

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

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

cstough@adamsbroadwell.com

SACRAMENTO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
DANIKA L. DESAI
SARA F. DUDLEY
THOMAS A. ENSLOW
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
RACHAEL E. KOSS
NIRIT LOTAN
AARON M. MESSING
WILLIAM C. MUMBY
CAMILLE G. STOUGH

MARC D. JOSEPH
Of Counsel

*Admitted in Colorado

October 29, 2019

Via Email and Hand Delivery

Agenda Item Nos. 10 and 11

Planning and Land Use Management Committee
Los Angeles City Council
c/o Office of the City Clerk
City of Los Angeles
City Hall, Room 395
Los Angeles, California 90012
Email: clerk.plumcommittee@lacity.org
andrew.choi@lacity.org

Re: **Appellant CREED LA's Response to Department of City Planning
Appeal Response regarding the Southern California Flower Market
Project (Council File Nos. 19-1048 and 19-1048-S1)**

Dear Honorable Committee Members:

On behalf of appellant Coalition for Responsible Equitable Economic Development ("CREED LA"),¹ we are writing to respond to the City Planning Commission's Appeal Response, dated October 24, 2019, prepared for the October 29, 2019, PLUM Committee hearing regarding the Southern California Flower Market Project ("Project"). The Project is located at 709-765 S. Wall Street, 306-326 East 7th Street, and 750-752 S. Maple Avenue, and includes an expansion and redevelopment of the existing Flower Market facility between Maple Avenue and Wall Street, south of 7th Street, and a new mixed-use development consisting of wholesale trade, retail, restaurant, office, and residential uses. (Planning Case Nos. VTT-74568-1A; ENV-2016-3991-EIR; and CPC-2016-3990-GPA-VZC-CUB-ZV-SPR.)

¹ CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and the environmental and public service impacts of the Project.

4639-009acp

This hearing involves two separate appeals by CREED LA challenging the Planning Commission's Letters of Determination for the Project, including the August 26, 2019 VTT Letter of Determination and August 26, 2019 CPC Letter of Determination for the Project. The Appeal Response contains responses to some of the issues raised in our first appeal ("VTT Appeal"), and fails entirely to respond to the issues raised in our second appeal ("CPC Appeal"). The responses provided fail to resolve the issues we raised. As detailed below, the issues raised in the Appeals and in CREED LA's prior comments on the Project still stand.

In short, the Environmental Impact Report ("EIR") prepared for the Project fails to comply with the requirements of the California Environmental Quality Act² ("CEQA") because: (1) the Project description is inadequate, and (2) the Project's potentially significant impacts on air quality, health risk, noise, and geology and soils have not been adequately disclosed, analyzed, or mitigated. This response is supported by the technical comments of air quality consultant, James J. J. Clark, PhD, of Clark & Associates,³ who concludes that the EIR: (a) fails to adequately disclose and analyze the Project's significant cumulative impacts; (b) fails to effectively mitigate significant air emissions from construction; (c) fails to adequately disclose and mitigate significant levels of operational emissions; and (d) fails to perform an adequate health risk analysis from the Project's operational and construction emissions. This response is also supported by the technical comments from noise and acoustic consultant, Derek Watry of Wilson Ihrig,⁴ who maintains that the City still lacks substantial evidence to support its conclusion that the EIR's construction noise mitigation measures can be effectively implemented or enforced. As a result of these substantial errors and omissions, the EIR fails as an informational document, and fails to ensure that the Project's potentially significant impacts will be mitigated to the greatest extent feasible, as required by CEQA.

The Project is also inconsistent with the environmental provisions of the General Plan because the Project has numerous potentially significant environmental impacts on air quality, public health, and from construction noise that the City has failed to adequately mitigate. As a result of these deficiencies, the City lacks substantial evidence to support the required findings to approve the

² Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

³ **Exhibit A:** Letter from Dr. James Clark to Camille Stough regarding Air Technical Comments on the Southern California Flower Market Project, October 28, 2019.

⁴ **Exhibit B:** Letter from Derek Watry to Camille Stough regarding Noise Technical Comments on the Southern California Flower Market Project, October 28, 2019.

Project's entitlements pursuant to CEQA, the Subdivision Map Act, and the Los Angeles Municipal Code.

As discussed herein, the Committee must therefore grant our Appeals and require the EIR be revised and recirculated in compliance with CEQA. Only in this way can the City ensure that the Project complies with all applicable state and local laws, including CEQA, and ensure that the City upholds its duty to protect the health and safety of its residents.

(1) Procedural Background of Appeals

On June 13, 2019, CREED LA filed an appeal of the Advisory Agency's approval of the Vesting Tentative Tract Map ("VTTM") and certification of compliance for the EIR. The June 13th Appeal and CREED LA's oral testimony on the land use entitlements were heard by the Planning Commission on August 8, 2019. On August 26, 2019, the Planning Commission denied CREED LA's June 13th Appeal, sustained the Advisory Agency's decisions, and approved the requested land use entitlements.⁵ CREED LA then filed two separate appeals to the Planning Commission's August 26th VTT Letter of Determination and August 26th CPC Letter of Determination, on September 5, 2019 and September 16, 2019, respectively, which is scheduled for public hearing before the PLUM Committee on October 29, 2019.⁶

On October 18, 2019, the Planning Commission issued a third erratum making "corrections and clarifications" to the Final EIR and incorrectly concluding that the changes do not require recirculation of the Draft EIR pursuant to Section 15088.5 of the CEQA Guidelines.^{7, 8} As discussed below, the erratum contains new substantive analysis and conclusions regarding the Project's potentially significant impacts, which require recirculation of the EIR.

⁵ See Letter of Determination for VTT-74568-1A; ENV-2016-3991-EIR, dated August 26, 2019 ("VTT LOD") and Letter of Determination for CPC-2016-3990-GPA-VZC-CUB-ZV-SPR, dated August 26, 2019 ("CPC LOD").

⁶ We incorporate herein by reference the following: CREED LA's June 13, 2019 Justification for Appeal (VTT-74568); August 6, 2019 Response to Appeal Report for August 8th Hearing; September 5, 2019 Justification for Appeal to City Council (VTT-74568-2A; ENV-2016-3991-EIR) ("**Second VTT Appeal**") and September 16, 2019 Justification for Appeal to City Council (CPC-2016-3990-GPA-VZC-HD-MCUP-SPR) ("**CPC Appeal**"), along with their attachments and exhibits.

⁷ Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁸ Erratum No. 3 to the Final Environmental Impact Report for the Southern California Flower Market Project, issued October 18, 2019 ("Erratum 3").

On October 24, 2019, the Planning Commission prepared a response to CREED LA's September 5th appeal on the VTTM ("Appeal Response") and a letter recommending technical modifications. The Appeal Response fails to resolve the issues we raised.

Furthermore, as of the date of this letter, Planning Commission staff have not provided an Appeal Response to CREED LA's September 16, 2019 appeal letter regarding the land use entitlements under CPC-2016-3990-GPA-VZC-HD-MCUP-SPR (CPC Appeal).⁹ The City has therefore failed to resolve any of the issues raised in the CPC Appeal related to the Project's land use inconsistencies. These inconsistencies still remain, rendering the Project's entitlements inconsistent with State and local requirements. These inconsistencies require the Committee to uphold our CPC Appeal and deny the Planning Commissions' recommendations to approve the land use entitlements.

(1) The EIR Fails to Provide a Complete and Accurate Project Description and Fails to Analyze the Impacts of the Entire Project.

In its Appeal Response, the City repeats the Planning Commission's unsupported claim that the Draft EIR's ("DEIR") inclusion of text and figures describing the North Building Addition represents an adequate description of the entire scope of the Project.¹⁰ The Appeal Response also refers to Erratum 3, a document that is not part of either the DEIR or Final EIR ("FEIR"), to further argue that the DEIR contained an adequate project description for the entire Project.¹¹ However, the clarifications in the Appeal Response and Erratum 3 do not resolve the fact that the EIR contains inconsistent and missing descriptions of the North Building Addition throughout.

⁹ See CREED LA's September 16, 2019 Justification for Appeal of the Planning Commission's Letter of Determination, dated August 26, 2019 (CPC-2016-3990-GPA-VZC-HD-MCUP-SPR) ("CPC Appeal"). On October 28, 2019, the Planning Commission confirmed via email that they had not responded to the CPC Appeal.

¹⁰ Appeal Response, p. 2.

¹¹ Erratum 3 provides an additional summary of Section 2 of the DEIR as support that the DEIR provided a complete and consistent description of the Project (Erratum 3, p. 2-3).

The City points to various sections in the DEIR that are in the context of the entire Project or characterize the northern portion of the Project as a renovation. For example, Erratum 3 cites to DEIR pages 2-1 to 2-3, which describes the parking spaces required to comply with the City parking code.¹² The context of this section relates to the number of parking spaces as part of the new South building and *existing* north building.¹³ However, the existing north building that will be renovated is *not* the same as the North Building Addition addressed in our comments. As shown in the EIR's floor plans,¹⁴ the North Building Addition is a completely new structure that will require new physical construction, and is not a renovation of an existing building on the Project site.

Similarly, the Erratum states that the construction schedule on pages 2-5 and 2-6 of the DEIR encompasses all proposed construction activities, including the construction of the "new south building and renovations of the north building."¹⁵ Again, this language is inconsistent with the fact that the northern portion of the Project not only includes renovations of the existing north building, but also construction of the North Building Addition. However, the construction schedule provided in the DEIR fails to include sufficient detail to enable the public and decisionmakers to determine whether the construction schedule includes the additional construction of the North Building Addition at all because it does not distinguish between the phases of construction and renovation between the southern and northern portions of the Project site. The City also cites to various figures in the DEIR, but these figures are merely visual drawings and floor plans depicting the layout and square footage of proposed uses throughout the Project Site. They do not describe the North Building Addition or its potential environmental impacts.

