

Communication from Public

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Comments for Public Posting: Please see attached comment letter in support of SAFER's appeal of the Project.



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Via LA Council File Submission Portal

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**Re: Comment on Final Environmental Impact Report
8th Grand and Hope Project – June 18, 2024 PLUM Hearing
(CPC-2017-505-TDR-ZV-SPPA-DD-SPR)**

Dear Honorable Members of the PLUM Committee:

I am writing on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) regarding the Final Environmental Impact Report (“EIR”) prepared for the 8th Grand and Hope Project in the City of Los Angeles (CPC-2017-505-TDR-ZV-SPPA-DD-SPR), including all actions referring to the development 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 on a 34,679 square-foot site.

SAFER previously submitted comments for the City’s Hearing Officer hearing on February 13, 2023. SAFER reiterates those comments and incorporates them by reference herein. After further reviewing the Final EIR and related documents, we conclude that the Final EIR fails as an informational document because it fails to impose all feasible mitigation measures to reduce the Project’s impacts and does not analyze the cumulative environmental impacts associated with the proposed Data Center that abuts the Project site. SAFER requests that the City deny the adoption of the Final EIR and prepare and recirculate a Supplemental Environmental Impact Report (“SEIR”) prior to considering approvals for the Project.

PROJECT DESCRIPTION

The Project, located at 754 South Hope Street, includes 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, and restaurant space on a 34,679-square-foot site. The Project would also include 636 vehicle parking spaces on three subterranean levels, eight above-grade levels, and four spaces on the ground floor. An existing surface parking lot and four-story parking structure will be demolished.

The Project site is bounded by parking structures to the north, a business/commercial development to the west, a mixed-use development to the east which includes a residential complex, and various office/commercial buildings and residential developments to the south. The project has a General Plan land use designation of Regional Center Commercial and is zoned by the Los Angeles Municipal Code as C2-4D (Commercial, Height District No. 4). The EIR identified 74 potential related development projects within a half-mile of the site.

LEGAL BACKGROUND

I. Environmental Impact Reports as Informational Documents.

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Res. Code § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1).) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564) The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810)

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); See also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564) The EIR serves to provide agencies and the public with information about the environmental impacts

of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (Guidelines §15002(a)(2)) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub.Res.Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B)) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732 (Cal. App. 5th Dist. 1990)).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988)) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018)). “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Id.* at 516). Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Id.*). “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (*Id.*). Whether a discussion of a potential impact is sufficient “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s

decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.” (*Id.*). As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Id.* at 514.) SAFER finds that the EIR prepared by the City here is inadequate for the reasons set forth below.

II. Cumulative Impacts Analysis in an EIR.

An EIR must discuss significant cumulative impacts. CEQA Guidelines section 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines section 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” CEQA Guidelines section 15355(a).

“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” *Communities for a Better Environment v. Cal. Resources Agency* (“CBE v. CRA”), (2002) 103 Cal.App.4th 98, 117. A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” CEQA Guidelines § 15355(b).

As the court stated in *CBE v. CRA*, 103 Cal. App. 4th at 114:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

(Citations omitted).

In *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d at 718, the court concluded that an EIR inadequately considered an air pollution (ozone) cumulative impact. The court said: “The [] EIR concludes the project’s contributions to ozone levels in the area would be immeasurable and, therefore, insignificant because the [cogeneration] plant would emit relatively minor amounts of [ozone] precursors compared to the total volume of [ozone] precursors emitted in Kings County. The EIR’s analysis uses the magnitude of the current ozone problem in the air basin in order to trivialize the project’s impact.” The court concluded: “The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”¹ The Kings County case was recently reaffirmed in *CBE v. CRA*, 103 Cal.App.4th at 116, where the court rejected cases with a narrower construction of “cumulative impacts.”

Similarly, in *Friends of Eel River v. Sonoma County Water Agency*, (2003) 108 Cal. App. 4th 859, the court recently held that the EIR for a project that would divert water from the Eel River had to consider the cumulative impacts of the project together with other past, present and reasonably foreseeable future projects that also divert water from the same river system. The court held that the EIR even had to disclose and analyze projects that were merely proposed, but not yet approved. The court stated, CEQA requires “the Agency to consider ‘past, present, and probable future projects producing related or cumulative impacts . . .’ (Guidelines, § 15130, subd. (b)(1)(A).) The Agency must interpret this requirement in such a way as to ‘afford the fullest possible protection of the environment.’” *Id.*, at 867, 869. The court held that the failure of the EIR to analyze the impacts of the project together with other proposed projects rendered the document invalid. “The absence of this analysis makes the EIR an inadequate informational document.” *Id.*, at 872.

