

EXHIBIT B

UNITEHERE! Local 11

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October 7, 2019

City Planning Commission, City of Los Angeles
200 N. Spring Street, Council Chamber Rm. 340
Los Angeles, CA 90012
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**RE: ITEMS 7 & 8, CITY PLANNING COMMISSION HEARING SCHEDULED OCTOBER 10, 2019;
OLYMPIC TOWER PROJECT (813-815 WEST OLYMPIC BOULEVARD, 947-951 S. FIGUEROA STREET);
DCP CASE NOS. CPC-2015-455, ENV-2015-4558, VTT-73966**

Dear City Planning Commission:

UNITE HERE Local 11 ("Local 11" or "Appellant"), respectfully provides the City of Los Angeles ("City") the following comments¹ concerning the Department of City Planning ("DCP") staff reports for the referenced Item 6 ("Appeal Staff Report")² and Item 7 ("Entitlement Staff Report")³ concerning the 57-story, 779,173-square-foot ("SF"), 373-hotel room, 374-condo Olympic Tower development ("Project") located at 813-815 West Olympic Boulevard in Downtown Los Angeles ("Site") proposed by Olymfig26, LLC ("Applicant"). As raised in our subdivision appeal (the "Appeal"), Local 11 is concerned with the Project's compliance with the California Environmental Quality Act ("CEQA") and Los Angeles Municipal Code ("LAMC" or "Code").

While Local 11 finds DCP's response lacking on all of our Appeal arguments, we want to focus the City's attention on two arguments. First, the Project's lack of affordable housing cannot be cured by relying on the Transfer of Floor Area Rights ("TFAR") Public Benefit Payment when the City fails to assess the payment in accordance with the TFAR provisions under Article 4.5 of the Code. Here, the City fails to assess all of the TFAR square footage requested for the Project and relies on an outdated sales price. When compared to similar Downtown TFAR projects, the *Project's Public Benefits Payment may be under-assessed by as much as \$ 17+ million*. These are funds the City could use to provide real public benefits to City stakeholders, such as affordable housing and public parks. Second, the greenhouse gas ("GHG") analysis contained in the Project's Environmental Impact Report ("EIR") fails to comply with the CEQA Guidelines. Specifically, the GHG plans relied upon in the EIR are entirely aspirational and lacking any binding, project-specific requirements. *Despite the Project's GHG emissions exceeding thresholds routinely used by the City for other City projects*, the City erroneously refuses to apply the same thresholds now to this Project.

¹ Please note that pages cited herein are either to the page's stated pagination (referenced herein as "p. ##") or the page's location in the referenced PDF document (referenced herein as "PDF p. ##").

² DCP (10/10/19) Item 6 Staff Report (DCP Case No. VTT-73966-1A), <https://planning.lacity.org/odocument/e00d4221-0a8b-4d72-a07c-b5f0a8f664c4/VTT-73966-CN-1A.pdf>.

³ DCP (10/10/19) Item 7 Staff Report (DCP Case No. CPC-2015-4557-MCUP-CUX-TDR-SPR-DD), <https://planning.lacity.org/odocument/1dbc6157-1a75-4aab-b293-ebc88c34daf8/CPC-2015-4557.pdf>.

As discussed herein, substantial evidence shows the Project is not complying with its Public Benefit Payment obligations and, therefore, the City cannot make its Code-required findings. Nor does the City provide substantial evidence demonstrating that the Projects GHG emissions are not cumulatively considerable. Local 11 urges the City Planning Commission to withhold its approval of the requested TFAR and EIR until the issues discussed herein are addressed in a recirculated EIR and TFAR findings.

I. PROJECT IS NOT COMPLYING WITH ITS TFAR PAYMENT OBLIGATIONS

In response to our argument that the Project lacks any affordable housing in the midst of an affordable housing crisis, DCP claims the Project needs only to be consistent and or in harmony with the City's General Plan, and that the Project's Public Benefit Payment would further the General Plan's affordable housing goals (Appeal Staff Report, pp. 7-8).

This response does not address CEQA's requirement that EIRs fully identify any inconsistency between a proposed project and the general, specific, regional, and other applicable plans. See CEQA Guidelines § 15125(d); see also *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1566; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881. Here, the EIR's land use impact section (DEIR, Tbls. IV.H-1 – IV.H-6) fails to identify any of the affordable housing goals, policies, objectives, issues, or purposes identified in the Appeal. Moreover, the Project fails to satisfy its entire Public Benefit Payment required under the Code, as discussed below.

A. BACKGROUND ON THE PROJECT AND TFAR

Here, the Project will contain up to 779,173 SF of floor area on a 37,031-SF lot, for a Floor Area Ratio ("FAR") of 13:1 (Entitlement Staff Report, pp. 1, A-1). To this end, the Project requires various land use entitlements including a TFAR approval to allow a purported 455,161-SF of TFAR to be transferred from the Los Angeles Convention Center (i.e., Donor Site) to the Project Site (i.e., Receiver Site) to permit the maximum 13:1 FAR (*id.*, at p. A-9). To grant the requested TFAR, the City must make specific land use findings and impose certain conditions of approval, including but not limited to:

- The finding that the TFAR transfer serves the public interest by complying with the requirements of LAMC § 14.5.9; and
- The condition that the TFAR transfer shall provide a Public Benefit Payment in conformance with LAMC § 14.5.9.

(See LAMC § 14.5.6.B.2 subds. (a)(3) & (b)(1))

Under the Code, "public benefit" means amenities provided to the public including but not limited to providing for affordable housing, public open space, job training and outreach programs, local hiring, payment of prevailing wages, and other similar provisions (LAMC § 14.5.3 [definition of "Public Benefit"]; see also LAMC § 14.5.9.A). The total Public Benefit Payment is calculated in accordance with the formula provided under LAMC § 14.5.9.C (see Tbl. 1 on the following page).

TABLE 1: PUBLIC BENEFIT PAYMENT FORMULA (SEE LAMC § 14.5.9.C)

(Public Benefit Payment)		=	$\frac{(\text{Purchase or Sale Price})/(\text{Lot Area})}{(\text{High Density Floor Area Ratio Factor})} \times (40\%) \times (\text{TFAR Transferred})$
Notes:			
<i>Purchase or Sale Price:</i> The sale price of the Receiver Site, if it has been purchased through an unrelated third-party transaction within 18 months of the date of submission of the request for approval of the Transfer, or an Appraisal if it has not.			
<i>Lot Area:</i> Prior to any dedications of the Receiver Site.			
<i>High Density Floor Area Ratio Factor:</i> Means a denominator of six and is used in calculating the amount of any TFAR Transfer Payment.			
<i>TFAR Transferred:</i> The number of square feet of Floor Area Rights to be transferred to the Receiver Site.			
(See LAMC §§ 14.5.3, 14.5.9.C)			

B. THE PROJECT DOES NOT COMPLY WITH ITS PUBLIC BENEFIT PAYMENT OBLIGATIONS

According to Applicant's TFAR Application submitted on December 16, 2015,⁴ the Project's Public Benefit Payment was calculated at \$ 22,158,132 based on: a \$ 22,000,220 sale price on May 1, 2014; a lot area of 37,031 SF; a High-Density Floor Area Ratio Factor of six; and a proposed 781,638-SF development inclusive of an estimated 559,452-SF of TFAR (see Fig. 1 below). According to the Entitlement Staff Report (p. A-16), the Applicant is now proposing only a 779,173-SF development inclusive of 455,161-SF of TFAR—thus reducing the Applicant's Public Benefit Payment to \$ 18,027,494. However, as explained below, this Payment is not properly assessed because it (1) undercounts requested TFAR, (2) relies on outdated sale transaction, that (3) undervalues the Project Site when compared to appraisals for similarly situated properties.