As we noted in our Second VTT Appeal, the EIR's project description remains inconsistent and inadequate as an informational document for the public to review. In *Stophemilleniumentertainment.com*, the court determined that errors in an EIR's project description are prejudicial because the failure to include relevant information precludes informed decision making and informed public comment, regardless of whether a different outcome would have resulted if the public agency

¹² Erratum 3, p. 2.

¹³ Erratum 3, p. 2 and DEIR, p. 2-3.

¹⁴ DEIR, Figures 2-3, 2-5, 2-7, 2-9, 2-11, 2-13, 2-14, and 2-15.

¹⁵ Erratum, p. 3.

had complied.¹⁶ Similarly here, the Project description remains inconsistent and precludes the public from knowing with certainty that all impacts have been analyzed for the entire Project, including the North Building Addition. Additionally, the Erratum, which claims to only provide “clarifications and corrections” to the EIR, includes a new analysis on noise impacts on sensitive receptors as it relates to the North Building Addition. This new analysis is outside the scope of an erratum, which is intended to correct minor clerical errors in an existing document. Rather, CEQA requires that this new analysis be included in a revised EIR and recirculated so that the public can review and comment on what is obviously a substantive change to the EIR itself.

The EIR’s inadequate project description is an informational defect which renders the EIR inadequate as a matter of law. Without an accurate, stable and finite project description, the EIR remains inadequate, still fails to disclose and analyze all environmental impacts of the entire Project, and therefore fails to comply with CEQA.

(2) The EIR Fails to Disclose and Analyze Geology and Soil Impacts of the Entire Project.

As we explained in our Second VTT Appeal, the EIR’s 2016 Geotechnical Investigation Report (“2016 Report”) did not analyze the impacts from the North Building Addition, and was therefore no longer valid, by the EIR consultant’s own admission.¹⁷ The City admits in its Appeal Response that, at the time the 2016 Report was prepared, the North Building Addition had not yet been proposed as part of to the northern portion of the Project site. Rather than prepare and recirculate a new report containing additional analysis of impacts from the North Building Addition as part of a revised EIR, the City attached an updated 2019 Geotechnical Investigation Report (“2019 Report”) as part of Erratum 3 and concludes that the Project will not result in significant geology and soil impacts. In addition to being an impermissible use of an “erratum,” the City’s new geotechnical analysis lacks substantial evidence to support the City’s revised conclusion that the North Building Addition will not result in significant geology or soil impacts. The EIR therefore still fails to adequately disclose and analyze geology and soil impacts from the entire project.

¹⁶ *Stopthemillenniumhollywood.com vs. City of Los Angeles*, (2019) 39 Cal.App5th 1, 20.

¹⁷ Second VTT Appeal, p. 6-7.

First, Erratum 3 notes that the 2019 Report merely clarifies, adds to, and makes insignificant modifications to the 2016 Report.¹⁸ This is problematic because the 2016 Report specifically limits the reliance on the report and its analysis to three years:

“The findings of this report are valid as of the date of this report. However, changes in the conditions of a property can occur with the passage of time, whether they are due to natural processes or the works of man on this or adjacent properties. In addition, changes in applicable or appropriate standards may occur, whether they result from legislation or the broadening of knowledge. Accordingly, the findings of this report may be invalidated wholly or partially by changes outside our control. **Therefore, this report is subject to review and should not be relied upon after a period of three years.**”¹⁹

This section of the report limits the validity of its findings, which are admittedly derived from the report’s 2016 analysis and studies, which predated the DEIR, and cautions that the findings should not be relied upon after a certain amount of time when conditions have changed. The City acknowledges that the 2019 Report continues to rely on findings from the 2016 Report, stating: “Because the 2016 [Report] included an investigation of the entire Project, the analysis contained in the 2019 [Report] **relies** on the site reconnaissance, field exploration, laboratory testing, and engineering analysis prepared for the 2016 [Report].”²⁰ Neither the City nor the consulting firm, Geocon West, Inc., provide reasoning as to why it decided to rely on the 2016 findings despite the above provision limiting the report to three years. In addition, the City does not provide any substantial evidence for its failure to analyze the impacts from the North Building Addition, or why the 2016 analysis is still reliable despite the fact that over three years have since passed.

Second, the Appeal Report contends that Mitigation Measure E-1 will adequately mitigate any potential impacts from the Project, including the North

¹⁸ Erratum 3, p. 5.

¹⁹ 2016 Report, *Limitations and Uniformity of Conditions* (dated July 29, 2016) (emphasis added).

²⁰ Erratum 3, p. 5 (emphasis added).

Building Addition, by complying with the recommendations of the 2019 Report and existing local regulations under the City’s municipal code.²¹ Since the City acknowledges that it did not conduct an additional analysis of impacts from the North Building Addition, but instead made modifications to the 2016 Report, the conclusion that implementing these mitigation measures would result in less than significant impacts is unsupported. In other words, without knowing what the significant impacts will be, the City lacks substantial evidence to support the conclusion that the mitigation measures are actually reducing impacts to less than significant levels. Indeed, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.²²

Additionally, the City’s reliance on the Project’s compliance with local regulations does not guarantee that potentially significant impacts will be mitigated to less than significant levels. The City must provide substantial evidence to support that conclusion.²³ Although the Appeal Response cites to various provisions of the City code with which the Project must comply, it provides no explanation as to how those regulations would mitigate unidentified significant impacts. This deferred mitigation measure does not provide adequate information for informed decision making under CEQA and results in improperly deferred analysis, not mitigation.²⁴

Finally, the City’s Appeal Response concludes: “As the North Building Addition is an entirely above-ground building and does not propose any significant excavation or earthwork activities, it is clear that the Addition would not significantly alter the existing geological and soil conditions on the site.”²⁵ A lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding.²⁶ Neither the City, nor the 2019 Report provide an analysis that results in a conclusion that the North Building Addition would not impact existing geology and soil conditions. As mentioned above, the North Building Addition is not the same structure as the

²¹ Appeal Response, p. 3.

²² *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

²³ *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735–736. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).

²⁵ Appeal Response, p. 3.

²⁶ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
4639-009acp

existing North building where the Flower Market currently operates. Applying any analysis or findings based on the existing North building would be improper because the North Building Addition is a new structure with a different size, weight and use. The City's reliance on the 2019 Report to address these new impacts is therefore entirely unsupported.

“The EIR must contain facts and analysis, not just the bare conclusions of the agency.’ [Citation.] ‘An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”²⁷ The City has not provided substantial evidence to support its conclusion that the Project, including the construction and operation of the North Building Addition, will have less than significant impacts on geology and soil. The 2019 Report should be updated with a new analysis of impacts that account for the North Building Addition, and included in a revised EIR for circulation.

(3) The EIR Fails to Adequately Analyze and Mitigate the Project's Air Quality and Health Risk Impacts.

As we discussed in our previous appeals, the EIR fails to adequately analyze and mitigate the Project's air quality impacts and fails to disclose and analyze the Project's health risk impacts. We fully incorporate, reference and attach hereto the technical comments from air quality consultant, James J. J. Clark, PhD, of Clark & Associates.²⁸ Dr. Clark reviewed the EIR's air quality analysis, technical comments from SWAPE and Greg Gilbert, and the recent Appeal Response, Technical Modifications and Erratum 3. Dr. Clark concludes that the EIR: (a) fails to adequately disclose and analyze the Project's significant cumulative impacts; (b) fails to effectively mitigate significant air emissions from construction; (c) fails to adequately disclose and mitigate significant levels of operational emissions; and (d) fails to perform an adequate health risk analysis from the Project's operational and construction emissions. Because the EIR is fails to adequately disclose, analyze, and mitigate the Project's air quality impacts, the EIR must be revised accordingly and recirculated.

²⁷ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197-98.

²⁸ **Exhibit A:** Letter from Dr. James Clark to Camille Stough regarding Air Technical Comments on the Southern California Flower Market Project, October 28, 2019.

a. The EIR fails to adequately disclose and analyze the significant cumulative impacts of the Project and related construction projects.

The EIR identifies 178 projects within the immediate vicinity of the Project site, which it concludes would be reasonably foreseeable to contribute to a cumulative impact on air quality in conjunction with the Project. However, the EIR concludes, with no quantitative analysis, that the Project's cumulative impacts would be less than significant because each of these individual projects will be required to achieve emissions levels below significance thresholds. The City also improperly defers its cumulative impact analysis to a future time, stating that any related projects that exceed thresholds would perform dispersion modeling to confirm whether health-based air quality standards would be violated.²⁹ As a result, the EIR contains no actual analysis on the cumulative impacts that will be generated by the Project combined with other related projects, in violation of CEQA. As a result, the City lacks substantial evidence to support the EIR's conclusion that cumulative impacts will be less than significant.

By contrast, there is substantial demonstrating that the Project is likely to have potentially significant cumulative air quality impacts from the concurrent construction of the Project with other reasonably foreseeable projects in its immediate vicinity. In his technical comments, Dr. Clark explains that there are numerous projects within the vicinity of the Project which are currently under construction, or proposed for construction.³⁰ Given that many of these projects under consideration are large in land size, have long construction periods, and anticipate substantial increases in various uses in the area, Dr. Clark concludes that it is highly probable that the sum of emissions from the various projects and this Project combined would result in cumulatively significant air quality impacts. As an example, Dr. Clark reviewed the disclosed emissions levels of particulate matter ("PM") PM 10 and PM 2.5 from a nearby proposed 10-acre project ("The City Market of Los Angeles Project") and its cumulative impact with this Project. His calculation demonstrated that the cumulative impact could be significantly above PM 10 and PM 2.5 thresholds just from the two projects combined.³¹

²⁹ DEIR, p. 4.C-21 to 4.C-22.

