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June 12, 2024

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: Council Members

Dear Honorable Members:

SUPPLEMENTAL APPEAL RESPONSES FOR THE 8TH, GRAND AND HOPE PROJECT; CF 23-1150 / CF 23-1151

On May 26, 2023, the Deputy Advisory Agency (DAA) certified the 8th, Grand and Hope Project Environmental Impact Report (EIR) (Case No. ENV-2017-506-EIR) and approved Vesting Tentative Tract Map (VTTM) No. 74876-CN for the merger and re-subdivision of three lots into one ground lot and nine airspace lots for residential and commercial condominium purposes, and a Haul Route for the export of approximately 89,750 cubic yards of soil; and the Associate Zoning Administrator (AZA) approved ZA-2021-7053-ZAI, with clarifications to parking and open space requirements, in connection with the 8th, Grand and Hope Project (Project). 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/retail/restaurant space with a maximum height of 592 feet and total floor area of 554,927 square feet on a 34,679 square-foot site, for a floor area ratio (FAR) of 9.25:1. To accommodate the Project, an existing surface parking lot and a four-story parking structure would be demolished.

On June 5, 2023, the DAA and AZA actions were appealed by the Coalition for Responsible Equitable Economic Development Los Angeles (CREEDLA), Digital Realty, and Supporters Alliance for Environmental Responsibility (SAFER). On September 26, 2023, the City Planning Commission (CPC) issued its decision and denied the appeals, thereby sustaining the decision of the DAA in certifying the EIR and in approving Vesting Tentative Tract Map No. 74197, and the decision of the AZA in approving Case No. ZA-2021-7053-ZAI. The AZA decision was final and not appealable. The VTTM received two second-level appeals from:

- 1) CREED LA (October 6, 2023)
- 2) Digital Realty (October 6, 2023)

In addition, on September 26, 2023, the CPC issued its decision on Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and recommended that the City Council approve Transfer of Floor Area Rights (TFAR) for up to 346,853 square feet from the Los Angeles Convention Center (Donor Site) to the Project Site (Receiver Site), thereby permitting a maximum 9.25:1 FAR, in lieu of the

otherwise permitted 6:1 FAR; dismissed as not necessary, a Zone Variance related to compact and tandem parking; approved Zone Variances related to relief from parking standards; approved Project Permit Adjustments related to ground floor treatments and balcony projections; a Director's Decision related to in-lieu fee payments for on-site trees; and a Site Plan Review. The CPC decision on the Zone Variances, Project Permit Adjustments, Director's Decision, and Site Plan Review received appeals from:

- 1) CREED LA (October 6, 2023)
- 2) Digital Realty (October 6, 2023)
- 3) SAFER (October 3, 2023)

These appeals were responded to in a Letter to the Planning and Land Use Management (PLUM) Committee of the City Council, dated May 2, 2024, and uploaded to Council File Nos. 23-1150 and 23-1151.

On May 7, 2024, the appeals were agendaized to be heard before the PLUM Committee. On this date,

- 1) CREED LA submitted a Supplemental Letter to support their appeal,;
- 2) Digital Realty withdrew their appeal; and
- 3) The Applicant requested to continue the item to June 18, 2024.

This letter serves to respond to CREED LA's Supplemental Letter, dated May 7, 2024 (Supplemental Letter No. 2).

ADAMS, BROADWELL, JOSEPH & CARDOZO ON BEHALF OF COALITION FOR RESPONSIBLE EQUITABLE ECONOMIC DEVELOPMENT LOS ANGELES (CREEDLA) RE: CF-23-1150 (CPC-2017-505-TDR-ZV-SPPA-DD-SPR-1A) and CF-23-1151 (VTT-74876-CN-2A)

For reference, comment letters previously submitted by this Appellant that are referenced in the Supplemental Appeal Points and Responses below include:

- 1) Comments on the Draft EIR, dated January 5, 2022 (Draft EIR Comments);
- 2) A letter to the DAA following the distribution of the VTTM Staff Report, but prior to the scheduled public hearing, dated February 15, 2023 (Final EIR Letter);
- 3) The first-level appeal of Case No. VTT-74876-CN (VTTM Appeal);
- 4) 48-hour correspondence to the CPC, dated July 11, 2023 (48-hour letter);
- 5) A second-level appeal of Case No. VTT-74876-CN (Second Level Appeal);
- 6) A first-level appeal of Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR (CPC Appeal); and
- 7) A supplemental letter to PLUM dated March 1, 2024 (Supplemental Letter No. 1).

These comment letters were responded to by the City in the following documents:

- 1) Draft EIR Comments were responded to in the Final EIR;
- 2) The Final EIR Letter was responded to in the City's VTTM Appeal Report to the CPC, July 13, 2023 (Appeal Report);
- 3) The VTTM Appeal was responded to in the Appeal Report; and
- 4) The Second Level Appeal, 48-hour letter, CPC Appeal, and Supplemental Letter No. 1 were all responded to in the Letter to PLUM dated May 2, 2024 (PLUM Letter).

Staff Responses to the Supplemental Letter No. 2 are provided below, and more detailed responses are provided in Attachment 1 of this report.

Supplemental Appeal Point 1

The Final EIR fails to disclose impacts related to Air Quality, Health Risk, Noise, Hazardous Materials, Energy, Land Use Policies, and Public Utilities.

Staff Response 1

The Appellant cites the previously submitted Final EIR Letter which, as discussed above, was addressed in the Appeal Report. Furthermore, it should be noted that “Health Risk” is not a specific topic of CEQA review but falls into multiple categories, each of which were addressed in the Project EIR.

Supplemental Appeal Point 2

The City lacks substantial evidence showing that fire flow requirements can be served by existing infrastructure.

Staff Response 2

The Appellant continues to assert, without substantial evidence, that the communication from Los Angeles Fire Department (LAFD) should be disregarded in favor of fire flow requirements based on the opinion of a third party. In their correspondence to the Planning Department, dated July 25, 2019, LAFD states that, “[t]he required fire-flow for this project has been set at **6,000 to 9,000 G.P.M. from four to six fire hydrants flowing simultaneously.**” The Appellant asserts that the referenced LAFD communication is “informal” and contrary to LAMC Table 57.507.3.1, but misunderstands the regulations cited to support this claim. Furthermore, the comment letter from LAFD is consistent with the format used across the City when providing correspondence from one Department to another when providing recommended conditions for development projects.

Further, while CEQA provides for balancing opinions from two experts when there is a dispute, the expert retained by the Appellant challenges the LAFD determination on the basis that LAMC Table 57.507.3.1 controls fire flow, ignoring the specific language contained in LAMC Section 57.507 which states that “fire-flows shall comply with Table 57.507.3.1 for any structures, group of structures or facilities by the type of land development, or as otherwise determined by the Chief.” The Project has obtained this type of confirmation from LAFD. As also discussed in the PLUM Letter, the Appellant bases their contention on a report prepared for the adjacent Bloc Project’s (775 Hope Project’s) fire flow, infrastructure requirements, and IFFAR determination. However, the LAFD’s determination, identifying conditions and recommendations for a different project do not apply to the 8th, Grand, and Hope Project.

Supplemental Appeal Point 3

The City fails to analyze health risks from construction and operational emissions.

Staff Response 3

The Appellant asserts that the City did not disclose impacts to health from construction and operational emissions and a Health Risk Assessment (HRA) is required. This specific comment was addressed in the Final EIR (see Response to Comment No. 3-6 and 3-28) and the Appeal Report. As discussed therein, the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies for evaluating a project’s impacts including potential impacts related to health risk. This comment does not provide substantial evidence to demonstrate that a quantified HRA related to any potential on-site sources of Toxic

Air Contaminants (TAC) is required under CEQA or that the City abused its discretion in not requiring a HRA in the Draft EIR. The comment also does not provide evidence that including the HRA for informational purposes in the Final EIR deprived the public or decisionmakers of the analysis contained in the HRA or somehow changed the original analysis and conclusions regarding TACs in the EIR. Accordingly, as discussed in the Final EIR Response to Comments, consistent with SCAQMD CEQA Air Quality Handbook guidance, *L.A. City CEQA Thresholds Guide*, and OEHHA guidance, due to the duration of construction for land use development projects, TAC emissions are considered short-term sources of emissions and the evaluation as the Appellant suggests was not warranted in the Draft EIR and is not required. The Appellant further misrepresents OEHHA Guidance to require an analysis that the Project is not required to provide due to the short-term duration of construction emissions. An analysis of operational emissions was also conducted and determined that the Project is not considered to be a substantial source of diesel particulate matter (DPM) warranting a refined HRA as its truck trips would be below the SCAQMD recommended levels.

Nonetheless, an HRA was prepared in response to these comments to confirm, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project. The HRA is provided as Appendix FEIR-2 of the Final EIR and was prepared for informational purposes and is not used as substantial evidence for any conclusions. But does demonstrate that even if an HRA was necessary, the Project would not have a significant air quality impact or public health risk. The HRA, based upon appropriate methodology and assumptions, demonstrated that health risks from the Project-related incremental cancer risk is below the applicable SCAQMD significance threshold of 10 in one million people as referenced in this comment.¹

Supplemental Appeal Point 4

Localized significance thresholds do not reflect health risks from exposure to toxic air contaminants.

Staff Response 4

The Appellant asserts that Localized Significance Thresholds (LSTs) are not appropriate for determining cancer risk, and the City should have prepared an HRA. This specific comment was previously addressed in the Final EIR (see Response to Comment Nos. 3-6 and 3-28). The Appellant incorrectly asserts that the Draft EIR concluded that the Project's cancer risk from exposure to DPM (discussed as localized emissions) would be less than significant based on the Draft EIR's conclusion that the Project's criteria pollutant emissions (discussed as regional emissions) are less than significant. The Draft EIR correctly followed guidance in SCAQMD's handbook for addressing localized impacts associated with criteria pollutants using the SCAQMD Localized Significance Thresholds and Look-Up screening tables.² The maximum daily localized emissions from Project construction and LSTs were presented in Table IV.A-6 on page IV.A-58 of the Draft EIR and demonstrate that the Project would not exceed the SCAQMD-recommended localized screening thresholds. The Draft EIR addressed criteria pollutants consistent with the SCAQMD LSTs and TACs (DPM) consistent with the qualitative assessment and a confirmatory HRA in the Final EIR for informational purposes. The commentor conflates the two different analyses discussed in two different sections with two different methodologies.

¹ SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.

² SCAQMD, *LST Methodology Appendix C-Mass Rate LST Look-up Table*, revised October 2009.

As discussed in the two responses, the Draft EIR correctly addressed health risk impacts and an HRA was not necessary as the Project is not considered to be a substantial source of diesel particulate matter warranting an HRA, nor is an HRA required by SCAQMD or the City, and no additional formal guidance for HRAs for construction activities has been adopted by the SCAQMD or the City. Nonetheless, an HRA was prepared in response to these comments to confirm, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project. The HRA is provided as Appendix FEIR-2 of the Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is below the applicable SCAQMD significance threshold of 10 in one million.

Supplemental Appeal Point 5

The FEIR's HRA fails to analyze health risk impacts on all groups of sensitive receptors.

Staff Response 5

The Appellant asserts the Project EIR is required to provide an HRA, and the informational HRA that was provided in the FEIR was not prepared properly and did not adequately analyze all sensitive groups. This specific comment was previously addressed in the Appeal Report. As discussed therein, the Appellant contends that the HRA contained in the Final EIR is inadequate because it fails to analyze health risk impacts on all groups of sensitive receptors. The Appellant asserts a number of methodological deficiencies exist in a document they contend is required. The Project is not required to prepare an HRA based on SCAQMD guidance, OEHHA Guidance cited by the Applicant which was prepared for the Hot Spots Program not development projects, and Lead Agency discretion in adopting thresholds. Nevertheless, a HRA was prepared as part of the Final EIR for the Project, conforming to the appropriate methodological guidance for such an informational document. As the document does not address a specific environmental impact, nor is it required, the Appellants assertions that the Project failed to disclose impacts is unfounded. For additional discussion of the informational HRA, please see Comment No. CREED LA – PLUM Letter 5 in Attachment 1 to this document, which substantiates the appropriateness of the informational document.

Supplemental Appeal Point 6

Substantial evidence demonstrates that the project will have a significant health risk impact on children.

Staff Response 6

The Appellant continues to assert that an HRA is required for the Project, cites an HRA the Appellant prepared that does not conform to the City's appropriate methodology, and provides no substantial evidence to support the need for such a study. As discussed above, a quantified HRA is not required, and the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies related to the preparation of such documents. Please see in Attachment 1 to this document for more information on the HRA guidelines and the informational document prepared for the Project.