The court in *Citizens to Preserve Ojai v. Bd. of Supervisors*, 176 Cal.App.3d 421 (1985), held that an EIR prepared to consider the expansion and modification of an oil refinery was inadequate because it failed to consider the cumulative air quality impacts of other oil refining and extraction activities combined with the project. The court held that the EIR’s use of an Air District Air Emissions Inventory did not constitute an adequate cumulative impacts analysis. The court ordered the agency to prepare a new EIR analyzing the combined impacts of the proposed refinery expansion together with the other oil extraction projects.

¹ *Los Angeles Unified v. City of Los Angeles*, 58 Cal.App.4th at 1024-1026 found an EIR inadequate for concluding that a project’s additional increase in noise level of another 2.8 to 3.3 dBA was insignificant given that the existing noise level of 72 dBA already exceeded the regulatory recommended maximum of 70 dBA. The court concluded that this “ratio theory” trivialized the project’s noise impact by focusing on individual inputs rather than their collective significance. The relevant issue was not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant given the nature of the existing traffic noise problem.

DISCUSSION

I. The EIR Fails to Analyze the Potentially Significant Air Quality Impacts.

The Project does not adequately substantiate its air quality analyses and the date in which it relies on. SAFER's comments were prepared with expert review from environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"), who found that numerous instances where the EIR relies on unsupported data inputs to determine significance impacts related to air quality. SWAPE's expert comments and CVs are attached as Exhibit A.

The City's analysis of the Project's air quality and greenhouse gas impacts relied on emissions calculated with the model CalEEMod. This model relies on recommended default values, or on site-specific information related to a number of factors. "CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type." (Ex. B, p. 1.) When more specific project information is known, the user may change the default values and input project-specific values, but those changes must be supported by substantial evidence.

SWAPE reviewed the CalEEMod output files and found several model inputs were not consistent with information disclosed in the EIR or changes were made to default values without justification. (Ex. A, pp. 2-7.) Specifically:

1. The City made unsubstantiated changes to the length of construction phases
2. The City made unsubstantiated changes to the off-road construction equipment unit amount
3. The City made unsubstantiated reduction to the carbon dioxide intensity factor
4. The City made unsubstantiated reduction to the number of gas-operated fireplaces
5. The City made unsubstantiated reductions to hauling trip numbers

(Ex. A, pp. 2-8.)

As a result of these inconsistencies, the Project's air quality and GHG emissions were likely underestimated. For instance, SWAPE also noted that the EIR's GHG analysis relied on a flawed and unsubstantiated analysis of GHG emissions. (Ex. A, p. 19.) Specifically, "[w]hen reviewing the CalEEMod output files included in the AQ & GHG Analysis, [SWAPE was] able to identify several model inputs that are inconsistent with information disclosed in the DEIR. As a result, the models may underestimate the Project's emissions...A revised EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the environment." (*Id.*)

Preparing an accurate informational document is paramount to the preparation of an EIR, and the City's failure to adequately and comprehensively review these informational gaps renders the analyses, and any resulting conclusions made from it, invalid. The City should therefore prepare a more complete EIR document that substantiates all of its conclusions.

II. The Project Fails to Adequately Analyze the Project's Greenhouse Gas Impacts.

The Project will have potentially significant and unmitigated GHG impacts that must be addressed before proceeding with any approvals. In accordance with the above analysis identifying unsubstantiated inputs within the CalEEMod, SWAPE prepared an updated model using Project-specific information. (Ex. A, p. 9.) SWAPE determined that the updated analysis would have an exceedance of construction-related volatile organic compound ("VOC") emissions. (*Id.*) Specifically, the VOC emissions represented a 270% increase as compared to results in the unsubstantiated model prepared for the EIR.

SWAPE recommends "additional feasible mitigation measures should be incorporated, such as those suggested in the section of this letter titled 'Feasible Mitigation Measures Available to Reduce Emissions.' The Project should not be approved until a revised EIR is prepared, incorporating all feasible mitigation to reduce emissions to less-than-significant levels." (Ex. A, p. 10.) This potentially significant air quality impact has not been mitigated and clearly constitutes a CEQA violation. The Project may not be approved unless the City requires implementation of all feasible mitigation measures. (*Nat. Res. Def. Council, Inc. v. City of Los Angeles*, 98 Cal. App. 5th 1176, 1213 (2023).)