³⁰ **Exhibit A**, p. 2-4.

³¹ **Exhibit A**, p. 4.

The City must conduct a quantitative cumulative analysis on air emissions which includes the Project and all reasonably foreseeable surrounding projects, such as the City Market Project, and revise and recirculate the EIR to adequately disclose and mitigate all potentially significant cumulative impacts.

b. The EIR's Mitigation Measure MM C-1 fails to effectively mitigate the air quality impacts from construction emissions.

In response to our Appeals, the City contends that MM C-1 is an enforceable mitigation measure because "Tier 4" engines have been phased in for all engine types nationwide and Tier 4 equipment is now commercially available from all manufacturers, especially for common types of construction equipment.³² The Appeal Response goes on to say that, in the unlikely event that contractors are not able to secure acceptable equipment, the Applicant is required to demonstrate that an alternative meeting or exceeding Tier 4 standards exist.³³

Our previous appeals and technical comments from SWAPE and Greg Gilbert have provided substantial evidence demonstrating that Tier 4 standards are difficult for contractors to meet and implementation of Tier 4 equipment has been historically low. In comparison City has not provided substantial evidence to demonstrate that this mitigation measure is feasible for the Project to acquire 100% Tier 4 final equipment for the construction phase.

Additionally, we restate our concern regarding the general ineffectiveness of merely requiring "Tier 4" technology as a mitigation measure and provide additional context on the consequences of this measure. Critically, MM C-1 fails to distinguish between Tier 4 *interim* and Tier 4 *final* technology. As Dr. Clark explains, the difference in the use of Tier 4 interim versus Tier 4 final would have a significant impact on the emissions on site. While Tier 4 final can remove more than 90% of PM 2.5 emissions, Tier 4 interim only removes 80 to 90%.³⁴ According to Dr. Clark, CALEEMOD modeling showed a 25% increase in PM 2.5 exhaust emissions when utilizing construction equipment with Tier 4 interim technology.³⁵ Since MM

³² Appeal Response, pp. 5-6.

³³ *Id.*

³⁴ **Exhibit A**, p. 5.

³⁵ *Id.*

C-1 allows for any “Tier 4” technology, it necessarily allows for the use of exclusively Tier 4 interim construction equipment. Thus, construction equipment that is deemed compliant with the mitigation measure can continue to emit significant levels of PM 2.5. As such, MM C-1 is neither feasible nor effective in mitigating the air emissions from the Project’s construction equipment to less than significant levels.

The City therefore fails to provide substantial evidence to support its conclusion that construction emissions will be mitigated to less than significant levels. The EIR must be revised and recirculated with adequate mitigation measures that can be feasibly implemented and will effectively mitigate the significant construction emissions.

c. The EIR fails to adequately disclose and mitigate potentially significant levels of operational emissions.

Dr. Clark’s technical comments also discuss the EIR’s failure to disclose the significant levels of PM 10 and PM 2.5 associated with operational emissions. Dr. Clark points out that the data provided in the EIR actually show exceedances to local significant thresholds (“LSTs”).³⁶ The data also show that this discrepancy is a result of the City’s exclusion of emissions from operational mobile sources.³⁷ The City neither provides an explanation as to why mobile sources were omitted nor a quantitative analysis as to how they derived the conclusion that the emissions from operational activities would be less than significant. As such, the City has failed to provide substantial evidence that operational emissions would not be less than significant. The EIR must be revised and recirculated to correct this critical omission of the mobile sources and provide an adequate quantifiable analysis on the Project’s operational impacts.

d. The EIR fails to include an analysis of health risk impacts, as required by CEQA.

The Appeal Response continues to improperly rely on AB2588 to avoid its nondiscretionary duty to disclose the nature, extent, and severity of the Project’s impacts on human health. As stated in our previous appeals and letters, CEQA

³⁶ **Exhibit A**, p. 5-6.

³⁷ *Id.*

4639-009acp

Guidelines and case law **require** agencies to analyze the health impacts of projects, even if a quantitative health risk assessment is not mandated. For example, Section 15126.2(a) of the CEQA Guidelines requires an EIR to discuss, *inter alia*, “health and safety problems caused by the physical changes” that the proposed project will precipitate.

Additionally, the Supreme Court recently held that, as a matter of law, an EIR as an informational document must discuss how air quality impacts are connected to adverse human health effects.³⁸ Similarly here, substantial evidence demonstrates that there are significant air quality impacts that must be analyzed as to their adverse effects on human health, particularly with toxic air contaminants (“TACs”). For example, as Dr. Clark points out, the operational emissions for PM 2.5 and PM 10 exceed LSTs and is indicative of health risk impacts. The Appeal Response also recognizes that PM 2.5 emissions correlate with TACs that form the basis of a health risk assessment, as both are “largely the result of emissions by heavy-duty diesel engines.”³⁹ There is substantial evidence in the record demonstrating that the Project is likely to result in potentially significant levels of construction and operational emissions. Nevertheless, the EIR fails to provide a full health risk analysis for both the construction and operational phases of the Project. This is a clear violation of CEQA which must be corrected in a revised and recirculated EIR.

(4) The EIR Fails to Adequately Mitigate the Project’s Construction Noise Impacts on Sensitive Receptors.

An agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁴⁰ As we discussed in our Appeals and EIR comments, the EIR fails to adequately mitigate the Project’s construction noise impacts. We fully incorporate,

³⁸ *Sierra Club vs. County of Fresno, Sierra Club*, (2018) 6 Cal.5th 502, 516. *See also Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1369 (wherein the First District held that an EIR must include a “human health risk assessment”); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220, (wherein the appellate court held that an EIR was inadequate because it failed to correlate adverse air quality impacts to resulting adverse health impacts.).

³⁹ Appeal Response, p. 6.

⁴⁰ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

reference and attach hereto the technical comments from noise and acoustic consultant, Derek Watry of Wilson Ihrig.⁴¹ Mr. Watry maintains that the City lacks substantial evidence to support its conclusion that construction noise mitigation measures, MM I-1 and MM I-2 can be effectively implemented or enforced.

First the EIR fails to provide any evidence to support the assumption that contractors will be able to implement the mitigation measure requiring mufflers for construction equipment to reduce noise levels by 3dB. For example, no manufacturer data has been presented by the City demonstrating that construction equipment.⁴²

Second, the EIR fails to demonstrate with any evidence that it is feasible to continually move and reposition the temporary noise barriers necessary to attenuate the sound for the Textile Building Lofts and/or Santee Court Apartments, as purported required by the mitigation measures. By contrast, as Mr. Watry explains, for certain equipment, it is functionally infeasible to move a 15 to 24 foot sound attenuation blanket to follow the equipment throughout the Project site in order to continuously block the line of noise and sight to sensitive receptors.⁴³ The very actions required for the measures to be effective may therefore be impossible for the Project's contractors to implement.

Finally, as Mr. Watry describes in his comments, the mitigation measures for noise provided in the updated Mitigation Monitoring Program (October 2019) ("MMP") are inconsistent with the claims in the Appeal Response that the measures will be effective.⁴⁴ Mr. Watry provides a side by side comparison of the language in the Appeal Response and the MMP and concludes that the MMP, as the enforceable document, does not comport with how the Appeal Response characterizes the noise mitigation measures.⁴⁵ Because the actual language in MM I-1 and MM I-2 is significantly different from the Appeal Response, the mitigation measures remain ineffective. The EIR therefore fails to adequately mitigate noise impacts to less than significant levels.

⁴¹ **Exhibit B:** Letter from Derek Watry to Camille Stough regarding Noise Technical Comments on the Southern California Flower Market Project, October 28, 2019.

⁴² **Exhibit B**, p. 1.

⁴³ **Exhibit B**, p. 2.

⁴⁴ **Exhibit B**, pp. 2-3.

⁴⁵ *Id.*

(5) The Vesting Tentative Tract Map violates the Subdivision Map Act.

As discussed in our Second VTT Appeal, the Committee must vacate the Planning Commission's approval of the VTTM until the EIR is compliant with CEQA and demonstrates that the Project will not have environmental and public health impacts. The Project must also be consistent with applicable general plans, specific plans and local codes governing development density as required by the Subdivision Map Act.⁴⁶

As explained above, the Appeal Response and Erratum 3 do not provide substantial evidence that the Project results in no significant impacts. As such, the City has not adequately met the required findings of compliance with state law, such as CEQA, and the protection of the community's health and safety.⁴⁷ Until the EIR is revised to address the significant impacts from air quality, noise, health risk, and geology and soil, the City must deny approval of the VTTM.

CONCLUSION

As discussed above, the EIR fails to provide an adequate analysis of environmental impacts from the entire Project and fails to provide substantial evidence to support the City's conclusions that the impacts will be less than significant. Our appeals should be granted and the EIR must be revised accordingly and recirculated for review and public comment.

Sincerely,

/s/

Camille Stough

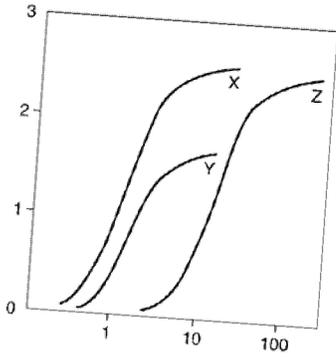
CGS:acp
Attachments

cc: Adam Villani, adam.villani@lacity.org
Mindy Nguyen, mindy.nguyen@lacity.org

⁴⁶ Government Code § 66474(a) – (g).

⁴⁷ Government Code §§ 66498.1(c)(1) and 66498.1(c)(2).
4639-009acp

EXHIBIT A



Clark & Associates
Environmental Consulting, Inc.