Supplemental Appeal Point 7

The FEIR fails to mitigate the project's significant health risk impact to a less-than-significant level.

Staff Response 7

The Appellant relies on the Supplemental Appeal Points 3-4 to assert that a significant impact related to air quality exists, impacts were not disclosed appropriately in the EIR and that binding mitigation is required, and further references a voluntary Condition of Approval which requires the use of construction equipment which meet emissions standards (US EPA Tier 4 Final Standards). As discussed above, no such impact would occur and mitigation is not required. As mitigation is not required, the City has opted to adopt a voluntary Condition of Approval for the Project, and the City has sole discretion to impose Conditions of Approval as part of approval of the Project's Land Use Approvals..

Supplemental Appeal Point 8

The FEIR fails to disclose and mitigate significant operational noise impacts.

Staff Response 8:

The Appellant asserts that the EIR is inadequate because a threshold of significance 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) is not used, citing case law. In the King and Gardiner Farms, LLC v. County of Kern case, the court held that the EIR did not include an analysis, supported by substantial evidence, explaining why the magnitude of an increase in ambient noise need not be addressed to determine the significance of the project's noise impact. This comment was previously addressed in the Project Final EIR Response to Comment Nos. 3-41 and 3-42. As discussed therein, the thresholds of significance for the analysis of potential noise impacts are based on the *L.A. CEQA Thresholds Guide*. CEQA allows lead agencies discretion to utilize thresholds of significance provided they're supported with substantial evidence. The City utilizes the same thresholds and methodology described in the Project Draft and Final EIR for evaluating noise impacts. The Applicant's proposed threshold does not meet the standards of CEQA as no substantial evidence is provided, the threshold would not meet the disclosure requirements of CEQA as the threshold could result in imperceptible changes in ambient noise resulting in significant impacts misleading the public and decision makers, and appears to arbitrarily apply the Noise Element table intended for considering new uses with respect to existing ambient noise levels. For example, implementing the suggested threshold would result in a significant unavoidable impact from a noise level increase from 69.9 dBA CNEL (conditionally acceptable) to 70.0 dBA CNEL (normally unacceptable) for residential uses. This 0.1 dBA increase would not be perceptible to humans in an outdoor environment but under the Appellant's proposed methodology would require mitigation, not meaningfully informing the public or decision makers of project impacts.

The existing threshold used by the City however, considers both the existing ambient noise levels, the Noise Element, and *LA CEQA Thresholds Guide* classifications for acceptable ambient noise levels, the increase as a result of the Project on sensitive receptors, and discloses the absolute noise associated with Project construction and operation. In support of their proposed threshold, the Appellant cites legal rulings which require lead agencies to consider the changes in ambient noise and absolute noise associated with the Project. These are requirements that the Project has met by implementing the current City threshold, but would not be met by the Appellant's proposed threshold, which appears to make a determination based on land use categories rather than quantitative ranges or values.

With regard to Project operation, the Project's potential noise impacts are based on a significance threshold of 5 dBA over the existing ambient noise environment. In addition, the composite noise impact analysis from all operational sources of the Project incorporates the City's land use compatibility guidelines from the General Plan and is based on two levels of thresholds for composite noise increases: a 3 dBA noise increase when the Project plus the ambient noise level fall within the "normally unacceptable" or "clearly unacceptable" category or a 5 dBA noise increase when the Project plus the ambient noise level fall within the "normally acceptable" or "conditionally acceptable" category. The EIR adequately analyzed the Project noise impacts, and the Appellant's assertions nor the threshold proposed by the Appellant are supported by substantial evidence.

Supplemental Appeal Point 9

The FEIR still fails to require all feasible mitigation measures to reduce significant noise impacts.

Staff Response 9

The Appellant states that their previous comments and appeal have identified additional feasible mitigation measures that would reduce the Project's significant construction noise impacts, including the provision of either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction. The Appellant continues to summarize the City's response to their proposed mitigation and asserts the responses do not adequately address why "requesting approval from the owners of affected residential buildings is infeasible," and that the City should address whether the noise impacts from installation of the Appellant proposed mitigations would be greater or less than the Project. The Appellant proposes a mitigation measure which would not comply with CEQA Guidelines Section 15126.4 which, among other requirements, requires that mitigation measures be *fully* enforceable through permit conditions or legally binding agreements and where a lead agency determines a mitigation measure cannot be legally enforced, the measure need not be proposed or analyzed but a short explanation of why is sufficient. The ability of the Applicant to secure agreements from each and every impacted residence to allow installation of screening is *prima facie* not legally enforceable as the Applicant can't be reasonably expected to secure an agreement with all parties and the City lacks a mechanism to compel two parties to enter into an agreement and enforce this requirement. Further, the mitigation would need to be roughly proportional to the impact, and would not obviate the need for further mitigation or reduce impacts to less than significant. As the same CEQA Guidelines section doesn't require the measure to be analyzed if determined not to be enforceable, the City need not address the Appellant's speculation and argument related to comparative impacts from mitigation. The Draft EIR considered all feasible mitigation measures and has adopted them as conditions of approval accordingly.

Supplemental Appeal Point 10

The FEIR still fails to analyze and mitigate potentially significant hazards impacts.

Staff Response 10

The Appellant states that due to findings of the Project Phase I establishing the likelihood of asbestos and lead paint on site that mitigation measures are required. Hazards and hazardous materials, including, asbestos and lead-based paint (LBP) were addressed in the Initial Study included as Attachment A to the Draft EIR and also in Section IV, Other Environmental Considerations of the Draft EIR. As stated therein, asbestos and lead-based paint are subject to specific regulation that the Applicant is required to follow. In particular, the Project would comply with SCAQMD Rule 1403, Asbestos Emissions from Renovation/Demolition Activities, which regulates asbestos as a toxic material and controls the emissions of asbestos from demolition

and renovation activities by specifying agency notifications, appropriate removal procedures, and handling and clean up procedures. In addition, the demolition of buildings containing LBPs is subject to a comprehensive set of California regulatory requirements that are designed to assure the safe handling and disposal of these materials. Cal/OSHA has established limits of exposure to lead contained in dusts and fumes, which provides for exposure limits, exposure monitoring, and respiratory protection, and mandates good working practices by workers exposed to lead, particularly since demolition workers are at the greatest risk of adverse exposure. Lead-contaminated debris and other wastes must also be managed and disposed of in accordance with applicable provisions of the California Health and Safety Code. The Initial Study included a reasonable analysis of this topic, providing adequate information about the potential impacts. The Project is consistent with other similar construction activities in the City and does not represent a unique circumstance. Compliance with these regulatory requirements identified in the EIR would ensure that no impacts associated with asbestos or lead-based paint would occur. Therefore, there is no deferred analysis or mitigation related to asbestos or LBP.

Supplemental Appeal Point 11

The FEIR fails to include sufficient investigation into energy conservation measures.

Staff Response 11

The Appellant asserts that the Project did not adequately analyze energy impacts in the Draft EIR due to reliance on Title 24 measures and a lack of a discussion of alternative energy sources. The Appellant cites an unpublished Superior Court Case to support for this assertion and the inadequacy of the analysis. In the decision, the court found that the single page discussion of energy impacts was not sufficient for a project developing on agricultural land.

Section IV.B, Energy, of the Draft EIR provided a thorough analysis of potentially significant energy impacts of the Project, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. The Draft EIR included quantitative discussion of energy impacts from both on-site and off-site sources, including building energy use and transportation. As discussed therein, the Project's energy demands would comply with existing energy efficiency standards and would not cause wasteful, inefficient, or unnecessary use of energy. Therefore, Project impacts related to energy use under Threshold (a) were concluded to be less than significant. In addition, the Project would not conflict with adopted energy conservation plans, or violate state or federal energy standards. Therefore, Project impacts associated with regulatory consistency under Threshold (b) were concluded to be less than significant. So, while this comment correctly identified that CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, Project-related energy impacts were concluded to be less than significant and mitigation measures were not required.

As discussed on Page IV.B-25 of the Draft EIR, in addition to complying with CALGreen Code and Los Angeles Green Building Code requirements, the Applicant would also implement Project Design Feature (PDF) GHG-PDF-1, which states that the design of new buildings would incorporate sustainability features (e.g., Energy Star-labeled products); and WAT-PDF-1, which states that the Project 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, among others. In addition, the Project would be subject to the State's latest Title 24 standards. As an example, residential and nonresidential buildings built in compliance with the 2019 standards will use about 30 to 53

percent less energy than those under the 2016 standards and 2022 standards would further reduce energy use.³ The Project would also comply with Section 110.10 of Title 24, which includes mandatory requirements for solar-ready buildings, and, as such, would support and would not preclude the potential future use of on-site renewable energy.

The Draft EIR included a discussion regarding renewable energy options that might be available or appropriate for the Project. As discussed on Page IV.B-35 of the Draft EIR, the Project would comply with Title 24 requirements for “Solar Ready Buildings” which requires a certain area of rooftop to be set aside for installation of solar panels. This would not preclude installation of onsite solar panels as suggested in this comment. Due to the Project Site’s location, other on-site renewable energy sources would not be feasible to install on-site as there are no local sources of energy from the following sources: biodiesel, biomass hydroelectric and small hydroelectric, digester gas, methane, fuel cells, landfill gas, municipal solid waste, ocean thermal, ocean wave, and tidal current technologies, or multi-fuel facilities using renewable fuels. Furthermore, wind-powered energy is not viable on the Project Site due to the lack of sufficient wind in the Los Angeles basin. Specifically, based on a map of California’s wind resource potential, the Project Site is not identified as an area with wind resource potential.⁴

Regarding EV charging infrastructure, the Project would comply with the City requirement to designate 30 percent of new parking spaces as capable of supporting future electric vehicle supply equipment. This would exceed the 2022 CALGreen Code requirement of 20 percent. As the Project would not result in significant Energy impacts, no further evaluation as suggested in this comment in excess of 30 percent is warranted.

As discussed above, sources of renewable energy would be limited on the Project Site further necessitating a diesel back-up generator during emergency power outages. Solar-powered generators for construction activities would be limited given the Project Site constraints and could only supplement existing energy demand during construction. Use of this type of generator would not be feasible nor reliable for operational emergency requirements (e.g., operation of elevators and lights) for a 50-story building.

As such, the Project EIR adequately analyzed in detail the Project’s energy impacts consistent with Appendix G and Appendix F.

The commentor is referred to page 87 of the Initial Study regarding solid waste and recycling efforts.

Supplemental Appeal Point 12

The Project does not provide affordable housing, in conflict with local land use goals, objectives, and policies.

Staff Response 12

³ CEC, *2019 Building Energy Efficiency Standards, Fact Sheet*.

⁴ CEC, *Wind Resource Area & Wind Resources*, www.energy.ca.gov/maps/renewable/wind.html, updated October 16, 2017.

The Appellant reiterates similar arguments previously addressed in the Appeal Report and PLUM Letter, suggesting that the goals, policies, and objectives of City plans are requirements of each Project. The Appellant further asserts that the Project must meet a number of policies and objectives the Appellant has identified, and disregards discussion of *Sequoyah Hills*, provided in the Appeal Report and PLUM Letter. As discussed in the PLUM Letter, the Draft EIR, and the Findings, the Project does not conflict with and is consistent with the Housing Element.

Supplemental Appeal Point 13

The Project's local land use approvals are not supported by substantial evidence.

Staff Response 13

The Appellant asserts the Project Approvals are invalid because of the points raised in their arguments, asserting that the EIR lacks substantial evidence and therefore is deficient. As discussed, the Appellants arguments are without merit, substantial evidence supports the City's adoption of the Project EIR, entitlements, and findings.

Conclusion

the Appellant has failed to demonstrate how the CPC erred or abused its discretion in approving VTTM No. 74876-CN and the entitlements associated with Case No. CPC-2017-505-TDR-ZV-SPPA-DD-SPR, and the appeals and supplemental submissions have not provided any substantial evidence to dispute the findings of the EIR. The EIR is comprehensive and has been completed in full compliance with CEQA. As demonstrated by the responses to the appeal points, there are no new impacts or substantial increases in previously identified impacts that would result from the comments raised herein. As such, in accordance with CEQA Guidelines Section 15088.5, no substantial evidence or details to support the conclusory statements regarding the supposed inadequacy of the EIR, mitigation measures, statements of overriding consideration, or the supposed inadequacy of the findings, have been provided to demonstrate that there are new impacts or substantial increases in previously identified impacts, or that revision of the Draft EIR is warranted. The City Planning Commission correctly made findings of approval consistent with the California Subdivision Map Act and the LAMC, and the provisions of CEQA. Therefore, in consideration of all the facts, Planning staff recommends that the PLUM Committee and City Council deny the appeals, sustain the decisions of the City Planning Commission, and certify the EIR.