SWAPE found that the Project's GHG impacts are potentially significant as well, finding that "[w]hen amortizing the Project's construction-related GHG emissions over a period of 30 years and summing them with the Project's operational GHG emissions, we estimate net annual GHG emissions of approximately 4,967 MT CO₂e/year (see table below)." (Ex. A, p. 20.) This amount exceeds SCAQMD's bright-line threshold, indicating another unaddressed and unmitigated impacts stemming from the Project. SWAPE concludes that the EIR "should not be relied upon. A revised EIR should be prepared to include an updated GHG analysis which incorporates additional mitigation measures to reduce the Project's GHG emissions to less-than-significant levels." (*Id.*)

Given the uncertainties surrounding the air quality and GHG studies in which the Project relies on, the City should not rely on such conclusions to find that the Project's impacts are below significance thresholds. SWAPE's updated analysis, using Project inputs, clearly demonstrates the Project's potentially significant impacts, and should be further studied before any approvals.

III. The EIR Fails to Disclose and Mitigate the Project's Significant Indoor Air Quality Impacts.

The EIR fails to discuss, disclose, analyze, and mitigate the significant health risks posed by the Project from Formaldehyde, a toxic air contaminant ("TAC"). Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has reviewed the proposed EIR and all relevant documents regarding the Project's indoor air emissions. Based on this review, Mr. Offermann concludes that the Project will likely expose future residents living at the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Here, Mr. Offermann responds to the rebuttal comments prepared by the City. Mr. Offermann's CV and expert comments are attached as Exhibit B.

First, the City alleges that Mr. Offermann's use of the South Coast Air Quality Management District (SCAQMD) health risk significance threshold of 10 per million is a new method of analysis. (Ex. A, p. 6.) This is incorrect. The threshold is well established and is independently enacted by the Air District. In preparing his calculations of indoor formaldehyde emissions, Mr. Offermann used mass balance theory, as referenced in "Calculation of Estimated Building Concentrations" of the California Department of Health's "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers". (CDPH, 2017). (*Id.*, p. 22.)

Based on this established scientific theory, Mr. Offermann concluded that Project residents would be exposed to a significant cancer risk of 120 per million due to the presence of formaldehyde emissions in the indoor air. This is 12 times greater than the SCAQMD health risk significance threshold of 10 per million. (*Id.*, p. 16.) The City contends that the formaldehyde risks cited by Mr. Offermann are not applicable because the Project will comply with building code and composite wood product manufacturing regulations. However, this is incorrect. As Mr. Offermann explains, his calculations apply standard engineering mass balance calculations and assume compliance with all applicable regulations. (Ex. A, p. 22.) Notably, even composite wood products manufactured with California Air Resources Board ("CARB")-certified "ultra low emitting formaldehyde" (ULEF) resins do not ensure that indoor air concentrations of formaldehyde will produce a cancer risk of less than 10 per million. (*Id.* at p. 6.) Therefore, the only feasible strategy to avoid the impact of carcinogenic indoor formaldehyde emissions is for the Applicant to commit to using only composite wood products that are made with no-added formaldehyde resins, such as those made from soy or polyvinyl acetate. (*Id.*, p. 5.) Unless and until this impact is addressed, it remains a significant air quality impact which makes the use of the EIR improper.

IV. The EIR Fails to Adequately Consider the Cumulative Impacts With Regard to the Adjoining Data Center Project Proposal.

The Project's cumulative impacts analysis relies on incomplete projections that fail to account for the proposed Data Center project, and thus fails to comply with CEQA. Recognizing

that several projects may together have a considerable impact, CEQA requires an agency to consider the “cumulative impacts” of a project along with other projects in the area. (Pub. Resources Code §21083(b); CEQA Guidelines §15355(b)) If a project may have cumulative impacts, the agency must prepare an EIR, since “a project may have a significant effect on the environment if ‘[t]he possible effects of a project are individually limited but cumulatively considerable.’” (*CBE supra*, 103 Cal.App.4th at 98, 114; *Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 (“*Kings Co.*”) It is vital that an agency assess “the environmental damage [that] often occurs incrementally from a variety of small sources . . .” (*Bakersfield Citizens For Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (“*Bakersfield Citizens*”)).

The EIR must discuss a Project’s significant cumulative impacts. (14 CCR § 15310(a).) CEQA Guidelines define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (14 CCR §15355.) The individual effects may be changes resulting from a single project or more than one project. 14 CCR §15355(a). Cumulative impacts may result from individually minor but collectively significant projects taking place over a period of time. 14 CCR §15355(b). A cumulative impact is an impact created by the combination of the project reviewed in the EIR together with other projects causing related impacts. 14 CCR §15130(a)(1). The cumulative impact from several projects is the change in the environment that results from the incremental effect of the project when added to other past, present, and ***probable future projects***. 14 CCR §§15065(a)(3), 15130(b)(1)(A), 15355(b) (emph. added).