OFFICE
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

PHONE
310-907-6165

FAX
310-398-7626

EMAIL
jclark.assoc@gmail.com

October 28, 2019

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

Attn: Ms. Camille G. Stough

Subject: Comment Letter on Final Environmental Impact Report (DEIR) for Los Angeles Flower Market Project, Los Angeles, California, State Clearing House Number 2017051068

Dear Ms. Stough:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2019 City of Los Angeles Final Environmental Impact Report (FEIR) of the above referenced project.

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

Project Description:

The Project Applicant proposes to expand and redevelop the existing Flower Market facility between Maple Avenue and Wall Street, south of 7th Street, while maintaining the existing wholesale market. The existing property consists of two buildings, the north building (206,517 square feet) and the south building (185,111 square feet). Both buildings include open roof-top parking. The Applicant proposes to maintain and renovate the north building and its roof-top parking and demolish the south building in preparation of a new building with one level of subterranean parking.

The Project would be a new mixed-use development consisting of wholesale trade, retail, restaurant, office, and residential uses. The new Flower Market building (in place of the existing south building) would be 15 stories (12-story residential tower, over three stories of office, retail, restaurant, wholesale flower market, and parking) and 205 feet in height. The development program would consist of: 323 residential units (the Applicant providing 10% of the units [or approximately 32 units] for moderate income families), 64,363 square feet of office space, 4,385 square feet of retail space, 63,785 square feet of wholesale space and storage, 13,420 square feet of food and beverage space, and 10,226 square feet of event space. The Flower Market would continue to operate in the existing north building during and after the redevelopment.

General Comments:

The proposed project is located in a heavily impacted portion of Los Angeles, where there are currently more than 178 projects within the area of influence of the proposed project that are planned, have been completed, or are under consideration. The City has an obligation under CEQA to ensure that the cumulative impacts from all of these projects are quantified so appropriate mitigation measures (including delaying projects) can be considered. The FEIR's flawed and incorrect air quality analysis and mitigation measures demonstrate that the Project's operational and construction emissions are likely to result in significant, unmitigated air quality impacts, as further described below.. Finally, the FEIR fails to accurately disclose or mitigate the Project's potentially significant health risks from exposure to toxic air contaminants (TACs). The City must conduct a proper analysis of health risks as they relate to the significant impacts from construction and operational emissions in order to accurately evaluate these impacts.

Specific Comments:

1. The Numerous Construction Projects in The Vicinity of the Project Cumulatively Result in Exceedances of the Local Significance Thresholds (LSTs) Onsite.

According to the FEIR, mitigated emissions for the Flower Market Project during the construction phase are 4 lbs per day for PM_{2.5} and 7 lbs per day for PM₁₀. The LSTs for the site were calculated to

be 7 lbs per day and 25 lbs per day, respectively. LSTs represent the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and according to SCAQMD were developed based on the ambient concentrations of that pollutant for each source receptor area and distance to the nearest sensitive receptor.

According to the City's analysis of cumulative air quality impacts in the FEIR, "There are 178 related projects in the study area of the Project Site that were identified by the Project's traffic study. If any other of these related projects in the more immediate vicinity of the Project Site were to undertake construction concurrently with the Project, localized CO, PM_{2.5}, PM₁₀, and NO₂ concentrations at nearby sensitive receptors would be further increased." (DEIR at 4.C-21 to 4.C-22.)

Within 500 feet of the project boundary there are 7 completed projects, 3 current projects under construction, and 7 proposed projects, including the 7th and Maple Project (covering approximately 2 acres) due north of the project site, and the City Market Los Angeles Project (covering approximately 10 acres). Expanding the boundary of influence from the Project Site from 500 feet to 500 meters (extent of LST tables), there are 13 completed projects, 7 current projects under construction, and 19 proposed projects. Given the number and size of the projects under consideration and under construction, it is highly probable that, even if each project were to individually achieve emissions below their LSTs, the sum of the emissions across the area would exceed acceptable levels, resulting in cumulatively significant air quality impacts.

The 7th and Maple Project, located directly across the Project Site, is a planned residential tower at the corner of 7th and Maple Streets, consisting of a 33-story building that would include 452 residential units. The proposed development would replace a surface parking lot and include podium-level and rooftop amenity decks, as well as a partially underground garage for up to 561 vehicles. This two-acre project is less than 25 meters from the boundary of the Flower Market project site.

According to the City of Los Angeles Planning Department website, the City Market of Los Angeles Project is seeking to redevelop an approximately 10-acre project site across portions of four blocks in Downtown Los Angeles. The Proposed Project seeks to demolish up to approximately 91,729 sf of

the existing structures on the Project Site and redevelop the Project Site with a mixed-use project with a maximum of approximately 1,719,658 sf of total developed floor area. The City Market Project is anticipated to be built out over a proposed 25-year period and would include the construction of approximately 945 multiple residential dwelling units, 210 hotel rooms, 294,641 sf of commercial (including medical and general office) and manufacturing uses, 224,862 sf of retail floor area (including restaurants, bars, event space, wholesale uses, and a cinema with approximately 744 seats), and 312,112 sf of corporate/educational campus floor area. The City Market Project would also include approximately 3,670 parking spaces in above and below grade parking structures.

Although the City states that the application of LST thresholds to each related project in the local area would help ensure that each related project does not produce localized hotspots of CO, PM_{2.5}, PM₁₀, and NO₂, a determination of no significant impacts cannot be ascertained until a quantitative analysis is performed. Instead, the City incorrectly attempts to defer this critical cumulative impact analysis to an undisclosed future time, by stating that “any projects that would exceed LST thresholds (after mitigation) would perform dispersion modeling to confirm whether health-based air quality standards would be violated.” (DEIR at 4.C-22.) As a result of this deferred analysis, the FEIR contains no analysis of the cumulative emissions that will be generated by the Project combined with the other 178 reasonably foreseeable cumulative projects in the direct vicinity of the Flower Market Project.

Based on the air quality analysis (Appendix C of the DEIR for the City Market Project), all four phases of the City Market Project are expected to take approximately 30 months per phase (or a total of 120 months or ten years). This would ensure that a continuous source of particulate matter (estimated to be between 2.53 lbs per day to 7.10 lbs per day for PM_{2.5}; and, 2.96 lbs per day to 12.99 lbs per day for PM₁₀) could be impacting the Flower Market Project Site. The cumulative impact is as high as 11.10 lbs per day for PM_{2.5} (4 lbs per day from the Flower Market Project and 7.1 lbs per day from the City Market Project); and 19.99 lbs per day for PM₁₀ (7 lbs per day from the Flower Market Project and 12.99 lbs per day from the City Market Project), violating the LST PM_{2.5} for the Site.

The City cannot defer performing the required cumulative analysis of another project, rather it must perform the required cumulative analysis for this Project as it relates to other projects, and determine the true extent of the impacts of all the projects currently under way and those that are planned.

2. The City’s Mitigation Measure MM C-1 For Reducing The Air Quality Impacts From The Construction Phase Of The Project Can Result In Significant Emissions That Will Impact The Community During The Construction Phase Of The Project.

The City’s air quality analysis assumes the use of Tier 4 or other retrofitted engine technology to meet the T4 standards at the site for engines greater than 50 horsepower (hp). As stated in CREED LA’s previous air quality technical comments from SWAPE and Mr. Gilbert, this mitigation measure fails to distinguish whether T4 interim or T4 final will be required to mitigate emissions to less than significant levels. The difference in the use of T4 interim technology over T4 final technology will have a significant impact on the emissions on site. While T4 final technology can remove more than 90% of PM_{2.5} emissions, T4 interim technology only removes between 80% to 90% of PM_{2.5} exhaust. Assuming the same conditions on site and utilizing construction equipment equipped with T4 interim technology, as a mitigation measure compliant with the language of MM C-1, CALEEMOD modeling showed a 25% increase in PM_{2.5} exhaust emissions for the project. This increase is substantial and would increase the exposure to DPM for the nearby sensitive receptors. The FEIR’s air quality analysis assumes that T4 final equipment will be used for all construction equipment with engines greater than 50 hp. However, MM C-1 merely states that “Tier 4” equipment is required, without specifying whether T4 “interim” or T4 “final” must be used. Due to the substantial disparities between the emissions reductions achieved from the use of T4 interim versus T4 final equipment, MM C-1 fails to ensure that the emissions assumed in the FEIR’s air quality analysis will actually be achieved. The City must revise the FEIR and MM C-1 to specify whether T4 interim or T4 final construction equipment is required for the Project, and must remodel emissions accordingly using the applicable level of T4 equipment that will be required for the Project.