VINCENT P. BERTONI, AICP
Director of Planning

 for

Polonia Majas
City Planning Associate

VPB:MZ:MN:JM:PM

c: Gerald Gubatan, Planning Director, Council District 14

Attachments:

Attachment 1 – Memorandum Response to CREED May 7 Comments, Eyestone Environmental, Dated May 22, 2024



MEMORANDUM—RESPONSE TO CREED May 7, 2024

Comments

TO: Polonia Majas
City Planning Associate

FROM: Eystone Environmental

SUBJECT: 8th, Grand and Hope Project—Response to CREED’s Appeal dated May 7, 2024
CPC-2017-505-TDR-ZV-SPPA-DD-SPR, ENV-2017-506-EIR,
VTT-74876-CN-1A, and ZA-2021-7053-ZAI

DATE: May 22, 2024

The Draft Environmental Impact Report (EIR) for the 8th, Grand & Hope Project circulated for public review and comment from November 18, 2021, through January 5, 2022. Following public review, the City published a comprehensive Final EIR on January 19, 2023, which included responses to comments received during the Draft EIR public review period.

Prior to the Deputy Advisory Agency/Hearing Officer/Zoning Administrator public meeting that the City held on February 15, 2023, three letters were received in opposition to the Project from Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development (CREED LA) Los Angeles, Lozeau Drury on behalf of the Supporters Alliance for Environmental Responsibility (SAFER); and Digital Realty. Each of these parties also subsequently filed appeals regarding the Project. As part of its appeal to the City Zoning Administrator’s ZA-2021-7053-ZAI approval, Digital Realty submitted additional letters dated June 1, 2023, and June 9, 2023. Responses to these letters and appeals were provided as part of a June 2023 memorandum (June 2023 Appeal Responses). These responses demonstrate that both the Draft and Final EIRs meet the requirements of the California Environmental Quality Act (CEQA); the analyses presented therein are accurate and the conclusions are based on substantial evidence; many of the issues raised in the new comment letters were already addressed in Section II, Responses to Comments, of the Final EIR; and the Appellants’ claims are not supported by substantial evidence.

Prior to the City Planning Commission hearing, CREED LA submitted a comment letter on July 11, 2023. On September 26, 2023, the City Planning Commission rejected the appeals to the VTTM, EIR and ZAI, approved the CPC case, and certified the EIR.



MEMORANDUM—RESPONSE TO CREED May 7, 2024

Comments

May 22, 2024

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Subsequently, CREED LA, SAFER and Digital Realty filed three separate appeals. These appeals were responded to in an April 2024 memorandum (April 2024 Appeal Responses). As demonstrated by the April 2024 Appeal Responses, the appeals justifications do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

At the May 7, 2024 PLUM Meeting that considered the Project, CREED submitted another comment letter regarding the Project (refer to Attachment A). This letter is responded to below. As demonstrated by the responses below, most of the issues raised in this comment letter have already been responded to as part of the previous comment letters submitted by CREED. In addition, these May 7, 2024 claims are not supported by substantial evidence and do not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

Response to May 7, 2024, CREED LA Letter Submitted to City Council and Land Use Management Committee

Comment No. CREED LA—PLUM Letter-1

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments in support of CREED LA’s appeal of the City of Los Angeles (“City”) City Planning Commission’s (“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”). The scope of the Commission’s determination included, in part, approval of a Vesting Tentative Tract Map, certification of an Environmental Impact Report (“EIR”), 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. The Planning and Land Use Management Committee will consider CREED LA’s appeal as Agenda Items 7 and 8 of the May 7, 2024, Committee meeting.



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On October 5, 2023, CREED LA appealed the Commission’s decision on the grounds that 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.¹ The Staff Report for the appeal hearings purports to contain responses to the issues raised in CREED LA’s appeal. However, as explained below, the Staff Report continues to rely on unsupported and outdated studies and fail to disclose or mitigate the Project’s potentially significant fire hazard, air quality, health risk, noise, hazardous materials, energy, land use, and public utilities impacts. This letter further demonstrates that the FEIR’s analysis and mitigation of these impacts remain substantially inaccurate and incomplete, failing to comply with the requirements of CEQA. As a consequence of these significant and unmitigated impacts, the City cannot make the requisite findings under the Los Angeles Municipal Code (“LAMC”) to make the requested approvals.

The PLUM Committee cannot uphold the Commission’s approval due to the unresolved errors and omissions in the FEIR. These errors must be remedied in a revised EIR that is recirculated for public review and comment which fully discloses and mitigates the Project’s potentially significant environmental and public health impacts. CREED LA respectfully requests that the PLUM Committee uphold CREED LA’s appeal, vacate the City Planning Commission’s approval of the Project, and recirculate the EIR for public review.

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.



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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.

¹ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

II. THE FEIR FAILS TO COMPLY WITH CEQA

CREED LA's comments on the FEIR demonstrated that the FEIR fails to comply with CEQA. These issues were not resolved by the Commission prior to approval and are not resolved by the responses to comments in the Staff Report. As explained more fully in CREED LA's comments on the FEIR, the FEIR fails to accurately disclose the extent of the Project's potentially significant impacts on air quality, health risk, noise, hazardous materials, energy, land use policies, and public utilities. The FEIR fails 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.²

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

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This comment introduces the letter, provides a statement of interest, and states the commenter's belief that the Final EIR fails to meet the requirements of CEQA. Contrary to this comment, both the Draft EIR and Final EIR were completed in full compliance with CEQA. In particular, all public comments, including those received from the commenter, were comprehensively addressed in the Final EIR and no substantial evidence was provided to demonstrate that the Draft EIR was inadequate. As demonstrated by the responses to comments below, the EIR does not rely on unsupported and outdated studies

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or fail to disclose or mitigate the Project's potentially significant fire hazard, air quality, health risk, noise, hazardous materials, energy, land use, and public utilities impacts. Rather, the EIR's analysis and mitigation of potential impacts is inaccurate and complete and fully complies with the requirements of CEQA. The commenter's claims are not supported by substantial evidence.

Comment No. CREED LA—PLUM Letter-2

A. The City Lacks Substantial Evidence Showing that Fire Flow Requirements Can be Served by Existing Infrastructure.

CREED LA's appeal demonstrates that the City lacks substantial evidence showing that adequate fire flow is available to the Project in conformance with requirements in LAMC Section 57.507. Although the City prepared a Fire Flow Availability Report ("IFFAR") in 2019 which concludes that there is adequate fire flow available to the Project, CREED LA's appeal demonstrates that fire flow available to hydrants in the area has decreased since 2019, and that fire flow available to the Project would fall short of the applicable fire flow requirement.³ The reduced fire flow available to hydrants in the area is demonstrated in a 2023 IFFAR for a Project across the street (the BLOC at 775 Hope Street).

In Staff Response S1-1, the City reiterates the 2019 IFFAR's conclusion that fire flow of 6,000 to 9,000 gallons per minute (GPM) could be provided to the Project and would meet requirements in LAMC Section 57.507.⁴ Response S1-1 ignores CREED LA's comment that LAMC Section 57.507 would require a higher fire flow requirement for high-density projects such as this one. Mr. Burtt explains that the 6,000 to 9,000 GPM requirement set in LAFD's 2019 letter is a preliminary determination subject to changes as the Project building plans are finalized.⁵ Mr. Burtt also explains that Section 57.507.3.3 requires a fire flow of 12,000 GPM for high-density commercial or industrial areas.⁶ Because this Project has a high-density land use designation of "Regional Center Commercial," a 12,000 GPM is called for by the Municipal Code, and may ultimately be applied by the Fire Chief.⁷

Mr. Burtt also explains that fire flow water supply availability information is typically only considered valid for approximately 12 months.⁸ As the 2019 IFFAR is approximately 5 years old, conclusions based on the 2019 IFFAR are not supported by substantial evidence.

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Staff Response S1-1 suggests that, because the 2023 IFFAR applies to a different project across the street, the results of the 2023 IFFAR are inapplicable to this Project.⁹ The City explains that three of the hydrants that would be used for the Project are not included in the 2023 IFFAR. This response ignores that several other hydrants are shared across both projects, rely on the same water infrastructure, and are documented in the 2023 IFFAR to have dramatically reduced flow.¹⁰ Since the 2019 data has not been valid for years, the only valid evidence in the record shows that there is decreased flow to the Project's hydrants and insufficient fire flow available to the Project.

In Staff Response S1-2, the City states that the City prepared a second IFFAR for the BLOC Project which indicates that fire flow would be sufficient to serve The BLOC Project.¹¹ The City ignores that the second IFFAR states that fire flow would only be sufficient with a 12-inch main upgrade to be installed along South Hope Street, a fact which fully supports Mr. Burt's conclusions.¹² Mr. Burt explains that because the IFFAR assumes the construction of a main upgrade, the IFFAR supports the opposite conclusion reached by the City: current fire flow to the area is inadequate unless infrastructure improvements are implemented.¹³

CREED LA's appeal explains that due to the inadequate fire flow, the Project would require the construction of new or expanded water facilities and impacts would result in significant impacts. In Staff Response S1-3, the City argues that the Project would not need to expand water facilities to provide adequate fire flow to the Project, reasoning that the 2023 IFFAR is not relevant to this Project, and that fire flow for the Project was determined to be adequate to serve the Project [sic]¹⁴ CREED LA's appeal and the discussion herein explains that the 2023 IFFAR is relevant to this Project because it concerns some of the same fire hydrants, relies on the same water infrastructure, and contains current information about existing fire flow conditions related to the Project site, unlike the outdated 2019 IFFAR included in the FEIR.

Staff Response S1-3 states that the Project EIR adequately analyzed impacts associated with construction activities for the Project, and anticipated the installation of new on-site infrastructure and limited off-site work.¹⁵ The City fails to provide any evidence showing that the infrastructure improvements necessary to provide adequate fire flow to the Project are reflected in the FEIR. The City cannot assume the FEIR adequately analyzes water

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infrastructure improvements when the FEIR assumes that no water infrastructure improvements are required and when the City has still not evaluated the extent of necessary water infrastructure improvements.

In Response to Comment #1, the City's expert, KPFF, states that the Project obtained an official determination by LAFD, dated July 25, 2019, which set the fire flow to 9,000 G.P.M. from six hydrants flowing simultaneously. Mr. Burttt explains that the 6,000 to 9,000 GPM requirement set in LAFD's 2019 letter is a preliminary determination subject to changes as the Project building plans are finalized.¹⁶

Response to Comment #1 further states that the 2023 IFFAR does not demonstrate that fire flow to the Project is inadequate because the IFFAR was prepared for a different project and three of the hydrants are served by a different water main.¹⁷ This response ignores the fact that several other hydrants are shared across both projects and are documented in the 2023 IFFAR to have reduced flow.¹⁸

Response to Comment #1 also states that the Project will incorporate a fire sprinkler suppression system, and cites to LAMC Section 57.513, which provides that the Fire Chief can substitute fire protection equipment in lieu of the requirements of LAMC Chapter 57.¹⁹ It is important to note that the Fire Chief has not exempted the Project from applicable fire flow requirements.²⁰ And Mr. Burttt explains that compliance with fire sprinkler requirements (NFPA 13) and standpipe requirements (NFPA 14) does not demonstrate compliance with fire flow requirements in the California Fire Code (CFC) and LAMC.²¹

Response to Comment #2 states that the City need not analyze impacts from construction of water infrastructure upgrades because the Project's 2019 IFFAR concludes that the existing available infrastructure is capable of delivering adequate fire flow to the Project.²² As is explained herein and in CREED LA's appeal, the conclusions of the 2019 IFFAR are no longer valid, and new evidence shows that fire flow has decreased.

Response to Comment #2 again asserts that project would incorporate a fire sprinkler suppression system that would reduce or eliminate the public hydrant demands.²³ Mr. Burttt notes that the City does not provide any evidence in support of this claim.²⁴ Documentation

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has not been provided indicating that fire sprinkler suppression will allow for reduction or elimination of public hydrant demands.