The CEQA Guidelines allow two methods for satisfying the cumulative impacts analysis requirement: the list-of-projects approach, and the summary-of-projects approach. Under either method, the EIR must summarize the expected environmental effects of the project and related projects, provide a reasonable analysis of the cumulative impacts, and examine reasonable mitigation options. 14 CCR § 15130(b). The EIR’s cumulative impacts analysis does not comply with either of these requirements.

Here, the Project fails to consider the cumulative impacts associated with developing next to a proposed Data Center, the site of an existing parking garage that directly abuts the Project site. Neither the DEIR nor the FEIR’s Corrections documents mention the Data Center proposal, despite the Applicant being placed on notice of the proposed Data Center as early as 2022. While the City mentions the Data Center in documents and correspondence with the Data Center’s representative, it fails to consider it in any of its subsequent analyses, despite the two buildings being built alongside each other. The 279-foot-tall Data Center proposal would result in the demolition of the parking garage and the construction of a 13-story building, featuring 486,000 square feet (sf) of space as well as two floors of parking.

On its own, the Data Center proposal will undoubtedly have significant environmental impacts, given that the project proposal will require demolition before construction. As demonstrated in SWAPE’s analysis, attached as Exhibit C, the Project will have a potentially

significant cumulative impact with the adjoining Data Center. Where there are potentially significant environmental impacts associated with the Data Center's demolition and construction independent of the Project, the City should have considered the cumulative impacts that results from the two separate projects. The City does not. Therefore, the City's failure to assess the cumulative impacts of both projects means that the EIR fails as an informational document. The City must prepare and circulate a revised EIR in order to adequately analyze the cumulative impacts.

a. The City Was on Notice of the Data Center Proposal.

The City cannot claim that it had no knowledge of the proposed Data Center development before it reached its decision. While SAFER does not contest that the City performed a cumulative impacts analysis, the City relied upon inaccurate analyses when it approved the Project because it failed to account for the Data Center. Despite being placed on notice of the Data Center,² the City was adamant that its analysis complied with CEQA and certified the FEIR without preparing an updated cumulative impacts analysis.

The City contends that nearly four years had passed before the Data Center submitted its entitlement application. If the timeline is based on when any entitlement application is submitted, however, then the City would be incorrect because the Applicant did not submit its amended entitlement application until the end of 2021. Regardless, the City and Applicant were both on notice of the proposed Data Center project at least three months before it issued its Letter of Determination, and on notice before it conducted both its Hearing Officer hearing on February 15, 2023 and Planning Commission hearing on July 13, 2023. Instead of taking the time to adequately review and analyze the impacts that may arise from a proposed development project abutting the Project, the City and Applicant merely noted that the “[f]uture data center would impact the residential uses” (July 2023 Planning Commission Staff Report, p. 57.) Nearly a year since the Hearing Officer hearing took place, and in spite conceding the Data Center's potential impacts, the City maintains its position that no additional review through an revised draft EIR is necessary.

b. The Data Center Project is a Probable Future Project.

Reliance on inaccurate information also renders the EIR invalid as it failed to account for all **probable future projects**. (14 Cal.Code Regs. § 15130(b)(1)(A)) (emph. added). In *Friends of Eel River*, the court held that cumulative impacts analysis must disclose and analyze projects that were merely proposed, but not yet approved. *Friends of Eel River v. Sonoma Cnty Water Agency* (2003) 108 Cal.App.4th 859. The court held that the failure of the EIR to analyze the impacts of

² On February 10, 2023, Rafal Rak, who represents Digital Realty Trust, Inc. (“Digital”) sent a letter to the City explaining their intention to design and entitle a Data Center to replace the parking garage on its Property. On March 22, 2023, Digital Realty submitted its entitlement application to the City. It was not until May 26, 2023 that the City finally issued its Letter of Determine, at least several months.

the project together with other proposed projects rendered the document “an inadequate informational document” and thus, invalid. (*Id.*, at p. 872.) Just as in *Friends of the Eel River*, the City’s failure to account for close to half a million square feet of the new proposed Data Center project in its cumulative impacts analysis renders the EIR invalid.