3. Operational Emissions Show That The Levels Of PM10 and PM2.5 Are Above LST Thresholds And Are Therefore Significant.

The DEIR states page 4.C-18 that “As shown on Table 4.C-9, the Project would generate on-going emissions on-site from area and energy sources that would generate negligible pollutant concentrations of CO, NO₂, PM_{2.5}, or PM₁₀ at nearby sensitive receptors.” At first glance, the presentation of the data appears to present daily operational emissions below the local significance thresholds. This

conclusion is incorrect. Table 4.C-9 actually shows that the total operational emissions for the project (area, energy and mobile) are actually **19 lbs per day** for PM10 and **6 lbs per day** for PM2.5

**Table 4.C-9
Estimated Daily Operations Emissions**

Emissions Source	Pounds Per Day					
	VOC	NO _x	CO	SO _x	PM ₁₀	PM _{2.5}
Area Sources	14	<1	27	<1	<1	<1
Energy Sources	<1	2	1	<1	<1	<1
Mobile Sources	7	31	83	<1	19	5
Total Operations	22	33	111	<1	19	6
Existing Operations	-4	<-1	<-1	<-1	<-1	<-1
Net Regional Total	18	33	111	<1	19	6
Regional Significance Threshold	55	55	550	150	150	55
Exceed Threshold?	No	No	No	No	No	No
Net Localized Total	14	<1	27	<1	<1	<1
Localized Significance Threshold	--	106	1,368	--	6	2
Exceed Threshold?	N/A	No	No	N/A	No	No

The City’s analysis incorrectly states that the estimated emissions do not exceed the LST thresholds of 6 lbs per day for PM10 and 2 lbs per day for PM2.5. While the City fails to show its method for calculating the net localized total, it is evident from Table 4.C-9 that the City chose to ignore the impact from mobile sources associated with the project (estimated to be 7,765,904 annual vehicle miles per the CALEEMOD analysis), assuming that all of the emissions occur off-site. By way of comparison, the City’s analysis of Mitigated Daily Construction Emissions (Table 4.C-10) includes all portions of the emissions (mobile, area, and energy). The City must correct this omission and adequately demonstrate its analysis on operational emissions impacts and design measures to mitigate mobile emissions from the Project in a recirculated DEIR.

4. The FEIR Fails To Include A Proper Analysis Of Health Risks As They Relate To The Significant Impacts From Construction And Operational Emissions.

The FEIR’s assessment of TACs ignores the risk from potential TAC exposure known to be present in diesel exhaust. The FEIR states that the Project would not result in any substantial emission of TACs during the construction or operational phases without any quantification of the known releases

that will occur on site. CARB¹ defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

The City attempts to argue that it is not required to analyze the health risk from operational exposure to TAC emissions. However, there is notable precedent requiring a quantitative analysis of TACs from diesel exhaust in DEIRs. Moreover, the absence of this analysis renders the FEIR's health risk analysis incomplete. In a 2017 Air Quality Technical Report² submitted in support of a Draft EIR for the Turk Island Landfill Consolidation and Residential Subdivision³, proponents accounted for the gaseous phase of diesel emission and detailed the speciated diesel total organic gas (TOG) emissions along with the DPM emissions for all construction equipment. The speciated diesel TOG emissions and DPM emissions were utilized in dispersion modeling to identify the maximally exposed individual sensitive receptor (MEISR) of the project to determine the health risks associated with all sources of air toxins from the construction phase of the project.

Here, the City's analysis ignores the presence of TACs being emitted with diesel exhaust during the construction and operational phases of the project without making any attempt to quantify the impacts. This omission is a continuing flaw that must be addressed by the City. The results should then be presented in a recirculated DEIR.

¹ CARB. 1998. Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part A, Public Exposure To, Sources and Emissions of Diesel Exhaust In California. April 22, 1998. Pg A-1.

² Ramboll Environ. 2017. Air Quality Technical Report Turk Island Landfill Consolidation And Residential Subdivision Project. Prepared For City of Union City, Union City, CA. Prepared by Ramboll Environ US Corporation, San Francisco, CA August, 2017. <https://www.unioncity.org/DocumentCenter/View/1867/Turk-Island---App-D---AQ-Emissions-Report?bidId=>

³ Union City. 2018. Draft Environmental Impact Report (DEIR) Turk Island Landfill Consolidation And Residential Subdivision Project. SCH Number 20008112107. Dated 3/15/2018. <https://www.unioncity.org/DocumentCenter/View/1863/Turk-Island-DEIR?bidId=>

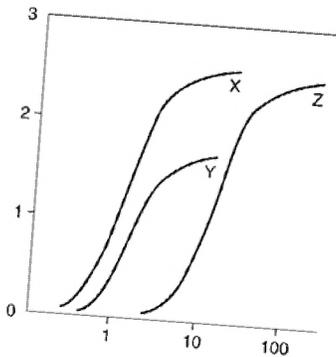
Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the conditions of approval are not binding.

Sincerely,



JAMES J. J. CLARK, Ph.D.



Clark & Associates
Environmental Consulting, Inc

Office
12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

Phone
310-907-6165

Fax
310-398-7626

Email
jclark.assoc@gmail.com

James J. J. Clark, Ph.D.

Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

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

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

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

Professional Experience:

Dr. Clark is a well-recognized toxicologist, air modeler, and health scientist. He has 25 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling, RESRAD, GENII); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: Scott D. McClurg, et al. v. Mallinckrodt Inc. and Cotter Corporation.

Lead Case No.: 4:12CV00361 AGF United States District Court Eastern District of Missouri Eastern Division

Client: Environmental Law Group, Birmingham, AL.

Dr. Clark performed a historical dose reconstruction for community members and workers exposed to radioactive waste released into the environment from the St. Louis Air Port Site (SLAPS) and the Hazelwood Interim Storage Site (HISS). The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the SLAPS and HISS sites. The analysis included the incorporation of air dispersion modeling across the

community to determine ground-level air concentrations and deposition of thorium and uranium isotopes and their respective daughter products. The dose reconstruction considered all relevant pathways to determine total doses of radiation received across the community from 1946 through 2017.

Case Result: Settlement in favor of plaintiff.

Case: Mary Ann Piccolo V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 130700053

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

Case: Tracey Coleman V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 140902847

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

Case: David Dominguez and Amanda Dominguez V. Cytec Industries, Inc et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. BC533123

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

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to hexavalent chromium who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding her exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client – Confidential

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

Client – Confidential

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

Client: Omnitrans, San Bernardino, California

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

Client: Confidential, San Francisco, California

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

Client – United Kingdom Environmental Agency

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

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

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: Ameren Services, St. Louis, Missouri

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

Client: City of Santa Clarita, Santa Clarita, California

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

Client: Confidential, Los Angeles, California

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

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

Client – Confidential, Los Angeles, California

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

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

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

Client: Covanta Energy, Westwood, California

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

Client – United Kingdom Environmental Agency

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

Client – Confidential, Los Angeles, California

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

Client – Confidential, Los Angeles, California

Prepared comprehensive evaluation of methyl *tertiary* butyl ether (MTBE) in municipal drinking water system. MTBE is a chemical added to gasoline to increase the octane rating and to meet Federally mandated emission criteria. The evaluation included available data on the production, use, chemical characteristics, fate and transport, toxicology, and remediation of MTBE. The results of the evaluation have been were used as a briefing tool for non-public health professionals.

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

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

Client: Confidential, Los Angeles, California

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

Client: Kaiser Venture Incorporated, Fontana, California

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

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Client: Confidential, Atlanta, Georgia

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

Client: Confidential, Escondido, California

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

Client: Confidential, San Francisco, California

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

Client: Confidential, Bogotá, Columbia

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

Client: Confidential, Los Angeles, California

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

Client: Confidential, Los Angeles, California

Managed remedial investigation (RI) of heavy metals and volatile organic chemicals (VOCs) for a 15-acre former manufacturing facility. The RI investigation of the site included over 800 different sampling locations and the collection of soil, soil gas, and groundwater samples. The site is currently used as a year round school housing approximately 3,000 children. The Remedial Investigation was performed in a manner that did not interrupt school activities and met the time restrictions placed on the project by the overseeing regulatory agency. The RI Report identified the off-site source of metals that impacted groundwater beneath the site and the sources of VOCs in soil gas and groundwater. The RI included a numerical model of vapor intrusion into the buildings at the site from the vadose zone to determine exposure concentrations and an air dispersion model of VOCs from the proposed soil vapor treatment system. The Feasibility Study for the Site is currently being drafted and may be used as the basis for granting closure of the site by DTSC.

Client: Confidential, Los Angeles, California

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

Client: Confidential, Los Angeles, California

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

Client –Dominguez Energy, Carson, California

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

Kaiser Ventures Incorporated, Fontana, California

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

ANR Freight - Los Angeles, California

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

Kaiser Ventures Incorporated, Fontana, California

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

Unocal Corporation - Los Angeles, California

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

Client: Confidential, Los Angeles, California

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

Client: Confidential, San Francisco, California

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

Client: Confidential, San Francisco, California

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

IT Corporation, North Carolina

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

Professional Associations

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

International Society of Environmental Forensics (ISEF)

Publications and Presentations:

Books and Book Chapters

- Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.
- Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.
- Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.
- Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.
- Clark, J.J.J.** 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.
- Clark, J.J.J.** 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.
- Clark, J.J.J.** 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.
- Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.

- Rosenfeld, P.E., **Clark, J. J.**, Hensley, A.R., and Suffet, I.H. 2007. "The Use Of An Odor Wheel Classification For The Evaluation of Human Health Risk Criteria For Compost Facilities" *Water Science & Technology*. 55(5): 345-357.
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2004. "The Value Of An Odor Quality Classification Scheme For Urban Odor" WEFTEC 2004. 77th Annual Technical Exhibition & Conference October 2 - 6, 2004, Ernest N. Morial Convention Center, New Orleans, Louisiana.
- Clark, J.J.J.** 2003. "Manufacturing, Use, Regulation, and Occurrence of a Known Endocrine Disrupting Chemical (EDC), 2,4-Dichlorophenoxyacetic Acid (2,4-D) in California Drinking Water Supplies." National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Minneapolis, MN. March 20, 2003.
- Rosenfeld, P. and **J.J.J. Clark**. 2003. "Understanding Historical Use, Chemical Properties, Toxicity, and Regulatory Guidance" National Groundwater Association Southwest Focus Conference: Water Supply and Emerging Contaminants. Phoenix, AZ. February 21, 2003.
- Clark, J.J.J.**, Brown A. 1999. Perchlorate Contamination: Fate in the Environment and Treatment Options. In *Situ and On-Site Bioremediation*, Fifth International Symposium. San Diego, CA, April, 1999.
- Clark, J.J.J.** 1998. Health Effects of Perchlorate and the New Reference Dose (RfD). Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Browne, T., **Clark, J.J.J.** 1998. Treatment Options For Perchlorate In Drinking Water. Proceedings From the Groundwater Resource Association Seventh Annual Meeting, Walnut Creek, CA, October 23, 1998.
- Clark, J.J.J.**, Brown, A., Rodriguez, R. 1998. The Public Health Implications of MtBE and Perchlorate in Water: Risk Management Decisions for Water Purveyors. Proceedings of the National Ground Water Association, Anaheim, CA, June 3-4, 1998.