In sum, the Staff Report contains no response to the fact that the 2019 IFFAR has become invalid in the five years since it was prepared. The City attempts to argue that a 2023 fire flow analysis for a project relying on some of the same water infrastructure is inapplicable to this Project, but Mr. Burttt explains that the analysis includes several of the same hydrants and others which rely on the same infrastructure. The Staff Report also suggests that the Project might be exempted from fire flow by meeting certain sprinkler requirements, but ignores that the Project has not been exempted from any fire flow requirements, and fails to provide any evidence that such the proposed sprinkler system would reduce or eliminate hydrant demands.

Thus, the FEIR's conclusion that adequate fire flow is available to the Project is not supported by substantial evidence. Evidence in the record shows that the Project would require the construction of new or expanded water facilities. The Project's public utility impacts must be analyzed in a revised and recirculated EIR.

³ Letter from ABJC to City re: Supplemental Comments in Support of 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).

⁴ Staff Report, pg. 4.

⁵ *Id.*

⁶ Burttt Response, pg. 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ Staff Report, pg. 4.

¹⁰ Burttt Response, pg. 3; Letter from ABJC to City re: Supplemental Comments in Support of 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), pg. 7 (“the flow at 20 psi at hydrant F-15526 decreased from 1500 to 685, and flow at hydrant F-15388 decreased from 1500 to 1040”).

¹¹ Staff Report, pg. 5-6; Burttt Response, pg. 5.

¹² Burttt Response, pg. 5.

¹³ *Id.* at 6.

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¹⁴ Staff Report, pg. 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Staff Report, pg. 255.

¹⁸ Burt Response, pg. 3; Letter from ABJC to City re: Supplemental Comments in Support of 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), pg. 7 (“the flow at 20 psi at hydrant F-15526 decreased from 1500 to 685, and flow at hydrant F-15388 decreased from 1500 to 1040”).

¹⁹ Staff Report, pg. 256.

²⁰ Burt Response, pg. 9.

²¹ *Id.* at 10.

²² Staff Report, pg. 256.

²³ Staff Report, pg. 256.

²⁴ Burt Response, pg. 11.

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These comments are generally duplicative of those provided in a letter from the commenter that was responded to by KPFF on April 5, 2024 (refer to Attachment B for a copy of the comments and KPFF’s responses). As stated in a second response letter from KPFF (refer to Attachment C), the assertions relative to the expiration of the IFFAR continue to lack substantial evidence. In addition, the challenge to the LAFD determination on the basis that LAMC Table 57.507.3.1 controls fire flow, ignores the specific language contained in LAMC Section 57.507 which states that “fire-flows shall comply with Table 57.507.3.1 for any structures, group of structures or facilities by the type of land development, or as otherwise determined by the Chief.” (emphasis added). Finally, comments related to the BLOC project are not applicable to the 8th, Grand and Hope Project, since LAFD made a different determination for the BLOC project and the circumstances and character of fire flow to the BLOC are not the same as the 8th, Grand and Hope Project as discussed in Attachment B.

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Comment No. CREED LA—PLUM Letter-3

B. The Project Would Have Significant and Unmitigated Health Risk Impacts

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

CREED LA’s appeal explains that the City was required to prepare a quantified health risk analysis (“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.”²⁵

In response, the City prepared an HRA for the Project’s construction and operations and included it in the FEIR.²⁶ But the City maintains in the FEIR that the HRA was only conducted for informational purposes,²⁷ and continues to assert in the Staff Report that a HRA is not required by CEQA.²⁸ The City, in Staff Response 1A-1, reiterates the flawed argument 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.²⁹ The City reasons that because “Individual Cancer Risk” is measured in the risk of contracting cancer over a 70-year lifetime, any activity lasting less than 70 years need not be analyzed in an HRA.³⁰ This reasoning is flawed because 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.³¹ Further, OEHHA32 guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.³³ The OEHHA guidance document explicitly states that this threshold is applicable to short-term construction projects.³⁴

Staff Response 1A-1 further claims that the South Coast Air Quality Management District’s (“SCAQMD”) CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects.³⁵ The City fails to identify any recommendation in the Handbook against analysis of short-term construction activities beyond arguing that projects lasting less than 70 years need not be evaluated.³⁶ However, this position is inconsistent with the City’s legal duty to disclose the human health effects caused by exposure to the Project’s TAC emissions, and is not supported by substantial evidence. SCAQMD’s 1993 Handbook is admittedly outdated,

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and SCAQMD has explained that “[o]ther methodologies can be used as long as documentation is provided regarding the source and applicability to the project.”³⁷ The City’s approach is also inconsistent with SCAQMD’s current CEQA health risk thresholds, which set numeric thresholds for evaluating TAC exposure.³⁸ In sum, the City’s position on HRAs is contrary to law and undermines public health protections afforded by CEQA.

²⁵ *Id.* at 518.

²⁶ Appendix FEIR-2.

²⁷ FEIR, pg. II-33; Appendix FEIR-2, pg. 2.

²⁸ Staff Report, pg. 6, Staff Response 1A-1.

²⁹ FEIR, pg. II-31, Response to Comment 3-6.

³⁰ Eystone Environmental, Department of City Planning, Memorandum (June 22, 2023), pg. 13 (Staff Report PDF pg. 98).

³¹ “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”), pg. 8-17.

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 *Id.* (“The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation. Frequently, the issue of how to address cancer risks from short-term projects arises... We recommend that exposure from projects longer than 2 months, but less than 6 months be assumed to last 6 months (e.g., a 2-month project would be evaluated as if it lasted 6 months). Exposure from projects lasting more than 6 months should be evaluated for the duration of the project.”)

³⁵ Staff Report, pg. 6.

³⁶ Eystone Environmental, Department of City Planning, Memorandum (June 22, 2023), pg. 13 (Staff Report PDF pg. 98).

³⁷ See [https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-\(1993\)](https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/ceqa-air-quality-handbook-(1993)).

³⁸ See <https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.aqmd.gov/docs/default-source/ceqa/handbook/south-coast-aqmd-air-quality-significance-thresholds.pdf%3Fsfvrsn%3D25&ved=2ahUKEwiRj4eNkvyFAxWEETQIHfkrDHMQFnoECBcQAQ&usg=AOvVaw07n1OZu8Nvvtfq0AnstL MG>.

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This specific comment was addressed in the Final EIR (see Response to Comment No. 3-6 and 3-28) and June 2023 Appeal Responses (see Response to Comment No. CREED-2). As discussed therein, the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies for evaluating a project's impacts including potential impacts related to health risk. This comment does not provide substantial evidence to demonstrate that a quantified HRA related to any potential on-site sources of TACs is required under CEQA or that the City abused its discretion in not requiring one in the Draft EIR or that including the HRA for informational purposes deprived the public or decisionmakers of the analysis contained in the HRA or somehow changed that analysis.

As discussed in Response to Comment No. 3-6, in Section II, Responses to Comments, of the Final EIR, the Draft EIR correctly identified that proposed construction activities would be limited in duration and considered a short-term source of TAC emissions. SCAQMD's CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. The rationale for not requiring an HRA for construction activities is the limited duration of exposure. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, "Individual Cancer Risk" is the likelihood that a person continuously exposed to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology and OEHHA guidance evaluates residential exposure over a 30-year duration.¹ Because the construction schedule for the Project estimates that the phases which require the most heavy-duty diesel equipment and truck² usage, such as site grading/excavation, would last for a much

¹ SCAQMD CEQA Handbook, 1993, Chapters 5, 9, and 10. It should be noted that SCAQMD is the City's air quality expert agency.

² Heavy-Duty trucks range between Class 5 through Class 8 Truck (Weight Classification). A Class 5 heavy duty truck with a Gross Vehicle Weight Rating of 16,001 to 19,500 pounds, equipped with a medium-heavy duty engine (e.g., utility bucket truck). A Class 6 heavy duty truck with a Gross Vehicle Weight Rating of 19,501 to 26,000 pounds, equipped with a medium-heavy duty engine (e.g., school (Footnote continued on next page)

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shorter duration (e.g., approximately three months) (refer to page B-28 of Appendix B of the Draft EIR), and the overall construction schedule (refer to page B-28 of Appendix B of the Draft EIR) would be limited to approximately three years, construction of the Project would not result in a substantial, long-term (i.e., 70-year or 30-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (i.e., 3 years out of a 70-year or 30-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted or required. This supporting information is also consistent with *2006 L.A. City CEQA Thresholds Guide* in making a case-by-case determination of significance.³ As such, the Draft EIR correctly concluded that Project-related TAC emission impacts during construction would be less than significant and consequently not result in a potential health risk impact.

As discussed in Response to Comment No. 3-6, in Section II, Responses to Comments, of the Final EIR, the June 2023 Appeal Responses (see Response to Comment Nos. CREED-2 and CREED-3), and again in this comment, the commentor misrepresents OEHHA's guidance regarding when an HRA is recommended for a construction period of two months or more. OEHHA's Guidance Manual provides recommendations related to cancer risk evaluation of certain short-term projects.⁴ As discussed in Section 8.2.10 of the Guidance Manual, "The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation." Short-term projects that would require a permitting decision by SCAQMD typically would be

bus). A Class 7 heavy duty truck with a Gross Vehicle Weight Rating of 26,001 to 33,000 pounds (e.g., delivery truck), equipped with either a medium-heavy duty engine or a heavy-heavy duty engine. A Class 8 Truck with a heavy duty truck with a Gross Vehicle Weight Rating of 33,001 pounds or greater, equipped with a heavy-heavy duty engine (e.g., concrete/dump truck).

³ *The Department of City Planning now uses the CEQA Appendix G environmental checklist questions as thresholds of significance. The 2006 L.A. CEQA Thresholds Guide is no longer the City's default threshold, but may be used as a reference guide.*

⁴ *Office of Environmental Health Hazard Assessment, Air Toxicology and Epidemiology, Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, 2015.*

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limited to site remediation (e.g., stationary soil vapor extractors) and would not be applicable to the Project. The Guidance Manual does not provide specific recommendations for evaluation of short-term use of mobile sources (e.g., heavy-duty diesel construction equipment) typical of construction projects.

From an operational standpoint, the Draft EIR correctly identified that the Project would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic toxic air contaminants. In addition, the proposed land uses would not generally involve the use of heavy-duty diesel trucks with the exception of occasional moving trucks, trash trucks or delivery trucks. The Appellant is referred to SCAQMD guidance below that provides clarification as to when an HRA may be warranted:

The SCAQMD published and adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, which provides recommendations regarding the siting of new sensitive land uses near potential sources of air toxic emissions (e.g., freeways, distribution centers, rail yards, ports, refineries, chrome plating facilities, dry cleaners, and gasoline dispensing facilities).⁵ The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units).

As discussed in Response to Comment No. 3-6 in Section II, Responses to Comments, of the Final EIR, the proposed uses are conservatively estimated to generate approximately eight trucks per day. Furthermore, SCAQMD guidance does not list emergency generators as a use warranting additional analysis in an HRA. Based on SCAQMD guidance, no quantitative analysis was required to assess future cancer risk within the vicinity of the Project as the Project is consistent with the recommendations regarding the siting of new sensitive land uses near potential sources of TAC emissions

⁵ SCAQMD, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*, May 6, 2005.

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provided in the SCAQMD *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Specifically, the Project is not considered to be a substantial source of diesel particulate matter (DPM) warranting a refined HRA since daily truck trips to the Project Site would not exceed 100 trucks per day or more than 40 trucks with operating TRUs, well below the SCAQMD recommendations, above.

As further discussed in Response to Comment No. 3-6 in Section II, Responses to Comments, of the Final EIR, an HRA related to any potential on-site sources of TACs is not required by SCAQMD or the City, and no guidance for HRAs for construction has been adopted by SCAQMD or the City. Accordingly, the HRA provided as Appendix FEIR-2 of the Final EIR was done voluntarily for informational purposes only to supplement the administrative record and respond to comments, and further demonstrated that even if an HRA was necessary (which it was not) the Project would not have a significant air quality impact. The HRA, based upon appropriate methodology and assumptions, demonstrated that health risks from the Project (combined construction and operation) would result in a maximum incremental cancer risk of 3.9 in one million people and would occur at residences located east of the Project Site, across South Grand Avenue. The Project-related incremental cancer risk is below the applicable SCAQMD significance threshold of 10 in one million people as referenced in this comment.⁶

Comment No. CREED LA—PLUM Letter-4

2. Localized Significance Thresholds Do Not Reflect Health Risks From Exposure to Toxic Air Contaminants

The City also cannot assume that because emissions would not exceed Localized Significance Thresholds (“LSTs”), the Project’s localized air quality impacts would not expose sensitive receptors to substantial air pollutant concentrations. LSTs are based on

⁶ SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.

