vibration monitoring during demolition of an older wing of the Laguna Honda Hospital.

Loch Lomond Marina EIR, San Rafael, CA

Examined traffic noise impacts on existing residences for the City of San Rafael. Provided the project with acoustical analyses and reports to satisfy the requirements of Title 24.

Mare Island Dredge and Material Disposal, Vallejo, CA

EIR/EIS analysis of noise from planned dredged material off-loading operations for the City of Vallejo.

Napa Creek Vibration Monitoring Review, CA

Initially brought in to peer review construction vibration services provided by another firm, but eventually was tapped for its expertise to develop a vibration monitoring plan for construction activities near historic buildings and long-term construction vibration monitoring.

San Francisco DPW, Environmental Services On-Call, CA

Noise and vibration monitoring for such tasks as: Northshore Main Improvement project, and design noise mitigation for SOMA West Skate Park.

San Francisco PUC, Islais Creek Clean Water Program, San Francisco, CA

Community noise and vibration monitoring during construction, including several stages of pile driving. Coordination of noise and ground vibration measurements during pile driving and other construction activity to determine compliance with noise ordinance. Coordination with Department of Public Works to provide a vibration seminar for inspectors and interaction with Construction Management team and nearby businesses to resolve noise and vibration issues.

San Francisco PUC, Richmond Transport Tunnel Clean Water Program, San Francisco, CA

Environmental compliance monitoring of vibration during soft tunnel mining and boring, cut-and-cover trenching for sewer lines, hard rock tunnel blasting and site remediation. Work involved long-term monitoring of general construction activity, special investigations of groundborne vibration from pumps and bus generated ground vibration, and interaction with the public (homeowners).

Santa Clara VTA, Capitol Expressway Light Rail (CELR) Bus Rapid Transit (BRT) Update EIS, CA

Reviewed previous BRT analysis and provide memo to support EIS.

Shell Oil Refinery, Martinez, CA

Identified source of community noise complaints from tonal noise due to refinery equipment and operations. Developed noise control recommendations. Conducted round-the-clock noise measurements at nearby residence and near to the property line of the refinery and correlated results. Conducted an exhaustive noise survey of the noisier pieces of equipment throughout the refinery to identify and characterize the dominant noise sources that were located anywhere from a quarter to three-quarters of a mile away. Provided a list of actions to mitigate noise from the noisiest pieces of refinery equipment. Assisted the refinery in the selection of long-term noise monitoring equipment to be situated on the refinery grounds so that a record of the current noise environment will be documented, and future noise complaints can be addressed more efficiently.

Tyco Electronics Corporation, Annual Noise Compliance Study, Menlo Park, CA

Conducted annual noise compliance monitoring. Provided letter critiquing the regulatory requirements and recommending improvements.

University of California, San Francisco Mission Bay Campus Vibration Study, CA

Conducted measurements and analysis of ground vibration across site due to heavy traffic on Third Street. Analysis included assessment of pavement surface condition and propensity of local soil structure.

ATTACHMENT B

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

June 2, 2023

VIA ONLINE SUBMISSION

City of Los Angeles Appeal Board

Online Portal: <https://plncts.lacity.org/oas>

VIA EMAIL AND OVERNIGHT MAIL

Polonia Majas, Planner

City of Los Angeles

Department of City Planning

221 N. Figueroa St., Suite 1350

Los Angeles, CA. 90012

Email: polonia.majas@lacity.org

Re: Appeal of Advisory Agency Approval of the 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN).

Dear Appeal Board Members and Ms. Majas:

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit this appeal of the City of Los Angeles (“City”) Advisory Agency’s approval of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN) (“Project”), proposed by Mitsui Fudosan America (“Applicant”). The scope of the Advisory Agency’s approval includes:

- Approval of Vesting Tentative Tract Map No. 74876-CN, pursuant to Section 17.15 of the Los Angeles Municipal Code (“LAMC”);
- Certification of the 8th, Grand and Hope Project Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act (“CEQA”);¹
- Adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program (“MMRP”).

¹ Cal. Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq.

CREED LA submitted comments on the Project's Draft EIR ("DEIR") on January 5, 2022 during the public review period required by Section 15087 of the CEQA Guidelines. CREED LA's comments on the DEIR demonstrated that the DEIR fails to comply with CEQA by failing to accurately disclose potentially significant impacts, failing to support its significance findings with substantial evidence, and failing to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. The City included responses to comments in the Final EIR ("FEIR") pursuant to Section 15088 of the CEQA Guidelines. CREED LA submitted comments explaining that the DEIR's flaws were not remedied in the City's FEIR. Subsequently, a public hearing for the Project was held by the Deputy Advisory Agency and Hearing Officer on behalf of the City Planning Commission on February 15, 2023. The Advisory Agency's Letter of Determination ("LOD") was mailed on May 26, 2023.

CREED LA hereby appeals all actions taken by the Advisory Agency with regard to the Project as described in the May 26, 2023 LOD. This appeal is timely filed in compliance with the LAMC. The reasons for this appeal are set forth herein and in the attachments, which include CREED LA's comments on the DEIR and FEIR.² We incorporate by reference the attached comments and exhibits, which are in the City's record of proceedings for the Project.³

As explained herein and in the attached comments, the Advisory Agency abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.⁴

I. STANDING TO APPEAL

Section 17.06 of the LAMC, "Tentative Map and Appeals," provides that [t]he subdivider, the Mayor, any member of the City Council, or **any other**

² **Attachment A:** Letter from Adams Broadwell Joseph & Cardozo to City re: Comments on 8th, Grand and Hope FEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (February 15, 2023); Comments on 8th, Grand and Hope DEIR (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022).

³ We reserve the right to supplement these comments at later hearings and proceedings on the Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121,

⁴ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

interested person adversely affected by the proposed subdivision may appeal any action of the Advisory Agency with respect to the tentative map or the kind, nature or extent of the improvement required to the Appeal Board” [emphasis added]. CREED LA and its members are interested persons who would be adversely affected by the Vesting Tentative Tract Map approved by the Advisory Agency. Therefore, CREED LA has standing to appeal the Advisory Agency’s decision.

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

Individual members of CREED LA include John Ferruccio, Gery Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project’s environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

II. REASONS FOR APPEAL

A. The Advisory Agency’s Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record

The Subdivision Map Act (“SMA”) provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

- (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
- (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
- (c) That the site is not physically suitable for the type of development.
- (d) That the site is not physically suitable for the proposed density of development.
- (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

LAMC Section 17.15(c)(2), “Vesting Tentative Maps,” provides that “a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines:

(a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or

(b) The condition or denial is required in order to comply with state or federal law.

Here, approval of the vesting tentative tract map would place the community in a condition dangerous to its health and safety.

First, CREED LA's comments on the EIR explained that the EIR failed to adequately disclose and analyze significant health impacts on the community from exposure to Diesel Particulate Matter ("DPM") generated by construction activities or Project operations. Specifically, the EIR failed to analyze impacts on all sensitive receptors, including children. Analysis of impacts on children is essential due to the increased sensitivity of children to Toxic Air Contaminants like DPM. As discussed in CREED LA's comments on the FEIR, Dr. James Clark corrected the City's analysis to address impacts on children, and found that the Project's operational and construction impacts exceed the 10 in 1 million cancer risk significance threshold. Dr. Clark's analysis found that for a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

Second, the Project's operations would involve residential use of natural gas.⁵ The Project's operations would consume a total of 4,859,882 cf of natural gas each year.⁶ Although the Project will not use natural gas fireplaces, the Project's EIR does not preclude use of other gas appliances like stoves.⁷ CREED LA's comments on the FEIR present substantial evidence demonstrating that residential natural gas use has potentially significant health risks on residents – a risk which was not analyzed in the EIR. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474 unless this impact is analyzed and mitigated.

⁵ DEIR, IV.B-15.

⁶ DEIR, IV.B-25.

⁷ FEIR, IV-3.

Third, the Project would have significant construction noise impacts. As explained in CREED LA's comments, excessive noise or significant increases in noise can impact public health. The City must adopt all feasible mitigation measures to reduce these noise impacts before the Project can be approved. CREED LA's expert identified mitigation measures which would reduce the magnitude of these impacts. The City cannot approve the Project pursuant to LAMC Section 17.15(c)(2) and the SMA unless this impact is mitigated to the fullest extent feasible.⁸

For these reasons, and others discussed in CREED LA's comments, approval of the Project is likely to cause significant impacts to air quality, public health, and noise. The Advisory Agency therefore lacks substantial evidence to make the necessary findings. The City must correct the errors in the EIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

B. The Project's Environmental Review Fails to Comply with CEQA

CREED LA's comments on the EIR demonstrated that the EIR fails to comply with CEQA. As explained more fully in CREED LA's comments on the DEIR and FEIR, the EIR failed to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, and greenhouse gas emissions. The EIR failed to support its significance findings with substantial evidence, and failed to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot adopt a statement of overriding considerations pursuant to CEQA.⁹

⁸ Government Code, section 66474.01.

⁹ Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

June 2, 2023
Page 7

III. CONCLUSION

CREED LA respectfully requests that the City set a hearing on this appeal, and that the Appeal Board uphold this appeal and vacate the Advisory Agency's approval of the Project.

Sincerely,



Aidan P. Marshall

APM:acp

ATTACHMENT C

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amarshall@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

ARIANA ABEDIFARD
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

July 11, 2023

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

VIA EMAIL ONLY

Commission President Millman and Commission Members
City Planning Commission

Email: cpc@lacity.org

Polonia Majas, City Planning Associate

Email: polonia.majas@lacity.org

Re: Agenda Item 8 and 10 – 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN; ZA-2021-7053-ZAI).

Dear Commission President Millman, Commission Members, and Ms. Majas:

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) to provide comments on City Planning Commission (“CPC”) Agenda Item #8 in support of our appeal of the City of Los Angeles (“City”) Advisory Agency’s approval of the 8th, Grand and Hope Project (SCH No. 2019050010, Case Nos. ENV-2017-506-EIR; ZA-2021-7053-ZAI; VTT-74876-CN) (“Project”), proposed by Mitsui Fudosan America (“Applicant”). The scope of the Advisory Agency’s approval includes approval of a Vesting Tentative Tract Map; certification of an Environmental Impact Report (“EIR”); and adoption of Environmental Findings, Statement of Overriding Considerations; and Mitigation Monitoring Program (“MMRP”). We also provide comments on Agenda Item #10, under which the CPC will consider approval of a Transfer of Floor Area Rights (“TFAR”), Zone Variances, a Specific Plan Project Adjustments, a Director’s Decision regarding the amount of trees to be planted on-site, and a Site Plan Review (CPC-2017-505-TDR-ZV-SPPA-DD-SPR).

CREED LA filed an appeal of the Advisory Agency’s decision on June 2, 2023, attaching CREED LA’s comments on the Project’s Draft EIR (“DEIR”), submitted on January 5, 2022, and on the Final EIR (“FEIR”), submitted on February 15, 2023. CREED LA’s appeal and EIR comments demonstrated that the Advisory Agency abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.¹ The Staff Report prepared for the July 13th hearing includes responses to CREED LA’s comments on the FEIR. This letter addresses the responses to CREED LA’s comments contained in the Staff Report, attaching analysis from air quality and hazards expert James Clark, Ph.D and noise expert Derek Watry. This letter demonstrates that the Staff Report does not contain substantial evidence to support denial of our appeal. Further, this letter demonstrates that the CPC lacks substantial evidence to make the requisite findings to approve the Project’s Transfer of Floor Area Rights (“TFAR”), Zone Variances, a

¹ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.
L5887-013

Specific Plan Project Adjustments, a Director's Decision regarding the amount of trees to be planted on-site, and Site Plan Review.

I. The City is Required to Analyze Health Risk Impacts

CREED LA's comments on the DEIR explained that the City was required to prepare a quantified HRA for the Project because CEQA requires that a project's health risks "must be 'clearly identified' and the discussion must include 'relevant specifics' about the environmental changes attributable to the Project and their associated health outcomes."² In response, the City prepared an HRA for the Project's construction and operations and included it in the FEIR.³ But the Staff Report reiterates that the HRA was only conducted for informational purposes, and continues to assert that a HRA is not required by CEQA.⁴ The Staff Report, in Response to Comment No. CREED-2, reasons that construction emissions of Diesel Particulate Matter ("DPM") need not be analyzed in an HRA because they occur over a shorter time period than 70 years. This reasoning is flawed, as individual cancer risk is not just affected by the duration of exposure to Toxic Air Contaminants ("TACs"), but also the concentration of the individual's unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA⁵ guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.⁶

II. The FEIR Still Fails to Disclose and Mitigate Significant Health Impacts on Sensitive Populations

CREED LA's comments on the FEIR explained that the Project's HRA failed to analyze impacts on all sensitive receptors. Health risk impacts on children are measured using Age Sensitivity Factors ("ASFs").⁷ ASFs "account for increased sensitivity of early-life exposure to carcinogens."⁸ ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project's estimated emissions of TACs. In the Project's HRA, the City failed to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project's health risk impacts on this group of sensitive receptors.

The FEIR contended that use of ASFs is not required for measuring DPM health impacts, relying on U.S. EPA guidance⁹ related to early life exposure adjustment factors whereby the adjustment factors are only considered when carcinogens act "through the mutagenic mode of

² *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518.

³ Appendix FEIR-2.

⁴ FEIR, pg. II-33; Appendix FEIR-2, pg. 2.

⁵ OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

⁶ See "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 ("OEHHA Guidance"), p. 8-18.

⁷ Appendix FEIR-2, pg. 4.

⁸ Appendix FEIR-2, pg. 4; *see also* City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10.

⁹ U.S. EPA. 2006. Memorandum – Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance – Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action.

action.”¹⁰ The FEIR reasoned that DPM is not mutagenic because only a small portion of its constituent particles are mutagenic. The FEIR failed to cite to scientific authority in support of the claim that DPM is not a mutagenic carcinogen. And the FEIR failed to cite to scientific authority suggesting that all of the constituent compounds of a pollutant must be mutagenic for it to be considered mutagenic.