- Clark J.J.J.**, Brown, A., Ulrey, A. 1997. Impacts of Perchlorate On Drinking Water In The Western United States. U.S. EPA Symposium on Biological and Chemical Reduction of Chlorate and Perchlorate, Cincinnati, OH, December 5, 1997.
- Clark, J.J.J.**; Corbett, G.E.; Kerger, B.D.; Finley, B.L.; Paustenbach, D.J. 1996. Dermal Uptake of Hexavalent Chromium In Human Volunteers: Measures of Systemic Uptake From Immersion in Water At 22 PPM. *Toxicologist*. 30(1):14.
- Dodge, D.G.; **Clark, J.J.J.**; Kerger, B.D.; Richter, R.O.; Finley, B.L.; Paustenbach, D.J. 1996. Assessment of Airborne Hexavalent Chromium In The Home Following Use of Contaminated Tapwater. *Toxicologist*. 30(1):117-118.
- Paulo, M.T.; Gong, H., Jr.; **Clark, J.J.J.** (1992). Effects of Pretreatment with Ipratropium Bromide in COPD Patients Exposed to Ozone. *American Review of Respiratory Disease*. 145(4):A96.
- Harber, P.H.; Gong, H., Jr.; Lachenbruch, A.; **Clark, J.**; Hsu, P. (1992). Respiratory Pattern Effect of Acute Sulfur Dioxide Exposure in Asthmatics. *American Review of Respiratory Disease*. 145(4):A88.
- McManus, M.S.; Gong, H., Jr.; Clements, P.; **Clark, J.J.J.** (1991). Respiratory Response of Patients With Interstitial Lung Disease To Inhaled Ozone. *American Review of Respiratory Disease*. 143(4):A91.
- Gong, H., Jr.; Simmons, M.S.; McManus, M.S.; Tashkin, D.P.; Clark, V.A.; Detels, R.; **Clark, J.J.** (1990). Relationship Between Responses to Chronic Oxidant and Acute Ozone Exposures in Residents of Los Angeles County. *American Review of Respiratory Disease*. 141(4):A70.
- Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. *American Review of Respiratory Disease*. 139(4):A41.

EXHIBIT B



28 October 2019

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

Subject: City of Los Angeles - Southern California Flower Market Project
Environmental Case: ENV-2016-3991-EIR
State Clearinghouse No.: 2017051068
Review and Comment on Appeal Response Noise Comments

Dear Ms. Stough,

Wilson Ihrig has provided several reviews of the construction noise analysis in the *Southern California Flower Market Environmental Impact Report* (EIR) and the City's related conclusions pursuant to the California Environmental Quality Act (CEQA) related to the Project's noise impacts and proposed mitigation. Our most recent review prior to this letter included our comments on the Letter of Determination issued by the Los Angeles Planning Commission on 26 August 2019 (our comment letter was issued on 4 September 2019). Our 4 September 2019 letter summarized our technical critique of the Project's unresolved construction noise issues, and it is appended in its entirety to this letter. The body of this letter specifically addresses statements and claims in the *Appeal Response for the Flower Market Project Appeals; CF 18-1048 / 19-1048-S1* (City of Los Angeles, Department of City Planning, 24 October 2019) (Appeal Response).

In summary, the Appeal Response continues to assert – without substantial evidence – that the EIR's proposed construction noise mitigation measures will enable the subject Project to be constructed while maintaining the City's stated threshold of significance, which is an increase of 5 dBA $L_{eq, 1 \text{ hour}}$. [Appeal Response at p. 7]. As we have previously commented, there are several reasons why the City lacks substantial evidence to conclude that the EIR's construction-noise mitigation measures can be effectively implemented or enforced:

1. The record lacks evidence demonstrating that the Project's contractors will be willing, or even able, to fit their equipment with "high-performance" mufflers that would reduce the noise levels by 3 dB, as asserted by the City. [Appeal Response at p. 8] There is not, for example, manufacturer performance data that establishes that the noise levels of equipment likely to be used are 3 dB lower than the reference levels utilized in the EIR calculations.

2. The record lacks evidence demonstrating that the Project's contractors will be willing, or even able, to continually move and position using forklifts and/or loaders "free-standing temporary noise barrier systems . . . up to 24 feet in height . . . to achieve the necessary performance degree of sound attenuation along direct lines of sight to the Textile Building Lofts and/or Santee Court Apartments residences." [Appeal Response at p. 8] While the types of noise barriers the City is describing are available and can work for some applications (principally pile driving), it will be infeasible for a crane with a 15 to 24 foot sound attenuation blanket to follow graders, backhoes, bulldozers, etc. around to continuously block the line of sight from all floors of the Textile Building to the construction equipment. Meanwhile, the forklifts and loaders themselves will be yet more construction equipment adding to the noise levels.
3. The Mitigation Monitoring Program appended to the Appeal Response (beginning at p. 11 of the Appeal Response but separately numbered beginning with p. 4-1) does not contain language regarding construction noise abatement that comports with the claims made in the Appeal Response itself.

- a. With respect to mufflers, the Appeal Response states:

"Mitigation Measure I-1 ensures that the exhaust systems of all diesel-powered construction vehicles are properly muffled and corresponds to a reduction of construction noise levels of 3 dBA" [Appeal Response at p. 8]

Meanwhile, the actual Mitigation Measure I-1 states:

"All capable diesel-powered construction vehicles shall be equipped with exhaust mufflers or other suitable noise reduction devices" [Appeal Response at p. 15; MMP p. 4-5]

There is nothing in the actual mitigation measure language that will ensure that the construction equipment noise levels will be 3 dB lower than the reference levels used for the EIR noise calculations.

- b. With respect to sound barrier walls, the Appeal Response states:

"Mitigation Measure I-2 establishes a performance-based mitigation standard of 15 dBA of sound attenuation, and thus does not limit sound barriers to stationary barriers erected at the construction site perimeter or of limited height." [Appeal Response at p. 8]

Meanwhile, the actual Mitigation Measure I-2 states:

“Temporary sound barriers capable of achieving a sound attenuation of at least 15 dBA shall be erected along the Project’s boundary facing Santee Court Apartments. Temporary sound barriers capable of achieving a sound attenuation of at least 6 dBA shall be erected along all other Project construction boundaries.” [Appeal Response at p. 15; MMP p. 4-5]

While MM I-2 attempts to set sound attenuation standards, it fails to establish a clear performance-standard of 15 dBA because it is not clear that the sound attenuation performance needs to be assessed at all receptor locations, including the upper floors of multi-story residential buildings, which it would need to be to provide the claimed abatement.

More troubling, the actual MM I-2 language expressly states that the sound barriers shall be erected along the Project boundaries. This is inconsistent with the Appeal Response’s contention that the measure “does not limit sound barriers to stationary barriers erected at the construction site perimeter”.

MM I-2 is therefore vague and does not comport with statements made in the Appeal Response alleging to confirm the efficacy and implementation of sound barriers required to reduce the noise levels below the established threshold of significance. As such, it will not ensure that construction noise level will be below the threshold of significance on all floors of, for example, the Textile Building, where sensitive receptors are located.

In conclusion, the construction noise Mitigation Measures I-1 and I-2 do not ensure that construction noise levels will be kept below the established standard of significance. As I have repeatedly explained, I do not think they will limit the noise level increases on, for example, the upper floors of the Textile Building, to 1.3 dBA as the City claims [Appeal Response at p. 8]. I recommend that in addition to these measures, a carefully designed noise monitoring program be carried out by an entity that is independent of the developer or contractor. The program should monitor noise levels at various floors of the Textile Building and the Santee Court Apartments, and it should make sufficient measurements prior to the onset of any construction work to unequivocally establish the existing ambient noise levels. Then, throughout construction, the noise levels should be assessed against the established threshold of significance (ambient plus 5 dBA on an hourly L_{eq} basis) and, if exceeded, the contractor should be required to shut down operations until such time as the work may be continued with noise levels that meet the City’s standard as the Appeal Response (and every other document produced by the City) clearly states it will. [Appeal Response at p. 8].

*

*

*

*

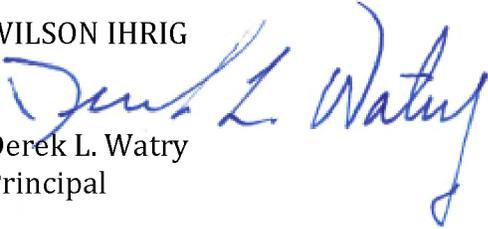
*

Please let us know if you have any questions about our analysis or comments.

Very truly yours,

WILSON IHRIG

Derek L. Watry
Principal





4 September 2019

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

Subject: City of Los Angeles - Southern California Flower Market Project
Environmental Case: ENV-2016-3991-EIR
State Clearinghouse No.: 2017051068
Additional Review and Comment on CEQA Noise Analysis

Dear Ms. Stough,

Wilson Ihrig has been advised that the Los Angeles Planning Commission has certified the EIR for this project and denied the appeal made by the Coalition for Responsible Equitable Economic Development (CREED LA) and others. During the 8 August 2019 meeting, the lead agency made certain statements and representations about the EIR noise study which you have asked me to review.