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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.

The purpose of LSTs is not to represent health risk significance thresholds for TACs such as DPM. Rather, LSTs represent the maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based on the ambient concentrations of that pollutant for each source receptor area.³⁹ As explained in our initial comments, DPM is not a criteria pollutant for which there is an applicable federal or state ambient air quality standard. The seven criteria air pollutants are: ozone (O₃); carbon monoxide (CO); nitrogen dioxide (NO₂); sulfur dioxide (SO₂); PM₁₀; PM_{2.5}; and lead (Pb). Conversely, DPM is made of dozens of constituent particles that cause cancer. For example, the California Air Resources Board explains that DPM is composed of carbon particles and numerous organic compounds, including over 40 known cancer-causing organic substances.⁴⁰ Examples of these chemicals include polycyclic aromatic hydrocarbons, benzene, formaldehyde, acetaldehyde, acrolein, and 1,3-butadiene. Diesel exhaust also contains gaseous pollutants, including volatile organic compounds and oxides of nitrogen (NO_x). Because of DPM's toxic constituent particles, even if the size of DPM particles is the same as PM₁₀ and PM_{2.5}, the LST applicable to PM₁₀ and PM_{2.5} would not apply to DPM. Accordingly, CARB has identified DPM as a TAC with no threshold level of exposure for adverse health effects determined. In sum, LSTs were not designed to reflect the unique health risks of TACs like DPM. Therefore, an HRA is necessary to quantify exposure to TACs like DPM.

³⁹ South Coast Air Quality Management District, Final Localized Significance Threshold Methodology (June 2003, Revised July 2008), available at www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2; <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>; [sic]

⁴⁰ CARB, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>.

Response to Comment No. CREED LA—PLUM Letter-4

This specific comment was addressed in the Final EIR (see Response to Comment Nos. 3-6 and 3-28). This comment incorrectly asserts that the Draft EIR concluded that the

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Project's cancer risk from exposure to DPM would be less than significant based on the Draft EIR's conclusion that the Project's criteria pollutant emissions are less than significant. The Draft EIR correctly followed guidance in SCAQMD's handbook for addressing localized impacts associated with criteria pollutants using the SCAQMD Localized Significance Thresholds and Look-Up screening tables.⁷ The maximum daily localized emissions from Project construction and LSTs were presented in Table IV.A-6 on page IV.A-58 of the Draft EIR and demonstrate that the Project would not exceed the SCAQMD-recommended localized screening thresholds. The Draft EIR addressed criteria pollutants consistent with the SCAQMD LSTs and TACs (DPM) consistent with the qualitative assessment and a confirmatory HRA in the Final EIR for informational purposes. It is not clear why the commentor conflates the two different analyses.

As discussed in the two responses, the Draft EIR correctly addressed health risk impacts and a health risk assessment was not necessary. The Project is not considered to be a substantial source of diesel particulate matter warranting an HRA. An HRA is not required by SCAQMD or the *L.A. City CEQA Thresholds Guide*, and no guidance for health risk assessments for construction has been adopted by SCAQMD or the City. Nonetheless, an HRA was prepared in response to these comments to confirm, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project. The HRA is provided as Appendix FEIR-2 of the Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is below the applicable SCAQMD significance threshold of 10 in one million.

⁷ SCAQMD, *LST Methodology Appendix C-Mass Rate LST Look-up Table*, revised October 2009.

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Comment No. CREED LA—PLUM Letter-5

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

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”, [sic] 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***,”⁴¹ 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.”⁴²

The HRA prepared in response to CREED LA’s comments fails to analyze impacts on all sensitive receptors. Health risk impacts on children are measured using Age Sensitivity Factors (“ASFs”).⁴³ As stated in the FEIR, ASFs “account for increased sensitivity of early-life exposure to carcinogens.”⁴⁴ 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 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 FEIR’s environmental setting.⁴⁵

The City argues that relevant guidance does not support the use of ASFs to analyze health impacts of DPM.⁴⁶ This unsupported claim was fully addressed in CREED LA’s comments on the FEIR and comments to the City Planning Commission.⁴⁷ OEHHA guidance explicitly applies ASFs to all carcinogens such as DPM regardless of purported mechanism of action.⁴⁸ CREED LA’s comments also discuss U.S. EPA guidance,⁴⁹ which recommends use of ASFs for carcinogens that act “through the mutagenic mode of action.”⁵⁰ It is uncontested by the City that DPM contains mutagenic carcinogens, but the City puts forth the scientifically-unsupported claim that all of the constituent compounds of a pollutant must be mutagenic for ASFs to be applied.⁵¹

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The City suggests that its failure to apply ASFs is consistent with SCAQMD guidance.⁵² But the City ignores that SCAQMD has commented on many HRAs conducted in the South Coast Air Basin by criticizing the failures of other agencies to apply ASFs for projects with DPM emissions.⁵³

The City also ignores that the City itself has applied ASFs in previous construction HRAs.⁵⁴ The City offers no reasoning for why substantial evidence supported the use of ASFs for other construction projects and not this one.

The City's responses also ignore 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,"⁵⁵ 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.

Therefore, 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 omits application of ASFs, the Project's health risk impacts on especially-sensitive populations have 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.

⁴¹ Pub. Res. Code ("PRC") § 21083(b)(3), (d) [emphasis added].

⁴² See PRC §21000 et seq. [emphasis added]

⁴³ Appendix FEIR-2, pg. 4.

⁴⁴ Appendix FEIR-2, pg. 4; see also City of Los Angeles, Department of City Planning. 2019. Air Quality and Health Effects, pg 10.

⁴⁵ DEIR, pg. III-2.

⁴⁶ Staff Report, pg. 6, Staff Response 1A-2; Id, pg. 26, Response to Comment No. CREED—PC Letter-3; Appendix FEIR-2, pg. 4-6.

⁴⁷ Letter from Adams, Broadwell, Joseph & Cardozo to City 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) (February 15, 2023); Letter from ABJC to City re: Agenda

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Item 8—8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; VTT-74876-CN; ZA-2021-7053-ZAI) (July 11, 2023).

- ⁴⁸ OEHHA, Guidance Manual for Preparation of Health Risk Assessments (February 2015) available at <https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>, appendices available at <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>; OEHHA, Technical Support Document for Cancer Potency Factors (May 2009), pg. 3-4, available at <https://oehha.ca.gov/media/downloads/crnrr/tsdcancerpotency.pdf>; Appendix FEIR-2, pg. 4; see OEHHA, Technical Support Document for Exposure Assessment Stochastic Analysis, available at <https://oehha.ca.gov/media/downloads/crnrr/exposureassessment2012tsd.pdf>; see SCAQMD, Risk Assessment Procedures for Rules 1401, 1401.1, and 212 (August 2017), pg. 7, available at <http://www.aqmd.gov/docs/default-source/permitting/rule-1401-risk-assessment/riskassessproc-v8-1.pdf>; San Joaquin Valley Air Pollution Control District, Update to District's Risk Management Policy to Address OEHHA's Revised Risk Assessment Guidance Document (May 2015), pg. 8, 20, 24. ⁴⁹, available at: <https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf>; see Bay Area Air Quality Management District, 2022 CEQA Guidelines, Pg. E-100–106, available at https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa-guidelines-2022/appendix-e-recommended-methods-for-screening-and-modeling-local-risks-and-hazards_final.pdf?la=en.
- ⁴⁹ 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, available at https://www.epa.gov/sites/default/files/2015-01/documents/cgiiwg-communication_ii.pdf.
- ⁵⁰ Appendix FEIR-2, pg. 6.
- ⁵¹ Eystone Environmental, Memorandum, Department of City Planning (June 22, 2023), pg. 23 (Staff Report, PDF pg. 108) (“It is acknowledged that this comment identifies that USEPA has identified that diesel exhaust (DE) has ‘...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.’ However, as discussed in Appendix FEIR-2, for diesel particulates, polycyclic aromatic hydrocarbons (PAHs), and their derivatives, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass.”).
- ⁵² Staff Report, pg. 6 (Staff Response 1A-1); Eystone Environmental, Memorandum (June 22, 2023), pg. 13 (“It should be noted that SCAQMD is the City’s air quality expert agency”).
- ⁵³ SCAQMD, Comments on Draft Mitigated Negative Declaration (DMND) for the Proposed Walnut Specific Plan No. 3 Mixed-Use Development Located North of Valley Boulevard, Bounded by Pierre Road to the West and Suzanne Road to the East (February 2015), available at <https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2015/february/dmndwalnutsp.pdf?sfvrsn=4> (“Although the HRA specifically states that the analysis used recent guidance from OEHHA, the breathing rates used do not correspond to OEHHA’s new guidance using the different age groups. The cancer risk was also calculated using one ASF value, which is not consistent with OEHHA’s calculation recommendation for the different age groups.”); SCAQMD, Comments on Second Recirculated Draft Environmental Impact Report (RDEIR) for the Proposed West Valley Logistics Center Specific Plan (SCH No.: 2012071058) (March 2018), available at <https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2018/deirwestvalley>

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[logistics-032018.pdf](#) (“When calculating cancer risks, the age sensitivity factors (ASF) accounts for greater susceptibility in early life, starting from the 3rd trimester of pregnancy to 70 years”).

⁵⁴ City of Los Angeles, Air Quality Technical Report For the Proposed 1020 S. Figueroa Street Project (June 2016), available at https://planning.lacity.gov/eir/1020SoFigueroa/DEIR/Appendix_C_Air_Quality_Technical_Report.pdf; City of Los Angeles, Initial Study for 698 New Hampshire Project, pg. B23-B24, available at https://planning.lacity.gov/staffrpt/mnd/Pub_102716/ENV-2016-1414.pdf; City of Los Angeles, Air Quality Technical Report for 698 New Hampshire Project (September 2017), pg. 52-53, available at https://planning.lacity.gov/eir/FigPico/files/Apx%20C_Air%20Quality%20Tech%20Report.pdf; City of Los Angeles, Final EIR for Harvard-Westlake Parking Improvement Plan (June 2017), pg. 66, available at https://planning.lacity.gov/eir/Harvard_WestLake/FEIR/0.0%20FEIR%20Responses%20to%20Comments%20and%20MMP.pdf.

⁵⁵ PRC § 21083(b)(3), (d) (emphasis added).

Response to Comment No. CREED LA—PLUM Letter-5

This specific comment was addressed in the June 2023 Appeal Responses (see Response to Comment Nos. CREED-3 and CREED-11). As discussed therein, the appellant contends that the HRA contained in the Final EIR is inadequate because it fails to analyze health risk impacts on all groups of sensitive receptors. As discussed above in Response to Comment No. CREED LA—PLUM Letter-4, the purpose of the HRA provided as Appendix FEIR-2 of the Final EIR was to confirm for informational purposes, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project and identified the impact at the maximum exposed sensitive receptor. This receptor was identified east of the Project Site, across Grand Avenue (for combined construction and operational emissions). The Project-related incremental cancer risk was below the applicable SCAQMD significance threshold of 10 in one million people.⁸ As shown on page 49 (SRC Diagram-Construction) of Appendix FEIR-2, the DPM concentration decreases substantially at greater distances (Construction DPM concentration decreases by a factor of 7 approximately 150 feet from the maximum concentration). Thus, the reported maximum impact identified in the HRA was appropriately used for comparison to the SCAQMD significance threshold. As a point of clarification, an HRA is not inadequate if it does not analyze impacts on “all” sensitive receptors for the reasons discussed above

⁸ SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.

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(impacts decrease over distance away from the source and impacts are less than significant at the maximum exposed sensitive receptor).

It is important to understand the purpose of the OEHHA guidance cited in this comment as it is not applicable to the Project. The Guidance Manual was developed by OEHHA, in conjunction with the California Air Resources Board (CARB), for use in implementing the Air Toxics “Hot Spots” Program (Health and Safety Code Section 44360 et. seq.). The Air Toxics “Hot Spots” Program requires certain stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics “Hot Spots” Program are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels. The intent in developing the Guidance Manual was to provide HRA procedures for use in the Air Toxics Hot Spots Program or for the permitting of new or modified stationary sources. The Project is not a new or modified stationary source that requires air quality permits to construct or operate.