FIGURE 1: ORIGINAL TFAR APPLICATION EXCERPTS⁵

3. RECEIVER SITE VALUATION Check valuation method: <input checked="" type="checkbox"/> Sales Price ^a <input type="checkbox"/> Appraisal ^a	
3.1 Sales Price If a Sales Price valuation method was used, please complete this Section 3.1 Sales Price: <u>\$22,000,220</u> Date of Sale: <u>May 1, 2014</u>	
* * *	
8. ESTIMATED PUBLIC BENEFITS PAYMENT 8.1 Payment Calculation Values Please list the following values to calculate the estimated Minimum and Maximum Public Benefits Payments in Section 8.2:	
(a) Value [from Section 3.1 or 3.2]:	<u>\$22,000,220</u>
(b) Lot Area (sq. ft.) [from Section 1.2]:	<u>37,031 sf</u>
(c) High Density Floor Area Ratio Factor: ¹⁷	<u>6</u>
(d) Estimated Transfer Minimum Sq. Ft. [from Section 4.4 (a)]:	<u>559,452 sf</u>
(e) Estimated Transfer Maximum Sq. Ft. [from Section 4.4 (b)]:	<u>559,452 sf</u>
* * *	

⁴ Applicant's TFAR Application is located in the City's Project files. For your convenience, a copy is available at the following Dropbox link: <https://www.dropbox.com/s/070ln5705e1foya/TFAR%20Application.pdf?dl=0>.

⁵ *Ibid.*, PDF pp. 1-3, 6-7.

8.2	<u>Calculation of Public Benefits Payment</u>
8.2.1	<u>Estimated Minimum Public Benefits Payment¹⁸</u>
	Please calculate the "Minimum Public Benefits Payment" according to the following formula:
$(\text{Value [8.1(a)] } 22,000,220 / \text{Lot Area [8.1(b)] } 37,031 / 6) \times .40 \times \text{Minimum Sq. Ft. [8.1(d)] } 559,452 = \$ 22,158,132$	

1. CITY OMITTS 101,826-SF OF REQUESTED TFAR, AMOUNTING TO A \$4.03 MILLION ERROR

Here, absent TFAR, the 37,031-SF Project Site is limited to a 6:1 FAR or 222,186-SF of development (Entitlement Staff Report, p. A-8). Thus, to allow the proposed 779,173-SF Project, the Applicant would need to request 556,987-SF of TFAR ($779,173 - 222,186 = 556,987$) (Entitlement Staff Report, p. A-8 [explicitly stating "TFAR requested is 556,987 square feet (from both the Convention Center and a CRA donor site)."]). However, the City's \$ 18.02 million Public Benefit Payment reflects only 455,161 SF of TFAR was assessed, essentially exempting 101,826 SF of proposed development from the Code's Public Benefit Payment requirement. This error alone amounts to \$ 4.03 million undervaluation of Applicant's Public Benefit Payment.

2. THE PROJECT'S SALE TRANSACTION IS OUTDATED

Here, the \$ 22.0 million sales transaction occurred on May 1, 2014—19 months and 15 days before the Project's TFAR Application was submitted.⁶ This violates the Code. The Code gives applicants two options. They may either base the valuation of the property on the sale price in an unrelated sale that took place within 18 months of the application, or they may conduct a new appraisal that establishes "the fair market value of the Receiver Site as of the date the application was submitted." LAMC §§ 14.9.3 (emphasis added), 14.5.9. A sales transaction conducted more than five years ago, and more than 18 months before the application, does not comply with the Code.

3. SALES PRICE IS UNDERVALUED COMPARED TO SIMILAR TFAR PROJECT PROPERTIES, RESULTING IN A PUBLIC BENEFIT PAYMENT UNDERASSESSED BY AS MUCH AS \$ 17.43 MILLION

Here, at a \$ 22,000,220 sales price for the 37,031-SF Site, the Project Site was valued at \$ 594 per SF. This is very low. When compared to similar Downtown TFAR projects within approximately one mile of the Project Site, Downtown property values range between \$ 690 to \$ 955 per SF with an average valuation of \$ 817 per SF (see Tbl. 2 on the following page). When utilizing the average valuation (\$ 817/SF) and the highest valuation (\$ 955/SF) of similar properties, the 37,031-SF Project Site would be appraised at approximately \$ 30.25 and \$ 35.36 million (respectively). At these assessed values, the Project would be subject to a total Public Benefit Payment of approximately \$ 30.34 and \$ 35.46 million (respectively), or approximately \$ 12.31 and \$ 17.43 million (respectively) – far more than what the Project now intends to pay (see Tbl. 3 on the following page).

⁶ *Supra* fn. 4.

TABLE 2: SIMILAR TFAR PROJECT VALUATIONS

Project Case No. (Primary Address)	Appraised or Purchase Price	Lot Area (SF)	Price per SF
ZA 2014-0562 & ZA-2018-2852 (1155 S. Olive St.) ⁷	\$ 64,702,388*	93,723	\$ 690
CPC-2017-173-TDR-BL-MCUP-SPR (913 S. Figueroa St.) ⁸	\$ 62,400,000	85,317	\$ 731
DIR-2015-2690-TDR (801 S. Grand Ave.) ⁹	\$ 52,517,830*	58,906	\$ 892
ZA-2016-4203-TDR-CUB-SPR (926 W. James M. Woods Blvd.) ¹⁰	\$ 13,518,980	14,156	\$ 955
Lowest Valuation			\$ 690
Highest Valuation			\$ 955
Average Valuation			\$ 817
Notes:			
* Calculated based on known values utilizing the Public Benefit Payment formula.			

TABLE 3: PUBLIC BENEFIT PAYMENT (ACTUAL V. POTENTIAL VALUATION)

	Outdated Sale Price (\$ 594/SF)	Appraised at Average Valuation (\$ 817/SF)	Appraised at Highest Valuation (\$ 955/SF)
Appraised or Purchase Price	\$ 22,000,220	\$ 30,257,111	\$ 35,364,605
divided Lot Area (SF)	37,031	37,031	37,031
divided High Density Floor Area Ratio Factor	6.0	6.0	6.0
multiply 40 Percent	0.40	0.40	0.40
multiply TFAR Transferred (SF)	455,161*	556,987**	556,987**
Total Public Benefit Payment	\$ 18,027,494	\$ 30,340,017	\$ 35,461,505
Difference between Actual v. Potential		\$ 12,312,523	\$ 17,434,011
Notes:			
* TFAR Actually Assessed			
** TFAR That should Have Been Assess			

⁷ See DLANC (for 9/20/18 PLUC meeting) Project Materials, PDF pp. 1, 55 (noting 93,723-SF lot area, 15,186-SF of TFAR transferred, and \$ 698,918.06 Public Benefit Payment), http://www.dlanc.org/sites/dlancd7.localhost/files/309%20W%2012th%20ST%20Final%20-%20SITE%201A_DLANC%20PACKAGE.pdf.

⁸ See DLANC (for 2/19/19 PLUC meeting) Project Materials, PDF p. 28 (appraised \$ 62.4 million for 85,317-SF lot area), <http://www.dlanc.org/sites/dlancd7.localhost/files/CPC-2017-173%20913%20Figueroa%20DLANC-R.pdf>.

⁹ See DCP (2/25/16) Director's Determination TFAR, pp. 2, 5, 8 (noting 58,906-SF lot area, 5,700-SF of TFAR transferred, and \$ 338,790.20 Public Benefit Payment), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/YWNhMTBmODltZG5ZC00MTUxLTg1NTMtNWY1MmYzMjAwNDI40>.

¹⁰ See DCP (7/3/17) Letter of Determination, p. 15 (noting 14,156-SF lot area), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/YjRkYTllMTgtNzc4Zi00NTk5LTlmYTtNTcx0GEzMiRmZmEy0>; see also DCP (9/11/17) Letter of Clarification, PDF p. 3 (noting recent sale price of \$13,518,980), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/OWQ0N2VmZjgtNTVIMC00OGRhLTg2YTtNGM1MGUwNDFmYjBi0>.

C. THE CITY CANNOT MAKE CODE-REQUIRED FINDINGS WITHOUT RESOLVING THE PUBLIC BENEFIT PAYMENT ISSUE

As noted above, the City cannot grant the Project's requested TFAR approval without the Project satisfying its Public Benefit Payment requirements in accordance with LAMC § 14.5.9 (see LAMC § 14.5.6.B.2 subds. (a)(3) & (b)(1)). As discussed above, substantial evidence demonstrates that the City fails to assess all requested TFAR square footage, that the Project relies on an outdated sale price, which is also out of line with various appraisals and valuations of similar Downtown TFAR projects. This results in the loss of millions of dollars of public benefits to Downtown City stakeholders in the form of direct/indirect funds to the City's Department of Housing & Community Development Affordable Housing Trust Fund and redevelopment of Pershing Square Park (Appeal Staff Report, p. 8; Entitlement Staff Report, pp. A-16 – A-17). Without resolving this issue, the City cannot make the Code-required land use findings.

