Communication from Public

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May 7, 2024

VIA EMAIL AND ONLINE SUBMISSION
ATTN: Chair Marqueece Harris-Dawson and Councilmembers
Planning and Land Use Management Committee
Los Angeles City Council
Portal: LACouncilComment.com
Email: clerk.plumcommittee@lacity.org

VIA EMAIL ONLY
Polonia Majas, Planner
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Re: Agenda Items 7 & 8 – Comments in Support of Appeal of 8th, Grand and Hope Project (Case Nos. ENV-2017-506-EIR; CPC-2017-505-TDR-ZV-SPPA-DD-SPR; VTT-74876-CN).

Dear Chair Harris-Dawson, Honorable Councilmembers and Ms. Majas:

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.

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 However, as explained below, the Staff Report continues to rely on unsupported and outdated studies and fail to disclose or mitigate the Project's potentially significant fire hazard, air quality, health risk, noise, hazardous materials, energy, land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.

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

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

itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

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]

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

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

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.

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. Burtt's conclusions.[12] Mr. Burtt 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]

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[5] *Id.*
[6] Burtt Response, pg. 2.
[7] *Id.*
[8] *Id.* at 3.
[9] Staff Report, pg. 4.
[10] Burtt 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; Burtt Response, pg. 5.
[12] Burtt Response, pg. 5.
[13] *Id.* at 6.

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 [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 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. 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.[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]

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[14] Staff Report, pg. 5.
[15] *Id.*
[16] *Id.*
[17] Staff Report, pg. 255.
[18] Burtt 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").

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. Burtt 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. Burtt notes that the City does not provide any evidence in support of this claim.[24] Documentation 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. Burtt 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

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[19] Staff Report, pg. 256.
[20] Burtt Response, pg. 9.
[21] *Id.* at 10.
[22] Staff Report, pg. 256.
[23] Staff Report, pg. 256.
[24] Burtt Response, pg. 11.

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.

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, OEHHA[32] guidance sets a recommended threshold for

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[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] Eyestone 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.

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, 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.

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[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] Eyestone 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).

[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=AOvVaw07n1OZu8Nvvtfq0AnstLMG.

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 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 (03); carbon monoxide (CO); nitrogen dioxide (NO2); sulfur dioxide (SO2); PM10; PM2.5; 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 (NOx). Because of DPM's toxic constituent particles, even if the size of DPM particles is the same as PM10 and PM2.5, the LST applicable to PM10 and PM2.5 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.

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[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;

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

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", 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

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

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]

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]

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[48] OEHHA, Guidance Manual for Preparation of Health Risk Assessments (February 2015) available at https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, appendices available at https://oehha.ca.gov/air/crnr/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/crnr/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/crnr/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.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/cgiwg-communication_ii.pdf.

[50] Appendix FEIR-2, pg. 6.

[51] Eyestone 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); Eyestone 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-

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 has not been analyzed. The omission of information regarding the Project's health effects on children constitutes an ongoing failure to analyze a potentially significant impact under CEQA.

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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/deirwestvalleylogistics-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).

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 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.

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]

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

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[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] Eyestone Environmental, Memorandum (June 22, 2023), pg. 25, Response to Comment No. CREED-4 (Staff Report, PDF pg. 110).
[60] Pub. Resources Code § 21002.

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.

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 are "normally unacceptable" and levels at residences above 70 db are clearly "unacceptable."[64]

[61] Staff Report, pg. 6 – Staff Response 1A-2.
[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.

Land Use	Community Noise Exposure CNEL, db Normally Acceptable	Conditionally Acceptable	Normally Unacceptable	Clearly Unacceptable
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 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.

[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.*

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	58.4	68.5	72.0	2.6
R6	71.5	45.7	52.2	46.8	23.1	67.3	67.5	73.0	1.5
R7	72.4	47.7	47.4	51.1	19.6	63.4	63.9	73.0	0.6
R8	67.8	53.0	51.3	46.1	27.4	52.0	57.3	68.2	0.4
R9	69.4	44.1	50.7	44.6	40.7	61.3	61.9	70.1	0.7

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 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 impacts[71] in holding that the County's

[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 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");

reliance on the 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.

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

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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.

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 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.

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 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.*

[76] DEIR, Section VI ("Other CEQAS Considerations"), pg. IV-21.
[77] *Id.*
[78] *Id.*

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 regulations[83] 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 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

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[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.
[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.*

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.

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.

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[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).
[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.").