Wilson Ihrig has practiced exclusively in the field of acoustics since 1966. During our 53 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

In addition to documents which we reviewed previously, we have also reviewed the Letter of Determination issued by the Los Angeles Planning Commission on 26 August 2019. Previously reviewed documents include: (1) *Southern California Flower Market Draft Environmental Impact Report* (DEIR), prepared by CAJA Environmental Services, LLC., September 2018; (2) *Responses to The Papadimos Group Comments on Southern California Flower Market Noise Analysis* (Response to Papadimos), Douglas Kim + Associates, LLC, 26 February 2019; and (3) *Southern California Flower Market DEIR Appeal Report* (Appeal Report), City of Los Angeles Department of City Planning, issued on or about 30 July 2019.

Our comments on the above cited documents follow.

I. THE EIR ANALYSIS MISREPRESENTS THE EFFECTIVENESS OF THE PROPOSED CONSTRUCTION NOISE MITIGATION

For this section, I focus on the residential building addressed directly in the EIR analysis, the Santee Court Apartments. I will use this situation to explain why the proposed mitigation measures will not reduce noise to levels below the established threshold of significance as the lead agency purports. In a subsequent section, I will build upon the information in this section to demonstrate why the construction noise impact will be significant at another residential building not analyzed in the EIR.

The DEIR clearly states that the threshold of significance for an impact for construction “lasting more than 10 days in a three-month period” is if the construction noise level “would exceed existing ambient exterior noise levels by 5 dBA or more”. [DEIR at p. 4.I-12] Construction on the site, from demolition to the conclusion of grading, will take 8 months [Table 4.C-7, DEIR at p. 4.C-16] and heavy equipment is expected to be used on nearly all workdays during this period.

In the DEIR, the noise analysis establishes that the existing, ambient noise level at Santee Court Apartments is 50.8 dBA [DEIR Table 4.I-4 at p. 4.I-10]. Without mitigation, the DEIR estimates the noise level with construction work from excavator and front-end loaders would be 65.5 dBA. The DEIR concludes that the increase would be 14.7 dB and correctly concludes that “without mitigation, the Project’s construction related noise impacts would be significant.” [DEIR at p. 4.I-14].

In response to a comment from The Papadimos Group, a similar analysis was prepared for a grader, and the unmitigated noise was estimated to increase the ambient noise level by 16.7 dBA. [Response to Papadimos, no page number].

To mitigate these identified construction noise impacts, the following mitigation measures (MM) were proposed:

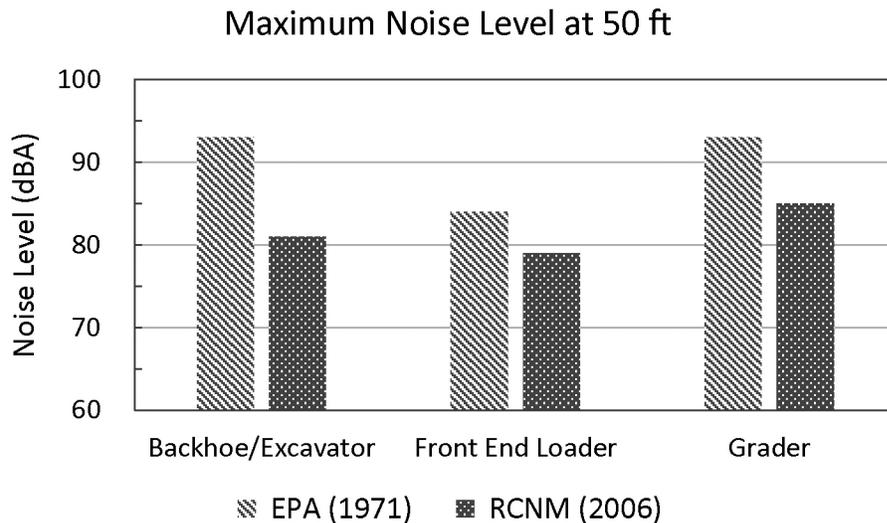
- MM I-1 All capable diesel-powered construction vehicles shall be equipped with exhaust mufflers or other suitable noise reduction devices.
- MM I-2 Temporary sound barriers capable of achieving a sound attenuation of at least 15 dBA shall be erected along the Project’s boundaries facing Santee Court Apartments.

The above mitigation measures assume “mitigative attenuation” of 3 dB for mufflers and 15 dB for temporary sound barriers for the Santee Court Apartments. As a result of the 18 dB attenuation, the DEIR concludes that construction noise impacts will be less than significant.

However, both of the attenuation factors are flawed and misrepresent what will actually happen when this project is built.

Misrepresentation of “muffler” attenuation. MM I-1 states that “diesel-powered construction vehicles shall be equipped with mufflers” and a 3 dB reduction is assumed for this in the mitigated noise calculations. This is misleading because it implies that the equipment would otherwise not have mufflers, which is false. When environmental noise analyses were first conducted in the 1970s, it was common for construction equipment to be unmuffled, so requiring a muffler would have been a meaningful mitigation measure. That is no longer the case today – most modern construction equipment comes equipped with mufflers.

The DEIR noise analysis utilizes source data from the FHWA Roadway Construction Noise Model (RCNM). [DEIR at p. 4.I-13] These data were, for the most part, collected during the Central Artery/Tunnel project in Boston in the 1990s. [RCNM User’s Guide at p. 1] Prior to this, most noise studies utilized data published by the Environmental Protection Agency in 1971.¹ The chart below compares the source noise levels at 50 ft for the three types of equipment analyzed for this project.



The noise reduction seen between 1971 and 2006 is primarily attributable to the widespread adoption of mufflers. Given that the DEIR calculations are based on the 2006 RCNM values, no additional attenuation for muffled equipment is warranted.

Misrepresentation of sound barrier wall attenuation. Sound barrier walls attenuate noise by blocking the direct path. Sound may still be heard over a wall because of diffraction.

¹ *Noise from Construction Equipment and Operations, Building Equipment, and Home Appliances*, Report NTID300.1, U. S. EPA, Office of Noise Abatement and Control, December 1971.

The effectiveness of a sound wall depends on the relative heights of the source, the receiver, and the wall, and the distances between these. If a wall just breaks the line-of-sight, it will provide about 5 dBA of attenuation. The most any practical wall provides is about 15 dBA.

A given sound wall is most effective if either the source or the receiver is (or both are) very close to the wall. In some sense, this is because the sound has to “bend” more once it reaches the top of the wall. The DEIR purports to show the “worst case” scenario by conducting the analysis when the heavy equipment is very close to the wall. This is disingenuous and misleading because it severely over-estimates the general effectiveness of the proposed 15 ft sound barrier wall.

Based on information provided in the Response to Papadimos, it is apparent that the preparers of the DEIR used the following formula to calculate the insertion loss of the proposed 15 ft wall:

$$A_{\text{barrier}} = \text{minimum} \left\{ 15 \text{ or } \left(20 \log \left(\frac{2.51\sqrt{P}}{\tanh(4.46\sqrt{P})} \right) + 5 \right) \right\}$$

where P = the path length difference between the straight line between the source and the receiver and the total shortest distance from the path of the receiver over the top of the wall.² Perhaps counter-intuitively, the P parameter gets smaller as the equipment moves away from the wall. Therefore, the effectiveness of the wall diminishes.

Using this equation and information in the DEIR, it is a simple matter to estimate the noise levels at the Santee Court Apartments as the equipment moves away from the wall. The effectiveness of the wall also depends on the height of the receiver – the higher the receiver, the less effective the wall will be. The calculated noise levels for each floor in the Santee Court Apartments is shown in the following graph.³ The red circle shows the situation provided in the DEIR which is clearly seen to misrepresent the noise levels at Santee Court Apartments most of the time.⁴

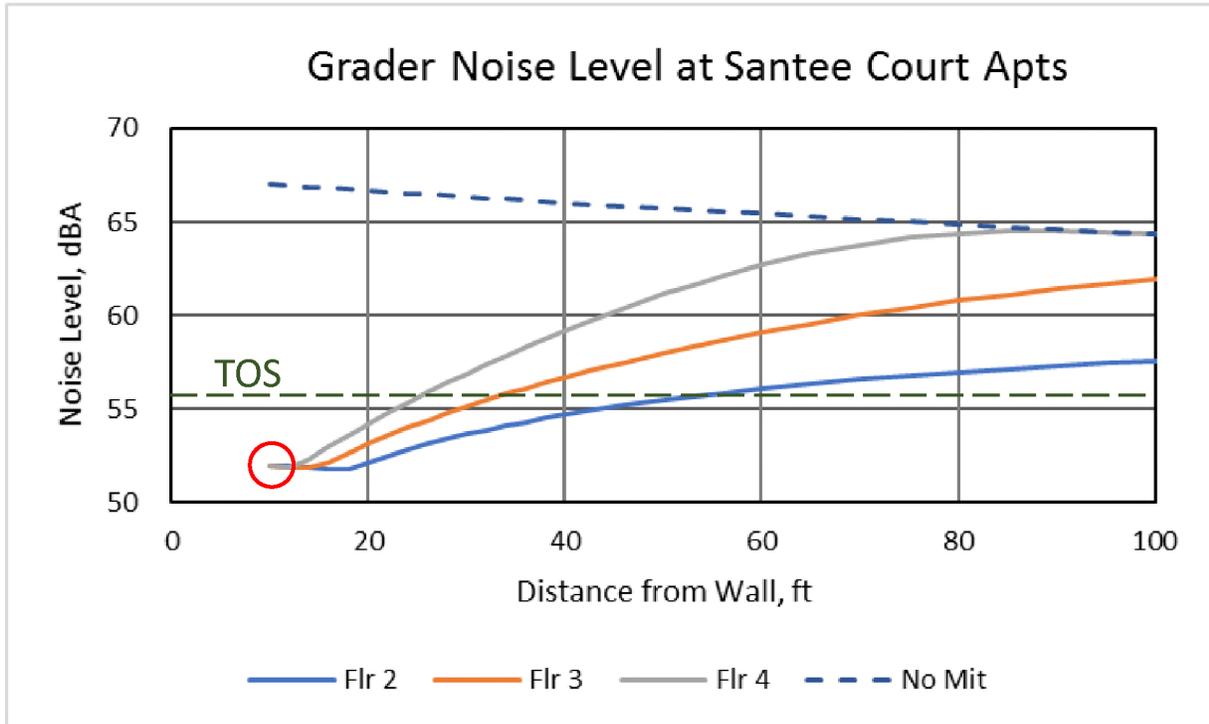
The DEIR stated threshold of significance (TOS) at the Santee Court Apartments is 55.8 dBA, and the graph clearly indicates that this will be exceeded once the equipment is roughly 25 to 50 feet from the wall (depending on the floor of the building). As the site is approximately

² Reference: Federal Transit Administration (FTA), *Transit Noise and Vibration Impact Assessment*, May 2006.