II. FAILURE TO PROPERLY ASSESS AND MITIGATE GHG IMPACTS.

In response to the argument that Project's GHG emissions are improperly analyzed and likely significant, DCP claims the proposed thresholds cited in our Appeal were never adopted, that CARB's AB 32 Scoping Plan and SCAG's 2016-2040 RTP/SCS satisfy CEQA Guidelines § 15064.4(c) for GHG analysis, and that the City does not routinely use any other significance thresholds (Appeal Staff Report, pp. 11-12). These claims lack merit.

While CEQA Guidelines § 15064.4(a) provides lead agencies the discretion to select a quantitative and/or qualitative analysis, both shall be "based to the extent possible on scientific and factual data" and "must reasonably reflect evolving scientific knowledge and state regulatory schemes." CEQA Guidelines § 15064.4 subds. (a) & (b). So too, the selection of any threshold must be supported by substantial evidence. CEQA Guidelines § 15064.7(c) Here, however, the City's qualitative and quantitative analysis fails to stay in line with evolving scientific knowledge and regulatory schemes, and not supported by substantial evidence.

First, CEQA Guidelines § 15064.4(c) relates to the discretion lead agencies have in determining the modes and methods to "estimate" or quantify a project's GHG emissions, as made clear by the California Natural Resources Agency ("Resources Agency").¹¹ Perhaps, the EIR and City meant to referenced the discretion to use consistency with *qualified* plans as envisioned under CEQA Guidelines §§ 15064.4(b)(3), 15183.5(b), and 15064(h)(3). However, as explained below, those sections do not provide agencies unfettered discretion to select just any plan—rather only qualified plans with binding, project-specific measures.

Second, none of the plans cited in the EIR (i.e., AB 32 Scoping Plan, SCAG's 2016-2040 RTP/SCS, City's ClimateLA Plan, City's Green Building Ordinance, City's Mobility 2035 Plan, and City's Green LA Plan) contain vital features of a Climate Action Plan (pursuant to CEQA Guidelines §§ 15064.4(b)(3) and

¹¹ See Resources Agency (Nov. 2018) Final Statement of Reasons for Regulatory Action: Amendments to The State CEQA Guidelines ("2018 Final Statement of Reasons"), p. 20 http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf; see also Resources Agency (Dec. 2009) Final Statement of Reasons For Regulatory Action: Amendments to the State CEQA Guidelines ("2009 Final Statement of Reason"), p. 21, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

15183.5(b)(1)).¹² Nor do any of the plans contain the mandatory, project-specific measures that satisfy CEQA Guidelines § 15064(h)(3). As explained by the Resources Agency (emphasis added), “consistency with plans that are purely aspirational (i.e., those that include only unenforceable goals without mandatory reduction measures), and provide no assurance that emissions within the area governed by the plan will actually address the cumulative problem, may not achieve the level of protection necessary to give rise to this subdivision’s presumption.”¹³ Here, the EIR cites measures and strategies that are mostly not applicable to the Project, and all are purely aspirational goals lacking any project-specific mandatory reduction measures. The EIR fails to “draw a link” between these non-binding plans and the Project’s cumulative effects on climate change.¹⁴

Third, the City has used South Coast Air Quality Management District (“SCAQMD”)’s 10,000 MTCO₂e/yr threshold, as well as SCAQMD’s Tier 3 and Tier 4 thresholds numerous times¹⁵—despite those thresholds never being formally adopted. Here, the EIR and City fail to explain why these thresholds—which the City uses in so many other cases—should not be applied here.

¹² See *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 200-201 (Upheld qualitative GHG analysis when based on city’s adopted its greenhouse gas strategy that contained “multiple elements” of CEQA Guidelines § 15183.5(b), “quantification of [city’s] baseline levels of [GHG] emissions and planned reductions[,]” approved by the regional air district, and “[a]t the heart” of the city’s] greenhouse gas strategy was “specific regulations” and measures to be implemented on a “project-by-project basis ... designed to achieve the specified citywide emission level.”).

¹³ See 2009 Final Statement of Reason, *supra* fn. 11, pp. 14-16.

¹⁴ *Ibid.*, pp. 16-17.

¹⁵ See e.g., 15116-15216 South Vermont Avenue project (DCP Case No. ENV-2017-1015) Initial Study (“IS”), PDF p. 81 (utilizing 10,000 MTCO₂e/yr threshold), http://clkrep.lacity.org/online/docs/2018/18-0279_misc_5_04-04-2018.pdf; 333 La Cienega Blvd. project (DCP Case No. ENV-2015-897) IS, PDF pp. 89-90 (applying 3,000 MTCO₂e/yr threshold for mixed-use project), <http://planning.lacity.org/eir/nops/333LaCienega/is.pdf>; 3063 W. Pico Blvd. project (DCP Case No. ENV-2016-1604) Mitigated Negative Declaration (“MND”), PDF pp. 86-87 (applying 3,000 MTCO₂e/yr threshold for mixed-use projects), http://cityplanning.lacity.org/staffrpt/mnd/Pub_033017/ENV-2016-1604.pdf; 7720 Lankershim Blvd. project (DCP Case No. ENV-2016-2384) MND, p. IV-33 – IV-35 (utilizing 3,000 Tier 3 threshold for non-industrial project), http://clkrep.lacity.org/online/docs/2018/18-0827_misc_1_08-28-2018.0001.pdf; 5750 Hollywood Blvd. project (DCP Case No. ENV-2014-4288) DEIR, PDF p. 31-32 (utilizing 3,000 Tier 3 threshold for non-industrial project), http://planning.lacity.org/eir/5750HollywoodBlvd/DEIR/4.C.Greenhouse_Gas_Emissions.pdf; Bermuda Apartments (DCP Case No. ENV-2017-628) MND, PDF p. 72-73 (utilizing 3,000 Tier 3 threshold for non-industrial project), <https://planning.lacity.org/odocument/64056bf9-e4b7-4085-b33f-89ced0b9dac5/ENV-2017-628.pdf>; 6516 W. Selma Ave. project (DCP Case No. ENV-2016-4313) MND, PDF pp. 102-104 (utilizing Tier 4 analysis and noting “SCAQMD’s draft thresholds have also been utilized for other projects in the City.”), http://clkrep.lacity.org/online/docs/2008/08-0887-S1_misc_7_02-22-2017.pdf; Lizard Hotel project (DCP Case No. ENV-2015-2356) Draft EIR, PDF pp. 23-24 (utilizing SCAQMD’s Tier 4 analysis), <http://planning.lacity.org/eir/SpringStHotel/DEIR/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf>; Glassell Park Residential project (DCP Case No. ENV-2016-4394) MND, PDF pp. 164-165 (applying SCAQMD’s Tier 3 and Tier 4 threshold), <https://planning.lacity.org/pdiscaseinfo/Home/GetDocument/MGEwYjZiMtNTI3MS00YmYxLTlmMmYtMjk3OTMyNTIjYzVmO>; Target at Sunset and Western project (DCP Case No. ENV-2008-1421) Addendum to Certified EIR, PDF pp. 28-31 (applying Tier 3 and Tier 4 thresholds), http://clkrep.lacity.org/online/docs/2016/16-0033_misc_1_01-08-2016.0001.pdf; Reef project (DCP Case No. ENV-2008-1773) DEIR, PDF p. 23-25 (applying Tier 3 and Tier 4 thresholds), <http://planning.lacity.org/eir/theReef/deir/DEIR%20Sections/IV.G.%20Greenhouse%20Gases.pdf>.

Fourth, SCAQMD's Tier 3 (screening thresholds) and Tier 4 (efficiency thresholds) analysis track the same approach taken by several other air districts, including Sacramento Metropolitan Air Quality Management District ("SMAQMD"),¹⁶ Bay Area Air Quality Management District ("BAAQMD"),¹⁷ Placer County Air Pollution Control District ("PCAPCD"),¹⁸ and San Luis Obispo Air Pollution Control District ("SLOAPCD")¹⁹—all adopting screening/efficiency thresholds.