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 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

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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* (2014) 225 CA4th 173, 213.

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.

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]

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[97] DEIR, pg. IV.B-35.
[98] *CECC* (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.

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.

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

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[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.
[105] Staff Report, pg.7, 29.
[106] Staff Report, pg. 29, pg. 120.

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.

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

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

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.

Sincerely,

Aidan P. Marshall

Attachments
APM:acp

ATTACHMENT A

BURTT ENGINEERING & CONSTRUCTION

120 Village Square #150, Orinda CA. 94563 OFFICE (510) 540 - 0155

May 6, 2024

Aidan P. Marshall
601 Gateway Blvd UNIT 1000,
South San Francisco, CA 94080

RE: 8th, Grand and Hope Proposed Development
754 South Hope Street, Los Angeles, CA 90017
Comments on Responses to Fire Flow Engineering Opinion Letter

Dear Mr. Marshall:

We previously reviewed the proposed 8th, Grand and Hope Development Project (Project) and associated documents related to the Project's EIR and development application under review by the City of Los Angeles, and provided a Fire Flow Engineering Opinion Letter on March 1, 2024. This Fire Flow Opinion Letter was responded to by the Los Angeles Department of City Planning on May 2nd, 2024 in the document titled "*Appeal Responses for the 8th, Grand and Hope Project; CF 23-1150 / CF 23-1151*." Additional responses were provided in the supplemental attachment document provided by KPFF on April 5th, 2024, titled "*Response to Supplemental Comments dated March 1,2024*."

This letter provides comments on Appeal Responses where related to fire protection and fire flow.

Comments on Appeal Responses in the Document: *Appeal Responses for the 8th, Grand and Hope Project; CF 23-1150 / CF 23-1151*

Supplementation Point S1-1 (per "*Appeal Responses for the 8th, Grand and Hope Project; CF 23-1150 / CF 23-1151*")
The Project did not provide substantial evidence to support that the fire flow requirements pursuant to LAMC can be served by existing infrastructure. A new IFFAR has been prepared for a project directly across the street which finds that water pressure in the area is now inadequate to serve that project.

Staff Response S1-1 (per "*Appeal Responses for the 8th, Grand and Hope Project; CF 23-1150 / CF 23-1151*")
The Appellant asserts that based on a 2023 IFFAR prepared for the 775 South Hope Street Project, the Project EIR improperly evaluated available fire flow, and did not disclose that fire flow available to the Project would be inadequate. However, the Project obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019, and included in Appendix F.1 of the Project EIR, which 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." Pursuant to Section 57.507 of the Los Angeles Municipal Code (LAMC), "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." Based on the determination by LAFD, the Project EIR analyzed the more conservative flow of 9,000 G.P.M. from six hydrants flowing simultaneously. Additionally, per LAMC and Building Code requirements, the Project would be required to install fire sprinkler systems, subject to review and approval by LAFD. As discussed in Appendix I of the Draft EIR, Utility Infrastructure Technical Report: Water, an IFFAR was submitted to the Los Angeles Department of Water and Power (LADWP) to determine if the existing public water system would have adequate water pressure to serve the Project's anticipated fire and domestic water needs. The results of the IFFAR approved by LADWP demonstrate that the applicable

requirement of 6,000 to 9,000 G.P.M. can be met by the existing infrastructure. As the Project fire flow requirement would be adequately served by the existing infrastructure, any fire response or fire sprinkler demand would also be adequately served by existing infrastructure.

Furthermore, the IFFAR for the 775 South Hope Street Project applies to a different project located on a separate block west of the Project Site, consisting of new and existing uses on a larger site. In addition, the group of fire hydrants determined by the IFFAR to be the hydrants that would service the 775 South Hope Street Project are not the same fire hydrants that were determined to be applicable for the Project IFFAR. In particular, three of the hydrants for the Project are served by a different water main not included in the 775 South Hope Street Project IFFAR. Therefore, the 775 South Hope Street Project IFFAR does not constitute substantial evidence that the Project EIR failed to disclose fire flow requirements or is insufficient in its analysis of water infrastructure.

Response to Staff Response S1-1

The Appeal Response asserts that the Project obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019, which set the fire flow to 9,000 G.P.M. from six hydrants flowing simultaneously. The Appeal Response asserts that this official determination was included in Appendix F.1 of the Project EIR, which 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." Pursuant to Section 57.507 of the Los Angeles Municipal Code (LAMC), "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 response above asserts that the Los Angeles Fire Department (LAFD) provided specific official determination of the fire flow for the Project. The response above asserts that this official determination controls fire flow in lieu of LAMC Table 57.507.3.1 (LAMC Section 57.507).