The EIR fails as an informational document by failing to sufficiently evaluate the cumulative impacts of this Project. A cumulative impact analysis “which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decision-maker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Joy Road Area Forest and Watershed Ass. v. Calif. Dept. of Forestry* (2006) 142 Cal.App.4th, 656, 676.) The City’s failure to conduct an accurate cumulative impacts analysis not only underestimates the environmental impacts but also fails to consider all feasible mitigation measures to reduce those significant impacts. Only by evaluating the true extent of a project’s environmental impacts, taking into consideration all relevant past, present, and probable future projects in the project’s vicinity, can the EIR serve its informational purpose.

Therefore, the City cannot move forward with the Project unless and until it prepares a revised EIR that adequately takes into consideration the cumulative impacts associated with the Data Center project. The Project concedes that there will be potentially significant impacts related to air quality, GHG emissions, energy, noise, and transportation, among others (See generally, Initial Study.) Additionally, both this Project and the Data Center proposal both concede that there will be potentially significant cumulative impacts. (Initial Study, p. 89.) However, the Project EIR’s cumulative impacts analysis does not address how those impacts may be more potentially significant and/or significant and unavoidable as a result of the *adjacent* Data Center proposal. For example, the Project’s Air Quality analyses erroneously conclude that the Project would not have any cumulatively considerable impacts during construction and operation, and therefore do not suggest any mitigation measures. (Air Quality Appendix, p. IV.A-62.) Therefore, the City has failed to provide an informational document that also includes adequate mitigation measures to address potentially significant cumulative impacts. SAFER incorporates all of the City’s environmental analysis documents related to the Data Center by reference. All of these documents are in the possession of the City and are before the City at the time of its decision on this Project.

As such, the City cannot proceed with any further project approvals unless and until a proper cumulative impacts analysis is performed and circulated for public review.

V. The City Inadequately Analyzed the Project’s Consistency With the City’s Housing Element.

Insofar as the Project proposes 580 market-rate residential units, the City inadequately reviewed the Project’s consistency with its own Housing Element and subsequent Community

Area Plan (“CAP”). The City adopted its 2021-2029 Housing Element (“Housing Element”) in 2022, which includes policies and objectives which include, but are not limited to:

Policy 1.1.2: Plan for appropriate land use designations and density to accommodate an ample supply of *housing units by type, cost, and size* within the City to meet housing needs, according to Citywide Housing Priorities and the City’s General Plan.

Objective 1.2: Facilitate the production of housing, *especially projects that include Affordable Housing* and/or meet Citywide Housing Priorities.

Objective 3.2: Promote environmentally sustainable buildings and land use patterns that *support a mix of uses, housing for various income levels* and provide access to jobs, amenities, services and transportation options.

Policy 3.2.2: Promote new multi-family housing, *particularly Affordable and mixed-income housing*, in areas near transit, jobs and Higher Opportunity Areas, in order to facilitate a better jobs-housing balance, help shorten commutes, and reduce greenhouse gas emissions.

(July 2023 Staff Report, p. F-14 (emph. added).)

In support of approving the Project, the City instead concludes that the Project would “further key Housing Element policies and objectives by providing additional supply of housing units by type, cost, and size to meet housing needs and Citywide housing priorities noted in Policy 1.1.2, Objective 1.2, Policy 1.2.2. The Project would provide 580 residential units which include a unit mix consisting of three-bedroom units, two-bedroom units, one-bedroom units, and studio units. The Project also supports Objective 3.2 and Policy 3.2.2 of supporting a mix of units that will accommodate a mixture of incomes, and uses that provide access to jobs, amenities, services and transportation options.” (*Id.*, p. 15.) Such conclusion is misleading because the ***Project fails to designate any affordable housing in its proposed 580 residential units or provide a justification for not doing so.***

Furthermore, the Project’s failure to earmark any units for affordable housing undermines the City’s 6th Cycle RHNA Allocation, which designates at least fifteen percent of available and suitable sites for lower income housing. Chapter 4 identifies inventory of suitable land for residential development,³ and within the subsequent Housing Element’s Site Inventory, several parcels that comprise the Project site are earmarked for lower income housing. (Appendix 4.1, Inventory of Adequate Site for Housing). However, ***none of the 580 units are reserved for lower-income housing nor does the City analyze or provide any explanation as to why it does not provide any affordable housing for the Project in spite of the site inventory.***

³ City of Los Angeles, 2021-2029 Housing Element (accessed October 25, 2023), <https://planning.lacity.org/plans-policies/housing-element>.