CREED LA’s comments on the FEIR presented substantial evidence that DPM is well-known to operate through the mutagenic mode of action. For instance, the U.S. EPA – on whose guidance the City claims to be relying – plainly states that DPM is mutagenic:

[D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: [...] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.¹¹ [emphasis added]

The Staff Report is nonresponsive to this substantial evidence, instead reiterating the erroneous claim that DPM is not mutagenic because not all of its constituent compounds are. Again, the Staff Report fails to identify scientific support for this claim. Therefore, the City’s failure to apply ASFs still lacks the support of substantial evidence. Courts have held that a clearly inadequate or unsupported study is entitled to no judicial deference.”¹²

Dr. Clark corrected the City’s analysis to include ASFs, and found that the Project’s operational and construction impacts exceed the maximum incremental cancer risk threshold of 10 in one million. Dr. Clark’s analysis found that for a resident living near the Project site, the risk for a child born and living during the 1st two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million threshold. Thus, the Project would have a significant health risk impact unanalyzed in the EIR that requires mitigation.

In response to CREED LA’s comments, the City adopted a Condition of Approval providing that the applicant shall “make a good faith effort” to ensure that all offroad diesel-powered equipment greater than 50 hp used during Project construction activities meet USEPA Tier 4 Final emissions standards. While use of Tier 4 equipment would reduce emissions, the COA’s purported mandate to “make a good faith effort” is vague, unenforceable and ineffective. The COA should be revised to remove this non-binding language, as follows:

Construction Equipment. The applicant shall ~~make a good faith effort to~~ ensure that all offroad diesel-powered equipment greater than 50 hp used during Project construction activities meet USEPA Tier 4 Final emissions standards. A copy of each such unit’s certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided on-site at the time of mobilization of each applicable unit of equipment to allow the

¹⁰ Appendix FEIR-2, pg. 6.

¹¹ U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at https://iris.epa.gov/static/pdfs/0642_summary.pdf.

¹² *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), quoting *Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

Construction Monitor to compare the on-site equipment with the inventory and certified Tier specification and operating permit.

III. The FEIR Still Fails to Require All Feasible Mitigation Measures to Reduce Significant Noise Impacts

The EIR acknowledges that the Project would have significant construction noise impacts. CREED LA's comments on the DEIR and FEIR identify additional feasible mitigation measures that would reduce the Project's significant construction noise impacts, including provision of either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction. Mr. Watry's attached comments provide further support for the feasibility of these measures.

IV. The Project Does Not Provide Affordable Housing, In Conflict With Local Land Use Goals, Objectives, And Policies

CREED LA previously commented that while the Project proposes to construct 580 residential units, it fails to provide any of the residential units at a below-market rate. The Project's lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing in the 2021-2029 Housing Element. To begin with, the Project would not contribute to meeting the City's RHNA for below-market rate housing, and is thus inconsistent with the Housing Element. Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City's RHNA are inconsistent with the City's Housing Element, a primary goal of which is to meet the RHNA. The Staff Report responds that the Project would be consistent with the Housing element because an 86% annual increase in production of Above Moderate housing is required to meet the City's RHNA target for 2021-2029. The Staff Report ignores that the City must achieve a 1347% increase in Very Low Income housing, a 1514% increase in Low Income, and a 7739% increase in Moderate Income housing.¹³ Indeed, production of Above Moderate housing is the least necessary housing category for the City to meet its RHNA targets, as "[t]he City is therefore projected to fall short at the affordable (below 120% AMI) income ranges, but may meet the above moderate (market-rate) production levels."¹⁴ The Housing Element states that in the previous cycle, 2014-2021, the City has met its overall RHNA target of 82,002 units; but did not produce enough housing in the lower and moderate income categories.¹⁵ In fact, the City overproduced Above Moderate housing – the RHNA Goal for Above Moderate housing was 35,412, and 105,522 such units were built in 2014-2020. Thus, this Project is inconsistent with the Housing Element by failing to provide affordable housing necessary to help the City meet its RHNA for below-market units.

The Staff Report further states that the Project will be conditioned to comply with the City's Transfer of Floor Area (TFAR) ordinance, by contributing approximately \$10 million to the City's affordable housing trust fund. The Housing Element's evaluation of this program in its "Evaluation of 2013-2021 Goals, Policies, Objectives and Programs" states that "[w]hile this program brought in funding for an array of public benefits downtown, the program has not met objectives with regard to funding and the creation of new affordable housing units downtown...The program is being revised with the update to the Downtown Community Plan, with the aim to prioritize the production of

¹³ Housing Element, pg. 99, Table 1.28.

¹⁴ Housing Element, pg. 19.

¹⁵ Housing Element, pg. 227.

onsite affordable units directly in new construction.”¹⁶ Thus, simply paying the TFAR Public Benefit fee is no substitute for provision of onsite affordable units.

CREED LA’s FEIR comments explained that the Project was inconsistent with Objective 1.2 (facilitate the production of housing, especially projects that include Affordable Housing), Objective 2.5 (target affordable housing in Transit Oriented Districts and designated Centers), and Objective 3.2 (promoting locating affordable and mixed-income housing near high quality transit). The Staff Report is nonresponsive to those comments.

As a result of these inconsistencies, the Project fails to comply with the Housing Element of the General Plan.

V. The Advisory Agency’s Approval of a Vesting Tentative Tract Map Was Contrary to Law and Unsupported by the Record

As explained in CREED LA’s appeal, LAMC Section 17.15(c)(2), “Vesting Tentative Maps,” provides that “a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines... (a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.” And Government Code, section 66474 requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Here, the Project’s operational and construction health risk impacts exceed the 10 in 1 million cancer risk significance threshold due to emissions of DPM. Dr. Clark’s analysis found that for a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000. Further, the Project has significant noise impacts. Thus, the Vesting Tentative Tract Map must be denied pursuant to LAMC Section 17.15(c)(2) and Government Code Section 66474.

VI. The CPC Cannot Make the Requisite Findings to Approve the Project’s Entitlements

In addition to the Vesting Tentative Map already approved by the Advisory Agency, the CPC will consider approval of the Project’s Transfer of Floor Area Rights (“TFAR”), Zone Variances, a Specific Plan Project Adjustments, a Director’s Decision regarding the amount of trees to be planted on-site, and Site Plan Review. To approve the Project’s TFAR, the CPC must find that the Project serves the public interest.¹⁷ But without mitigation of the Project’s construction noise impacts to the greatest extent feasible, or demonstrating that the Project’s benefits outweigh its costs, including providing employment opportunities for highly trained workers,¹⁸ the CPC cannot find that the Project is truly aligned with the public interest. Further, the Project fails to provide onsite affordable housing, which is inconsistent with policies in the Housing Element.

To approve the Project’s Zone Variance Findings, the CPC must find that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.¹⁹ And to approve the Project’s Project Permit Adjustments, the decisionmaker must have considered and found no

¹⁶ Housing Element, Appendix 5.1 - Evaluation of Programs, row 17.

¹⁷ Staff Report, pg. F-2.

¹⁸ Pub. Res. Code § 21081(a)(3), (b).

¹⁹ Staff Report, pg. F-6.

detrimental effects of the proposed project on surrounding properties and public rights-of-way. But as discussed in CREED LA's comments on the FEIR, the Project's operational and construction health risk impacts exceed the 10 in 1 million cancer risk significance threshold due to emissions of Diesel Particulate Matter ("DPM"). For a resident living near the Project site, the risk for a child born and living during the first two years of life will exceed 60 in 1,000,000, which exceeds the 10 in 1 million significance threshold. Further, the City has not mitigated the Project's significant construction noise impacts to the greatest extent feasible.

To approve the Project's Site Plan Review, the CPC must find that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan.²⁰ And to approve the Project's Zone Variance Findings, the CPC must find that the granting of the variance will not adversely affect any element of the General Plan.²¹ However, CREED LA's comments on the FEIR explain that the Project fails to provide affordable housing in conformity with Housing Element Policies.

VII. CONCLUSION

CREED LA respectfully requests that the CPC uphold the appeal and vacate the Advisory Agency's approval of the Project, and urges the CPC not to approve the Project's entitlements until the flaws in the Project's environmental review are remedied, and the Project is brought into conformity with all local policies.

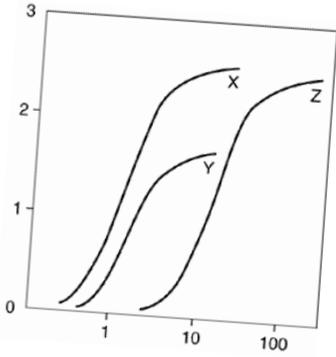
Sincerely,



Aidan P. Marshall

²⁰ Staff Report, pg. F-12.

²¹ Staff Report, pg. F-7.



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

July 10, 2023

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

Attn: Mr. Aidan Marshall

Subject: Response To Eyestone Environmetnal Memorandum Regarding Response to Letters Received On Febryart 15, 2023 and Appeal Comments For Final Environmental Impact Report (FEIR) For 8th, Grand, and Hope Street Project (ENV-2017-506-EIR) State Clearinghouse No. 2019050010

Dear Mr. Marshall,

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the January 2023 City of Los Angeles Final Environmental Impact Report (FEIR) of the above referenced project.

Response To Comment No. CREED-2, 3, 4, 5, & 11 – Lack of Construction and Operational HRA, Use of ASFs, Short Duration of Exposure

Eyestone contends that the City as the Lead Agency has discretion to select the appropriate levels of significance and methodologies for evaluating a project’s impacts including potential impacts related to health risk. Since the City resides in the South Coast Air Basin it is subject to rules from the South Coast Air Quality Management District (SCAQMD). Based on the City of Los Angeles’ own L.A. CEQA Threshold Guide (page B-1 of the 2006 Guide) it is clear that the City defers to the SCAQMD’s Air Quality Handbook and threshold levels. The answer from Eyestone regarding thresholds is clearly contradicted by the SCAQMD Air Quality Significance Thresholds, which defines the thresholds for TACS to be the maximum

incremental cancer risk greater than or equal to 10 in 1,000,000, a cancer burden greater than 0.5 cancer cases in areas with greater than 1 in 1,000,000 cancer risk, or a chronic and acute hazard index greater than or equal to 1. The only way to assess the cancer risk, cancer burden or hazard index from TACs against the SCAQMD's Air Quality Significance Thresholds is to perform a health risk analysis. The L.A. CEQA Threshold Guide further states that there is no specific concentration of carcinogenic air contaminants that can be considered completely safe. Thus, the amount of increased risk a person has of getting cancer from exposure to carcinogenic air toxics is used as an indicator of potential significant health risks (pg B.3-2 of 2006 LA CEQA Threshold Guide).

The City further states in the 2006 LA CEQA Threshold Guide that the impacts from toxic air contaminants can occur during either the construction or operational phases of a project. Eyestone's response regarding the short-term use of DPM-generating equipment and the potential health risks that may develop after exposure to the TACs is not in alignment with the guidance from OEHHA, the State's toxicology program, DTSC, U.S. EPA, ATSDR, and other authoritative bodies; and ignores the concept of increasing risk with the duration of exposure. The potency of the chemical is the primary driver of the potential to develop cancer. The duration of the exposure is a secondary consideration.

According to the City of Los Angeles's Air Quality And Health Effects guidance,¹ exposure to DPM may be a health hazard, particularly to *children* (emphasis added) whose lungs are still developing and the elderly who may have other serious health problems. This statement from the City's guidance clearly indicates that the City is aware that age of exposure to DPM has a significant impact on the potential health outcomes.

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the FEIR is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised final environmental impact report.

Sincerely,

A handwritten signature in black ink, appearing to read "J. J. Coe". The signature is written in a cursive style with a horizontal line extending to the left of the first letter.

¹ City of Los Angeles, Department of City Planning. 2019. Air Quality And Health Effects. Pg 10



9 July 2023

Aidan Marshall, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: *8th, Grand and Hope Project, Los Angeles, California*
Comments on Responses to FEIR Noise Comments

Dear Mr. Marshall,

In January 2022, we reviewed and provided comments on the DEIR for this project, and February 14th of this year we provided comments on the City's FEIR responses to our original comments. Our comments on the FEIR document have now been responded to by Eyestone Environmental in a memorandum to the City of Los Angeles Planning Department:

8th, Grand and Hope Project
Response to Letters Received on February 15, 2023 and Appeal Comments ("Appeal Responses")
Eyestone Environmental, June 22, 2023

This letter provides comments on the Appeal Responses.

Additional Comments on Construction Noise Mitigation

In our previous comments, we noted that the project did not consider adding noise barriers at the elevated receptor locations, and we suggested this might be done by either attaching scaffolding to the receptor buildings and hanging noise blocking material – possibly clear, thick vinyl – from the scaffolding or adding Plexiglas or other clear-material panels to the balconies that overlook the project site. The Appeal Response states that my previous commentary “does not provide substantial evidence that such a measure would in fact reduce the Project’s significant and unavoidable construction noise impacts, and the comment does not demonstrate that such mitigation measures would be feasible.” [Appeal Response at p. 54]

Assessing economic feasibility is outside my area of expertise, but I do believe it is within my purview to note that a previous project Wilson Ihrig worked on did erect scaffolding outside a neighboring building to support noise control blankets (with that building management’s cooperation, of course), and the developer of another project we reviewed agreed to replace old, plate-glass windows in an adjacent building with new, double-paned windows to mitigate construction noise. So, it is not unprecedented for project developers to implement construction noise control on properties they do not own.

With respect to efficacy of the suggested noise control measures, the DEIR indicates that the three receptors most affected by construction noise will be R1, R5, and R6 at which construction noise will exceed the significance criteria by, respectively, 10.7, 10.7, and 5.2 dBA. ½-pound-per-square foot transparent PVC barrier material has a Sound Transmission Class (STC) rating of 20 which will reduce construction noise at least 10 dB.¹ A ¼-inch-thick sheet of Plexiglas has an even higher rating, STC 29.² So, transparent materials that would reduce the construction noise to less-than-significant levels are readily available.