In any event, the City must justify its GHG significance threshold with substantial evidence and in compliance with the CEQA regulations. Here, therefore, the City must answer the hard questions, such as:

- Why is the Project's 11,442 MTCO₂e/yr not cumulative significant when SCAQMD, other air districts, and even the City has determined 10,000 MTCO₂e/yr is normally considered significant?
- What mitigation measures (if any) in CARB's AB 32 Scoping Plan or SCAG's RTP/SCS are binding, mandatory, and specific to the Project that ensures its GHG emissions are not cumulatively considerable?
- Why is the City refusing to apply SCAQMD's Tier 3 and Tier 4 thresholds in the instant case despite applying them for other similar projects?
- How is the City's GHG analysis in keeping with the evolving scientific knowledge and methods of CEQA analysis?

¹⁶ SMAQMD (May 2018) Guide to Air Quality Assessment in Sacramento County, pp. 6:1-3, 6:10-12 ("(GHG) emissions adversely affect the environment through contributing, on a cumulative basis, to global climate change ... the District recommends that lead agencies address the impacts of climate change on a proposed project and its ability to adapt to these changes in CEQA documents ... [thus urging] evaluating whether the GHG emissions associated with a proposed project will be responsible for making a cumulatively considerable contribution to global climate change." [emphasis original]), <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>; see also SMAQMD Thresholds of Significance Table, <http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf>.

¹⁷ BAAQMD (May 2017) CEQA Air Quality Guidelines, p. 2:1-4 ("No single project could generate enough GHG emissions to noticeably change the global average temperature [but rather] [t]he combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts."), http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.

¹⁸ PCAPCD (Oct. 2016) CEQA thresholds of Significance Justification Report, pp. E-2, 2, 17-22 ("CEQA requires that the lead agency review not only a project's direct effects on the environment, but also the cumulative impacts of a project and other projects causing related impacts. When the incremental effect of a project is cumulatively considerable, the lead agency must discuss the cumulative impacts in an EIR. [citing CEQA Guidelines § 15064]"), <https://www.placer.ca.gov/DocumentCenter/View/2061/Threshold-Justification-Report-PDF>; see also PCAPCD (11/21/17) CEQA Thresholds And Review Principles, <http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples>.

¹⁹ SLOAPCD (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5, 25-30, 42 ("No single land use project could generate enough GHG emissions to noticeably change the global average temperature. Cumulative GHG emissions, however, contribute to global climate change and its significant adverse environmental impacts. Thus, the primary goal in adopting GHG significance thresholds, analytical methodologies, and mitigation measures is to ensure new land use development provides its fair share of the GHG reductions needed to address cumulative environmental impacts from those emissions."), <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf>.

III. CONCLUSION

Local 11 appreciates the opportunity to provide these comments. Local 11 works to make our City a place of opportunity for all—a place where its members can work and afford to live. Local 11's members have a direct interest in seeing that the State's environmental laws and the City's land-use laws are being followed, that the City satisfies its affordable housing obligations, and that new development not contribute to the climate-change crisis that threatens a livable future. For the reasons discussed herein, and elsewhere in the Project's record, Local 11 urges the City Planning Commission withhold approval of the Project's TFAR request and EIR until the City recalculates the Applicant's Public Benefit Payment in accordance with the Code, and recirculates the EIR with an adequate GHG analysis. Please put this letter in the Project's administrative record.

Sincerely,



Charles Du
Staff Attorney
UNITE HERE Local 11

EXHIBIT C



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October 8, 2019

**RE: Items 7 & 8, City Planning Commission Hearing Scheduled October 10, 2019;
Olympic Tower Project (CPC-2015-4557, VTT-73966, ENV-2015-4558)**

Autumn Wind Associates has reviewed the Draft and Final Environmental Impact Report (“DEIR” and “FEIR”, respectively), inclusive of their respective appendices (“APP-##”),¹ for the referenced 57-story, 779,173-square-foot (“SF”), 373-hotel room, 374-condo Olympic Tower development (“Project”) located at 813-815 West Olympic Boulevard in Downtown Los Angeles (“Site”). Based on my review, I provide the following comments² to the City of Los Angeles (“City”) regarding the adequacy of the EIR’s analysis of the Project’s air quality and greenhouse gas (“GHG”) impacts as it relates to its compliance with California Environmental Quality Act (“CEQA”) and 14 Cal. Code. Regs. § 15000 *et seq.* (“CEQA Guidelines”). My qualifications are attached hereto as “Attachment A.”

In short, the EIR fails to properly analyze the Project’s construction air quality impacts, and fails to analyze GHG impacts consistent with evolving scientific and regulatory standards and further confirmed herein this comment letter. Furthermore, the Department of City Planning (“DCP”) response to these issues in the FEIR and the Project’s staff reports for regarding an appeal of the Project’s subdivision approval (“Appeal Staff Report”)³ and consideration of Project’s entitlement approvals (“Entitlement Staff Report”)⁴ is inadequate for the reasons discussed below.

Consistent with CEQA, the DEIR must be revised and recirculated with a complete and adequate air quality and GHG analysis that includes all feasible mitigation measures to reduce significant impacts.

A. CONSTRUCTION-RELATED HAUL TRUCK TRIPS AND RELATED AIR QUALITY EMISSIONS REMAIN SUBSTANTIALLY UNDERCOUNTED AND UNDERESTIMATED IN THE FEIR

The City has rejected written comments submitted by environmental experts SWAPE highlighting that the DEIR’s air quality analysis underestimated the total number of grading-related haul truck trips required to export by truck 115,000 cubic yards of site-excavated materials for disposal at a regional landfill (FEIR, pp. III-61), stating:

“The correct number of estimated truck haul trips is 11,550 truck trips, assuming 115,500 cubic yards of export and the use of 10-cubic-yard-capacity haul trucks. *CalEEMod assumes a return trip for every truck haul trip.*” (Emphasis added).

¹ All DEIR, FEIR, and Errata documents were accessed via City-controlled websites.

² Please note that all page citations herein are to either the page’s stated-pagination (referenced herein as “p. ##”) or to the page’s location in the referenced PDF document (referenced herein as “PDF p. ##”).

³ DCP (10/10/19) Item 6 Staff Report (DCP Case No. VTT-73966-1A), <https://planning.lacity.org/odocument/e00d4221-0a8b-4d72-a07c-b5f0a8f664c4/VTT-73966-CN-1A.pdf>.

⁴ See DCP (10/10/19) Item 6 Staff Report, <https://planning.lacity.org/odocument/e00d4221-0a8b-4d72-a07c-b5f0a8f664c4/VTT-73966-CN-1A.pdf>; see also DCP (10/10/19) Item 7 Staff Report, <https://planning.lacity.org/odocument/1dbc6157-1a75-4aab-b293-ebc88c34daf8/CPC-2015-4557.pdf>.

Contrary to this assertion, however, CalEEMod does not automatically assume a return trip for every truck haul trip. According to CalEEMod User Guidance:⁵

“If one load of material is delivered, CalEEMod assumes that one haul truck importing material will also have a return trip with an empty truck (e.g., 2 one-way trips). Similarly, a haul truck needed to export material is assumed to have an arrival trip in an empty truck and a loaded departure truck (e.g., 2 one-way trips). Thus, each trip to import and export material is considered as two separate round trips (or 4 one-way trips).” (Emphasis added).

The EIR clearly notes that excavated materials will require export from the Project Site to the landfill (FEIR, pp. III-31, III-57), and will require 59 separate 10-yard truck loads per day; logically, each haul truck trip to the landfill must require a separate return trip, either to the truck’s originating home base or to the Project Site to pick up another load of excavated materials for transport to the Chiquita Canyon Landfill and with that return trip to the Project Site to be counted as a separate one-way trip in the calculation of the Project’s haul truck-related emissions. Also, while CalEEMod Appendix A provides for combined import-export trips, noted as “phased trips”,⁶ no justification is provided in the EIR to show or explain that phasing with “double-duty” export-and-import haul trips will occur during the Project’s demolition and excavation phases. Thus, the FEIR substantially underestimates the Project’s on-road hauling emissions and vehicle-miles-traveled to dispose of its demolition and excavation materials. Because the FEIR has erroneously assumed that those 11,550 trips are calculated as round trips (rather than one-way trips), the FEIR Table IV.C-9 was revised for NOx emissions for year 2018 (showing an increase from 28 lbs./day to 56 lbs./day).

This increase is substantial and threatens the FEIR’s determination of less-than-significant construction-emission impacts. With the doubling of the excavation and demolition haul trips, both Localized Significance Threshold (“LST”) analysis and regional thresholds of significance for construction NOx and possibly other pollutants are likely to be exceeded, resulting in significant impacts for criteria pollutants that would in turn require health risk modeling to ensure that cancer- and non-cancer health risk thresholds are not exceeded.