OEHHA’s Guidance Manual provides Age Sensitivity Factors (ASFs) to account for potential increased sensitivity of early-in-life exposure to carcinogens. For risk assessments conducted under the auspices of AB 2588, a weighting factor is applied to all carcinogens regardless of purported mechanism of action. In comments presented to the SCAQMD Governing Board (Meeting Date: June 5, 2015, Agenda No. 28) relating to toxic air contaminant exposures under Rules 1401 (New Source Review of Toxic Air Contaminants), use of the 2015 OEHHA guidelines and their applicability for projects subject to CEQA, as they relate to the incorporation of early-life exposure adjustments, it was reported that:

The Proposed Amended Rules are separate from the CEQA significance thresholds. The Response to Comments Staff Report PAR 1401, 1401.1, 1402, and 212 A—8 June 2015 SCAQMD staff is currently evaluating how to implement the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will evaluate a variety of options on how to evaluate health risks under the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will conduct public workshops to gather input before bringing recommendations to the Governing Board.

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SCAQMD, as a commenting agency, has not conducted public workshops nor developed policy relating to the applicability of applying the 2015 OEHHA guidance for projects prepared by other public/lead agencies subject to CEQA.

To emphasize variability in methodology for conducting HRAs, regulatory agencies throughout the State of California including the Department of Toxic Substances Control (DTSC) which is charged with protecting individuals and the environment from the effects of toxic substances and responsible for assessing, investigating and evaluating sensitive receptor populations to ensure that properties are free of contamination or that health protective remediation levels are achieved have adopted the U.S. Environmental Protection Agency's (USEPA's) policy in the application of early-life exposure adjustments.

Specifically, USEPA guidance relating to the use of early life exposure adjustments (*Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens, EPA/630/R-003F*) are considered when carcinogens act "through the mutagenic mode of action." As reported:

The Agency considered both the advantages and disadvantages of extending the recommended, age dependent adjustment factors for carcinogenic potency to carcinogenic agents for which the mode of action remains unknown. EPA recommends these factors only for carcinogens acting through a mutagenic mode of action based on a combination of analysis of available data and long-standing science policy positions that set out the Agency's overall approach to carcinogen risk assessment, e.g., the use of a linear, no threshold extrapolation procedure in the absence of data in order to be health protective. In general, the Agency prefers to rely on analyses of data rather than on general defaults. When data are available for a susceptible lifestage, they should be used directly to evaluate risks for that chemical and that lifestage on a case-by-case basis. In the case of nonmutagenic carcinogens, when the mode of action is unknown, the data were judged by EPA to be too limited and the modes of action too diverse to use this as a category for which a general default adjustment factor approach can be applied. In this situation per the Agency's Guidelines for Carcinogen Risk Assessment, a linear low-dose extrapolation methodology is

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recommended. It is the Agency’s long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity.

It is acknowledged that this comment identifies that USEPA has identified that diesel exhaust (DE) has “... 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.” However, as discussed in Appendix FEIR-2, for diesel particulates, polycyclic aromatic hydrocarbons (PAHs), and their derivatives, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the exhaust particulate mass.⁹ To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action.¹⁰

This comment incorrectly states that the “City puts forth the scientifically-unsupported claim that all of the constituent compounds of a pollutant must be mutagenic for ASFs to be applied.” As discussed above, less than one percent of the exhaust particulate mass would exhibit a mutagenic mode of action. Thus, based on a review of relevant guidance on the applicability of the use of early life exposure adjustments to identified carcinogens, the use of these factors would not be applicable to the HRA provided in the Final EIR as neither the Lead Agency nor SCAQMD have developed formal recommendations on whether these factors should be used for CEQA analyses of potential DPM construction or operational impacts. For the HRA prepared in the Final EIR, the HRA relied upon USEPA guidance relating to the use of early life exposure adjustment factors (Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens, EPA/630/R-003F) whereby adjustment factors are only considered when

⁹ United States Environmental Protection Agency, *Health Assessment Document for Diesel Engine Exhaust (EPA/600/8-90/057F, 2002.*

¹⁰ United States Environmental Protection Agency, *National Center for Environmental Assessment, 2018; Integrated Risk Information System (IRIS), Diesel Engine Exhaust.*

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carcinogens act “through the mutagenic mode of action.” To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action. Therefore, early life exposure adjustments were not considered in the HRA presented as Appendix FEIR-2.

This comment also misrepresents SCAQMD guidance regarding application of ASFs for projects with DPM emissions. The comment cites SCAQMD’s Comments on Draft Mitigated Negative Declaration (DMND) for the Proposed Walnut Specific Plan No. 3 Mixed-Use Development Located North of Valley Boulevard, Bounded by Pierre Road to the West and Suzanne Road to the East, 2015. Provided below is the specific SCAQMD comment.

8. The method used to calculate cancer risk is not well documented. Although the HRA specifically states that the analysis used recent guidance from OEHHA, the breathing rates used do not correspond to OEHHA’s new guidance using the different age groups. The cancer risk was also calculated using one ASF value, which is not consistent with OEHHA’s calculation recommendation for the different age groups. It appears that the Lead Agency used a hybrid of both current and recent revised OEHHA guidance equations and factors in calculating the cancer risk and this was not well documented. SCAQMD staff recommends that the Lead Agency update the HRA with detailed explanation of the methods used to calculate the health risks as well as better define the factors used and how they were derived. Where applicable, the relevant SCAQMD references should be included.

The SCAQMD “recommends the Lead Agency update the HRA with detailed explanation of the methods used to calculate the health risks as well as better define the factors used and how they were derived.” The SCAQMD does not specify that the Lead Agency has to apply OEHHA’s ASFs, but instead the HRA states that the analysis used recent guidance from OEHHA and thus SCAQMD recommends that the HRA should then follow that guidance. This is not the case for the Project. As discussed above, the City provides a detailed explanation of the methods used to calculate the health risks and based on a review of relevant guidance on the applicability of the use of early life exposure

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adjustments to identified carcinogens, the use of these factors would not be applicable to the HRA provided in the Final EIR.

It should be of note that the SCAQMD comment letter cited in this comment did not recommend/request that project-related construction emissions be included in the HRA.

A quantified HRA using ASFs is not required, and the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies based on the above supporting evidence for evaluating a project's impacts including potential impacts related to health risk. Thus, as discussed above, the HRA provided as Appendix FEIR-2 of the Final EIR was to confirm for informational purposes, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project and addresses impacts to sensitive receptors including impacts on children.

Comment No. CREED LA—PLUM Letter-6

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

The City'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.⁵⁶ But as is explained above, the 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.⁵⁷ ***Dr. Clark's 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 10 in 1 million threshold.***⁵⁸ The City has not contested the accuracy of Dr. Clark's calculations, but simply claims that ASFs are not applicable to this Project.⁵⁹ With ASFs applied, the Project

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indisputably would have a significant and unmitigated health risk impact. The FEIR must be revised and recirculated to disclose and mitigate this significant health effect.

⁵⁶ Appendix FEIR-2, Executive Summary, pg. 1.

⁵⁷ Letter from ABJC to City 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) (February 15, 2023), Attachment A, pg. 5.

⁵⁸ *Id.*

⁵⁹ Eystone Environmental, Memorandum (June 22, 2023), pg. 25, Response to Comment No. CREED-4 (Staff Report, PDF pg. 110).

Response to Comment No. CREED LA—PLUM Letter-6

This specific comment was addressed in the June 2023 Appeal Responses (see Response to Comment Nos. CREED-3 and CREED-11). The appellant contends that the HRA contained in the Final EIR is inadequate because ASFs were not included in the HRA and summarizes Dr. Clark's calculations using ASFs. Please refer to Response to Comment No. CREED LA—PLUM Letter-5 regarding the City's discretion to select the appropriate thresholds of significance and methodologies based on substantial evidence as to why ASFs were not considered in the HRA presented as Appendix FEIR-2. Dr. Clark's updated analysis using ASFs is noted for the record and was forwarded to the decision-makers for their review and consideration. Please refer to the June 2023 Appeal Responses (Response to Comment No. CREED-11) for additional discussion of the applicability of ASFs.

Comment No. CREED LA—PLUM Letter-7

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

CREED LA's comments show that the Project would have a significant and unmitigated health risk impact as a result of DPM emitted during Project construction and operations. CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts.⁶⁰

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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. CREED LA subsequently explained that the COA's reference to a "good faith effort" makes the measure vague and nonbinding, and that the COA should be revised to remove this non-binding language.

The Staff Report responds that because the City did not identify a significant health risk impact, it is not necessary for the COA to include binding language.⁶¹ But because health risk impacts would in fact be significant, binding mitigation is required.

⁶⁰ Pub. Resources Code § 21002.

⁶¹ Staff Report, pg. 6—Staff Response 1A-2.

Response to Comment No. CREED LA—PLUM Letter-7

Contrary to what is stated in this comment, the Project would not result in significant health risk impacts and as such no changes in the City's adopted Condition of Approval regarding use of construction equipment meeting USEPA Tier 4 Final emission standards is warranted.

Comment No. CREED LA—PLUM Letter-8

C. The FEIR Still Fails to Disclose and Mitigate Significant Noise Impacts

1. The FEIR Fails to Disclose and Mitigate Significant Operational Noise Impacts

The City claims that operational noise impacts would be less than significant, but CREED LA's comments explain that operational noise impacts would be significant because noise from operations would raise existing ambient noise at two receptors near the Project (R5 and R9) from "conditionally acceptable" to "normally unacceptable" levels, and ambient noise at one receptor to "clearly unacceptable" levels.⁶² Receptor R5 is a residential property and R9 is a hotel.⁶³ Per the table below, the L.A. CEQA Thresholds Guide provides that noise levels at residences and hotels ranging from 70–75 CNEL db [sic] are

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“normally unacceptable” and levels at residences above 70 db [sic] are clearly “unacceptable.”⁶⁴

<u>Land Use</u>	<u>Community Noise Exposure</u> <u>CNEL, db</u>			
	<u>Normally Acceptable</u>	<u>Conditionally Acceptable</u>	<u>Normally Unacceptable</u>	<u>Clearly Unacceptable</u>
Single Family, Duplex, Mobile Homes	50 - 60	55 - 70	70 - 75	above 70
Multi-Family Homes	50 - 65	60 - 70	70 - 75	above 70
Schools, Libraries, Churches, Hospitals, Nursing Homes	50 - 70	60 - 70	70 - 80	above 80
Transient Lodging - Motels, Hotels	50 - 65	60 - 70	70 - 80	above 80
Auditoriums, Concert Halls, Amphitheaters	-	50 - 70	-	above 65
Sports Arena, Outdoor Spectator Sports	-	50 - 75	-	above 70
Playgrounds, Neighborhood Parks	50 - 70	-	67 - 75	above 72
Golf Courses, Riding Stables, Water Recreation, Cemeteries	50 - 75	-	70 - 80	above 80
Office Buildings, Business and Professional Commercial	50 - 70	67 - 77	above 75	-
Industrial, Manufacturing, Utilities, Agriculture	50 - 75	70 - 80	above 75	-

Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction without any special noise insulation requirements.

Conditionally Acceptable: New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features included in the design. Conventional construction, but with closed windows and fresh air supply systems or air conditioning will normally suffice.

Normally Unacceptable: New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.

Clearly Unacceptable: New construction or development should generally not be undertaken.

The thresholds above are derived from the City General Plan’s Noise Element’s Guidelines for Noise Compatible Land Use.⁶⁵ These noise levels were set “[t]o help guide determination of appropriate land use and mitigation measures visa-vis existing or

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anticipated ambient noise levels.”⁶⁶ Per the table below, the Project’s operations would increase ambient noise levels to “clearly unacceptable” levels at residential receptor R5 and “normally unacceptable” levels at hotel receptor R9.

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	59.7	44.6	40.7	61.3	61.9	70.1	0.7

The City reasons that because the increase in noise would be less than 3 dBA, a threshold set forth in the L.A. CEQA Thresholds Guide, impacts would be less than significant.