This conclusion that the Fire Chief has provided official determination of the fire flow and is exempting the Project from fire flow requirements pursuant to LAMC Section 57.507 and LAMC Table 57.507.3.1 does not appear to be supported by substantial evidence. Documentation from the LAFD is provided via an informal "Inter-Department Correspondence", which specifically notes that "fire-flow requirements vary from 2,000 gallons per minute (G.P.M.)… to 12,000 G.P.M. in high-density commercial or industrial areas." While the Fire Chief provides a general fire flow for the Project, the letter does not appear to discuss the Los Angeles Zone Information and Map Access System (ZIMAS), and does not confirm that the LAFD is aware that 754 Hope St. is a "Regional Center Commercial" in accordance with the City's General Plan Land Use. The Fire Chief clearly states later in the Inter-Departmental Correspondence that "The Los Angeles Fire Department continually evaluates… overall Department services for the entire City, as well as specific areas. The development of this proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities... [and/or the] relocation of present fire protection facilities."
In accordance with the statements from the LAFD the document as provided appears intended to provide commentary on the Project at the time it was presented under the 2014 Los Angeles Fire Code, while not rendering specific judgement. The document does not state it is an official determination, official guidance, or provides any indication it is intended to provide fire flow in lieu of LAMC Table 57.507.3.1. The document states "the development of the proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities." This statement provides substantial evidence that the Inter-Department Correspondence is not an official determination in accordance with LAMC Section 57.507.

The Los Angeles Zone Information and Map Access System (ZIMAS) indicates that 754 Hope St. is a "Regional Center Commercial" in accordance with the City's General Plan Land Use, which requires to up to 12,000 GPM of fire flow as a "high-density commercial… area". This is supported by evidence provided in accordance the communication provided by the LAFD, and as stated in Table 57.507.3.1 of the City of Los Angeles Municipal Code. This is also supported by the 2023 IFFAR, which notes a fire flow of 12,000 GPM for a separate development adjacent to the Project.

The Appeal Response asserts that the results of the IFFAR approved by LADWP demonstrate that the applicable requirement of 6,000 to 9,000 G.P.M. can be met by the existing infrastructure. As previously presented, substantial evidence shows that water supply data including fire flow water supply availability information varies over time, and is typically only considered valid for approximately 12 months. Various state agencies and local jurisdictions, including California Division of the State Architect (DSA) Bulletin 15-02,[1] Los Angeles County Public Works Waterworks Division (LACPWD) fire flow information request form,[2] and Santa Clarita Valley Water Agency note that water supply information should be considered valid for approximately 12 months or the water supply information may have changed. As the 2019 IFFAR is approximately 5 years old, conclusions based on the 2019 IFFAR are not supported by substantial evidence.

The Appeal Response asserts that the 2023 IFFAR for the 775 South Hope Street Project applies to a different project located on a separate block west of the Project Site. The Appeal Response identifies that three of the hydrants for the Project are not included in the 775 South Hope Street Project IFFAR.

While the 2023 IFFAR applies to an adjacent development to the Project in question, the LAFD Inter-Department Correspondence specifically states “the development of the proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities.”
Additionally, while three of the hydrants from the Project are not included in the 775 South Hope Street Project, the Los Angeles Department of Water and Power infrastructure and water mains are shared, several other hydrants are shared across both projects, and all hydrants share the same water infrastructure. Given that the results of the 2023 IFFAR provided a fire flow water supply of approximately 8,665 GPM, and that the California Division of the State Architect (DSA) Bulletin 15-02, Los Angeles County Public Works Waterworks Division (LACPWD) fire flow information request form, and Santa Clarita Valley Water Agency note that water supply information should be considered valid for approximately 12 months or the water supply information may have changed, there is substantial evidence that the 2019 IFFAR is outdated and may no longer be accurate.

[1] Available at https://www.dgs.ca.gov/-/media/Divisions/DSA/Publications/bulletins/BU_15-02.pdf.
[2] Available at https://pw.lacounty.gov/wwd/web/Documents/Forms/WW1775.pdf.

Supplemental Point S1-2

The Project EIR failed to disclose the information found in the adjacent project IFFAR, misinforming the decision makers, and possibly resulting in increased fire severity, limited firefighting capabilities, increased loss of life and property, and increased risk of fire spread – a significant impact under CEQA.