B. THE FEIR INCORRECTLY ASSUMES AVAILABILITY OF ALL TIER FOUR-FINAL-RATED CONSTRUCTION EQUIPMENT TYPES AND IMPERMISSIBLY CLAIMS TIER-FOUR FINAL EMISSION BENEFITS

SWAPE also raised concerns and evidence of “unsupported assumptions regarding the use of Tier 4 Final Mitigated Engines”, noting that Mitigation Measure C-1 (“MM C-1”), to require Tier 4 diesel offroad equipment, was made unenforceable by use of the subjective qualifier “where available”, and by the City’s failure to provide substantial evidence that Tier 4-Final equipped construction equipment is readily available across the spectrum of equipment types modeled for Project emissions and which will be used to first demolish existing structures onsite and then build the new Olympic Tower facilities (FEIR, p. III-53 – III-55 [“Comment CREED LA 2/SWAP AQ-C”]).

⁵ CalEEMod User’s Guide, p. 35, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4.

⁶ CalEEMod Appendix A, p. 14 (“Haul trips are based on the amount of material that is demolished, imported or exported assuming a truck can handle 16 cubic yards of material. For phased trips, the truck is assumed to be full both ways. For non-phased trips, the truck is assumed to be empty one direction and thus results in more haul trips calculated.”), http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6.

The City has provided no substantial evidence to counter the substantive concerns and information provided by SWAPE, and while new Tier 4 Interim (“T4-I”) and Tier 4-Final (“T4-F”) equipment has entered the offroad equipment inventory since the 2014 inventory findings noted above, the long-lived nature of construction equipment, higher costs for new T4-I and T4-F equipment, and other factors have contributed substantially to a much slower transition of the millions of pieces of construction equipment in California to the most recent Tier 4 status used by the City to calculate and evaluate for impact significance the emissions of all Project-related diesel offroad equipment ≥ 50 hp. Realistically, Project contractors will not own nor will they rent every piece of the scores of T4-F-rated equipment necessary to maintain the accuracy of the FEIR’s CalEEMod-modeled emission estimates. The City’s unsupported assumption regarding ready availability of T4-F equipment to be required for the Project is further contradicted by information from the California Air Resources Board (“CARB”).⁷ This information from CARB clearly contradicts the City’s unsupported assumption that the Project will readily, easily, and thereby fully comply with the Tier 4 Final emission rate it used exclusively to calculate and then evaluate the Project’s construction emission impacts.

This difference is meaningful. For example, for offroad diesel engines in construction equipment, from 75hp – 175 hp, the T4-I NOx limit is 2.5 g/bhp-hr, whereas the T4-F NOx rate is .30 g/bhp-hr. For equipment ranging from 176hp – 750 hp, the T4-I NOx limit is 1.5 g/bhp-hr, whereas the T4-F NOx limit is .30 g/bhp-hr. Therefore, for the lower horsepower equipment, and because MM C-1 is written so as to not prohibit use of T4-I rated equipment during construction, each T4-I equipment piece would emit at a NOx rate between *five and eight times that of the T4-F rate inappropriately used by the City* to estimate the Project’s offroad diesel construction equipment (over 50 hp) NOx emissions and their relative impact significance.

Tier 4-Final diesel (≥ 50 hp) emission rates in the *FEIR’s MM C-1 must be re-written to require solely T4-F equipment OR, alternatively, to revise the emissions estimates to reflect the actual, higher average emission rates for offroad construction equipment inventories in the region.*⁸ In either case, MM C-1 must be revised again in order to be made consistent with the emission benefits claimed with use of the T4-F equipment emission rates for all Project-related offroad diesel equipment with greater than 50 hp.

C. THE FEIR’S GHG SIGNIFICANCE ANALYSIS IS FLAWED

During the DEIR comment period, environmental experts SWAPE commented that the DEIR’s reliance on consistency with CARB’s AB 32 Scoping Plan, SCAG’s 2016-2040 RTP/SCS, and other referenced plans was not appropriate because these regulatory plans do not meet the criteria for an officially adopted GHG reduction program as required under CEQA Guidelines § 15064.4(b)(3), commonly referred to as a Climate Action Plan (“CAP”) (FEIR, APP-A, PDF pp. 83-84). This argument was echoed by Project Appellant Unite Here, who also noted that the Project’s annual GHG emissions (11,442 MTCO₂e/yr) exceed SCAQMD’s proposed Tier 3 threshold of 10,000 MTCO₂e/yr for industrial projects (the highest proposed threshold for any kind of project), and that the Project’s service population efficiency (6.67 MTCO₂e/yr/sp) exceeds SCAQMD’s proposed Tier 4 threshold of 4.8 and 3.0 MTCO₂e/yr/sp for target years 2020 and 2035 (respectively) (Appeal Staff Report, PDF pp. 21-22).

In response, the FEIR dismissed these comments stating that the SCAQMD thresholds were never formally adopted and that consistency with CARB’s AB 32 Scoping Plan and SCAG’s 2016-2040 RTP/SCS satisfies CEQA Guidelines § 15064.4(c) (FEIR, pp. III-78 – III-79, DEIR, pp. IV.F-34 – IV.F-

⁷ CARB, 2017 Off-Road Diesel Emission Factor Update for NOx and PM, p. 4, https://ww3.arb.ca.gov/msei/ordiesel/ordas_ef_fcf_2017.pdf.

50). These arguments were echoed in the Appeal Staff Report (p. 12), where City staff also states “[n]o other significance thresholds are routinely used by the City for determining the significance of the GHG emissions impacts.” These responses are inadequate under the CEQA Guidelines and fail to meaningfully explain why the Project’s GHG emissions are not cumulatively significant (as discussed below).

1. CARB’S AB 32 SCOPING PLANS AND SCAG’S RTP/SCS CONTAIN NO BINDING, PROJECT-SPECIFIC REQUIREMENTS AND, THUS, CANNOT BE THE SOLE JUSTIFICATION FOR GHG SIGNIFICANCE

First, the EIR incorrectly characterizes CARB, SCAG, and City plans as a qualified GHG reduction plans or CAP, when none exists. Here, the City claims the EIR’s qualitative analysis “demonstrate[es] the Project’s compliance ‘with regulations or requirements adopted to implement a Statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.’” (Appeal Staff Report, p. 11). While the internal citations are taken directly from CEQA Guidelines § 15064.4(b)(3), *the City omits the Guideline’s explicit reference to CEQA Guidelines § 15183.5(b)* that was added in the most recent update to the CEQA Guidelines. As explained by the Resources Agency, the addition of the 15183.5(b) reference was “needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project’s [GHG] emissions ... [and] consistent with the Agency’s Final Statement of Reasons for the addition of section 15064.4, which states that ‘proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.’ [2009 Final Statement of Reason, p. 27][.]”⁹ (2018 Final Statement of Reason, p. 19 [emphasis added]).¹⁰ When read in conjunction, CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified CAPs should include the following features: (1) inventorying and quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction); (2) establishing GHG reduction goal by establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable; (3) analyzing project types by identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area; (4) crafting performance-based mitigation measures by specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level; and (5) monitoring by establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels.

These CAP features provide the necessary substantial evidence demonstrating a project’s incremental contribution is not cumulative considerable, as required under CEQA Guidelines § 15064.4(b)(3).¹¹ Here, however, none of the plans identified in the EIR include the above-listed features to be considered a qualified CAP for the City (see e.g., no inventorying the City’s GHG emissions, no establishing the City’s fair share in GHG reduction goal, no quantifying various project types, no crafting of performance-based

⁹ Resources Agency (Dec. 2009) Final Statement of Reasons For Regulatory Action: Amendments to the State CEQA Guidelines, http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

¹⁰ Resources Agency (Nov. 2018) Final Statement of Reasons For Regulatory Action: Amendments To The State CEQA Guidelines, http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf.