But California courts have clearly held that “the lead agency should consider both the increase in noise level and the absolute noise level associated with a project.”⁶⁷ In *Keep our [sic] Mountains Quiet v. County of Santa Clara*,⁶⁸ the County of Santa Clara’s Mitigated Negative Declaration relied on the noise standards set forth in its noise ordinance as its thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.⁶⁹ The Court considered the analytical requirements of CEQA Guidelines, Appendix G (“whether the project would result in ‘[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project’) in determining that the lead agency should consider both the increase in noise level and the absolute noise level associated with a project.⁷⁰ The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts⁷¹ in holding that the County’s reliance on the

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project's compliance with noise regulations did not constitute substantial evidence supporting the County's finding of no significant impacts.⁷²

In *King and Gardiner Farms, LLC v. County of Kern*,⁷³ the Court of Appeal cited *Keep our Mountains Quiet* and decisions cited therein when it rejected the use of a single “absolute noise level” threshold of significance. The Court also concluded that the lead agency should consider both the increase in noise level and the absolute noise level associated with a project.⁷⁴ The Court explained the lead agency failed to “refer to evidence showing why the magnitude of an increase was irrelevant in determining the significance of a change in noise.”⁷⁵

Here, the City's noise significance threshold fails to consider both the increase in noise level and the absolute noise level associated with a project—the City's thresholds consider the increase in noise level but not the absolute noise level resulting from the Project. The FEIR thus fails to meet the analytical standards described in the aforementioned decisions. Further, increasing noise levels to “clearly unacceptable” levels—which the General Plan defines as levels where “new construction or development should generally not be undertaken”—constitutes an exceedance of the standards in the General Plan. Such an exceedance constitutes a significant impact under CEQA Guidelines, Appendix G, Section XIII(a), which provides that generation of a permanent increase in ambient noise levels in excess of standards established in the local general plan would constitute a significant impact. To the extent that the Project's exceedance of City's own land use compatibility guidelines happens in combination with noise generated by other projects in the area, the Project's operational noise would be cumulatively considerable.

⁶² Letter from ABJC to City 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) (January 5, 2021), pg. 18; *Id.*, Attachment B, Figure 2.

⁶³ DEIR, pg. IV.E-16.

⁶⁴ City of Los Angeles, L.A. CEQA Thresholds Guide (2006), pg. I.2-4, I.3-3, available at <https://planning.lacity.gov/eir/CrossroadsHwd/deir/files/references/A07.pdf>.

⁶⁵ City of Los Angeles, General Plan, Noise Element, pg. I-1, available at https://planning.lacity.gov/odocument/b49a8631-19b2-4477-8c7f-08b48093cddd/Noise_Element.pdf.

⁶⁶ *Id.*

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⁶⁷ *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733; see *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894 (citing *Keep Our Mountains Quiet*).

⁶⁸ *Keep our [sic] Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

⁶⁹ *Id.* at 732.

⁷⁰ *Id.* at 733.

⁷¹ *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project’s effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

⁷² *Id.* at 732–734; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of rehearing (Mar. 20, 2020).

⁷³ *King and Gardiner Farms, LLC, supra*, 45 Cal.App.5th 814.

⁷⁴ *Id.* at 887.

⁷⁵ *Id.* at 894.

Response to Comment No. CREED LA—PLUM Letter-8

The comment states that 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) should be used. This comment was previously addressed by Response to Comment Nos. 3-41 and 3-42 of the Final EIR. As discussed therein, the thresholds of significance for the analysis of potential noise impacts are based on the L.A. CEQA Thresholds Guide. With regard to Project operation, the Project’s potential noise impacts are based on a significance threshold of 5 dBA over the existing ambient noise environment. In addition, the composite noise impact analysis from all operational sources of the Project incorporates the City’s land use compatibility guidelines from the General Plan and is based on two levels of thresholds for composite noise increases: a 3 dBA noise increase when the Project plus the ambient noise level fall within the “normally unacceptable” or “clearly unacceptable” category or a 5 dBA noise increase when the Project plus the ambient noise level fall within the “normally acceptable” or “conditionally acceptable” category. The Appellant’s proposed threshold would not be a reasonable analysis due to the arbitrary application of the Noise Element table intended for considering new uses within the ranges of ambient noise levels, which

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does not consider the absolute noise and incremental increase, factors the Appellant goes on to cite in legal rulings. For example, a noise level increase from 69.9 dBA CNEL (conditionally acceptable) to 70.0 dBA CNEL (normally unacceptable) for residential uses, would result in a maximum 0.1 dBA, increase, which would not be perceptible in an outdoor environment but based on the Appellant's proposed threshold would result in a significant impact requiring mitigation measures which may not be technically feasible. Furthermore, the Project's maximum increase in composite noise levels would be 2.6 dBA, which is less than the 3 dBA noise increase that is considered just perceptible. The *King and Gardiner Farms, LLC v. County of Kern* case is not applicable to the Project. In particular, in the *King and Gardiner Farms, LLC v. County of Kern* case, the court held that the EIR did not include an analysis, supported by substantial evidence, explaining why the magnitude of an increase in ambient noise need not be addressed to determine the significance of the project's noise impact. The Draft EIR specifically includes an analysis of noise increases over existing ambient noise levels. In addition, the Project uses specified thresholds that are supported by substantial evidence, including a specific explanation provided in the LA. CEQA Thresholds Guide.

Comment No. CREED LA—PLUM Letter-9

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

The FEIR acknowledges that the Project would have significant construction noise impacts. CREED LA's comments and appeal 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.

In Response to Comment No. CREED-6, the Staff Report argues that provision of plexiglass barriers or sound blankets is not feasible because the Applicant would require approval from the owners of the residential buildings. The City does not explain why requesting approval from the owners of affected residential buildings is infeasible. Even if some sensitive receptors may not opt-in, noise impacts would be reduced at the buildings that do accept installation of noise barriers. The City also argues that installation of scaffolding and noise barriers involves generation of noise, rendering the proposed

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mitigation counterproductive. This argument does not address whether noise from installation of scaffolding and noise barriers would be as loud as construction of the Project—minor noise impacts from installation of noise barriers may be acceptable to neighboring sensitive receptors. In any case, because the City identifies a significant and unavoidable construction noise impact, affected sensitive receptors should be offered the option to accept installation of sound barriers.

Response to Comment No. CREED LA—PLUM Letter-9

This comment is similar to Comment Nos. 3-38 through 3-40 of the Final EIR and Response to Comment No. CREED-6 of the April 2024 Appeal responses. As discussed therein, several of the mitigation measures suggested by the commenter are not feasible. As discussed in Response to Comment No. 3-40 of the Final EIR, the Applicant does not own or operate the nearby buildings that include residential uses. Furthermore, the fitting of plexiglass for the two receptors that have balconies as suggested by the commenter would have its own construction noise impacts associated with construction equipment used to install the plexiglass, such as forklifts, aerial lifts and hand tools. The noise levels associated with forklifts, aerial lifts, and tools associated with implementing the plexiglass barriers would be approximately 82.0 dBA when operating adjacent to the residential building, which would exceed the ambient noise levels by up to 15.7 dBA. Thus, this suggested mitigation measure is not reasonable or feasible. Furthermore, contrary to this comment, the EIR does not state that “requesting approval from the owners of affected residential buildings [to implement mitigation] is infeasible,” rather the Final EIR states that a mitigation measure constructing scaffolding and sound blankets for adjacent buildings “would require the approval of other property owners to implement, and that approval cannot be guaranteed.”

Comment No. CREED LA—PLUM Letter-10

D. The FEIR Still Fails to Analyze and Mitigate Potentially Significant Hazards Impacts

The FEIR finds that hazards and hazardous materials impacts are less than significant, and does not identify any binding project design features or mitigation measures to reduce

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impacts.⁷⁶ However, the FEIR's conclusion is unsupported because the City failed to analyze the extent of hazardous materials present at the Project site.

Specifically, the FEIR's Phase I and II ESA concludes that, due to the age of the parking structure currently located on the Project site, an asbestos survey be conducted by a certified asbestos consultant prior to demolition.⁷⁷ The ESA further states that it is possible that lead-based paint was utilized on-site.⁷⁸ Despite this conclusion, no surveys for hazardous materials such as asbestos and lead-based paint are required in the MMRP and conditions of approval.

The FEIR's approach violates CEQA in several ways. First, the FEIR fails to conduct the requisite analysis of contaminants potentially present on the Project site. In *Cal. Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (“*CBIA v. BAAQMD*”)⁷⁹, the California Supreme Court held that the disturbance of contaminated soil is a potentially significant impact which requires disclosure and analysis of health and safety impacts in an EIR.⁸⁰ The Court explained that, “when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.”⁸¹ Further, CEQA requires that an EIR disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.⁸²

Here, the FEIR fails to require sampling and testing of substances such as asbestos and lead-based paint, despite acknowledging that they may be present onsite, and that further analysis is necessary to ascertain the absence of such hazardous substances. The FEIR's general statement that any onsite hazardous substances identified in a survey would be addressed in accordance with applicable regulations⁸³ ignores that the MMRP or conditions of approval fail to require a survey by a certified asbestos expert. Without the appropriate surveys, there is no guarantee that onsite hazardous materials would be detected. The City's approach thus does not allow for adequate disclosure and mitigation of conditions that may be hazardous to construction workers working on the Project.

A related issue is that deferring formulation of mitigation measures to post-approval studies is generally impermissible.⁸⁴ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.⁸⁵ If

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identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.⁸⁶ Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.⁸⁷

Here, the FEIR states that in the event asbestos or lead-based paint is detected, the Project would adhere to all federal, state, and local regulations prior to their removal.⁸⁸ This deferral is improper because (1) no surveys for asbestos and lead-based paint are currently required, and (2) the FEIR fails to identify the specific future studies and mitigation which may or may not be required by applicable regulations. By failing to disclose what specific analysis and mitigation will be required for each potentially present hazardous materials, the FEIR improperly defers mitigation. The vague allusions to future analysis and mitigation also violate CEQA's requirement that mitigation measures must be incorporated into the design of the Project or "fully enforceable through permit conditions, agreements, or other legally binding instruments."⁸⁹

In sum, the FEIR must be revised to disclose the Project's potentially significant hazards impacts and identify binding mitigation.

⁷⁶ DEIR, Section VI ("Other CEQAS Considerations"), pg. IV-21.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ (2015) 62 Cal.4th 369

⁸⁰ 62 Cal.4th at 388-90; 14 CCR § 15126.2(a).

⁸¹ *Id.* at 377.

⁸² 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388–90 ("CBIA v. BAAQMD") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal. App. 4th 48, 82; *Berkeley Jets* (2001) 91 Cal.App.4th 1344, 1370–71; CEQA Guidelines, Appendix G.

⁸³ DEIR, Section VI ("Other CEQA Considerations"), pg. IV-21.

⁸⁴ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

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⁸⁵ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th at pg. 1604, fn. 5.

⁸⁶ *Id.*

⁸⁷ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309; Pub. Resources Code, § 21061.

⁸⁸ DEIR, Section VI (“Other CEQAS Considerations”), pg. IV-21.

⁸⁹ CEQA Guidelines, § 15126.4, subd. (a)(2).

Response to Comment No. CREED LA—PLUM Letter-10

The commenter refers to a discussion of asbestos and lead based paint in the Final EIR. Note that asbestos and lead based-paint are not discussed in the Final EIR and no comments were raised regarding these topics. Hazards and hazardous materials, including, asbestos and lead-based paint were addressed in the Initial Study included as Attachment A to the Draft EIR and also in Section IV, Other Environmental Considerations of the Draft EIR. As stated therein, asbestos and lead-based paint are subject to specific regulation that the Applicant is required to follow. In particular, the Project is required to comply with SCAQMD Rule 1403, Asbestos Emissions from Renovation/Demolition Activities, which regulates asbestos as a toxic material and controls the emissions of asbestos from demolition and renovation activities by specifying agency notifications, appropriate removal procedures, and handling and clean up procedures. In addition, the demolition of buildings containing LBPs would be required to comply with a comprehensive set of California regulatory requirements that are designed to assure the safe handling and disposal of these materials. Cal/OSHA has established limits of exposure to lead contained in dusts and fumes, which provides for exposure limits, exposure monitoring, and respiratory protection, and mandates good working practices by workers exposed to lead, particularly since demolition workers are at the greatest risk of adverse exposure. Lead-contaminated debris and other wastes must also be managed and disposed of in accordance with applicable provisions of the California Health and Safety Code. Required compliance with these regulatory requirements would ensure that no impacts associated with asbestos or lead-based paint would occur. There is no deferred analysis or mitigation related to asbestos or lead-based paint.

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Comment No. CREED LA—PLUM Letter-11

E. The FEIR Fails to Include Sufficient Investigation into Energy Conservation Measures

The FEIR fails to include sufficient investigation into energy conservation measures that might be available or appropriate for the Project. CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.”⁹⁰ The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F.⁹¹

- 1) Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
- 2) The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- 3) The potential for reducing peak energy demand.
- 4) Alternate fuels (particularly renewable ones) or energy systems.
- 5) Energy conservation which could result from recycling efforts.