The Appeal Responses correctly notes that small gaps in noise barriers can cause a reduction in performance, but there is no fundamental reason why the noise barriers couldn't be well designed and properly installed. For the scaffolding approach, it is common for adjoining blankets to overlap somewhat to seal the gap. For the buildings with balconies (R1 and R6), the Plexiglas options are slightly different. The balconies at R1 are only open on the side facing construction (Fig. 1), so Plexiglas would be installed deck-to-ceiling. Yes, this would temporarily make the balcony an "interior" space, but it would still be usable. Building R6 is kitty-corner to the project site, so only two sides would have to be sealed from deck-to ceiling (Fig. 2). In the same way a highway noise barrier blocks traffic noise, this arrangement would block construction noise because the remaining open side would face in the opposite direction.



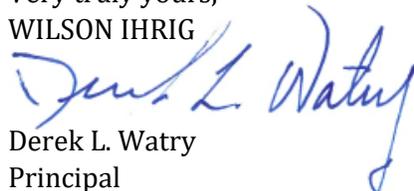
Figure 1 Balcony at R1



Figure 2 Balcony at R6

As I noted in previous comments, treating the balconies is an option that individual occupants could make according to their own sensibilities. Having worked at Wilson Ihrig for 31 years, I can attest to the fact that there are many people who loath construction noise.

Very truly yours,
WILSON IHRIG



Derek L. Watry
Principal

2023-02-14 - 8th-grand-hope - feir noise - d watry.docx

¹ <https://www.soundseal.com/files/content/industrial/products/flexible-noise-barriers/B-5%20CV%20Data%20Sheet.pdf>

² <https://www.eplastics.com/blog/sound-transmission-plexiglass-sheets>



LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300

www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: **SEP 26 2023**

Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR
CEQA: ENV-2017-506-EIR (SCH. No. 2019050010)
Plan Area: Central City
Related Cases: VTT-74864-CN-1A; ZA-2021-7053-ZAI-1A

Council District: 14 – de León

Project Site: 754 South Hope Street; 609 – 625 West 8th Street

Applicant: MFA 8th Grand and Hope LLC
Representative: Edgar Khalatian, Mayer Brown LLP

At its meeting of **July 13, 2023**, the Los Angeles City Planning Commission took the actions below in conjunction with the approval of the following Project:

Construction of a 50-story, mixed-use development comprised of 580 residential dwelling units and up to 7,499 square feet of ground floor commercial uses on a 34,679 square-foot site. The Project would provide vehicular parking in three subterranean levels and eight above-grade levels. The building would have a maximum height of 592 feet, and a Floor Area Ratio (FAR) of 9.25:1 (554,927 square feet) and would require the export of approximately 89,750 cubic yards of soil. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished.

1. **Found**, based on the independent judgment of the decision-maker, after consideration of the whole of the administrative record, the Project was assessed in the previously certified Environmental Impact Report No. ENV-2017-506-EIR, certified on September 26, 2023; and pursuant to CEQA Guidelines, Sections 15162 and 15164, no subsequent EIR, negative declaration, or addendum is required for approval of the Project;
2. **Recommended** that the City Council **approve**, pursuant Section 14.5.6 A of the Los Angeles Municipal Code (LAMC), a Transfer of Floor Area Rights (TFAR) greater than 50,000 square feet of floor area, for the transfer of up to 346,853 square feet of floor area from the Los Angeles Convention Center (Donor Site), located at 1201 South Figueroa Street, to the Project Site (Receiver Site), thereby permitting a maximum 9.25:1 FAR in lieu of the otherwise permitted 6:1 FAR;
3. **Requested** that within six months of the receipt of the Public Benefits Payment by the Public Benefit Trust Fund, the Chief Legislative Analyst convene the Public Benefit Trust Fund Committee, pursuant to LAMC Section 14.5.12;
4. **Dismissed** as not necessary, pursuant to LAMC Section 12.27, a Zone Variance to allow 60 percent of the required residential parking spaces as compact spaces, and to allow the parking of compact spaces in a tandem configuration;
5. **Approved**, pursuant to LAMC Section 12.27, a Zone Variance to allow relief from providing an additional 10-inch clear space to the parking stall widths when adjoined on their longer dimension by an obstruction;
6. **Approved**, pursuant to LAMC Section 12.27, a Zone Variance to allow relief to allow reduced drive aisle widths of 24 feet in lieu of the required drive aisle width;

7. **Approved**, pursuant LAMC Section 11.5.7 E, a Specific Plan Project Permit Adjustment for a Director’s Determination for an Alternative Design to allow a deviation from the Ground Floor Treatment regulations in Section 4 of the Downtown Design Guide;
8. **Approved**, pursuant LAMC Section 11.5.7 E, a Specific Plan Project Permit Adjustment to allow a deviation from Section 5 of the Downtown Design Guide to allow building and balcony projections up to nine feet and 25 feet into the sidewalk easements along Hope Street and Grand Avenue respectively, and allow projections to begin at an elevation of 25 feet above grade along Hope Street and Grand Avenue;
9. **Approved**, pursuant to LAMC Section 12.21 G.3, a Director’s Decision to allow 79 trees to be planted on-site in lieu of the otherwise required 145 trees, and to allow an in-lieu fee to be paid for the remaining 66 required on-site trees; and
10. **Approved**, pursuant to LAMC Section 16.05, a Site Plan Review for a development project which creates an increase of more than 50 dwelling units;
11. **Adopted** the attached Conditions of Approval; and
12. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved: Noonan
 Second: Lawshe
 Ayes: Cabildo, Choe, Mack, Millman, Zamora
 Recuse: Gold
 Absent: Leung

Vote: 7 – 0 – 1



Cecilia Lamas, Commission Executive Assistant II
 Los Angeles City Planning Commission

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

Effective Date/Appeals: The decision of the Los Angeles City Planning Commission related to Transfer of Floor Area Rights (TFAR) is appealable to City Council by the Applicant if disapproved in whole or in part. The decision of the Los Angeles City Planning Commission related to the remaining approvals is appealable to City Council within 15 days after the mailing date of this determination letter. Any appeal not filed within the 15-day period shall not be considered by the Council. All appeals shall be filed on forms provided at the Planning Department's Development Service Centers located at: 201 North Figueroa Street, Fourth Floor, Los Angeles, CA 90012; or 6262 Van Nuys Boulevard, Suite 251, Van Nuys, CA 91401.

FINAL APPEAL DATE: OCT 11 2023

Notice: An appeal of the CEQA clearance for the Project pursuant to Public Resources Code Section 21151(c) is only available if the Determination of the non-elected decision-making body (e.g., ZA, AA, APC, CPC) **is not further appealable** and the decision is final.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final

pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Conditions of Approval, Findings, Appeal Filing Procedures

c: Milena Zasadzien, Principal City Planner
Alan Como, Senior City Planner
Polonia Majas, City Planning Associate

CONDITIONS OF APPROVAL

Entitlement Conditions

1. **Site Development.** The use and development of the property shall be in substantial conformance with the plans submitted with the application, marked Exhibit A, stamp-dated, July 13, 2023, except as may be revised by this action. No change to the plans will be made without prior review by the Department of City Planning, and written approval by the Director of Planning, with each change identified and justified in writing. Minor deviations may be allowed in order to comply with the provisions of the Municipal Code, the subject conditions, and the intent of the subject permit authorization. The project shall be constructed in a manner consistent with the following project description:
 - a. The Project shall be limited to 580 dwelling units, and 7,499 square feet of ground floor commercial, retail and restaurant uses, totaling up to 554,927 square feet of floor area.
2. **Development Service Center.** Prior to sign-off on building permits by the Department of City Planning's Development Services Center for the project, the Department of City Planning's Major Projects Section shall confirm, via signature, that the project's building plans substantially conform to the conceptual plans stamped as Exhibit "A", as approved by the City Planning Commission.

Note to Development Services Center: The plans presented to, and approved by, the City Planning Commission (CPC) included specific architectural details that were significant to the approval of the project. Plans submitted at plan check for condition clearance shall include a signature and date from Major Projects Section planning staff to ensure plans are consistent with those presented at CPC.

3. Transfer of Floor Area Rights

- a. **Floor Area.** The Development shall not exceed a maximum Floor Area Ratio (FAR) of 9.25:1 and a total floor area of 554,927 square feet. The Transfer Payment and Public Benefit Payment shall be pro-rated to the amount of TFAR being acquired in the event the maximum amount of TFAR is not required. The buildable area of a Transit Area Mixed Use Project used to calculate the base floor area shall be 34,679 square feet with a 6:1 FAR. Changes to the Project that result in a 20 percent decrease in floor area, or more, shall require new entitlements. The Department of City Planning reserves the right to confirm the accuracy of the requested floor area, and to verify the calculation of the Transfer Payment and Public Benefit Payment at any time prior to the issuance of the building permit, or 24 months after the final approval of the Transfer and the expiration of any appeals or appeal period, or any extensions permitted by the Director in accordance with Section 14.5.11 of the LAMC.
- b. **TFAR Transfer Payment.** The Project is subject to and shall pay a TFAR Transfer Payment in conformance with Section 14.5.6 through 14.5.12 of the Code. Such payment shall be based on the actual amount of floor area transferred to the Project site.
 - i. The total amount of floor area authorized to be transferred from the Los Angeles Convention Center by this action shall not exceed 346,853 square feet. The total floor area of the Project Site (Receiver Site) shall not exceed 554,927 square feet.
 - ii. The Applicant shall provide a TFAR Transfer Payment consistent with LAMC Section 14.5.10 in the amount of \$5 per square foot, or \$1,734,265.00 for the

transfer of 346,853 square feet from the Los Angeles Convention Center located at 1201 South Figueroa Street (Donor Site) to the Project Site (Receiver Site).

- c. **Public Benefit Payment.** The Project is subject to and shall pay a Public Benefit Payment in conformance with Section 14.5.6 through 14.5.12 of the Code.
- i. The Applicant shall provide a Public Benefit Payment consistent with LAMC Section 14.5.9 in the amount of \$9,828,451.84 provided that at least 50 percent (or \$4,914,225.92) of the Public Benefit Payment consist of cash payment by the Applicant to the Public Benefit Trust Fund. Direct provision payments shall be paid directly to the recipients and not to the City of Los Angeles. Proof shall be provided in the form of a cleared check or bank statement and a letter signed by the Executive Director of each organization. Consistent with the TFAR Ordinance, the Project shall provide 50 percent (or \$4,914,225.92) of the Public Benefit Payment by directly providing the following public benefits:
 1. A payment to the Los Angeles City Council District 14's Public Benefits Trust Fund for Affordable Housing in the amount of \$4,914,225.92 (100 percent). The funds shall be utilized for construction and operation of affordable housing developments.
 - ii. At the time of issuance of the Certificate of Occupancy for the Project, the Applicant shall provide an update to the file from each recipient of direct provisions detailing how the money has been spent thus far.
 - iii. The Applicant shall pay the required Public Benefit Payment, less the cost of the Direct Provision of Public Benefits, in cash to the Public Benefit Trust Fund, pursuant to the terms of Transfer of Floor Area Rights Ordinance No. 181,574, Article 4.5 of the LAMC. The Public Benefit Payment proof of cash payment and direct provision of public benefits is required upon the earliest occurrence of either:
 1. The issuance of the building permit for the Project; or
 2. Twenty-four months after the final approval of the Transfer and the expiration of any appeals or appeal period; should the Applicant not make the required payments within the specified time, the subject approval shall expire, unless extended by the Director in writing.

Zone Variance Conditions

4. **Reduced Drive Aisle Width.** Vehicular drive aisles shall be allowed at a minimum width of 24 feet.
5. **Parking Stall Design.** Relief shall be provided from the requirement to provide the otherwise required additional 10-inch clear space for parking stall when adjoined on their longer dimension by an obstruction.

Specific Plan Adjustment Conditions

6. **Ground Floor Treatment.** The Project shall provide a minimum of 47 percent street frontage along Hope Street, 35 percent street frontage along Grand Avenue, and 67 percent frontage along 8th Street to accommodate commercial/active residential uses.

7. **Sidewalk Easement Projections.** The following building and balcony projections shall be permitted in the sidewalk easement, consistent with Exhibit A, stamp dated July 13, 2023:
 - a. Grand Avenue. The building shall be allowed to project up to 19 feet into the required sidewalk easement beginning at a height of 25 feet above the sidewalk.
 - b. Hope Street. The building shall be allowed to project up to 9 feet into the required sidewalk easement beginning at a height of 25 feet above the sidewalk.

Director's Decision Conditions

8. **Landscaping.** Prior to the issuance of a building permit, a landscape and irrigation plan shall be submitted to the Department of City Planning for approval. The landscape plan shall be in substantial conformance with the landscape plan stamped Exhibit A, dated July 13, 2023.
9. **Required Trees.** The Project shall plant 79 trees on-site and shall pay an in-lieu fee for the remaining 66 required on-site trees pursuant to LAMC Section 62.177(d).

Site Plan Review Conditions

10. **Common and Private Open Space.** Common and Private Open Space shall conform to the requirements of the LAMC and shall not be enclosed or be converted into habitable space.
11. **Tree Wells.** The minimum depth of tree wells and planters on the rooftop, any above grade open space, and above a subterranean structure shall be as follows:
 - a. Minimum depth for trees shall be 42 inches.
 - b. Minimum depth for shrubs shall be 30 inches.
 - c. Minimum depth for herbaceous plantings and ground cover shall be 18 inches.
 - d. Minimum depth for an extensive green roof shall be 3 inches.