¹¹ See *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 200-201 (Upheld qualitative GHG analysis when based on city’s adopted its greenhouse gas strategy that contained “multiple elements” of CEQA Guidelines § 15183.5(b), “quantification of [city’s] baseline levels of [GHG] emissions and planned reductions[,]” approved by the regional air district, and “[a]t the heart” of the city’s greenhouse gas strategy was “specific regulations” and measures to be implemented on a “project-by-project basis ... designed to achieve the specified citywide emission level.”).

mitigation measures that quantifiably meet a City-specific reduction goal, no monitoring by the City to ensure plan's effectiveness). As such, the EIR leaves an analytical gap showing compliance with said plans will translate into a project-level insignificance determination for the Project, and/or that the City is meeting its fair share in reducing the State's GHG emissions required under AB 32.¹²

Second, these plans do not satisfy requirements under CEQA Guideline § 15064(H)(3), which is explicitly cited in the EIR (DEIR, pp. IV.F-25) and alluded to by the City (Appeal Staff Report, p. 11 [fn 2 quoting examples listed in subdivision (h)(3)]. Subdivision (h)(3) permits lead agencies to find projects not cumulative considerable when a project complies with an approved plan or mitigation program that “provides specific requirements that will avoided or substantially lessen the cumulative problems within the geographic area in which the project is located ... [and] the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable.” (Emphasis added). When adopted, the Resources Agency explained that this subsection provides a “rebuttable presumption” for “certain” plans, such as local CAPs (2009 Final Statement of Reason, pp. 14-15).¹³ As further explained, “consistency with plans that are purely aspirational (i.e., those that include only unenforceable goals without mandatory reduction measures), and provide no assurance that emissions within the area governed by the plan will actually address the cumulative problem, may not achieve the level of protection necessary to give rise to this subdivision's presumption.” (*Id.*, p. 16 [emphasis added]). Hence, lead agencies must “draw a link between the project and the specific provisions of a binding plan or regulation,” before subsection (h)(3) rebuttable presumption is to take effect.

Here, however, the AB 32 Scoping Plan is not City specific and of the 18 strategies identified in the EIR, ten strategies are admittedly not applicable to the Project with several other strategies only tangentially related to the Project (e.g., Cap-and-Trade, Renewables Portfolio Standard, Low Carbon Fuel Standards, City's recycling program, etc.) (DEIR, Tbl. IV.F-7). Additionally, CARB has stated it would be “misguided” to suggest Cap-and-Trade or other state regulations covers mobile emissions from local land use projects, and made it abundantly clear that its Scoping Plans are “non-binding” on local governments.¹⁴ Moreover, none of the strategies include specific, mandatory, binding requirements for the Project. Instead, they are purely optional for local governments to apply on local projects. Similarly, of the 13 RTP/SCS actions and strategies identified in the EIR, seven are admittedly “not applicable” or “not necessarily applicable” to the Project, and all others contain purely aspirational language without any binding mandatory requirements (*see e.g.*, DEIR, Tbl. IV.F-8 [“reflect the changing population and demands ... focus new growth around transit ... plan for growth around livable corridors ... provide more options for short trips ... manage congestion ... promote zero-emissions vehicles ... promote neighborhood electric vehicles ...”). None of these actions/strategies include specific, mandatory, binding requirements for the Project. Similarly, the EIR fails to identify any Project-specific, mandatory requirements under the City's Mobility 2035 Plan or Green LA Plan (*id.* at pp. IV.F-47 – IV.F-49).¹⁵

¹² See *Golden Door Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892, 905 (held County's GHG threshold relying on statewide standards failed to comply with CEQA Guidelines § 15064.7(c) because it did not address the County specifically); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 230 (“Local governments thus bear the primary burden of evaluating a land use project's impact on greenhouse gas emissions. Some of this burden can be relieved by using geographically specific greenhouse gas emission reduction plans to provide a basis for the tiering or streamlining of project-level CEQA analysis.”);

¹³ *Supra* fn. 9.

¹⁴ See CARB (12/5/18) RE Centennial Specific Plan Final EIR, p. 3-4, 6-7, 10-11, <https://ww3.arb.ca.gov/toxics/ttdceqalist/centennialfeir.pdf>.

¹⁵ While the EIR cites “Program D7” under the City's Mobility 2035 Plan, which includes approximately 170 different programs, that program does not provide any mandatory requirements on specific projects that ensure GHG

While the Project seems consistent with the City's Green Building Codes, just because an infill project is designed to meet high building efficiency and conservation standards does not establish that its GHG emissions from transportation activities lack significant impacts.¹⁶ This concept is known as "additionality" whereby GHG emission reductions otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline § 15064.4(b)(1), a new project's emissions should be compared against that existing baseline.¹⁷ Hence, a "project should not subsidize or take credit for emissions reductions which would have occurred regardless of the project."¹⁸ In short, newer developments must be more GHG-efficient.¹⁹

In sum, none of plans relied upon are City-specific with mandatory, binding mitigation measures specific for the Project. Neither the EIR nor the City explains or draws the link between any *specific provisions that* ensure the Project's incremental contribution to climate change (11,442 MTCO₂e/yr in GHG emissions) is not cumulatively considerable. If the City wants to allow projects to tier-off GHG reduction plans, then it must first do the heavy-lifting of proposing and approving a proper CAP, subject to public CEQA review, as clearly urged in CARB's 2017 Scoping Plan.²⁰

2. THE EIR'S GHG ANALYSIS SHOULD USE SCAQMD THRESHOLDS JUST LIKE OTHER CITY PROJECTS

The SCAQMD's 10,000 MTCO₂e/yr threshold is widely acknowledge as an appropriate threshold, even by the City. In December 2008, the SCAQMD Governing Board *adopted* the staff proposal for an interim GHG significance threshold of 10,000 MTCO₂e/yr for stationary industrial projects where SCAQMD is the lead agency (DEIR, p. IV.F-13).²¹ Although not the lead agency here, SCAQMD has determined that a 10,000 MTCO₂e/yr is normally cumulative significant level of GHG emissions, *which the City has used in the past in many cases*.²² Here, the Project's 11,442 MTCO₂e/yr in GHG emissions exceeds this

reductions are achieved. See Mobility 2035 Plan (Sep. 2016) pp. 167-164 (listing all programs), https://planning.lacity.org/odocument/523f2a95-9d72-41d7-aba5-1972f84c1d36/Mobility_Plan_2035.pdf.

¹⁶ See *Newhall Ranch*, 62 Cal.4th at 229 (citing Natural Resources Agency); see also California Natural Resources Agency (Dec. 2009), *supra* fn. 9, p. 23 (while a Platinum LEED® rating may be relevant to emissions from a building's energy use, "that performance standard may not reveal sufficient information to evaluate transportation-related emissions associated with that proposed project").

¹⁷ *Supra* fn. 9, p. 89; see also CAPCOA (Aug. 2010) Quantifying Greenhouse Gas Mitigation Measures, pp. 32, A3 ("... in practice is that if there is a rule that requires, for example, increased energy efficiency in a new building, the project proponent cannot count that increased efficiency as a mitigation or credit unless the project goes beyond what the rule requires; and in that case, only the efficiency that is in excess of what is required can be counted."), <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>.

¹⁸ CAPCOA, *supra* fn. 17, p. 433.

¹⁹ See *Newhall Ranch*, 62 Cal.4th at 226.

²⁰ CARB (Nov. 2017) 2017 Scoping Plan, pp. 99-101 ("CARB advises that local governments also *develop community-wide GHG emissions reduction goals* necessary to reach 2030 and 2050 climate goals ... Since the statewide per capita targets are based on the statewide GHG emissions inventory that includes all emissions sectors in the State, *it is appropriate for local jurisdictions to derive evidence-based local per capita goals based on local emissions sectors and population projections* that are consistent with the framework used to develop the statewide per capita targets .. Sufficiently detailed and *adequately supported GHG reduction plans (including CAPs)* also provide local governments with a valuable tool for streamlining project-level environmental review." Emphasis added), https://ww3.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf.

²¹ SCAQMD (Apr. 2019) South Coast AQMD Air Quality Significance Thresholds, <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf>.

²² See e.g., Bending the River Back into the City Project (Jan. 2014) IS/MND, PDF p. 34 (applying 900 MTCO₂e/yr threshold for City project), http://clkrep.lacity.org/online/docs/2014/14-0254_misc_a_2-24-14.pdf; City (10/27/11) Inter-Departmental Correspondence, PDF p. 34 (applying 10,000 MTCO₂e/yr threshold), <http://clkrep.lacity>.

threshold, and because GHG emissions are global in nature, it is irrelevant that 11,442 MTCO₂e/yr is from this mixed-use Project rather than an industrial project—especially considering SCAQMD proposed much lower thresholds for mixed-use projects (as discussed *infra*). Given SCAQMD’s subject matter expertise in this area, its determination that projects with GHG emissions exceeding this 10,000 MTCO₂e/yr threshold are significant should be considered as substantial evidence and warrants considerable weight.