Courts have rejected EIRs that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.⁹² In *California Clean Energy Commission v. City of Woodland* (“CCEC”),⁹³ the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land. Similar to the FEIR here, the EIR in CCEC concluded that, due to the proposed project’s compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy. But the lead agency’s EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project. The Court held “the City’s

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EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options.”⁹⁴ The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.⁹⁵ But the Court explained:

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines ... These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building’s envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.⁹⁶

Here, the City fails to analyze key energy consumption measures in violation of CEQA Guidelines Appendix F. The FEIR states that the project would comply with Title 24 requirements for “Solar Ready Buildings,” which require a certain area of rooftop to be set aside for installation of solar panels.⁹⁷ But the FEIR fails to assess the feasibility of actually installing solar facilities on the Project site. The LA Green Building Code, in Section 4.211, provides that buildings shall comply with Section 110.10(b-d) of the California Energy Code. Section 110.10(b) of the California Energy Code only requires the solar zone to be no less than 15 percent of the total roof area of the building excluding any skylight area. As in CCEC, these provisions of the Green Building Code “[do] not address many of the considerations required under Appendix F.”⁹⁸ These considerations include the technical and economic feasibility of installing solar facilities on the Project site, the potential size of the Project’s solar zone, and the potential magnitude of mitigation provided by installing solar facilities. Given that the Project is required to provide a minimum solar zone for future installation of solar facilities, discussion of installation of solar facilities is warranted under CEQA Guidelines Appendix F. Since Appendix F requires discussion of “why certain measures were incorporated in the project and why other measures were dismissed,” the FEIR must be revised to discuss why onsite solar facilities are omitted from the Project proposal.

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The FEIR also fails to evaluate the extent to which mobile source energy consumption could be reduced during Project operations through electric vehicle charging infrastructure (above what is required by existing regulations). The City states that the Project would meet the City’s Green Building Code requirements by making 30% of the proposed parking spaces capable of supporting future vehicle charging equipment and equipping 10% of spaces with charging stations. But the FEIR fails to analyze the feasibility of increasing provision of electric vehicle charging infrastructure above existing requirements, and the magnitude of the resulting energy savings.

The FEIR states that a diesel backup generator would be required for Project operations,⁹⁹ but fails to evaluate measures to reduce this source of energy consumption, such as use of alternative fuel sources. For instance, the MMRP proposes use of solar-powered generators for construction activities, but does not refer to operational backup generators.¹⁰⁰

In sum, the City’s energy analysis fails adequately analyze measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.¹⁰¹

Analysis of energy-reducing measures is also necessary to address consistency with applicable land use policies. The Southern California Association of Government’s (“SCAG’s”) 2020–20245 RTP/SCS Strategy “Leverage Technology Innovations” calls for incorporation of solar energy “micro-power grids” in communities.¹⁰² The City of Los Angeles’ Downtown Design Guide calls for building design strategies to include renewable energy generation, including solar.¹⁰³ The LA Green New Deal sets forth the goal: All new buildings will be net zero carbon by 2030; and 100% of buildings will be net zero carbon by 2050.¹⁰⁴ The FEIR’s energy analysis and land use consistency analysis fail to analyze the feasibility of installing onsite solar facilities consistent with these policies, and fail to disclose the Project’s conflict with these policies. This analysis must be provided in a revised and recirculated EIR.

⁹⁰ Pub. Resources Code, § 21100(b)(3); Tracy First v. City of Tracy (2009) 177 Cal.App.4th 912, 930.

⁹¹ 14 Cal. Code Regs., § 15126.4(a)(1)(C) (stating “Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.”).

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⁹² *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.

⁹³ (2014) 225 CA4th 173.

⁹⁴ *Id.* at 213.

⁹⁵ *Id.* at 210, 211.

⁹⁶ CECC [sic] (2014) 225 CA4th 173, 213.

⁹⁷ DEIR, pg. IV.B-35.

⁹⁸ CECC [sic] (2014) 225 CA4th 173, 213.

⁹⁹ DEIR, pg. IV.A-40.

¹⁰⁰ FEIR, MMRP, pg. IV-3.

¹⁰¹ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.

¹⁰² DEIR, Appendix D, pg. 6.

¹⁰³ *Id.* at 35.

¹⁰⁴ City of Los Angeles, Green New Deal Plan—Targets, <https://plan.mayor.lacity.gov/las-green-new-deal/targets>, accessed 5/7/2024.

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Section IV.B, Energy, of the Draft EIR provided a thorough analysis of potentially significant energy impacts of the Project, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy. As discussed therein, the Project's energy demands would comply with existing energy efficiency standards and would not cause wasteful, inefficient, or unnecessary use of energy. Therefore, Project impacts related to energy use under Threshold (a) were concluded less than significant. In addition, the Project would not conflict with adopted energy conservation plans, or violate state or federal energy standards. Therefore, Project impacts associated with regulatory consistency under Threshold (b) were concluded less than significant. So, while this comment correctly identified that CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, Project-related energy impacts were concluded to be less than significant and mitigation measures were not required.

As discussed on Page IV.B-25 of the Draft EIR, In addition to complying with CALGreen Code and Los Angeles Green Building Code requirements, the Applicant would

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also implement Project Design Feature GHG-PDF-1, which states that the design of new buildings would incorporate sustainability features (e.g., Energy Star-labeled products); and Project Design Feature WAT-PDF-1, which states that the Project 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, among others. In addition, the Project would be subject to the 2022 Title 24 standards. As an example, residential and nonresidential buildings built in compliance with the 2019 standards will use about 30 to 53 percent less energy than those under the 2016 standards and 2022 standards would further reduce energy use.¹¹ The Project would also comply with Section 110.10 of Title 24, which includes mandatory requirements for solar-ready buildings, and, as such, would support and would not preclude the potential future use of on-site renewable energy.

Contrary to what is stated in this comment, the Draft EIR did include a discussion regarding renewable energy options that might be available or appropriate for the Project. As discussed on Page IV.B-35 of the Draft EIR, the Project would comply with Title 24 requirements for “Solar Ready Buildings” which requires a certain area of rooftop to be set aside for installation of solar panels. This would not preclude installation of onsite solar panels as suggested in this comment. Due to the Project Site’s location, other on-site renewable energy sources would not be feasible to install on-site as there are no local sources of energy from the following sources: biodiesel, biomass hydroelectric and small hydroelectric, digester gas, methane, fuel cells, landfill gas, municipal solid waste, ocean thermal, ocean wave, and tidal current technologies, or multi-fuel facilities using renewable fuels. Furthermore, as discussed on Page IV.B-35 of the Draft EIR, wind-powered energy is not viable on the Project Site due to the lack of sufficient wind in the Los Angeles basin. Specifically, based on a map of California’s wind resource potential, the Project Site is not identified as an area with wind resource potential.¹²

¹¹ CEC, *2019 Building Energy Efficiency Standards, Fact Sheet*.

¹² CEC, *Wind Resource Area & Wind Resources*, www.energy.ca.gov/maps/renewable/wind.html, updated October 16, 2017.

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Regarding EV charging infrastructure, the Project would comply with the City requirement to designate 30 percent of new parking spaces as capable of supporting future electric vehicle supply equipment. This would exceed the 2022 CALGreen Code requirement of 20 percent. As the Project would not result in significant Energy impacts, no further evaluation as suggested in this comment in excess of 30 percent is warranted.

As discussed above, sources of renewable energy would be limited on the Project Site further necessitating a diesel back-up generator during emergency power outages. Solar-powered generators for construction activities would be limited given the Project Site constraints and could only supplement existing energy demand during construction. Use of this type of generator would not be feasible nor reliable for operational emergency requirements (e.g., operation of elevators and lights) for a 50-story building.

The commentor is referred to page 87 of the Initial Study regarding solid waste and recycling efforts which states the following:

The Project would comply with and be consistent with the applicable regulations associated with solid waste. Specifically, the Project would provide adequate storage areas in accordance with the City of Los Angeles Space Allocation Ordinance (Ordinance No. 171,687), which requires that development projects include an on-site recycling area or room of specified size.¹³ The Project would also comply with AB 939, AB 341, AB 1826, and City waste diversion goals, as applicable, by providing clearly marked, source-sorted receptacles to facilitate recycling.

¹³ Ordinance No. 171687, adopted by the Los Angeles City Council on August 6, 1997.

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Comment No. CREED LA—PLUM Letter-12

F. The Project Does Not Provide Affordable Housing, In Conflict with Local Land Use Goals, Objectives, And Policies

CREED LA's appeal explains 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. Staff Response 1A-4 and Response to Comment No. CREED—PC Letter-5 argue that the CEQA does not require an exact match between a project and a relevant plan, and that a Project need not be in perfect conformity with every plan policy in order to be consistent with the General Plan.¹⁰⁵ The City also reasons that provision of housing, regardless of affordability, is a welcome contribution to the City's housing stock.¹⁰⁶ The City also argues that a payment to the CD 14 Public Benefit Trust Fund for Affordable Housing addresses affordable housing concerns.

The City's argument that the Project is generally consistent with housing policies ignores that Project is inconsistent with the entire subset of housing policies relating to affordable housing. The Housing Element contains numerous policies not just calling for provision of housing—but provision of affordable and mixed-income housing. Such policies include Objective 2.2, Objective 2.5, Objective 1.2, Objective 3.2, and Policy 1.2.1. A project that proposes no affordable housing and makes no commitment to mixed-income housing would thus be inconsistent with these policies. The Housing Element also contains policies prioritizing affordable and mixed-income housing near high quality transit (Policy 2.5.1, Objective 3.2). This Project would occupy a location near high quality transit without providing affordable housing, which is another plain inconsistency with housing policies. The City also fails to establish the Project's consistency with Policy 3.1.9 ("Encourage 'convertible design' of above ground parking structures in transit-rich areas so they can later be converted to housing."), despite proposing above-grade parking. In sum, the fact that the Project proposes 580 residential units does not automatically make it consistent with Housing Element policies. The City must fully analyze consistency with affordable housing policies and disclose inconsistencies.

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The City 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 onsite affordable units directly in new construction.”¹⁰⁷ The Staff Report offers no evidence countering this evaluation.¹⁰⁸ Thus, simply paying the TFAR Public Benefit fee is no substitute for provision of onsite affordable units.

¹⁰⁵ Staff Report, pg.7, 29.

¹⁰⁶ Staff Report, pg. 29, pg. 120.

¹⁰⁷ Housing Element, Appendix 5.1—Evaluation of Programs, row 17, available at [https://planning.lacity.gov/odocument/dd0490a7-9f71-4792-9b65-04b1526c0488/Appendix_5.1_-_Evaluation_of_2013-2021_Goals,_Objectives,_Policies_and_Programs_\(Adopted\).pdf](https://planning.lacity.gov/odocument/dd0490a7-9f71-4792-9b65-04b1526c0488/Appendix_5.1_-_Evaluation_of_2013-2021_Goals,_Objectives,_Policies_and_Programs_(Adopted).pdf).

¹⁰⁸ Staff Report, Eystone Environmental, Memorandum, pg. 10 (Response to Comment No. CREED—PC Letter-5).

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These comments were already addressed in previous comments from the commenter including Response to Comment Nos. CREED-8 of the June 2023 Appeal Responses, and Response to Comment No. CREED—PC Letter-5 of the April 2024 Appeal Responses. As demonstrated therein, neither the commenter’s claim that the Project is required to provide on-site affordable housing nor that the TFAR benefit findings are inadequate, are well-taken, nor supported by substantial evidence.

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III. THE PROJECT'S LOCAL LAND USE APPROVALS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

CREED LA's appeal explains that the City lacks substantial evidence to approve the Project's land use approvals, which include 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. Each of these approvals requires the City to make a finding that the Project would not have significant adverse effects on public health, the general welfare, or the environment. The specific findings are discussed in detail in CREED LA's appeal. Because the Staff Report has not demonstrated that the Project's significant impacts have been fully analyzed and mitigated, the Committee must find that the City Planning Commission's approval of the Project's land use approvals was contrary to law and unsupported by the record.

IV. CONCLUSION

CREED LA respectfully requests that the PLUM Committee uphold this appeal, vacate the Commission's approval of the Project, and direct staff to prepare a revised and recirculated EIR that complies with CEQA.

Response to Comment No. CREED LA—PLUM Letter-14

The commenter makes no new substantiated claims or revival of claims that have not already been sufficiently addressed in previous responses, including in the City's findings. Furthermore, the EIR has been completed in full compliance with CEQA and no substantial evidence has been provided to support the claim that the findings for the discretionary actions for the Project could not be made. In addition, no substantial evidence has been provided to demonstrate that the Project would result in new significant impacts or a substantial increase in a significant impact already identified in the EIR. As such, recirculation of the EIR is not warranted.