The minimum amount of soil volume for tree wells on the rooftop or any above grade open spaces shall be based on the size of the tree at maturity:

- a. 220 cubic feet for a tree 15 – 19 feet tall at maturity.
 - b. 400 cubic feet for a tree 20 - 24 feet tall at maturity.
 - c. 620 cubic feet for a medium tree or 25 – 29 feet tall at maturity.
 - d. 900 cubic feet for a large tree or 30 - 34 feet tall at maturity.
12. **Tree Maintenance.** All newly planted trees must be appropriately sized, staked and tied; provided with a watering moat; and shall be properly watered and maintained.
13. **Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source cannot be seen from adjacent residential properties, the public right-of-way, nor from above.
14. **Trash and Recycling.**
 - a. All trash collection and storage areas shall be located on-site and shall not be visible from the public right-of-way.
 - b. Trash receptacles shall be stored in a fully enclosed building or structure.

c. Trash/recycling containers shall be locked when not in use.

15. **Mechanical Equipment.** Any structures on the roof, such as air conditioning units and other equipment, shall be fully screened from view of any abutting properties and the public right-of-way. All screening shall be setback at least five feet from the edge of the building.
16. **Construction Signage.** There shall be no off-site commercial signage on construction fencing during construction.

Environmental Conditions

17. **Implementation.** The Mitigation Monitoring Program (MMP), attached as “Exhibit B” and part of the case file, shall be enforced throughout all phases of the Project. The Applicant shall be responsible for implementing each Project Design Features (PDF) and Mitigation Measure (MM) and shall be obligated to provide certification, as identified below, to the appropriate monitoring and enforcement agencies that each PDF and MM has been implemented. The Applicant shall maintain records demonstrating compliance with each PDF and MM. Such records shall be made available to the City upon request.
18. **Construction Monitor.** During the construction phase and prior to the issuance of building permits, the Applicant shall retain an independent Construction Monitor (either via the City or through a third-party consultant), approved by the Department of City Planning, who shall be responsible for monitoring implementation of PDFs and MMs during construction activities consistent with the monitoring phase and frequency set forth in this MMP.

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

19. **Substantial Conformance and Modification.** After review and approval of the final MMP by the Lead Agency, minor changes and modifications to the MMP are permitted, but can only be made subject to City approval. The Lead Agency, in conjunction with any appropriate agencies or departments, will determine the adequacy of any proposed change or modification. This flexibility is necessary in light of the nature of the MMP and the need to protect the environment. No changes will be permitted unless the MMP continues to satisfy the requirements of CEQA, as determined by the Lead Agency

The Project shall be in substantial conformance with the PDFs and MMs contained in this MMP. The enforcing departments or agencies may determine substantial conformance with PDFs and MMs in the MMP in their reasonable discretion. If the department or agency cannot find substantial conformance, a PDF or MM may be modified or deleted as follows: the enforcing department or agency, or the decision maker for a subsequent discretionary project related approval finds that the modification or deletion complies with CEQA, including CEQA Guidelines Sections 15162 and 15164, which could include the preparation of an addendum or subsequent environmental clearance, if necessary, to analyze the impacts from the modifications to or deletion of the PDFs or MMs. Any addendum or subsequent CEQA clearance shall explain why the PDF or MM is no longer needed, not feasible, or the other basis for modifying or deleting the PDF or MM, and that the modification will not result in a

new significant impact consistent with the requirements of CEQA. Under this process, the modification or deletion of a PDF or MM shall not, in and of itself, require a modification to any Project discretionary approval unless the Director of Planning also finds that the change to the PDF or MM results in a substantial change to the Project or the non-environmental conditions of approval.

20. Tribal Cultural Resource Inadvertent Discovery. In the event that objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities (Ground disturbance activities shall include the following: excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, pounding posts, augering, backfilling, blasting, stripping topsoil or a similar activity), all such activities shall temporarily cease on the Project Site until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

- Upon a discovery of a potential tribal cultural resource, the project Permittee shall immediately stop all ground disturbance activities and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and the Department of City Planning.
- If the City determines, pursuant to Public Resources Code Section 21074 (a)(2), that the object or artifact appears to be tribal cultural resource, the City shall provide any effected tribe a reasonable period of time, not less than 14 days, to conduct a site visit and make recommendations to the Project Permittee and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.
- The project Permittee shall implement the tribe's recommendations if a qualified archaeologist, retained by the City and paid for by the project Permittee, reasonably concludes that the tribe's recommendations are reasonable and feasible.
- The project Permittee shall submit a tribal cultural resource monitoring plan to the City that includes all recommendations from the City and any affected tribes that have been reviewed and determined by the qualified archaeologist to be reasonable and feasible. The project Permittee shall not be allowed to recommence ground disturbance activities until this plan is approved by the City.
- If the project Permittee does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist, the project Permittee may request mediation by a mediator agreed to by the Permittee and the City who has the requisite professional qualifications and experience to mediate such a dispute. The project Permittee shall pay any costs associated with the mediation.
- The project Permittee may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by the qualified archaeologist and determined to be reasonable and appropriate.
- Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC) at California State University, Fullerton.

Notwithstanding the above, any information determined to be confidential in nature, by the City Attorney's office, shall be excluded from submission to the SCCIC or the general public under the applicable provisions of the California Public Records Act, California Public Resources Code, and shall comply with the City's AB 52 Confidentiality Protocols.

Administrative Conditions

21. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review or approval, plans, etc., as may be required by the subject conditions, shall be provided to the Planning Department for placement in the subject file.
22. **Code Compliance.** Area, height and use regulations of the zone classification of the subject property shall be complied with, except where herein conditions are more restrictive.
23. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to the Planning Department for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Planning Department for attachment to the file.
24. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public officials, legislation or their successors, designees or amendment to any legislation.
25. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Planning Department and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.
26. **Building Plans.** Page 1 of the grants and all the conditions of approval shall be printed on the building plans submitted to the City Planning Department and the Department of Building and Safety.
27. **Project Plan Modifications.** Any corrections and/or modifications to the Project plans made subsequent to this grant that are deemed necessary by the Department of Building and Safety, Housing Department, or other Agency for Code compliance, and which involve a change in site plan, floor area, parking, building height, yards or setbacks, building separations, or lot coverage, shall require a referral of the revised plans back to the Department of City Planning for additional review and final sign-off prior to the issuance of any building permit in connection with said plans. This process may require additional review and/or action by the appropriate decision-making authority including the Director of Planning, City Planning Commission, Area Planning Commission, or Board.
28. **Indemnification and Reimbursement of Litigation Costs.** The Applicant shall do all of the following:
 - (i) Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.

- (ii) Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- (iii) Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
- (iv) Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
- (v) If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

FINDINGS

A. ENTITLEMENT FINDINGS

Transfer of Floor Area Rights Findings

1. **The increase in Floor Area generated by the proposed Transfer is appropriate with respect to location and access to public transit and other modes of transportation, compatible with other existing and proposed developments and the City's supporting infrastructure, or otherwise appropriate for the long-term development of the Central City.**

The Project would involve the construction of a 50-story mixed-use building with a maximum height of 592 feet. The Project's commercial and residential uses would total 554,927 square feet of floor area, consisting of 580 residential units, 7,499 square feet of ground-floor commercial retail and restaurant uses, parking, and residential open space amenities.

The Project Site is close to several bus transit lines, rail lines, and local shuttle service. Specifically, the Project Site is located approximately two blocks away from the 7th/Metro Center Metro Rail station, which contains the Metro B, D, A, and L Lines and is considered a hub of the regional rail network, connecting passengers to Pasadena, East Los Angeles, Long Beach, Culver City, Santa Monica, Hollywood, Korea Town, and North Hollywood. Metro bus lines, including local and rapid lines, as well as Los Angeles Department of Transportation's (LADOT's) Commuter Express lines, run south along Grand Avenue, with the nearest stop midblock on Grand Avenue between 7th Street and 8th Street. Metro Lines 66 and 81, as well as LADOT's Commuter Express Lines 419, 431, 437 and 534 and Antelope Valley Transit Authority's (AVTA) Commuter Line 785, run west on 8th Street. LADOT's DASH Lines have stops within one block north on 7th Street and within one block west on Flower Street. Also, within two to three blocks of the Project Site are Silver Lines 910 and 950; Foothill Transit Lines SS, 493, 495, 497, 498, 499 and 699; Santa Monica's Big Blue Bus Line R10; Torrance Transit Line 4X; and Montebello Bus Lines 40 and 50. These bus lines connect passengers to the Project Site from various locations across the City and throughout Los Angeles County. Additionally, the Project Site is within walking distance of various employment opportunities in the Downtown area.

The intensity and mix of the residential and commercial uses are compatible with the current density and mix of uses in the downtown Los Angeles area. The Project Site is located in an area which is developed with low- to high-rise, mixed-use buildings. Immediately to the north of the Project Site are two above-grade parking garages, an eight-story parking structure along Hope Street and a four-story parking structure along Grand Avenue. Across Hope Street to the west is a recently renovated mixed-use development (The Bloc) that encompasses an entire city block and includes a 33-story office tower and a 26-story hotel tower, with a nine-story parking and retail podium. To the east of the Project Site, across Grand Avenue is a 112-foot-tall mixed-use residential and commercial development, which includes a ground floor grocery store. To the south of the Project Site are multiple office/commercial buildings and other residential developments, including a high-rise, residential tower (i.e., 8th+Hope) with a height of 246 feet immediately to the southwest at 801 S. Hope Street, a mixed-use high-rise building at 801 S. Grand Avenue with a height of 310 feet, a mixed-use high-rise building 888 S. Hope Street with a height of 370 feet, and three other high-rise residential towers (i.e., Atelier at 801 S. Olive Street with a height of 358 feet; the approved 29-story 845 S. Olive Street Tower; and the 820 S. Olive/825 S. Hill Street Tower with a height of 637 feet) to the southeast on Olive Street between 8th Street and 9th Street. In the Project vicinity, are other high-rise buildings that include commercial and residential uses.

The increase in floor area generated by the proposed transfer will allow the development of a compatible mixed-use project consisting of 580 residential units with varying unit types, and 7,499 square feet of restaurant and retail uses on the Receiver Site. The Project is considered an infill development within a highly urbanized area of the City, which is designated for high-density residential development by the Community Plan. The Project Site is approximately 34,679 square feet and is permitted a maximum 6:1 FAR (or 208,074 square feet of floor area) as restricted by the D Limitation pursuant to Ordinance 164,307 - Subarea 1910. The Applicant has requested a Transfer of 346,853 square feet of floor area from the Donor Site located at 1201 South Figueroa Street (Los Angeles Convention Center), to permit a maximum 9.25:1 FAR (554,927 square feet) on the Receiver Site. The Transfer is appropriate for the long-term development of Central City because it will enable the Project to include residential, retail, and restaurant uses that would complement the other uses in the Financial Core District which contains numerous high-rise office buildings, a variety of commercial opportunities, and nearby entertainment attractions such as the Staples Center, Los Angeles Convention Center, and L.A. Live. The Transfer would allow more residents to live, work, and shop within the Financial Core District, while promoting access to the different amenities and attractions and contributing more retail and restaurant options within the area for residents and visitors. The Transfer would also contribute to the revitalization and modernization of Downtown Los Angeles including job creation and increased City tax revenue generation, maintaining the strong image of downtown as the major center of the metropolitan region, and serving as a linkage and catalyst for other downtown development.

The Project will be easily accessible via public transit, is consistent with both existing and proposed development in the Financial Core District, will be in close proximity to jobs, housing, and a wide range of uses and public services, can be served by the existing utilities, and will support the development planned for the Central City Community Plan Area. Thus, the proposed Transfer will be appropriate for the Receiver Site.

2. The Transfer serves the public interest.

As part of the Transfer Plan, a Public Benefit Payment is required and must serve a public purpose, such as: providing for affordable housing; public open space; historic preservation; recreational; cultural; community and public facilities; job training and outreach programs; affordable childcare; streetscape improvements; public arts programs; homeless services programs; or public transportation improvements. The transfer serves the public interest by facilitating a project that will contribute to the sustained economic vitality of the Central City area, and by contributing a total Public Benefit Payment of \$9,828,451 (based on a formula that includes the transfer of 346,853 square feet) and a TFAR Transfer Payment of \$1,734,265 (based on the transfer of 346,853 square feet from the Convention Center multiplied by \$5), in accordance with LAMC Section 14.5.10. The Public Benefit Payment consists of a 50 percent cash payment of \$4,914,225 to the Public Benefit Payment Trust Fund, and 50 percent of the payment for public benefits to be directly provided by the Applicant, as indicated in the table below. As such, the Transfer of Floor Area serves the public benefit interest as it complies with the specific requirement for the transfer to occur.

| Public Benefit Payment Transfer Plan | |
|--|-------------|
| Total Public Benefit Payment | \$9,828,451 |
| 50% Public Benefit Cash Payment | \$4,914,225 |
| 50% Public Benefit Direct Provision | \$4,914,225 |
| Allocation of Public Benefit Direct Provision | |

| | | |
|--|------|-------------|
| Council District 14 Public Benefits Trust Fund for Affordable Housing | 100% | \$4,914,225 |
| | | |

3. The Transfer is in conformance with the Community Plan and any other relevant policy documents previously adopted by the Commission or the City Council.

The Receiver Site (Project Site) of the Transfer is located within the Central City Community Plan, and has a land use designation of Regional Commercial and is zoned C2-4D. The Community Plan describes the Transfer of Floor Area Rights (TFAR) as follows (Page III-19): “The transfer of floor area between and among sites is an important tool for Downtown to direct growth to areas that can best accommodate increased density and from sites that contain special uses worth preserving or encouraging.”

The Site is subject to Development D Limitation, contained in Subarea 1910 of Ordinance No. 164,307, which limits the FAR of a building to 6:1, unless a transfer of floor area is approved. The transfer will re-allocate 346,853 square feet of unused, allowable floor area from the Donor Site (Los Angeles Convention Center) and permit a maximum FAR of 9.25:1 on the Receiver Site, which will be consistent with the Community Plan and other relevant policy documents, which provides for a transfer of floor area up to a 13:1 FAR.

The Transfer will permit the development of the Receiver Site with a Project that is consistent with the objectives and policies of the Central City Community Plan, including:

Objective 1-2: To increase the range of housing choices available to Downtown employees and residents.

Objective 2-1: To improve Central City’s competitiveness as a location for offices, business, retail, and industry.

Policy 2-1.2: To maintain a safe, clean, attractive, and lively environment.