The City also routinely uses SCAQMD’s numeric Tier 3 bright-line and Tier 4 efficiency thresholds. In December 2008, SCAQMD released its Interim CEQA GHG Significance Threshold that proposed a multi-tiered approach for evaluating a project’s GHG impacts,²³ which was subsequently clarified, where SCAQMD proposed for non-exempt projects (i.e., Tier 1) not consistent with a qualified CAP (i.e., Tier 2), lead agencies should compare a project’s GHG emissions to numeric screening thresholds (i.e., Tier 3).²⁴ Under Tier 3, lead agencies may choose between two options: Option 1 use a proposed 1,400 or 3,000 or 3,500 or 10,000 MT CO₂e/yr threshold for a commercial or mixed-use or residential or industrial project (respectively); or Option 2 use a single numerical threshold of 3,000 MTCO₂e/yr for non-industrial projects. *The City has utilized Option 1 in lieu of the Option 2 numerous times.*²⁵ Where a

org/online/docs/2014/14-0106_misc_w_5-7-15.pdf; LAX Terminals 2 and 3 Modernization project (Feb. 2017) DEIR, PDF pp. 141 (applying 10,000 MTCO₂e/yr threshold), http://clkrep.lacity.org/online/docs/2017/17-0836_misc_11_07-26-2017.pdf; Van Nuys Airport Propeller Park Development (Feb. 2011) Final Negative Declaration, PDF p. 87 (applying 10,000 MTCO₂e/yr threshold), http://clkrep.lacity.org/online/docs/2011/11-1518_rpt_bac_8-30-2011.pdf; LAX Terminal 1.5 project (Nov. 2016) IS/MND, PDF p. 72 (applying 10,000 MTCO₂e/yr threshold), http://clkrep.lacity.org/online/docs/2017/17-0017_misc_5_01-13-2017.pdf; Mariondale Avenue and Lillyvale Avenue Vacation District project (2/22/18) IS, PDF p. 18, http://clkrep.lacity.org/online/docs/2017/17-0504_misc_2_03-27-2018.pdf; 15116-15216 South Vermont Avenue project (11/22/17) IS, PDF p. 81, http://clkrep.lacity.org/online/docs/2018/18-0279_misc_5_04-04-2018.pdf; North Valley Fire Station No. 7 project (10/17/11) IS, PDF p. 31, http://clkrep.lacity.org/online/docs/2012/12-0114_misc.pdf; Burbank Blvd. Widening project (Jul. 2009) IS, PDF p. 45, http://clkrep.lacity.org/online/docs/2009/09-2458_misc_4-1-16.pdf.

²³ SCAQMD (12/5/08) Board Letter, p. 5, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); see also SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA GHG Significance Threshold, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf).

²⁴ SCAQMD (9/28/10) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf).

²⁵ See e.g., Venice Blvd. Self-Storage project (DCP Case No. ENV-2017-3855) MND, PDF pp. 49-50 (applying 1,400 MTCO₂e/yr threshold for commercial project), https://planning.lacity.org/staffrpt/mnd/Pub_101818/ENV-2017-3855.pdf; 5950 Jefferson Boulevard project (DCP Case No. ENV-2017-4170) MND, PDF pp. 112-114 (noting SCAQMD’s 3,000 MTCO₂e/yr threshold is “appropriate” and remains supported by SCAQMD’s technical analysis as a useful indicator of significance), https://planning.lacity.org/staffrpt/mnd/Pub_122018/ENV-2017-4170.pdf; 333 La Cienega Blvd. project (DCP Case No. ENV-2015-897-EIR) Initial Study, PDF pp. 89-90 (applying the 3,000 MTCO₂e/yr threshold for mixed-use project), <http://planning.lacity.org/eir/nops/333LaCienega/is.pdf>; 3063 W. Pico Blvd. project (DCP Case No. ENV-2016-1604) MND, PDF pp. 86-87 (referencing 3,000 MTCO₂e/yr threshold for mixed-use projects), http://cityplanning.lacity.org/staffrpt/mnd/Pub_033017/ENV-2016-1604.pdf; 16966 Sunset Blvd. project (DCP Case No. ENV-2017-3896) MND, PDF pp. 41 (utilizing 3,000 MTCO₂e/yr threshold), https://planning.lacity.org/staffrpt/mnd/Pub_122718/ENV-2017-3896.pdf; 756 N. Edinburgh Avenue project (DCP Case No. ENV-2016-1367-EIR) IS, PDF pp. 87-88 (applying 3,000 MTCO₂e/yr threshold), <http://planning.lacity.org/eir/EdinburghAve/DEIR/Appendix%20A%20-%20NOP%20IS%20and%20Comment%20Letters.pdf>; 1209 6th Avenue project (DCP Case No. ENV-2014-1988-EIR) Initial Study, PDF pp. 85-86 (applying the 3,500 MTCO₂e/yr threshold for residential project), https://planning.lacity.org/eir/nops/1209_6thAvenueInitialStudy/1209_InitialStudySigned_100716.pdf; 15116 S. Vermont Avenue Staff Report (DCP Case No. ENV-2017-1015-MND) PDF pp. 182, 220 (containing MND applying the 10,000 MTCO₂e/yr threshold for industrial project), <http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2017-1014.PDF>; Woodley Avenue Self-Storage project (DCP Case No. ENV-2018-

project's emissions exceed the screening-level threshold, a more detailed review of the project's GHG emissions is warranted using SCAQMD's proposed per capita efficiency targets (i.e., Tier 4).²⁶ For project-level analyses, SCAQMD proposed a 2020 and 2035 efficiency target of 4.8 and 3.0 MTCO₂e/yr per service population ("MTCO₂e/yr/sp"), respectively.²⁷ *In fact, the City has utilized SCAQMD's Tier 4 efficiency analysis numerous times.*²⁸

Here, a Tier 3 and 4 Analysis shows the Project greatly exceeds applicable thresholds. Here, SCAQMD's Tier 1 and Tier 2 does not apply because the Project is not exempt and none of the plans referenced in the EIR qualify as an officially adopted CAP that meets the requirements of CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) (as discussed *supra*). As a mixed-use/non-industrial development, the Project is subject to SCAQMD's Tier 3 3,000 MTCO₂e/yr threshold under either Option 1 or 2, which the Project's 11,442 MTCO₂e/yr exceeds by more than a factor of three and, *thus, Tier 4 analysis is warranted here*. According to the California Air Pollution Control Officers Association ("CAPCOA"), service population is defined as "the sum of the number of residents and the number of jobs supported by the project."²⁹ Here, the Project includes 1,265 employees and residents (DEIR, p. IV.J-9) and approximately 373 hotel rooms. Utilizing the City's widely reported 80 percent hotel occupancy rate³⁰

4247) MND, PDF pp. 89-91 (utilizing 10,000 MTCO₂e/yr threshold for industrial project), https://planning.lacity.org/staffrpt/mnd/Pub_012419/ENV-2018-4247.pdf; *but see* 7720 Lankershim Blvd. project (DCP Case No. ENV-2016-2384) MND, p. IV-33 – IV-35 (utilizing 3,000 Tier 3 threshold for non-industrial project), http://clkrep.lacity.org/online/docs/2018/18-0827_misc_1_08-28-2018.0001.pdf; Lafayette Park Place Bridge Housing Facility project (3/13/19) CE, PDF p. 578, http://clkrep.lacity.org/online/docs/2018/18-0392_rpt_BOE_03-13-2019.pdf; 5750 Hollywood Blvd. project (DCP Case No. ENV-2014-4288) DEIR, PDF p. 31-32, http://planning.lacity.org/eir/5750HollywoodBlvd/DEIR/4.C_Greenhouse_Gas_Emissions.pdf; Providence Tarzana Medical Center project (DCP Case No. ENV-2016-1662) DEIR, PDF p. 50, https://planning.lacity.org/eir/ProvidenceTarzanaMedicalCtr/FEIR/files/D_IVD.pdf; Bermuda Apartments (DCP Case No. ENV-2017-628) MND, PDF p. 72-73, <https://planning.lacity.org/odocument/64056bf9-e4b7-4085-b33f-89ced0b9dac5/ENV-2017-628.pdf>;

²⁶ SCAQMD (12/5/08), *supra* fn. 23, p. 6.