Most recently, a court ruled against the City for failing to perform, at a bare minimum, a thorough consistency analysis with its own Housing Element goals and policy objectives. As the Court in *United Neighborhoods for Los Angeles v. City of Los Angeles* (“*United Neighborhoods*”) explained, the City’s Housing Element’s reference to affordable housing means “housing that can be afforded by those on low or median incomes; *spec.* housing made available to those on lower incomes at a price below normal market value...” and that the City must equally analyze all policies regardless of whether they are competing interests. (*United Neighborhoods for Los Angeles v. City of Los Angeles* (2023) 93 Cal. App. 5th 1074 at 1095.) Here, there is no indication that the City considered how the applicable policies, site inventory, and lower income designation would apply to the Project, and why it had decided to proceed with the Project without any affordable housing designation. At the very least, the City must have provided an explanation indicating that it had reviewed the Project’s consistency with the Housing Element, including a rationale as to why the Project cannot remain in compliance with the Sites Inventory, yet failed to do so here.

As such, the City fails to adequately review the Project’s consistency to the Housing Element’s policies and objectives. Given the clear inconsistency with the City’s own Housing Element, additional analysis and review must be performed to proceed with any Project approvals.

The City must analyze the Project’s inconsistency with the Housing Element policies, which are significant impacts under CEQA. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project’s inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4).

VI. The FEIR Fails to Sufficiently Justify a Statement of Overriding Considerations.

As the City concedes, the Project would result in *significant and unavoidable impacts* relative to specific noise impacts, including, off-road construction equipment noise, composite construction noise levels, off-road construction activity vibration (building damage), on-road construction vehicle vibration (human annoyance), cumulative off-road construction equipment noise, cumulative composite construction noise levels, and cumulative on-road construction vehicle vibration (human annoyance). (DEIR, p. I-11). As a result, the City will need to adopt a statement of overriding considerations.

Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a “statement of overriding considerations” finding that, because of the project’s overriding benefits, it is approving the project despite its environmental harm. (14 CCR §15043; PRC §21081(B); *Sierra Club v. Contra Costa Cty* (1992) 10 Cal.App.4th 1212, 1222). A statement of overriding considerations expresses the “larger, more general reasons for approving the project, such as the need to create new jobs, provide

housing, generate taxes and the like.” (*Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist.* (1994) 24 Cal.App.4th 826, 847).

A statement of overriding considerations must be supported by substantial evidence in the record. (14 CCR §15093(b); *Sierra Club v. Contra Costa Co.* (1992) 10 Cal.App.4th 1212, 1223)). The agency must make “a fully informed and publicly disclosed” decision that “specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project.” (15 CCR §15043(b)). As with all findings, the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515). Key among the findings that the lead agency must make is that:

“Specific economic, legal, social, technological, or other considerations, including the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report...[and that those] benefits of the project outweigh the significant effects on the environment.”

(PRC §21081(a)(3), (b).) Thus, the City must make specific findings, supported by substantial evidence, concerning both the environmental impacts of the Project, and the economic benefits including “the provision of employment opportunities for highly trained workers” created. As applied here, the City adopted a statement of overriding considerations, stating reasons that summarize the benefits of the Project. This includes how the Project would provide economic development, employment opportunities, and tax revenue of the City. (July 11, 2023 Staff Report, p. 84.) Nonetheless, the City fails to include any mention of the Project’s use of highly trained workers.

In short, the City cannot support its conclusion that the economic benefits of the Project outweigh the environmental costs if it does not know what the economic benefits will be. A revised EIR, Fiscal Analysis and Statement of Overriding Considerations is required to provide this information. The analysis must analyze whether the Project will provide employment opportunities for highly trained workers during construction and operation, or whether employment opportunities will be only for low-paid, unskilled workers.

CONCLUSION

In conclusion, SAFER believes that the EIR fails as an informational document because it is inconsistent with the City’s Housing Element, does not explain or provide any justification for not designating any of its units for affordable housing, fails to analyze the air quality impacts arising from the Project, fails to adequately consider the Project’s cumulative environmental impacts in conjunction with the proposed Data Center, and fails to support its statement of overriding considerations with substantial evidence. In contrast, SAFER has presented substantial evidence of the EIR’s various shortcomings and its corresponding failure to adequately disclose or mitigate the Project’s likely significant adverse impacts. For these reasons,

June 13, 2024

Appeal of Final EIR (CPC-2017-505-TDR-ZV-SPPA-DD-SPR)

8th Grand Hope Project

Page 15 of 15

we respectfully request that the Planning Commission recommend that the City Council deny approval of the FEIR and instead direct City staff to prepare a revised draft EIR in accordance with CEQA's public review provisions.

Sincerely,

A handwritten signature in black ink, appearing to read 'MA', with a stylized flourish extending to the right.