Objective 2-4: To encourage a mix of uses which create an active, 24-hour downtown environment for current residents and which would also foster increased tourism.

Policy 2-4.1: Promote night life activity by encouraging restaurants, pubs, night clubs small theaters, and other specialty uses to reinforce existing pockets of activity.

The Project will provide up to 580 residential units, including three-bedroom units, two-bedroom units, one-bedroom units, and studio units on a site located in the Financial Core District of the Community Plan. In addition, the project would provide 7,499 square feet of ground-floor commercial space, consisting of restaurants and retail stores fronting 8th Street. The Project’s supply of residential units and restaurant and retail uses aligns with the Community Plan’s vision for the Financial Core District, achieving Objective 1-2. The project will bridge the gap between housing and employment by providing homes for the increasing numbers of downtown workers, achieving Objective 2-1 and Objective 2-4.

In addition, the project site is located near the Los Angeles Sports and Entertainment District (LASED) (approximately 0.4 miles to the southwest) and the Convention Center (approximately 0.7 miles southwest) and will be consistent with the Central City Community Plan’s vision for the Financial Core District as a Convention Center/Arena Sphere of Influence

by developing the site with a mix of uses that complement the entertainment and commercial uses within the LASED and the Convention Center. The proximity of the project site to LASED and the Convention Center will locate patrons and residents within walking distance to various businesses, conventions, trade shows, and tourist destinations and provide a linkage to the other surrounding Central City Community Plan Districts.

The project will provide commercial spaces allowing for restaurant and retail uses, helping to create an active, 24-hour downtown that will serve the residents and employees of the Financial Core District, as well as visitors. The addition of new uses, as well as up to 580 residential units in the Financial Core District supports the existing retail base by strengthening current and creating new residential demand for goods and services, as well as creating synergy between different commercial uses in the Central City Community Plan area. The project will also improve the streetscape along 8th Street, Hope Street, and Grand Avenue with street lighting, trees, landscaping, and bicycle parking, enhancing the overall pedestrian environment.

Therefore, the Project is consistent with the applicable Central City Community Plan Objectives and Policies.

Zone Variance Findings

In order for a variance to be granted, all five of the legally mandated findings delineated in City Charter Section 562 and Los Angeles Municipal Code Section 12.27 must be made in the affirmative. Following (highlighted) is a delineation of the findings and the application of the relevant facts of the case to same:

4. That the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations.

The Project site consists of a 34,679 square-foot (0.80-acres) property which fronts 8th Street to the south, Hope Street to the west, Grand Avenue to the east, and a shared lot line on the north side. The Project involves the construction of a 50-story mixed use development comprised of 580 residential dwelling units and up to 7,499 square feet of ground floor commercial uses on a 34,679 square foot site. The Project would provide vehicular parking in three subterranean levels and eight above-grade levels, and a total of 640 parking spaces with a mixture of standard and compact spaces, with code required electrical vehicle charging spaces. The building will have a maximum height of 592 feet, and a floor area ratio of 9.25:1 (554,927 square feet).

The Project has requested a Variance to deviate from the required driveway aisle width of 27 feet, 4 inches for standard parking stalls and 25 feet, 4 inches for compact parking stalls, and to provide a 24 feet drive aisle for all parking areas. Additionally, the Project is requesting a deviation from the requirement to provide a 10-inch clear space from parking stall obstructions. The Project proposes ingress/egress from both Hope Street and Grand Avenue with a circular drop-off area on the ground floor and access to all parking garages and no driveways along 8th Street. The Project was designed with no driveways on 8th Street to promote a high-quality pedestrian environment at street level, with active ground floor uses that wrap around the building's corners. Additionally, the Project has been conditioned to require parking stalls to be designed in compliance with LAMC 12.21 A.

The driveway aisle and 10-inch clear space deviation is imperative to provide the necessary parking for the mixed-use project that would contribute to the supply of market-rate housing

and employment within the Financial Core District with the Central City Community Plan of the Downtown Area.

The Project as proposed also supports the City's housing goals and provides economic benefits in employment and tax revenue. Therefore, the Project as proposed would not result in practical difficulties of unnecessary hardship inconsistent with the general purposes and intent of the underlining zone.

5. That there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity.

The Project is an infill development within an urban setting, and is zoned C2. The C2 zone requires a minimum lot size of 5,000 square feet and a minimum lot width of 50 feet. The existing lot dimensions are 107 feet along Hope Street and 100 feet along Grand Avenue, and 336 feet along 8th Street. This is a relatively wide property compared to its depth compared to other existing high-rise, mixed-use projects in the vicinity. In order to achieve an efficient layout of parking spaces and circulation, the building is oriented lengthwise along 8th Street. As a result, the parking garage is narrow, which limits the amount of parking that can be provided on each level, as well as constraining the drive aisle width and turning radii between the parking stalls. The Project is required pursuant to the Downtown Design Guide to provide 75 percent of its ground floor frontage along 8th Street with active uses, and was designed with no driveways on 8th Street in order to enhance the pedestrian realm by eliminating vehicular and pedestrian conflicts. Therefore, site access and vehicular ramps could only be located along the rear property line, with one driveway on Hope Street and one on Grand Avenue. This is an additional circumstance that limits the configuration of vehicular circulation in the garage.

The Downtown Street Standards require a 17-foot-wide sidewalk with a 7-foot-wide average sidewalk easement along Grand Avenue, a 15-foot-wide sidewalk with a 3-foot-wide average sidewalk easement along Hope Street, and a 12-foot-wide sidewalk with a 5-foot-wide sidewalk easement. While sidewalk and easement widths are required for other downtown projects, the subject property has three street frontages which, in combination with the lot configuration and driveway access issues mentioned above, represents special circumstances that do not apply to other properties in the vicinity.

Therefore, the reduced drive aisle width and reduction in clearance space adjacent to an obstruction allow for a building configuration that is suitable for the lot size shape, and internal circulation. As such, there are special circumstances related to the size, shape, and location of the lot that do not generally apply to other properties in the vicinity. Therefore, the variance requests are necessary to develop the subject site in a manner consistent with the general plan, community plan, and nearby development.

6. That the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question.

The existing lot dimensions are 107 feet along Hope Street and 100 feet along Grand Avenue, and 336 feet along 8th Street. This is a relatively wide property compared to its narrow depth compared to other existing high-rise, mixed-use projects in the vicinity. In order to achieve an efficient layout of parking spaces and circulation, the building is oriented lengthwise along 8th Street. As a result, the design of the parking garage is narrow, which limits the amount of

parking that can be provided on each level, as well as constraining the drive aisle width and turning radii between the parking stalls. The Project is required pursuant to the Downtown Design Guide to provide 75 percent of its ground floor frontage along 8th Street with active uses, and was designed with no driveways on 8th Street in order to enhance the pedestrian realm by eliminating vehicular and pedestrian conflicts. Therefore, site access and vehicular ramps could only be located along the rear property line, with one driveway on Hope Street and one on Grand Avenue.

The Downtown Street Standards require a 17-foot-wide sidewalk with a 7-foot-wide average sidewalk easement along Grand Avenue, a 15-foot-wide sidewalk with a 3-foot-wide average sidewalk easement along Hope Street, and a 12-foot-wide sidewalk with a 5-foot-wide sidewalk easement. While sidewalk and easement widths are required for other downtown projects, the subject property has three street frontages which, in combination with the lot configuration issues mentioned above, represents an unnecessary hardship. Therefore, the granting of the variance is necessary for the preservation and enjoyment of a substantial property right and use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the subject property.

7. That the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located.

The Project involves the construction of a 50-story mixed use development comprised of 580 residential dwelling units and up to 7,499 square feet of ground floor commercial uses on a 34,679 square foot site. The Project would provide vehicular parking in three subterranean levels and eight above-grade levels, and a total of 640 parking spaces with a mixture of standard and compact spaces. The Project will improve existing site conditions by redeveloping an underutilized lot, and will enhance the public welfare and surrounding neighborhood by providing wider sidewalks and other pedestrian improvements, and by eliminating the existing driveways along 8th Street, consolidating vehicular access to the rear of the site. The variance requests to reduce the drive aisle width and to provide an additional 10-inch clear space to parking stall widths adjacent to an obstruction would be internal to the Project's vehicular parking garage, and therefore, do not constitute an unsafe or hazardous environment for surrounding properties or other properties in the vicinity. The conditions and circumstances which create the need for the variance are unique to the subject property, as is the method of relief from those circumstances. Therefore, the reduced drive aisle width and relief from clearance requirement will not affect other properties or property rights in the vicinity. The Project as conditioned will not be materially detrimental to the public welfare or injurious to the property or improvements in the same zone and vicinity in which the property is located.

8. That the granting of the variance will not adversely affect any element of the General Plan.

The Central City Community Plan designates the site for Regional Commercial land uses and allows for a corresponding zone of C2-4D. The Project Site's C2 zone permits an array of land uses including office, hotel, residential and commercial uses. The Project Site's Height District No. 4 has no height limit and permits a FAR of 13:1. However, the "D" limitation restricts the FAR to 6:1 unless a Transfer of Floor Area (TFAR) is approved (Ordinance No. 164,307). The Project includes a TFAR entitlement request which would allow an FAR of 9.25:1. Therefore, the Project's proposed maximum FAR would result in 554,927 square feet of floor area. There is no limit on the maximum number of dwelling units and the Greater Downtown Housing Incentive Area (ZI 2385) allows for zero setbacks along the front, side and rear property lines.

The Downtown Design Guide and Downtown Street Standards regulate street frontage standards, pedestrian walkways, and roadway improvement requirements, among other design regulations.

A stated goal of the Central City Community Plan is the continued economic and social viability of Central City which “depends on the contributions of a stable population and vibrant, cohesive neighborhoods. Therefore, a primary objective of the Central city Plan is to facilitate the expansion of housing choices in order to attract new and economically and ethnically diverse households.” Furthermore, the Community Plan includes the following objectives and policies which the proposed project advances:

Objective 1-2: To increase the range of housing choices available to Downtown employees and residents.

Objective 1-3: To foster residential development which can accommodate a full range of incomes

Policy 1-3.1: Encourage a cluster neighborhood design comprised of housing and services.

The use of the property for a mixed-use residential and commercial purposes is consistent with the Regional Commercial land use designation and corresponding C2 zone and supports Objective 1-2, Objective 1-3 and Policy 1-3.1 of the Central City Community Plan. The variance requests to reduce the drive aisle widths and to allow relief from 10-inch clear space requirements do not change the allowable uses permitted by the land use designation and zone and are instead necessary to provide parking and internal circulation for the Project. In conjunction with other entitlement requests, the variance requests for the Project would be in substantial conformance with the General Plan and the Central City Community Plan. Granting the variance would not adversely affect any element of the General Plan and granting of the variances will not adversely affect any element of the General Plan.

Project Permit Adjustment (Director’s Determination for Alternative Design) Findings

- 9. There are special circumstances applicable to the project or project site which make the strict application of the urban design regulation(s) impractical.**

Ground Floor Treatment

Pursuant to Section 4 of the Downtown Design Guide, Hope Street and Grand Avenue are designated as Retail Street and requires that at least 75 percent of the Project’s street frontage, excluding access to parking, must be designed to accommodate active uses such as retail, professional office, or live work uses building lobbies, recreation rooms, common areas, gathering or assembly spaces cultural facilities, and courtyards with direct access to each of these uses from the sidewalk. The Downtown Design Guide also requires where retail streets intersect other streets, the ground floor retail space should wrap the corner onto the intersecting streets, excluding driveways used for vehicular ingress and egress.

The Project includes an entitlement request for a Project Permit Adjustment for an alternative design to the ground floor requirements of the Downtown Design Guide along 8th Street, Grand Avenue and Hope Street. Excluding vehicular driveways, the 8th Street building frontage is approximately 320.9 feet, and proposes 216.9 feet, or approximately 67 percent of the frontage length, of active uses (commercial and residential lobby areas) and 104 feet,

33 percent of non-active uses (stairwell and drop off and outdoor lobby area). Grand Avenue's building street frontage is 71.1 feet, and proposes 25 feet, or approximately 35 percent of the frontage length, of active uses (commercial uses) and 46.1 feet of non-active uses (mechanical equipment rooms and stairwell); and Hope Street's building frontage is 69.1 feet, and proposes 32.5 feet, or 47 percent, of active uses (commercial) and 36.6 feet of non-active use (mechanical equipment room)

The Project Site's narrow average lot width of 107.5 feet and the 34,679 square-foot lot size and the need to place required mechanical areas and stairways constrain the Project's ability to meet the 75 percent active street frontage requirement. Nonetheless, to enhance the ground floor facades facing the street and Porte cochere/drop off area along 8th Street, the ground floor mechanical utility rooms and code required stairwell exit areas were design to complement the streetscape façade of the active uses along each street. The building's street facing elevations have been designed to integrate architectural elements such as finished ceramic tile and decorative woven metal screen. These design features complement the building's street facing facade by eliminating blank walls and providing an attractive visual relief to support the pedestrian realm. In addition, retail space would be visible at and wrap around the corners of 8th Street and Grand Avenue and 8th Street and Hope Street, in accordance goals established by the Downtown Design Guide. This would further support the Downtown Design Guide's intent to enhance street level interest and promote pedestrian traffic.

Therefore, the lot width, lot dimension and building constraints discussed above represent special circumstances applicable to the Project site which make the strict application of the urban design regulations of the Downtown Design Guide impractical. The proposed ground floor treatment alternative design of the Project achieves the overall objectives of the Downtown Design Guide requirements to promote design excellence and creative infill development solutions.

Sidewalk Easement Projections.