Staff Response S1-2

The Appellant asserts that the Project EIR should have disclosed information contained in an IFFAR for an adjacent project located at 775 Hope Street Project and, as a result, misinformed decision makers, possibly leading to fire service inadequacies and a subsequent CEQA impact. The Appellant attached an IFFAR for the adjacent 775 Hope Street Project, dated March 6, 2023.

The IFFAR report the Appellant attached to their letter was an earlier version of an IFFAR for a proposed project at 775 Hope Street to redevelop a portion of The BLOC mixed-use site (The BLOC Project). The final and approved IFFAR, also dated March 6, 2023, was published on March 28, 2024, as Appendix F to the Draft EIR for The BLOC Project and indicated that fire flow would be sufficient to serve The BLOC Project. The BLOC Project IFFAR makes no statements related to the 8th, Grand, and Hope Project's fire flow or IFFAR. The availability of The BLOC Project IFFAR document was several years after the release of the 8th, Grand, and Hope Project Initial Study, which was released on May 10, 2019, and which established the baseline for the Project.

The availability of The BLOC Project IFFAR report also occurred well after the publication of the Project's Draft EIR in November 2021 Final EIR in January 2023, and initial certification of the Project's EIR in May 2023. Therefore, the Project EIR did not "misinform" any decision-makers, as the information regarding the adjacent project's IFFAR was not available at the time of Project's EIR preparation and certification. In addition, the IFFAR is specific to the development details of The BLOC Project and considered infrastructure not applicable to the Project.

As discussed above and in Staff Response S1-1, the technical appeal points related to inadequate fire flow and infrastructure serving the Project are not supported by substantial evidence. The Project EIR disclosed all relevant information, and the Project will be required to provide code required fire safety systems in the new construction.

Response to Staff Response S1-2

The Appeal Response asserts that The BLOC Project final and approved IFFAR, also dated March 6, 2023, was published on March 28, 2024, as Appendix F to the Draft EIR for The BLOC Project and indicated that fire flow would be sufficient to serve The BLOC Project.

As mentioned in the response to Appeal Response S1-1, the Los Angeles Zone Information and Map Access System (ZIMAS) indicates that 754 Hope St. is a "Regional Center Commercial" in accordance with the City's General Plan Land Use, which requires to up to 12,000 GPM of fire flow as a "high-density commercial… area". This is supported by evidence provided in accordance the communication provided by the LAFD, and as stated in Table 57.507.3.1 of the City of Los Angeles Municipal Code. This is also supported by the 2023 IFFAR, which notes a fire flow of 12,000 GPM for a separate development adjacent to the Project.

Furthermore, the Inter-Department Correspondence as provided by LAFD states "the development of the proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities."

This provides substantial evidence that the BLOC Project IFFAR is relevant for consideration, and that the fire flow of the 754 South Hope Street IFFAR conducted in 2019 is outdated and requires further consideration.

We have researched and reviewed the BLOC Project final and approved IFFAR, dated March 6, 2023, as provided on the City of Los Angeles City Planning website: (https://planning.lacity.gov/EIR/TheBloc/Appendices/App_K.pdf).

The final and approved IFFAR for the adjacent project specifically states that the LAFD Flow Flow requirement for the project is "12,000 GPM from 8 fire hydrants flowing simultaneously". Additionally, the Los Angeles Department of Water and Power states in the approved IFFAR that "adequate flow provided to listed hydrants if… a 12-inch main upgrade to be installed along S Hope" (Figure 1).

Los Angeles Department of Water and Power - Water System

INFORMATION OF FIRE FLOW AVAILABILITY

LAFD Fire Flow Requirement: 12,000 GPM FROM 8 FIRE HYDRANTS FLOWING SIMULTANEOUSLY

Water Service Map No.: 128-207
LAFD Signature:
Date Signed:

Applicant: Leona Green
Company Name: KPFF Consulting Engineers
Address: 700 S Flower Street, Suite 2100
Telephone: (213) 418-0201
Email Address: leona.green@kpff.com

KATHRINE CRUZ
FEB 22 2023

	F-15525	F-15524	F- 15526
Location:	NE Corner of 8th St and Flower St Intersection	E/O Flower St, 280 ft north of 8th St and Flower St Intersection	NW Corner of 8th St and Hope St Intersection
Distance from Neareast Pipe Location (feet):	52	60	14
Hydrant Size:	4D	4D	4D
Water Main Size (in):	12"	8"	8"
Static Pressure (psi):	83	82	83
Residual Pressure (psi):	62	61	62
Flow at 20 psi (gpm):	1500	1500	1500

RICARDO [illegible]
FEB 23 2023

NOTE: Data obtained from hydraulic analysis using peak hour.