Marjan Abubo

LOZEAU DRURY LLP

Communication from Public

Name: Edgar Khalatian
Date Submitted: 06/13/2024 11:35 AM
Council File No: 23-1151
Comments for Public Posting: Attached is correspondence from the applicant.

June 13, 2024

mayerbrown.com

BY ELECTRONIC MAIL

Edgar Khalatian
Partner

Honorable Members of the Los Angeles City Council
Planning and Land Use Management Committee
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Re: 8th, Grand & Hope, Council File Nos. 23-1150 and 23-1151
Response to Comment Letter to PLUM;
CPC-2017-505-TDR-ZV-SPPA-DD-SPR, ENV-2017-506-EIR,
VTT-74876-CN-1A, and ZA 2021-7053-ZAI

Dear Honorable Members of the PLUM Committee:

On behalf of our client, Mitsui Fudosan America (the “**Applicant**”), which proposes to redevelop the property located at 609-625 West 8th Street and 754 South Hope Street within the Central City Community Plan area, below are responses to a letter submitted by (i) Adams Broadwell Joseph & Cardozo on behalf of the Coalition for Responsible Equitable Economic Development Los Angeles (“**CREED**”) to the Los Angeles City Council Planning and Land Use Management Committee (“**PLUM**”) on May 7, 2024.

As background, The City of Los Angeles (the “**City**”) circulated the Draft Environmental Impact Report (the “**EIR**”) for the 8th, Grand & Hope (the “**Project**”) 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 Hearing Officer/ Deputy Advisory Agency (the “**DAA**”)/Zoning Administrator (the “**ZA**”) public meeting that the City held on February 15, 2023, the City received three letters in opposition to the Project that included comments on the EIR. The three opposition letters were from Adams Broadwell Joseph & Cardozo on behalf of CREED; Lozeau Drury on behalf of Supporters Alliance For Environmental Responsibility (“**SAFER**”); and Richard Becher on behalf of Digital Realty. Each of these parties also subsequently filed appeals to the DAA’s and ZA’s determinations. The City’s responses and actions based on the administrative record demonstrate that both the Draft and Final EIRs meet the requirements of the California Environmental Quality

PLUM Committee
June 13, 2024
Page 2

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 letter and appeals to the City Planning Commission’s (the “CPC”) determinations have already been addressed in the Final EIR and the Staff Reports; and the Appellants’ claims are not supported by substantial evidence.

Prior to the CPC hearing, CREED submitted a comment letter on July 11, 2023 (the “**Prior to CPC Hearing Letter**” or “**PC Letter**”). On September 26, 2023, the CPC denied the appeals to the Vesting Tentative Tract Map (the “**VTTM**”), EIR and the ZA’s Interpretation (the “**ZAI**”), approved the CPC case, and certified the EIR. Subsequently, CREED, SAFER, and Digital Realty filed three separate appeals. The City responded to the three appeals submitted PLUM ahead of the May 7 PLUM hearing. In their Staff Report, staff recommended to deny all the appeals. We also provided responses to the several land use-related appeal points in a letter that was submitted to PLUM on May 2, 2024.

In general, the comment letter raises similar comments that have been responded to as part of the Final EIR and in Staff Reports. As demonstrated by the responses below, this comment letter lacks any substantial evidence and does not constitute new significant information warranting recirculation of the Draft EIR as set forth in CEQA Guidelines Section 15088.5.

Comment No. 1:

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.

¹⁰⁵ Staff Report, pg.7, 29.

¹⁰⁶ Staff Report, pg. 29, pg. 120.

PLUM Committee
June 13, 2024
Page 3

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.

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.

Response to Comment No. 1:

CREED makes similar claims as in previous appeals and comment letters that have been sufficiently addressed in the Final EIR and staff responses which demonstrated that the claims do not have any merit. These similar claims relate to alleged inconsistencies with the affordable housing policies of the 2021–2029 Housing Element and that the inconsistencies need to be

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, Eyestone Environmental, Memorandum, pg. 10 (Response to Comment No. CREED—PC Letter-5).

PLUM Committee

June 13, 2024

Page 4

disclosed. Their letter claims the Project is inconsistent because its above-ground parking garage does not have the ‘convertible design’ that would lend itself to habitable uses in the future. CREED also claims the City offers no evidence to counter the City’s reasoning in updating their Housing Element’s policies to prioritize on-site construction of affordable housing.