The Downtown Street Standards requires a 12-foot sidewalk and 5-foot sidewalk easement along 8th Street, a 15-foot sidewalk and 3-foot average sidewalk easement along Hope Street, and a 17-foot sidewalk and 7-foot average sidewalk easement along Grand Avenue. Pursuant to Section 3 of the Downtown Design Guide, buildings may project horizontally up to a maximum of 5 feet over the required sidewalk easement at a minimum vertical height of 40 feet above the sidewalk to accommodate street trees. The Project includes an entitlement request for a Project Permit Adjustment for an alternative design to allow building and balcony projections of up to 9 feet into the 3-foot average sidewalk easement area (variable easement from 1.5 to 9 feet in width along Hope Street), in lieu of a maximum 5 foot projection into a sidewalk easement; to allow building projections of up to 19 feet into the 7-foot average sidewalk easement (variable easement from 3.5 to 21 feet in width) along Grand Avenue, in lieu of a maximum 5-foot projection; and to allow projections to begin at an elevation of 25 feet above the sidewalk along Hope Street and Grand Avenue, in lieu of a minimum of 40 feet above the sidewalk.

The Project would otherwise comply with the Downtown Design Guide projection requirements along 8th Street. The balconies along 8th Street, would not project into the sidewalk easement at a height lower than 40 feet below the sidewalk. However, due to the site's narrow average lot width of 107.5 along Hope Street and Grand Avenue, the building

must maximize its dimensions along all facades, and therefore, requires the building to project into the sidewalk easement along Hope Street and Grand Avenue. To accommodate the Project's parking demand and parking maneuverability and dimension requirements within the building the alternative design is requested. Hope Street's building façade includes parking uses. On Grand Avenue, the building is designed so that the façade is wrapped with active uses, with commercial on the ground floor, residential leasing offices on the second floor, and residential units beginning on the third floor, which is where the building projection into the sidewalk easement would occur. This design places residential uses near the sidewalk, which fosters pedestrian safety and enhances the public realm. Since the sidewalk along Hope Street and Grand Avenue is 15 feet and 17 feet wide, respectively, there is sufficient horizontal width to accommodate pedestrian walkability, as well as providing adequate space for street tree canopy growth. This alternative design would advance the Downtown Design Guide's purpose to provide sidewalks that are walkable and accommodate a variety of uses.

Therefore, the lot dimension and building constraints discussed above represent special circumstances applicable to the project site which make the strict application of the Downtown Design Guide regulations impractical. Through the proposed alternative design, the Project nonetheless achieves the overall objectives of the Downtown Design Guide, Urban Design requirements to promote design excellence and creative infill development solutions.

10. In granting the request, the Director has imposed project requirements and/or decided that the proposed project will substantially comply with all applicable specific plan regulations.

The alternative design to allow building and balcony projections of up to nine feet into the three-foot average sidewalk easement area (variable easement from 1.5 to nine feet in width along Hope Street), in lieu of a maximum five-foot projection into a sidewalk easement; to allow building projections of up to 19 feet into the seven-foot average sidewalk easement (variable easement from 3.5 to 21 feet in width) along Grand Avenue, in lieu of a maximum five-foot projection; and to allow projections to begin at an elevation of 25 feet above the sidewalk along Hope Street and Grand Avenue, in lieu of a minimum of 40 feet above the sidewalk, and the alternative design to allow ground floor active uses to deviate from the 75 percent ground floor treatment required in the Downtown Design Guide would continue to advance the Downtown Design Guide's purpose to provide sidewalks that are walkable and accommodate a variety of uses. The Project would enhance the pedestrian experience along the street frontages and continue to provide required sidewalk widths and sidewalk easements along the streets abutting the Project. The Project would also meet the ground floor treatment requirements by providing storefront entries along the sidewalks. Additionally, the ground floor treatment along the streets which include glass and aluminum store front systems, decorative woven metal screen, ceramic tile advances the Downtown Design Guide vision of avoiding blank walls. The project, as proposed and conditioned, substantially complies with the provisions of the Downtown Design Guide with regard sidewalk easement projections along Grand Avenue, and ground floor requirements for active uses. Therefore, the Project will substantially comply with the applicable Downtown Design Guide regulations.

11. In granting the request, the Director has considered and found no detrimental effects of the proposed project on surrounding properties and public rights-of-way.

The Project was designed to adhere to the development requirements of the Downtown Design Guide. Due to the narrow lot width and lot size constrains the Project applicant

proposes an alternative design approach to sidewalk easement projections along Hope Street and Grand Avenue, and an alternative design approach for ground floor active use requirements along 8th Street, Grand Avenue and Hope Street. These deviations are appropriate to develop the proposed mix-use building consisting of 580 residential units and ground floor commercial, retail and restaurant uses. The alternative design to the sidewalk easement projections and ground floor treatment frontage requirements is appropriate in that it substantially complies with the provisions of the Downtown Design Guide with regard sidewalk easement projections along Grand Avenue, and ground floor requirements for active uses and would not pose any detrimental effects on surrounding properties and public-rights-of way.

The Project will improve existing site conditions and the surrounding neighborhood, as well as enhancing the public welfare through the provision of wider sidewalks, street trees, bicycle infrastructure, security lighting, landscaping, and active uses along a significant portion of the building's ground floor.

The Project's contemporary building design and architectural elements including prefinished aluminum frame doors and windows, vision and spandrel glass, ceramic tile, and decorative metal woven screen, the Project's alternative design to sidewalk easement projections along Grand Avenue and Hope Street and alternative design to ground floor treatment along 8th Street, Grand Avenue and Hope Street would be compatible with the neighborhood character of the surrounding district.

The Project will enhance the surrounding neighborhood by redeveloping a site currently used for parking with a mixed-use development that provides residential housing with ground floor commercial, retail, restaurant uses, and necessary upgrades to the existing streetscape. Finally, the Environmental Impact Report prepared for the Project found that the project would have less than significant impacts with incorporated mitigation for most impact categories, except for temporary construction-related noise and vibration impacts. As these impacts are temporary in nature, the Project would not have a permanent detrimental effect on surrounding properties. The benefits of the Project have been balanced against the significant and unavoidable impacts, and the City has found that the Project's benefits outweigh and override the significant unavoidable impacts relating to noise and vibration. Therefore, in consideration of the above, the project would not have detrimental effects on surrounding properties and public rights-of-way.

12. The project incorporates mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.

The Environmental Impact Report (EIR) determined that the Project has less than significant impact with mitigation measures for Cultural Resources (Archeological Resources), Geology and Soils (Paleontological Resources), and Noise (On-Site construction Vibration – Building Damage). The EIR identified feasible mitigation measures to avoid or substantially reduce the environmental impacts in these areas to a less than significant level. Based on the information and analysis set forth in the EIR, the project would not have any significant environmental impacts in these areas, as long as all identified feasible mitigation measures are incorporated into the project.

The EIR determined that the environmental impacts for Noise (Construction; Groundborne Noise and Vibration Human Annoyance - Construction) are significant and unavoidable. In order to approve the Project with significant unavoidable impacts, the City has adopted a Statement of Overriding Considerations. The City recognized that significant and unavoidable impacts would result from implementation of the project. Having (i) adopted all feasible

mitigation measures, (ii) rejected as infeasible the alternatives to the project, (iii) recognized all significant, unavoidable impacts, and (iv) balanced the benefits of the Project against the Project's significant and unavoidable impacts, the City found that each of the Project's benefits outweigh and override the significant unavoidable impacts relating to noise and vibration identified above.

Mitigation measures identified for the project are described and included in the certified EIR, and the Mitigation Monitoring Program (MMP). The City found that the impacts of the project have been mitigated to the extent feasible by the mitigation measures identified in the MMP. Each of the mitigation measures identified in the MMP have been incorporated into the Project as conditions of approval. Therefore, the Project incorporates mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible.

Director's Decision Findings

13. That the open space provided conforms with the objectives of LAMC Section 12.21 G.

Pursuant to LAMC Section 12.21 G.3, the Project is required to plant one tree for every four dwelling units proposed. The Project proposes 580 residential dwelling units, which would require a total of 145 on-site trees. The Applicant requests a Director's Decision to permit the planting of 79 on-site trees, in lieu of the otherwise required 145 on-site trees, in conjunction with the payment of an in-lieu fee for the remaining 66 required on-site trees, in accordance with LAMC Section 62.177(d). The property lies within the Central City Community Plan and the Greater Downtown Incentive Area (ZI No. 2385), in accordance with the Greater Downtown Incentive Area no setbacks are required. However, the Downtown Street Design Guide requires a 3-foot average sidewalk easement along Hope Street, a 7-foot average sidewalk easement along Grand Avenue and a 5-foot sidewalk easement along 8th Street. The Downtown Design Guide permits up to 5 feet of building and balcony projections into these easements at 40 feet above grade. The Project's limited ground floor area available for planting trees, the 34,679 square foot lot size, and the placement of the structure within and abutting the required sidewalk easement areas would limit ground floor areas available for planting trees. In accordance with LAMC Section 62.177(d), and as conditioned, the Applicant requests to pay an in-lieu fee of \$2,612 for each of the 66 trees that are not planted on-site, for a total of \$172,392. The Project will provide the required common and private open space therefore meeting the objectives of the LAMC Section 12.21 G.

14. That the proposed project complies with the total usable open space requirements.

Pursuant to LAMC Section 12.21 G.3, the Project is required to provide 63,600 square feet of usable open space and 25% of the common open space area is required to be landscaped, which the Project complies with. The Project is also required to plant one tree for every four dwelling units proposed. The Project proposes 580 residential dwelling units, which would require a total of 145 on-site trees.

The Project would provide 13,140 square feet of indoor open space, 15,358 square feet of outdoor open space, and 8,596 square feet of outdoor/covered space, and 28,100 square feet of private open space. Pursuant to ZA-2021-7053-ZAI the 8,596 square feet of covered exterior open space would count towards the common open space requirements per LAMC Section 12.21 G.3. The Project would also provide private balconies for most of the dwelling units, which would comprise a total of 28,100 square feet of private open space. Therefore, the Project would provide 65,193 square feet of open space, which would exceed the 63,600

square feet of open space required for the Project. Additionally, providing fewer code required trees would not reduce the total usable open space area and therefore the project would continue to meet the usable open space requirements.

Site Plan Review Findings

15. The project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan.

Framework Element. The General Plan Framework sets forth a citywide comprehensive long-range growth strategy and defines citywide policies regarding such issues as land use, housing, urban form, neighborhood design, open space, economic development, transportation, infrastructure, and public services. The Framework's Long-Range Diagram identifies the Project Site as located within the Downtown Center, an international center for finance and trade, the largest government center in the region, and the location for major cultural and entertainment facilities, hotels, professional offices, corporate headquarters, financial institutions, high-rise residential towers, regional transportation, and Convention Center facilities. The Downtown Center is generally characterized by high-rise buildings and floor area ratios up to 13:1.

The 8th, Grand and Hope Project involves the construction of a 50-story mixed use building with a maximum height of 592 feet above grade. The Project's commercial and residential development would total 554,927 square feet of floor area, consisting of 580 residential units, 7,499 square feet of ground-floor commercial retail and restaurant uses, and approximately 65,193 square feet of residential open space amenities. The residential uses would be located on levels 3 through 49 and vehicle parking would be provided within three subterranean levels and eight above-grade levels.

The Project satisfies the following objectives and policies of the Land Use Chapter of the General Plan Framework:

Objective 3.4: Encourage new multi-family residential, retail commercial, and office development in the City's neighborhood districts, community, regional, and downtown centers as well as along primary transit corridors/boulevards, while at the same time conserving existing neighborhoods and related districts.

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.

Objective 3.15: Focus mixed commercial/residential uses, neighborhood-oriented retail, employment opportunities, and civic and quasi-public uses around urban transit stations, while protecting and preserving surrounding low-density neighborhoods from the encroachment of incompatible land uses.

Policy 3.15.3: Increase the density generally within one quarter mile of transit stations, determining appropriate locations based on consideration of the surrounding land use characteristics to improve their viability as new transit routes and stations are funded in accordance with Policy.

Objective 3.16: Accommodate land uses, locate and design buildings, and implement streetscape amenities that enhance pedestrian activity.

The Project will provide new multi-family housing, commercial retail, and restaurants in the City's Downtown Center, as well as providing a public benefit in the way of a contribution towards affordable housing, including to the Council District's Affordable Housing Trust Fund. The Project will support Objective 3.4 and Policy 3.4.1 by providing a high density of residential units and ground-floor commercial/retail/restaurant uses, within a neighborhood that is in close proximity to many transit opportunities. The Project will support Objective 3.15 and Policy 3.15.3 as the site is designated as a Transit Priority Area, and is well-served by public transit, including both rail and bus service. The site is located two blocks from the entrance to the 7th/Metro Center Rail Station, which provides rail service to the Metro A, B, D, and L Lines which is considered a hub of the regional rail network. Furthermore, the project would enhance the pedestrian activity of the area through the provision of ground floor commercial uses and along 8th Street, Hope Street and Grand Avenue, and will provide streetscape improvements, supporting Objective 3.16. At the corner of Hope Street and 8th Street, the Project will include areas for outdoor seating. In addition, there will be no driveway curb cuts along 8th Street and the sidewalks around the project site would be improved with street trees, landscaping, pedestrian lighting, and bicycle racks. The Project's commercial and residential uses, amenities, and proximity to public transit will encourage pedestrian activity and provide an incentive for residents not to use their cars for commuting errands, dining, entertainment, and employment, thereby reducing vehicle trips.

The Project advances numerous goals and policies contained in the Framework Element's Economic Development chapter, including the following:

Goal 7A: A vibrant economically revitalized City.

Goal 7D: A City able to attract and maintain new land uses and businesses.

Goal 7G: A range of housing opportunities in the City.

The Project would redevelop the site by replacing an existing surface parking lot and four-story parking structure with a mixed-use high-rise building, which includes residential units and commercial, retail, and restaurant uses. The Project would provide for more housing opportunities in the area with a mixture of unit types, while introducing new commercial, retail and restaurant opportunities, which will serve the residents of the neighborhood. The mix of uses and additional residents will contribute to the Downtown Center, further supporting nearby businesses and job centers with new residents and shopping and dining opportunities. These components of the Project will contribute to employment opportunities and economic growth, strengthen the commercial sector, and contribute to a balance of land uses that meets the needs of residents.