Remarks: ECMR No. W2023023

IFFAR approved. Adequate flow provided to listed hydrants if F-9256 is not included in the 8 hydrants required for 12,000 GPM , F-16769 substitutes for F-9475, and a 12-inch main upgrade to be installed along S Hope St.

Water Purveyor: **Los Angeles Department of Water & Power** *Date:* 3/6/2023

Signtature: *Title:* Civil Engineering Associate II

Figure 1. BLOC Project IFFAR stating that infrastructure improvement and 12-inch main upgrade are required to be installed along S Hope St.

The Appeal Response conclusion that the BLOC Project IFFAR dated March 6, 2023 provided sufficient fire flow to serve The BLOC Project is not supported by substantial evidence. The IFFAR as provided demonstrates substantial evidence that S Hope Street water supply is not sufficient. The IFFAR as referenced appears to require substantial 12-inch water main infrastructure upgrade to be installed along S Hope Street, as stated by the Los Angeles Department of Water and Power.

This IFFAR provides substantial evidence that the adjacent project at 754 South Hope Street will not be able to obtain sufficient fire flow without infrastructure upgrade, as stated by the Los Angeles Department of Water and Power.

Supplemental Point S1-3

Substantial evidence shows that the Project would require the construction of new or expanded water facilities and impacts would result in significant impacts, which were not disclosed and which requires the recirculation of the Project EIR.

Staff Response S1-3

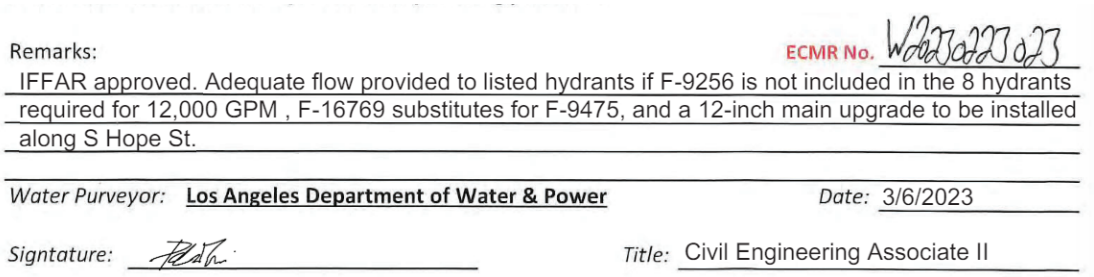
The Appellant asserts the Project would need to expand water facilities, based on an attached IFFAR for the 775 Hope Street Project. As discussed in Staff Response S1-2, the IFFAR and justification provided by the Appellant are not relevant to the Project. Fire flow for the Project was determined to be adequate to serve the Project, and for which no new significant public infrastructure would be required. Therefore, the appellant fails to provide new or substantial information to substantiate the appeal point; and recirculation of the Project EIR is not required. In addition, the Project EIR analyzed impacts associated with construction activities for the Project, and anticipated the installation of new on-site infrastructure and limited off-site work, including trenching and limited closure of adjacent streets. Construction activities for the Project were adequately addressed, and any potential off-site infrastructure upgrades would be limited and would not exceed the scope of construction analysis for the Project, including for such topics as Air Quality, Energy, Greenhouse Gas Emissions, Noise, and Utilities impacts. Further, LAFD evaluated the Project in a letter attached to the DEIR as Appendix F Public Service Response Letters, where LAFD required the same Fire Flow requirements as analyzed in the IFFAR for the Project, and did not identify any further improvements needed to serve the Project.

Response to Staff Response S1-3

The Appeal Response asserts that the attached IFFAR for the 775 Hope Street Project is not relevant to the Project, the fire flow for the Project was determined to be adequate to serve the Project, and no new or significant infrastructure would be required.

The Appeal Response states that the LAFD evaluated the Project in a letter attached to the DEIR as Appendix F Public Service Response Letters, where LAFD required the same Fire Flow requirements as analyzed in the IFFAR for the Project, and did not identify any further improvements needed to serve the Project.