²⁷ SCAQMD (9/28/10), *supra* fn. 24, p. 2.

²⁸ *See e.g.*, 6516 W. Selma Ave. project (DCP Case No. ENV-2016-4313) MND, PDF pp. 102-104 (utilizing Tier 4 analysis and noting "SCAQMD's draft thresholds have also been utilized for other projects in the City."), http://clkrep.lacity.org/online/docs/2008/08-0887-S1_misc_7_02-22-2017.pdf; 713 East 5th Street Project (DCP Case No. ENV-2017-421-EIR) Draft EIR, PDF p. 39 (for a new residential building in the Central City Community Plan, the "City has determined to assess the significance of the Project's GHG emission by comparing them to the SCAQMD draft Tier 4 performance standards"), http://planning.lacity.org/eir/713_East_5th/DEIR/files/D_IVC.pdf; Lizard Hotel project (DCP Case No. ENV-2015-2356) Draft EIR, PDF pp. 23-24 (utilizing SCAQMD's Tier 4 analysis), https://planning.lacity.org/eir/SpringSt_Hotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf; Glassell Park Residential project (DCP Case No. ENV-2016-4394) MND, PDF pp. 164-165 (applying SCAQMD's Tier 3 and Tier 4 threshold), https://planning.lacity.org/staffrpt/mnd/Pub_121318/ENV-2016-4394.pdf; Target At Sunset And Western project (DCP Case No. ENV-2008-1421) Addendum to Certified EIR, PDF pp. 28-31, http://clkrep.lacity.org/online/docs/2016/16-0033_misc_1_01-08-2016.0001.pdf; Reef project (DCP Case No. ENV-2008-1773) DEIR, PDF p. 23-25, <http://planning.lacity.org/eir/theReef/deir/DEIR%20Sections/IV.G.%20Greenhouse%20Gases.pdf>; Museum Square Office Building project (DCP Case No. ENV-2013-194) DEIR, PDF pp. 7-19, https://planning.lacity.org/eir/MuseumSquare/DEIR/DEIR%20Sections/IV.E.%20Greenhouse%20Gases_Global%20Climate%20Change.pdf;

²⁹ CAPCOA (Jan. 2008) CEQA & Climate Change, pp. 71-72, <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>.

³⁰ City of Los Angeles (2017) Hotel Market Study, pp. 1, 5, https://d3n8a8pro7vhmx.cloudfront.net/cd14/pages/2723/attachments/original/1508870241/CD14_Hotel_Market_Study-2017_Full_Report-Final.pdf?1508870241; *see also* City of Los Angeles (2017) 2017 Annual Report, p. 5, <https://ctd.lacity.org/sites/default/files/2017%20CTD%20Annual%20Report.pdf>.

and 1.5 persons per room ratio used by the City,³¹ it can be estimated that the proposed 373-room Project will typically serve 448 hotel patrons (240 rooms x 1.5 persons per room x 80 % occupancy rate). Thus, the Project's service population would be a maximum of 1,713 people. By dividing the Project's admitted GHG emissions by this service population, the Project would result in an efficiency level of approximately 6.67 MTCO₂e/yr/sp, which exceeds both SCAQMD's 2020 and 2035 efficiency threshold of 4.8 and 3.0 MTCO₂e/yr/sp (respectively). Thus, the *Project would result in a significant GHG impact*.

Applying bright-line screening and efficiency thresholds constitutes the current best practices of major air districts when there is no qualified CAP. Despite not being formally adopted, SCAQMD's Tier 3 and Tier 4 analysis has been replicated by multiple air districts who have adopted similar thresholds in recent years, such as the Sacramento Metropolitan AQMD,³² Bay Area AQMD,³³ Placer County APCD,³⁴ and San Luis Obispo APCD³⁵—which evidences broad consensus among these air districts of what constitutes best practices in CEQA analysis and regulatory controls over GHG emissions on local land use projects.

*In sum, the City has routinely used SCAQMD's Tier 3 screening and Tier 4 efficiency thresholds,*³⁶ notwithstanding SCAQMD not adopting them or serving as the lead agency, and numerous major air districts have followed suit. This inconvenient fact cannot be ignored. The EIR and City must justify—with substantial evidence—why it refuses to apply these applicable thresholds here, explain why the Project's 11,442 MTCO₂e/yr is not cumulative considerable despite exceed all relevant thresholds, and explains why its shoddy qualitative analysis relying on aspirational, non-binding plans is more in step with evolving scientific knowledge and regulatory schemes.

CONCLUSION

In short, the EIR's air quality and GHG analysis are inadequate. The issues discussed herein must be resolved in a revised and recirculated EIR. Should you have any questions or comments regarding this comment letter, please feel free to contact me at your convenience.

Sincerely,



Greg Gilbert, Autumn Wind Associates

³¹ Lizard Hotel (DCP Case No. ENV-2015-2356-EIR) Draft EIR, PDF p. 24, <https://planning.lacity.org/eir/SpringStHotel/Deir/DEIR%20Sections/Spring%20St%20Hotel%20IV.E%20Greenhouse%20Gas%20Emissions.pdf>.

³² SMAQMD (May 2018) Guide to Air Quality Assessment in Sacramento County, pp. 6:1-3, 6:10-12 (1,100 and 10,000 MTCO₂e/yr for non-stationary and stationary operational emissions, respectively), <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>; see also SMAQMD Thresholds of Significance Table, <http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf>.

³³ BAAQMD (May 2017) CEQA Air Quality Guidelines, p. 2:1-4 (1,100 MTCO₂e/yr bright-line or 4.6 MTCO₂e/yr/SP for non-stationary sources, and 10,000 MTCO₂e/yr for stationary sources), http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.

³⁴ PCAPCD (Oct. 2016) CEQA thresholds of Significance Justification Report, pp. E-2, 2, 17-22 (10,000 MTCO₂e/yr bright-line threshold for all projects, and various residential and non-residential efficiency thresholds depending on urban or rural context), <https://www.placer.ca.gov/DocumentCenter/View/2061/Threshold-Justification-Report-PDF>; see also PCAPCD (11/21/17) CEQA Thresholds And Review Principles, <http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples>.

³⁵ SLOAPCD (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5, 25-30, 42 (1,150 MTCO₂e/yr bright-line or 4.9 MTCO₂e/yr/SP for residential/commercial sources, and 10,000 MTCO₂e/yr for industrial sources), <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf>.

³⁶ See *supra* fn. 22, 25, 28.

STATEMENT OF QUALIFICATIONS

Greg Gilbert

Autumn Wind Associates

Greg Gilbert is director and founder of Autumn Wind Associates, located northeast of Sacramento, CA. AWA provides expert review, analysis, and estimation of potential air quality and related environmental impacts of proposed land-use development projects involving indirect- (mobile) and stationary (operating under air agency permit) sources of air pollution. He has consulted on air quality land use planning, mobile, and stationary source matters and projects to private and public clients since leaving public service as an air agency manager in 2000. Previously, he was national marketing director for an emissions catalyst products and technology firm with international markets in mobile and stationary sources. Between 1990 and 2000 Mr. Gilbert was employed in two California air agencies, most recently as project manager in the Mobile Source Division of the Sacramento Metropolitan Air Quality Management District (SMAQMD). While at SMAQMD Mr. Gilbert was responsible for managing development and implementation of the agency's heavy-duty diesel vehicle low-emission incentive program that would later evolve into the statewide Moyer Program; the evaluation of land use-related air quality emission impacts and control strategies, development of California Environmental Quality Act (CEQA) thresholds of significance and mitigations to reduce, offset, or eliminate air quality impacts of new land use; development of air-related CEQA guidance; and creation of the first air quality CEQA mitigation fee program with percentage-based emission reduction mitigation choices provided to the developer.

Since 2001, AWA has provided consulting expertise to private entities and air agencies, conducted research on construction practices and equipment emissions, assisted with development of CEQA land-use guidance documents and mitigation strategies for CA air quality agencies, and provided analysis and modeling of potential air quality impacts identified primarily in Mitigated Negative Declarations and Environmental Impact Reports for proposed land use development projects throughout California. Mr. Gilbert reviews and provides expert written and testimony on CEQA- and development-related project-specific environmental analysis, mitigation, and documentation for a wide range of public-, private-, and environmental-sector clients, including law firms specializing in CEQA-NEPA cases.