Housing Element. The City's Housing Element for 2021-2029 was adopted by City Council on June 14, 2022. The Proposed Project would meet the objectives and policies set forth in the Housing Element as described below.

Policy 1.1.2: Plan for appropriate land use designations and density to accommodate an ample supply of housing units by type, cost, and size within the City to meet housing needs, according to Citywide Housing Priorities and the City's General Plan.

Objective 1.2: *Facilitate the production of housing, especially projects that include Affordable Housing and/or meet Citywide Housing Priorities.*

Policy 1.2.2: *Facilitate the construction of a range of different housing types that addresses the particular needs of the city's diverse households.*

Policy 3.1.2: *Promote new development that furthers Citywide Housing Priorities in balance with the existing architectural and cultural context.*

Policy 3.1.3: *Develop and implement design standards that promote quality residential development.*

Objective 3.2: *Promote environmentally sustainable buildings and land use patterns that support a mix of uses, housing for various income levels and provide access to jobs, amenities, services and transportation options.*

Policy 3.2.2: *Promote new multi-family housing, particularly Affordable and mixed-income housing, in areas near transit, jobs and Higher Opportunity Areas, in order to facilitate a better jobs-housing balance, help shorten commutes, and reduce greenhouse gas emissions.*

Policy 3.2.5: *Promote and facilitate the reduction of water, energy, carbon and waste consumption in new and existing housing.*

The Project will further key Housing Element policies and objectives by providing additional supply of housing units by type, cost, and size to meet housing needs and Citywide housing priorities noted in Policy 1.1.2, Objective 1.2, Policy 1.2.2. The Project would provide 580 residential units which include a unit mix consisting of three-bedroom units, two-bedroom units, one-bedroom units, and studio units. The Project also supports Objective 3.2 and Policy 3.2.2 of supporting a mix of units that will accommodate a mixture of incomes, and uses that provide access to jobs, amenities, services and transportation options. The Project would construct a mixed-use building that is close to multiple transit options and include a total of 27 short-term and 224 long term bicycle parking spaces to support multi-modal transportation options for the residential and commercial uses. Additionally, the Project is located in the transit-rich Downtown Center, that is served by many local and rapid bus lines and train lines. By providing residential units, restaurants, and retail at the site, the Project will encourage walking, active transportation, and public transit usage, thereby reducing vehicular trips and overall vehicle miles traveled. The Project would also support Policy 3.1.3 of promoting quality development by the Project's use of quality materials use which consist of utilizing a mix of glass and aluminum storefront system, ceramic tile, aluminum panels, pre-finished aluminum frame and cap rail with clear continuous glass, and decorative woven metal screen to provide for a varied texture and transparent for the retail uses and residential lobby area. The podiums also utilize pre-finished aluminum frame and continuous clear, opaque and low e coating glass and partial vision glass with fritted inner layer. The ceramic tile at the ground level would include a glazed finish to soften the façade of the building and create a warm and inviting experience for visitors and residents. Lastly, the Project supports Policy 3.2., the building would incorporate sustainability features such as Energy Star-Labeled products by incorporating Project Design Feature GHG-PDF-1. Additionally, the Project's Project Design Features GHG-PDF-1 and WAT-PDF-1 would incorporate water conservation features, such as high-efficiency toilets with flush volume of 1.1 gallon of water per flush or less, showerheads with a flow rate of 1.5 gallons per minute or less, and drip/subsurface irrigation.

Required RHNA Finding

The Project is located on a parcel identified in the Inventory of Sites prepared for the 2021-2029 Housing Element, which was anticipated to accommodate 1.59 lower-income units. The Project includes zero lower-income units. Therefore, the Project would result in fewer units by income category than those identified in the Housing Element.

The Project would meet the objectives and policies set forth in the Housing Element as described above.

Pursuant to Government Code (GC) Section 65863(b)(2), the City finds that while the proposed project would result in fewer units by income category than those identified in the Inventory of Sites prepared for the 2021-2029 Housing Element, the remaining sites identified in the Housing Element of the General Plan are adequate to meet the requirements of GC Section 65583.2 and to accommodate the jurisdiction's share of the regional housing need pursuant to GC Section 65584. As of April 1, 2023, the City's remaining RHNA Allocation for the 2021-2029 Planning period is as follows: 112,281 Very Low-Income Units, 67,086 Low Income Units, 74,964 Moderate Income Units, and 168,892 Above-Moderate Income Units. As of April 1, 2023, the City has a remaining capacity of 330,056 Very Low-Income Units, 332,096 Low Income Units, 63,107 Moderate Income Units, and 907,466 Above-Moderate Income Units. The excess Above-Moderate Income Unit capacity may accommodate both Moderate and Above-Moderate Unity RHNA Allocations. Therefore, the City finds that there are adequate remaining sites in the Housing Element to accommodate the remaining RHNA Allocation for the planning period, and in compliance with the requirements of GC 65583.2.

Plan for a Healthy Los Angeles. The Project meets the policies set forth in the General Plan's Health and Wellness Element.

Policy 5.1: Reduce air pollution from stationary and mobile sources; protect human health and welfare and promote improved respiratory health.

Policy 5.7: Promote land use policies that reduce per capita greenhouse gas emissions, result in improved air quality and decreased air pollution, especially for children, seniors, and others susceptible to respiratory diseases.

Air Quality Element. The Project meets the policies set forth in the General Plan's Air Quality Element.

Policy 4.2.3: Ensure that new development is compatible with pedestrians, bicycles, transit, and alternative fuel vehicles.

Policy 5.1.2: Effect a reduction in energy consumption and shift to non-polluting sources of energy in its buildings and operations

Policy 5.1 and 5.7 of the Plan for a Healthy LA, the Health and Wellness Element, and Policy 4.2.3 of the Air Quality Element are policy initiatives related to the reduction of air pollution and greenhouse gases. As mentioned above, the Project includes features described in Project Design Feature AIR-PDF-1, the Project would include where power poles are available, electricity from power poles and/or solar powered generators rather than temporary diesel or gasoline generators will be used during construction. Additionally, AIR-PDF-2 notes that the Project will not include the use of natural gas-fueled fireplaces in the proposed residential units. The Project would include EV parking and charging stations in accordance with LAMC requirements to encourage reduction in transportation fuel usage. Taken together, the conditions would provide for the public welfare and public necessity by reducing the level

of pollution and greenhouse gas emissions to the benefit of the neighborhood and the City. As conditioned, the Project will be consistent with the aforementioned policies, as well as Policy 5.1.2 of the Air Quality Element, by ensuring that future developments are compatible with alternative fuel vehicles and shift to non-polluting sources of energy. EV project features are also good zoning practices because they provide a convenient service amenity to the occupants or visitors who use electric vehicles and utilize electricity on site for other functions. In addition, the Project promotes usage of public transportation and active transportation to support California's greenhouse gas emission reduction targets. As such, the Project improves habitability for future residents of the Project and minimizes impacts on neighboring properties.

Mobility Plan 2035. The project also meets the policies set forth in the General Plan's Mobility Element.

Policy 2.3: Recognize walking as a component of every trip, and ensure high-quality pedestrian access in all site planning and public right-of-way modifications to provide a safe and comfortable walking environment.

Policy 3.3: Promote equitable land use decisions that result in fewer vehicle trips by providing greater proximity and access to jobs, destinations, and other neighborhood services.

Policy 3.8: Provide bicyclists with convenient, secure and well-maintained bicycle parking facilities.

Policy 5.4: Continue to encourage the adoption of low and zero emission fuel sources, new mobility technologies, and supporting infrastructure.

The Project would provide a combination of ground floor commercial, retail, and restaurant uses and a residential lobby area while improving the streetscape conditions along 8th Street, Grand Avenue, and Hope Street, with trees, landscaping, street lighting, and bicycle racks. The Project is also required to provide full width concrete sidewalks as identified by the Downtown Street Standards, and any upgrades necessary to comply with Americans with Disabilities Act (ADA) requirements. Pedestrian access to the commercial components of the Project would be provided along all street frontages, with an outdoor seating area at the corner of 8th Street and Hope Street, while access to the residential component of the project is provided via one entrance on 8th Street and one entrance on Grand Avenue. The Project also supports Policy 3.3 as it is designated in a Transit Priority Area, and is well-served by public transit, including both rail and bus service. The site is located two blocks from the entrance to the 7th/Metro Center Metro Rail Station, which provides rail service to the Metro B, D, A and L Lines and is considered a hub of the regional rail network. In addition, the Project supports Policy 3.8 as it provides short-term bicycle parking on Grand Avenue and Hope Street and long-term bicycle parking located on the subterranean level. As mentioned previously, the Project would include EV parking and charging stations in accordance with LAMC requirements to encourage reduction in transportation fuel usage.

Central City Community Plan. The Central City Community Plan, a part of the Land Use Element of the City's General Plan, states the following objectives and policies that are relevant to the Project:

Objective 1-2: To increase the range of housing choices available to Downtown employees and residents.

Objective 1-3: To increase the range of housing choices available to Downtown employees and residents.

Objective 2-1: To improve Central City's competitiveness as a location for offices, business, retail, and industry.

Policy 2-1.2: To maintain a safe, clean, attractive, and lively environment.

Objective 2-4: To encourage a mix of uses which create an active, 24-hour downtown environment for current residents and which would also foster increased tourism.

Policy 2-4.1: Promote night life activity by encouraging restaurants, pubs, night clubs, small theaters, and other specialty uses to reinforce existing pockets of activity.

The Project would provide up to 580 residential units, including a mix of studio, one-bedroom, two-bedroom, and three-bedroom units on a site located in the Financial Core District of the Central City Community Plan. In addition, the project would provide 7,499 square feet of ground floor commercial space, consisting of retail and restaurant use fronting 8th Street, Grand Avenue and Hope Streets, as well as a residential lobby along 8th Street. The Project's residential units and commercial uses align with the Community Plan's overall vision for the Central City as a community which "creates residential neighborhoods; while providing a variety of housing opportunities with compatible new housing." The Project also furthers the Community Plan's vision by improving "the function, design and economic vitality of the commercial districts, and achieving Objective 1-2, Objective 1-3 and Objective 2-1. The Project will contribute new housing choices and increase employment opportunities by providing a mixture of residential unit types for the growing numbers of downtown workers. Furthermore, the ground floor commercial component would provide additional business opportunities within the Community Plan.

In addition, the Project Site is well-served by public transit, including both rail and bus service. The site is located two blocks from the entrance to the 7th/Metro Center Metro Rail Station, which provides rail service to the Metro B, D, A and L Lines and is considered a hub of the regional rail network. The Project is also located 0.40 miles southwest from the Los Angeles Sports & Entertainment District (LASED) and approximately 0.73 miles from the Convention Center and will be consistent with the Central City Community Plan's Policy 2-1.2, Objective 2-4 and Policy 2-4.1 by redeveloping a property used solely for parking with a mixed-use residential and commercial development that would add new uses near the LASED and the Convention Center. The Project would contribute to creating a lively environment by activating this part of downtown and fostering a walkable neighborhood proximate to existing businesses, conventions, trade shows, and tourist destinations, and provide a linkage to the other surrounding Central City Districts.

The Project will provide flexibility in commercial spaces allowing for restaurant and retail uses, helping to create an active, 24-hour downtown that will serve the residents and employees of the Financial Core District, as well as visitors. The addition of new commercial uses, as well as up to 580 residential units in the Financial Core District supports the existing retail base by strengthening and creating new residential demand for goods and services, as well as creating synergy between different commercial uses in the Central City Community Plan area. The Project's ground floor uses would contribute to pedestrian activity which would further strengthen the walkability of the neighborhood. The Project will improve the streetscape along 8th Street, Hope Street and Grand Avenue lighting, trees, landscaping, and bicycle parking, enhancing the overall pedestrian environment.

Therefore, based on the above, the Project is consistent with the purposes, intent and provisions of the General Plan, and will serve to implement the goals and objectives of the Central City Community Plan.

16. The project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties.

The Project site is located within the Downtown Center of the City of Los Angeles, and within the Central City Community Plan area, Financial Core District. The immediate vicinity is characterized by a mix of commercial, restaurant, bar, office, surface parking and high-rise residential uses. The 0.80-acre site is currently developed with a surface parking lot and a four-story parking structure.

Immediately to the north of the Project Site are two parking structures, an eight-story structure along Hope Street and a four-story structure along Grand Avenue. Across Hope Street to the west is a parking structure and business/commercial development (i.e., the Bloc), consisting of a department store, Sheraton Grand hotel, gym cinema, retail and restaurant uses and an office tower at 700 S. Flower Street and 711 S. Hope Street. The property to the east of the Project Site, across Grand Avenue is a 7-story, mixed-use residential/commercial development with a ground floor grocery store. The properties to the south, across 8th Street consist of multiple office/commercial buildings, and other residential developments, including a mid-rise residential tower immediately to the southwest, and mixed-use mid-rise buildings and properties to the north adjacent to the Project Site include multi-level parking garages.

The Project would develop the site with a mixed-use building that includes 580 multi-family residential units. The Project will also provide a total of 7,499 square feet of ground floor and commercial space which includes restaurants and retail. The residential uses would be located on levels 3 through 49 and vehicle parking would be provided within three subterranean levels and eight above-grade levels. Residential common indoor and outdoor open space would be provided at the podiums on levels 10, 21, and 35 and would include a gym and fitness center, co-working areas, various lounge areas, dining areas, kitchen, pool, spa, firepit, and multiple outdoor seating areas. Indoor common areas would be located on Levels 3, 11, and 36 and include dog run areas, dog care, fitness mezzanine, and wellness suite. The Project's indoor and outdoor common areas would total 65,193 square feet. The design and proposed mixed-use commercial and residential would complement the existing built environment, contribute to the market-rate housing supply and employment sector within the Financial Core District within the Central City Community Plan of the Downtown area. Outdoor seating for the commercial component would be situated at the southwest corner of the project along 8th and Hope Street.