As discussed in Response to Staff Response S1-1, there is substantial evidence that IFFAR's greater than 12 months old may be inaccurate. Furthermore, as discussed in Response to Staff Response S1-2, the mentioned finalized IFFAR for the 775 Hope Street Project was determined to not be adequate without substantial infrastructure upgrade (Figure 2). This is relevant because the Los Angeles Department of Water and Power infrastructure and water mains are shared, several other hydrants are shared across both projects, and all hydrants share the same water infrastructure.



Remarks: ECMR No. W2023023073

IFFAR approved. Adequate flow provided to listed hydrants if F-9256 is not included in the 8 hydrants required for 12,000 GPM , F-16769 substitutes for F-9475, and a 12-inch main upgrade to be installed along S Hope St.

Water Purveyor: **Los Angeles Department of Water & Power** *Date:* 3/6/2023

Signtature: *Title:* Civil Engineering Associate II

Figure 2. BLOC Project IFFAR stating that infrastructure improvement and 12-inch main upgrade are required to be installed along S Hope St.

Comments on Appeal Responses in Supplemental Attachment Document by KPFF:
Response to Supplemental Comments dated March 1,2024

Comment #1:

First, the City – both in the EIR and in the approval findings – lacked substantial evidence to conclude the Project meets applicable fire flow requirements set forth in the Los Angeles Municipal Code ("LAMC"). Fire flow refers to the rate of a water supply that is available at surrounding fire hydrants for firefighting purposes. The City's EIR relies on a Fire Flow Availability Report ("IFFAR") prepared in 2019 which concludes that there is adequate fire flow available to the Project. But the Los Angeles Department of Water and Power prepared an IFFAR in February 2023 for a project across the street at 775 South Hope Street, well before the instant Project received its initial approval by the Advisory Agency on May 26, 2023. The 2023 IFFAR shows that fire flow available to hydrants in the area has dramatically decreased since 2019, and that fire flow available to the Project would fall short of the applicable fire flow requirement. This data was not disclosed or analyzed in the EIR, and was not considered by City decisionmakers. Inadequate fire flow would result in increased fire severity, limited firefighting capabilities, increased loss of life and property, and increased risk of fire spread – a significant impact under CEQA.

Response to Comment #1:

The comment asserts that based on a 2023 IFFAR prepared for an unrelated project, the EIR's evaluation of available fire-flow to the Project is inadequate. However, per Section 57.507 of the LAMC, "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 obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019 (refer to Appendix F.1 of the Project' s Draft Environmental Impact Report (EIR), which states that "The 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". Based on this applicable determination by LAFD, the Project EIR analyzed the more conservative flow of 9,000 G.P.M. from six hydrants flowing simultaneously. As discussed in the Utility Infrastructure Technical Report: Water (Utility Report) prepared by KPFF for the Project and included as Appendix I of the Draft EIR, an Information of Fire Flow Availability Report (IFFAR) was submitted to the Los Angeles Department of Water and Power (LADWP) to determine if the existing public water system would have adequate water pressure to serve the Project's anticipated fire and domestic water needs. The results of the IFFAR approved by LADWP (refer to Exhibit 1 of the Utility Report) demonstrate that the applicable requirement of 6,000 to 9,000 gpm determined by LAFD can be met by the existing infrastructure. Also note that the IFFAR for 775 South Hope Street cited in this comment applies to a different project consisting of an entire block and on a separate block located west of the Project Site. In addition, the group of fire hydrants determined to be the hydrants that would service the 775 South Hope Street IFFAR are not the same fire hydrants that were determined to be applicable for the Project IFFAR. In particular, three of the hydrants for the 8th, Grand and Hope Project are served by a different water main not included in the 775 South Hope Street IFFAR. Therefore, the 775 South Hope Street IFFAR does not demonstrate that fire flow available to the hydrants for the Project have dramatically decreased since 2019.

In addition, as set forth in the following excerpt from the Utility Report for additional information regarding project fire flow which is related to the subject comment:

Furthermore, LAMC Section 57.513, Supplemental Fire Protection, states that: Where the Chief determines that any or all of the supplemental fire protection equipment or systems described in this section may be substituted in lieu of the requirements of this chapter with respect to any facility, structure, group of

structures or premises, the person owning or having control thereof shall either conform to the requirements of this chapter or shall install such supplemental equipment or systems. Where the Chief determines that any or all of such equipment or systems is necessary in addition to the requirements of this chapter as to any facility, structure, group of structures or premises, the owner thereof shall install such required equipment or systems.
The Project will incorporate a fire sprinkler suppression system, which will be subject to LAFD review and approval during the design and permitting of the Project, and which will reduce or eliminate the public hydrant demands. Based on Section 94.2020.0 of the LAMC that adopts by reference NFPA 14-2013 including Section 7.10.1.1.5, the maximum allowable fire sprinkler demand for a fully or partially sprinkled building would be 1,250 gpm for all buildings on the Site, which as shown by the approved WSA, can be supplied to the Site by LADWP.