With regard to the claim that the Project is inconsistent with the City’s 2021-2029 Housing Element, this and similar claims, as stated above, have been addressed in previous responses, including in the response letter submitted to PLUM on May 2, 2024 and in Staff Reports. As explained in prior responses, the City’s Housing Element does not require each development to provide affordable units. Moreover, a project that does not comply with every policy, goal or objective of a land use plan does not constitute an environmental impact. It is settled case law that a conflict between a project and an applicable plan does not constitute a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a “significant environmental effect” as defined by CEQA Guidelines Section 15382. Under State Planning and Zoning law (Government Code Section 65000, et seq.), strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. As discussed in the ruling in *Sequoyah Hills Homeowners Association v. City of Oakland* (1993) 23 Cal. App. 4th 704, State law does not require an exact match between a project and a relevant plan. Rather, to be “consistent,” the project must be “compatible with the objectives, policies, general land uses, and programs specified in the applicable plan,” meaning that a project must be in “agreement or harmony” with the applicable land use plan to be consistent with that plan, but need not be in perfect conformity with every plan policy. (Id. at page 719) As demonstrated in the land use analysis in the EIR and CPC Findings, and the fact that the Project is providing much needed housing, it is clear that the Project furthers the goals and objectives of the City’s Housing Element. As such, the Project would not conflict with the relevant housing provisions of any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Additionally, CREED’s claim that the Project is inconsistent with Policy 3.1.9, which encourages a ‘convertible design’ of its above-grade parking garage, is incorrect. The Project’s above grade parking garage has been designed to have level floor plates to be easily converted into a habitable use in the future. In fact, the parking levels all share the floor plate with residential leasing office on Level 2. Each individual floor can be converted from the top down, incrementally over time as parking demand gradually reduces. The speed ramp on the north side of the building can be removed as parking is converted. The design of the exterior envelope of the garage also includes the guardrail that matches the dwelling unit balconies so that future units in the converted garage will be provided with a continuous terrace like the other dwellings in the building. The level

PLUM Committee
June 13, 2024
Page 5

parking design has been included on Sheets A3.01 and A3.02 of the Project's Exhibit "A" that was approved along with associated entitlements by CPC.

Lastly, CREED makes the claim that the City would need to provide evidence in the Project's EIR to counter the City's reasoning for updating their Housing Element policies to prioritize on-site affordable housing, claiming that Project's contributions to the City's affordable housing fund is insufficient to supersede the "prioritizing" policy. There is no requirement that a project's EIR include reasoning for not including on-site housing to address any specific provision of the Housing Element. As explained above, the EIR and CPC Findings adequately address the issue of the Project not being in conflict with the Housing Element. The Project would support the City's objective to provide an equitable distribution of housing opportunities by type and cost by providing a mixed-use development that would include a variety of new multi-family residential units. Additionally, as recognized in the comment, the Project would be contributing a significant amount to the City's affordable housing plan. Furthermore, a clause stating that the City would "prioritize" on-site affordable housing does not create a mandatory duty require every new private property development to provide such units. Moreover, whether or not the fund has had sufficient funds to address the citywide affordable housing shortfall is irrelevant to the Project's environmental impacts as the Project did not cause the shortfall and will contribute nearly \$10 million to address the issue in the future. Nothing further is required by the Housing Element or CEQA of any individual mixed-use housing project.

In sum, most of these comments have been made before and demonstrated to not have merit in the various responses to their appeals and comments. Moreover, none of these claims constitute a CEQA impact.

Comment No. 2:

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.

PLUM Committee

June 13, 2024


Page 6

Response to Comment No. 2:

CREED LA makes the similar claim that the City lacks substantial evidence to approve the Project's various land use approvals and references their appeal, which was addressed in our May 2nd letter and by the City's Staff Report that recommended denial of their appeal. As in previous responses to their comments and appeals, their meritless claims have been sufficiently addressed by the City in the EIR, Findings, and in the Administrative Record. The Project's EIR has fully analyzed and provided appropriate mitigations for all potential impacts as has been comprehensively detailed with substantial evidence in the Findings. This claim provides no new information or specific evidence to substantiate its previous claims.

For all these reasons, and for the those set forth in the Responses to Comments in the Final EIR, the Findings made by the City, and those contained in the Administrative Record, we respectfully submit that this comment letter is without merit provides no new evidence to require additional analysis or recirculation of the EIR. Should you need additional information or have any questions, please feel free to contact me at 213-229-9548 or at EKhalatian@mayerbrown.com.

Sincerely,



Edgar Khalatian
Partner

cc: Jason McCrea, Department of City Planning Major Projects
Polonia Majas, Department of City Planning Major Projects