As mentioned above, the project area is highly urbanized, with various commercial and residential uses and other similar mid- to high-rise mixed-use developments. The Project site's proximity to major transit stops, and the site's Regional Commercial designation allows for residential and commercial uses. The Project's ground-floor uses would incorporate transparent and active storefront design on the public streets to create a pedestrian oriented retail environment, while encouraging transit usage. The following Project elements were designed in a manner which is compatible with both existing and future developments in the area:

- A. Building Design. The building's proposed design would be consistent with the design policies set forth in the Citywide Design Guidelines. The building elevations utilizes a

consistent architectural design feature, building materials and changes in building step back from Hope Street to break up massing and create a consistent architectural theme for the development. The parking podium would use a screening design covering the above ground parking levels. At the ground floor, the commercial and residential lobby entrances would utilize a mix of glass and aluminum storefront system, ceramic tile, aluminum panels, pre-finished aluminum frame and cap rail with clear continuous glass, and decorative woven metal screen to provide for a varied texture and transparent for the retail uses and residential lobby area. The podiums also utilize pre-finished aluminum frame and continuous clear, opaque and low e coating glass and partial vision glass with fritted inner layer. The ceramic tile at the ground level would include a glazed finish to soften the façade of the building and create a warm and inviting experience for visitors and residents. The facade of the Project's tower would primarily use glass to allow for natural lighting into the residential units, while the wraparound projecting balconies on most of residential level would provide shade and minimize solar gain throughout the building, highlighting the Project's energy efficiency and sustainability. The tower would also use the same screening design pattern from the podium to provide variety in the tower façade and highlight the outdoor open space and amenities throughout the tower. As mentioned above, the Project provides open space at various podium levels and at different indoor levels of the tower. The open spaces areas within the top of the podiums and the tiered design would help break the façade of the tower and provide unique focal points. Overall, the Project's contemporary architecture complements and enhances the surrounding developments.

- B. Height/Bulk. The Project would reach a maximum building height 592 feet above grade (50-stories). The height of the building is consistent with existing and future development in the immediate area. Around the immediate vicinity of the Project Site are high-rise buildings such as the two mixed-use buildings at 801 S. Grand Avenue (22-stories tall) and 888 S. Hope Street (395 feet tall), and three other high-rise residential towers to the southeast on Olive Street between 8th Street and 9th Street, 801 S. Olive Street (317 feet tall), 845 S. Olive (350 feet tall, approved, not constructed), and 820 S. Olive (636 feet tall). The proposed building would be comprised of four above-ground tiers which step back from Hope Street and the design serves to articulate the buildings elevation and provide visual interest. The project tiered levels also provide an innovative design solution to accommodate open space within each podium of a high-density development with limited lot area. Additionally, the four-tiered design breaks down the building's massing by providing multiple step backs used to further reduce the bulk and scale of the structure. Overall, the height and bulk of the project would be comparable to that of the high-rise mixed-use developments in the immediate vicinity and contribute to the City's skyline.
- C. Setbacks. The property lies within the Central City Community Plan and the Greater Downtown Incentive Area (ZI No. 2385), in accordance with the Greater Downtown Incentive Area no setbacks are required. However, the Project will comply with the requirements of the Downtown Street Design Guide and the Downtown Design Guide. The Downtown Design Guide requires that adjacent to retail (either on Retail Streets or adjacent to ground floor space designed for retail use in other locations), the building street wall (as defined in Table 6-1) shall be located at or within a few feet of the back of the required average sidewalk width. The building placement along the average sidewalk width along Hope Street and Grand Avenue is placed within the back of the required average sidewalk easements. Additionally, setbacks adjacent to retail, if any, shall be primarily hardscape and may be used for outdoor dining and other commercial activities. The setbacks adjacent to retail include hardscape and therefore complies with the setback requirements.

- D. Off-Street Parking. The project will provide residential and 20 covenanted parking spaces (per two recorded covenant and agreement for off-street parking spaces) for an adjacent building located at 611 West 6th Street (per a covenanted and recorded parking agreement) on-site in accordance with the Municipal Code and will be located in three levels of subterranean parking, eight above grade on levels 2 through 9 and four at grade parking spaces. In addition, the Project would include infrastructure for electric vehicle charging stations to facilitate the use of electric vehicles. The Project will also provide long-term and short-term bicycle parking in accordance with the Municipal Code. The long-term bicycle parking will be secure and accessible for residents within the subterranean parking levels, while short-term bicycle parking will be accessible along building frontages at Hope Street and Grand Avenue.
- E. Loading. Any loading or noise-generating back-of-house uses are located away from the street frontages, via a street level loading area located along an internal loading area, accessed from Hope Street. Mechanical equipment and utilities are also appropriately screened within the building and on the building's roof.
- F. Lighting. Implementation of the Project will introduce new light sources, including streetlights, interior building lighting, exterior security lighting, exterior architectural lighting, and individual tenant sign lighting. Project lighting would incorporate low-level exterior lights on the building and along pathways for security and wayfinding purposes. In addition, low-level lighting to accent signage, architectural features, and landscaping elements would be incorporated throughout the site to provide for efficient, effective, and aesthetic lighting solutions which will be shielded to minimize light trespass from the site.
- G. Landscaping. Open space and landscaping for the project is concentrated on the common open space areas throughout the podium levels. The podium open spaces include a multitude of outdoor amenities, including barbeque areas, pool, lounge areas, seating, spa, yoga, and fitness decks and a firepit. Onsite landscaping includes utilizing native shrubs, perennials, and canopy trees and landscaping would also be installed on ground level along 8th Street and throughout all the open space levels of the building. The streetscape would also enhance walkability through the provision of shade canopy trees and landscaping along 8th Street, Grand Avenue and Hope Street.
- H. Trash Collection. The Project includes an enclosed trash room area on the ground level which would be completely screened from view from adjacent public rights of way. All trash receptacles will be located within the enclosed trash room. Per the LAMC the Project is required to include a recycling area or room for the collection of glass, cans, paper and plastic recyclable materials. Trash and recycling facilities will be kept secure from unauthorized entry.

As described above, the Project consists of an arrangement of buildings and structures (including height, bulk, and setbacks), off-street parking facilities, loading areas, landscaping, trash collection, and other such pertinent improvements that will be compatible with existing and future development on adjacent and neighboring properties. The arrangement of the proposed development is consistent and compatible with existing and future development on neighboring properties.

17. The residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties.

The Project will result in the creation of new residential and commercial uses on a site that is currently developed with a four-level parking structure and a surface parking lot. The Project would provide indoor and outdoor residential amenities located on Levels 3, 10, 11, 21, 22,

35, and 36. Residential common indoor and outdoor open space would be provided at the podiums on levels 10, 21, and 35 and would include a gym and fitness center, co-working areas, various lounge areas, dining areas, kitchen, pool, spa, firepit, and multiple outdoor seating areas. Indoor common areas would be located on Levels 3, 11, and 36 and include dog run areas, dog care, fitness mezzanine, and wellness suite. Additionally, the Project would provide residential open space areas within private wraparound cantilevered balconies for most of the residential units. The Project's total square footage for the indoor and outdoor common and private areas would total 65,193 square feet.

Lastly, the Project's 4-tiered tower design decreases the building mass and provides additional visual relief for the residents of the adjacent mixed-use development east and west of the project site. The tower's configuration and design will ensure that sufficient natural lighting and air circulation would be provided for the project's residents and surrounding neighbors. Therefore, the project will not result in negative impacts on neighboring properties.

B. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

The City of Los Angeles (the "City"), as Lead Agency, has evaluated the environmental impacts of the 8th, Grand and Hope Project by preparing an Environmental Impact Report (EIR) (Case Number ENV-2017-506-EIR / SCH No. 2019050010). The EIR was prepared in compliance with the California Environmental Quality Act of 1970, Public Resources Code Section 21000 et seq. (CEQA) and the California Code of Regulations Title 14, Division 6, Chapter 3 (the "CEQA Guidelines").

The 8th, Grand and Hope EIR, consisting of the Draft EIR and Final EIR, is intended to serve as an informational document for public agency decision-makers and the general public regarding the objectives and impacts of the 8th, Grand and Hope (Project), located at 754 South Hope Street, 609 - 625 West 8th Street (Site or Project Site). The Project involves the construction and operation of a 50-story mixed-use high-rise with a height of 592 feet at the top of the parapet roof at residential development with ground floor commercial uses on a 0.80-acre site. The Project would include up to 580 residential units, 7,499 square feet of ground-floor commercial uses, three subterranean and eight above-ground parking, and residential open space amenities.

The Draft EIR was circulated for a 46-day public comment period beginning on November 18, 2021, and ending on January 5, 2022. The Final EIR was then distributed on January 20, 2023. The Advisory Agency certified the EIR on May 26, 2023 ("Certified EIR") in conjunction with the approval of the Project (VTT-74876-CN) which was subsequently appealed in June 2023 to the City Planning Commission. In connection with the certification of the EIR, the Advisory Agency adopted CEQA findings and a mitigation monitoring program. The decision-maker adopted the mitigation monitoring program in the EIR as a condition of approval. All mitigation measures in the previously adopted Mitigation Monitoring Program are imposed on the project through Conditions of Approval, to mitigate or avoid significant effects of the proposed Project on the environment and to ensure compliance during Project implementation.

NO SUPPLEMENTAL OR SUBSEQUENT REVIEW IS REQUIRED

CEQA and the State CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Sections 15000-15387) allow the City to rely on the previously certified EIR unless a Subsequent or Supplemental EIR is required. Specifically, CEQA Guidelines Sections 15162 and 15163 require preparation of a Subsequent or Supplemental EIR when an EIR has been previously certified, or a negative declaration has previously been adopted and one or more of the following circumstances exist:

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

None of the above changes or factors has arisen since the Project approval. There are no substantial changes to the Project, and the Project is substantially the same as the approved Project. No substantial changes have been identified to the surrounding circumstances, and no new information of substantial importance has been identified since the Project. There is no evidence of new or more severe significant impacts, and no new mitigation measures are required for the project.

Accordingly, there is no basis for changing any of the impact conclusions referenced in the certified EIR's CEQA Findings. Similarly, there is no basis for changing any of the mitigation measures referenced in the certified EIR's CEQA Findings, all of which have been implemented as part of the Project's conditions of approval. There is no basis for finding that mitigation measures or alternatives previously rejected as infeasible are instead feasible. There is also no reason to change the determination that the overriding considerations referenced in the certified EIR's CEQA Findings, and each of them considered independently, continue to override the significant and unavoidable impacts of the Project.

Therefore, as the Project was assessed in the previously certified EIR, and pursuant to CEQA Guidelines Section 15162, no supplement or subsequent EIR or subsequent mitigated negative declaration is required for the Project, as the whole of the administrative record demonstrates that no major revisions to the EIR are necessary due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effect resulting from changes to the project, changes to circumstances, or the existence of new information. In addition, no addendum is required, as no changes or additions to the EIR are necessary pursuant to CEQA Guidelines Section 15164.

RECORD OF PROCEEDINGS

The record of proceedings for the decision includes the Record of Proceedings for the original CEQA Findings, including all items included in the case files, as well as all written and oral information submitted at the hearings on this matter. The documents and other materials that constitute the record of proceedings on which the City of Los Angeles' CEQA Findings are based are located at the Department of City Planning, 221 N. Figueroa Street, Suite 1350, Los Angeles, CA 90021. This information is provided in compliance with CEQA Section 21081.6(a)(2).

In addition, copies of the Draft EIR and Final EIR are available on the Department of City Planning's website at <https://planning.lacity.org/development-services/eir> (to locate the documents, search for the environmental case number). The Draft and Final EIR are also available at the following Library Branches:

- Los Angeles Central Library—630 West Fifth Street, Los Angeles, CA 90071
- Little Tokyo Branch Library, 203 South Los Angeles Street, Los Angeles, CA 90012
- Pico Union Branch Library, 1030 S. Alvarado Street, Los Angeles 90006
- Chinatown Branch Library, 639 North Hill Street, Los Angeles, CA 90012
- Echo Park Branch Library, 1410 West Temple Street, Los Angeles, CA 90026
- Felipe de Neve Branch Library, 2820 West 6th Street, Los Angeles, CA 90057



LOS ANGELES CITY PLANNING APPEAL FILING PROCEDURES

Entitlement and CEQA appeals may be filed using either the Online Application System (OAS) or in person Drop Off at DSC (Development Services Center).

Online Application System: The OAS (<https://planning.lacity.org/oas>) allows appeals to be submitted entirely electronically online; fee payment is by credit card or e-check.

Drop off at DSC: Appeals of this determination can be submitted in person at the Metro or Van Nuys DSC locations, and payment can be made by credit card or check. City Planning has established drop-off areas at the DSCs with physical boxes where appellants can drop off appeal applications; alternatively, appeal applications can be filed with staff at DSC public counters. Appeal applications must be on the prescribed forms, and accompanied by the required fee and a copy of the determination letter. Appeal applications shall be received by the DSC public counter and paid for on or before the above date or the appeal will not be accepted.

Forms are available online at <http://planning.lacity.org/development-services/forms>. Public offices are located at:

Metro DSC

(213) 482-7077

201 N. Figueroa Street

Los Angeles, CA 90012

Van Nuys DSC

(818) 374-5050

6262 Van Nuys Boulevard

Van Nuys, CA 91401

West Los Angeles DSC

(CURRENTLY CLOSED)

(310) 231-2901

1828 Sawtelle Boulevard

West Los Angeles, CA 90025

City Planning staff may follow up with the appellant via email and/or phone if there are any questions or missing materials in the appeal submission, to ensure that the appeal package is complete and meets the applicable Los Angeles Municipal Code provisions.

An appeal application must be submitted and paid for before 4:30 PM (PST) on the final day to appeal the determination. Should the final day fall on a weekend or legal City holiday, the time for filing an appeal shall be extended to 4:30 PM (PST) on the next succeeding working day. Appeals should be filed early to ensure that DSC staff members have adequate time to review and accept the documents, and to allow appellants time to submit payment.



QR Code to Online Appeal Filing



QR Code to Forms for In-Person Filing