Based on the above, this comment does not provide substantial evidence to demonstrate that fire flow available to the Project would be inadequate.

Response to KPFF Comment #1
KPFF Comment #1 asserts that the Project obtained an official determination by the Los Angeles Fire Department (LAFD), dated July 25, 2019, which set the fire flow to 9,000 G.P.M. from six hydrants flowing simultaneously. The comment above asserts that the Los Angeles Fire Department (LAFD) provided specific official determination of the fire flow for the Project. The comment above asserts that this official determination controls fire flow in lieu of LAMC Table 57.507.3.1 (LAMC Section 57.507).
Furthermore, the comment asserts that in accordance with LAMC Section 57.513, where the Fire Chief determines that any or all of the supplemental fire protection equipment or systems described in this section may be substituted in lieu of the requirements of this chapter with respect to any facility, structure, group of structures or premises, the person owning or having control thereof shall either conform to the requirements of this chapter or shall install such supplemental equipment or systems.

This conclusion that the Fire Chief has provided official determination of the fire flow and is exempting the Project from fire flow requirements pursuant to LAMC Section 57.507 and LAMC Table 57.507.3.1 does not appear to be supported by substantial evidence. Documentation from the LAFD is provided via an informal “Inter-Department Correspondence”, which specifically notes that “fire-flow requirements vary from 2,000 gallons per minute (G.P.M.)… to 12,000 G.P.M. in high-density commercial or industrial areas.” While the Fire Chief provides a general fire flow for the Project, the letter does not appear to discuss the Los Angeles Zone Information and Map Access System (ZIMAS), and does not confirm that the LAFD is aware that 754 Hope St. is a "Regional Center Commercial" in accordance with the City’s General Plan Land Use. The Fire Chief clearly states later in the Inter-Departmental Correspondence that “The Los Angeles Fire Department continually evaluates… overall Department services for the entire City, as well as specific areas. The development of this proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities... [and/or the] relocation of present fire protection facilities.”
In accordance with the statements from the LAFD the document as provided appears intended to provide commentary on the Project at the time it was presented under the 2014 Los Angeles Fire Code, while not rendering specific judgement. The document does not state it is an official determination, official guidance, or provides any indication it is intended to provide fire flow in lieu of LAMC Table 57.507.3.1. The document states “the development of the proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities.” This statement provides substantial evidence that the Inter-Department Correspondence is not an official determination in accordance with LAMC Section 57.507.

Furthermore, the Fire Chief does not state that any fire protection systems or equipment may be substituted, omitted, or used in lieu of the written requirements and guidance.

There is substantial evidence that the Inter-Department Correspondence provided by the Fire Chief was intended as guidance, and no statements within the document are noted to be provided with the intent to

overrule, supersede, or provide judgement of a lower standard of care than that provided in the LAMC for the required fire flow.

While the 2023 IFFAR applies to an adjacent development to the Project in question, the LAFD Inter-Department Correspondence specifically states "the development of the proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities."

Additionally, while three of the hydrants from the Project are not included in the 775 South Hope Street Project, the Los Angeles Department of Water and Power infrastructure and water mains are shared, several other hydrants are shared across both projects, and all hydrants share the same water infrastructure. Given that the results of the 2023 IFFAR provided a fire flow water supply of approximately 8,665 GPM, and that the California Division of the State Architect (DSA) Bulletin 15-02, Los Angeles County Public Works Waterworks Division (LACPWD) fire flow information request form, and Santa Clarita Valley Water Agency note that water supply information should be considered valid for approximately 12 months or the water supply information may have changed, there is substantial evidence that the 2019 IFFAR is outdated and may no longer be accurate.

Furthermore, as the revised 2023 IFFAR indicates that S Hope Street infrastructure upgrades will be required, there is substantial evidence to indicate that the 2023 IFFAR is important and pertinent to consider to achieve the required fire flow to achieve fire and life safety at the Project site.

Please note that the KPFF Comment #1 provided references fire sprinkler and standpipe requirements. Fire flow and fire hydrant requirements are required in accordance with the California Fire Code (CFC) and LAMC. Fire sprinkler requirements (NFPA 13) and standpipe requirements (NFPA 14) are separate from fire flow requirements, and do not limit the fire flow requirements. Fire flow requirements, as stated by the LAFD and LAMC, are "12,000 G.P.M. in high-density commercial or industrial areas."

Comment #2:
Second, substantial evidence demonstrates that the Project would require the construction of new or expanded water facilities. The water main infrastructure upgrades necessary for operation of the Project would likely require street excavation and subsequent repair to access water mains. This project component was not analyzed in the EIR, and results in a significant public services impact.

Response to Comment #2:
The comment asserts that the EIR does not analyze the impact of new or expanded facilities which the commenter claims would be required for the Project. As discussed in Section IV.F.1, Public Services - Fire Protection of the Draft EIR and in the response above, the Project would incorporate specific fire flow requirements specified by LAFD, and the IFFAR approved by LADWP concluded that the existing available infrastructure is capable of delivering adequate fire flow to the Project. As such, no new off-site water mains would be required. Furthermore, as discussed in Section IV.F.1, Public Services - Fire Protection of the Draft EIR, in accordance with regulatory requirements, the project would also incorporate a fire sprinkler suppression system, which would be subject to LAFD review and approval during the design and permitting of the Project, and would reduce or eliminate the public hydrant demands. Thus, this comment does not provide substantial evidence to demonstrate that fire flow available to the Project would be inadequate and that a new water main would be required. `

Response to KPFF Comment #2
KPFF Comment #2 asserts that project incorporates specific fire flow requirements as specified by LAFD, and asserts that the IFFAR has been approved by LADWP, concluding that the existing available infrastructure is capable of delivering adequate fire flow to the Project. This conclusion is not supported by substantial evidence.

The Inter-Department Correspondence document provided by the LAFD states that “fire-flow requirements vary from 2,000 gallons per minute (G.P.M.)… to 12,000 G.P.M. in high-density commercial or industrial areas.” While the Fire Chief provides a general fire flow for the Project, the letter does not appear to discuss the Los Angeles Zone Information and Map Access System (ZIMAS), and does not confirm that the LAFD is aware that 754 Hope St. is a "Regional Center Commercial" in accordance with the City’s General Plan Land Use.

The Fire Chief clearly states later in the Inter-Departmental Correspondence that “The Los Angeles Fire Department continually evaluates… overall Department services for the entire City, as well as specific areas. The development of this proposed project, along with other approved and planned projects in the immediate area, may result in the need for… additional fire protection facilities... [and/or the] relocation of present fire protection facilities.”

KPFF Comment #2 asserts that project would also incorporate a fire sprinkler suppression system, which would be subject to LAFD review and approval during the design and permitting of the Project, and would reduce or eliminate the public hydrant demands.

This conclusion is not supported by substantial evidence. Documentation has not been provided indicating that fire sprinkler suppression will allow for reduction or elimination of public hydrant demands.

Sincerely,

Robert E. Burtt, P.E.

Fire Protection Engineer

Robert Burtt, P.E., GC, PMP

120 Village Sq. #150, Orinda, CA 94563

burtt4@gmail.com

925-528-8081

Expert – Professional Engineer

Licenses/Registrations/Designations

- California (Fire Protection) Engineer No. 2225
- California (Mechanical) Engineer No. 39163
- California (Civil) Engineer No. 93149
- Hawaii Professional Engineer No. 19910

California Contractor License No. 1024599

- Class A Licensed Engineering Contractor
- Class B Licensed General Contractor
- Class C10 Licensed Electrical Contractor
- Class C36 Licensed Plumbing Contractor
- Class C16 Licensed Fire Protection Contractor

Areas of Focus

- Civil
- Fire Protection
- Plumbing
- Mechanical
- Code Consulting / Building Code

Project Expertise

- High-rise Residential
- Apartments
- Hotels
- Retail Stores
- Office Buildings
- Computer Rooms
- Restaurants
- Industrial Plants
- Educational & Training Facilities
- Warehouse / Storage Facilities
- Churches
- Public Developments

- Engineering Judgements / Opinion Reports
- Design and Plan Review
- Forensic Investigation
- Document Analysis
- Building Code and Materials Research
- Standard of Care
- Contract Conformance
- Quality Control
- On-Site Supervision
- Project Management
- Regulatory Compliance
- Change Order and Cost Management
- Operational Oversight

Education

- Bachelor of Science, Mechanical Engineering, California Polytechnic State University, San Luis Obispo