³ This chart is for the Grader as analyzed in the Response to Papadimos. A chart for the Excavator and Loader as analyzed in the DEIR would be similar, but the noise levels would all be 2 dB lower.

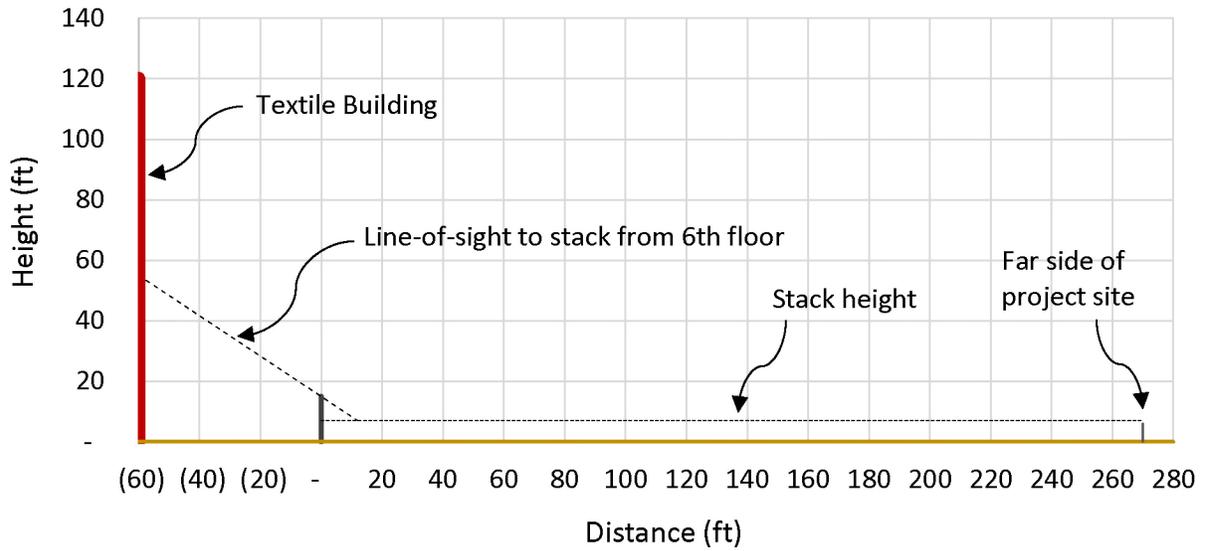
⁴ Note: The site is about 270 ft wide. The graph only shows the first 100 feet for clarity of the situation close to the wall.

270 feet wide, the noise levels will exceed the established threshold of significance for the majority of the time.

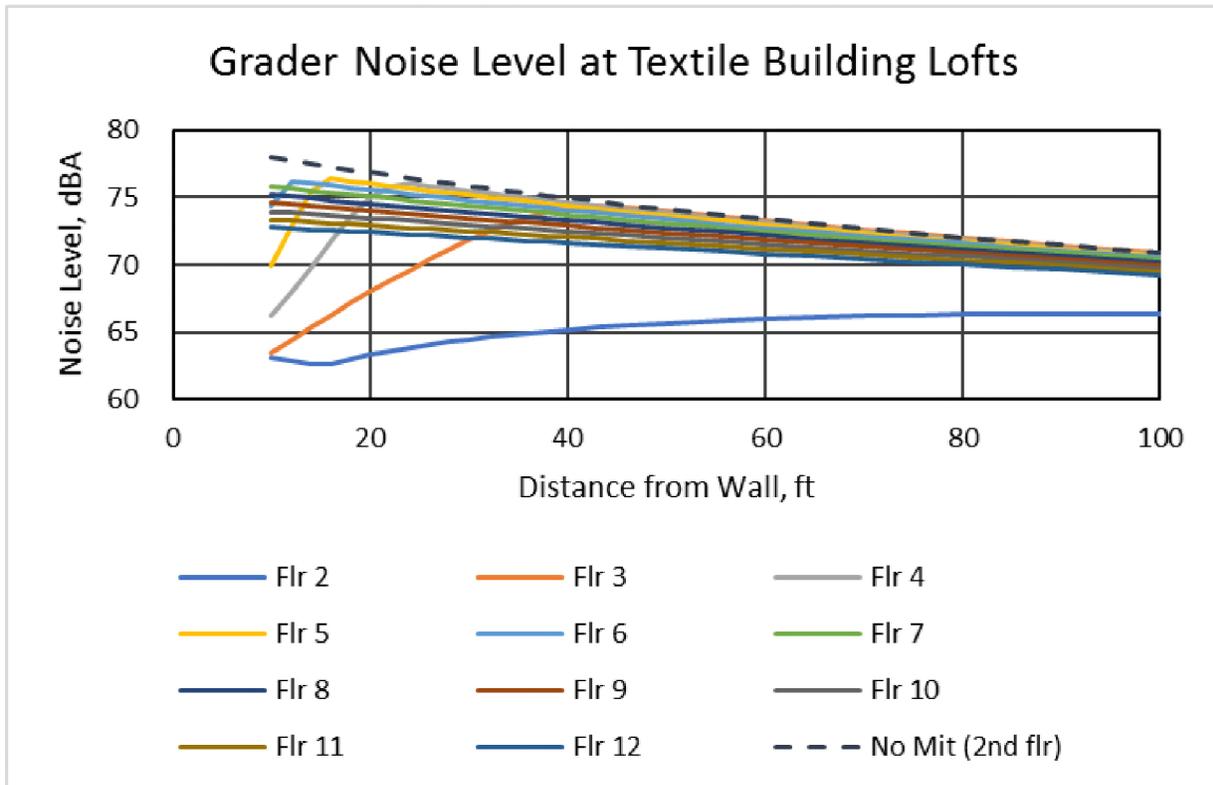


II. THE EIR ANALYSIS FAILED TO IDENTIFY SIGNIFICANT CONSTRUCTION NOISE IMPACTS AT NEAREST RESIDENTIAL RECEPTOR

In response to comments by CREED LA that the DEIR had neglected to consider all sensitive receptors – including, but not limited to, residences in the Textile Building at 315 E. 8th Street – the DEIR preparers chose to continue to incorrectly assert that the sound barrier wall would provide nearly 15 dB of attenuation despite the fact that most of the building practically looks down at the entire site. See the figure below for a scaled sketch of the geometry involved. The sketch specifically depicts the situation for a resident on the 6th floor, about halfway up the building (55 ft high). Given that the building is approximately 60 ft from the project boundary, that the given height of the construction equipment exhaust stack is 7 ft, and that the proposed wall is 15 ft high, the 6th floor resident will have direct line-of-sight to the exhaust stack once it is more than 12 ft from the wall. This is depicted graphically below.



The figure below shows the noise levels from the grader by floor for the Textile Building using the FTA equation to calculate the sound barrier wall attenuation and accounting for distance. For the 7th to 12th floors, the wall has no effect whatsoever.



The preparers of the DEIR are on record as stating, “Off-site noise monitoring conducted for the DEIR measured a daytime ambient noise level of 64.8 dBA L_{eq} along Maple Street. Textile Building Lofts likely experience greater noise levels due to its closer proximity to 8th Street” [Appeal Report, Exhibit G at p. 2]. The preparers did not make any attempt to estimate the noise levels using data collected for the DEIR, so, therefore, did not establish any quantitative thresholds of significance for the various floors of the building. However, given data in the DEIR, this is quite easily done.

As a preface, I note that because the threshold of significance is based on the existing ambient noise level, it will not be the same for all floors of the Textile Building because the higher floors are farther from the road traffic than the lower floors.⁵ (This same effect occurs at the Santee Court Apartments, but it’s not as pronounced since the building is 200 ft from Maple Street and not as tall.) As far as sound attenuation with distance is concerned, distance is distance, be it vertical or horizontal.

The noise along 8th Street was not measured for the DEIR, but it may reasonably be assumed to be the same as along 7th Street, which the DEIR measured to be 73.4 dB at a distance of 30 ft.⁶ On 7th Street, the microphone had a 180-degree view of the roadway. In front of the Textile Building (facing Maple), the microphone would only have a 90-degree view because the building itself shields half the roadway from view. This reduces the noise exposure by 3 dB. The distance from the center of E. 8th Street to the residences in the Textile Building that face Maple Street and that are farthest from E. 8th Street is 126 ft. Using the methodology of the DEIR, the estimate of noise due to E. 8th Street alone at sidewalk level is therefore

$$L_{eq} = 70.4 \text{ dBA} + 20 \log_{10} (30 \text{ ft} / 126 \text{ ft}) = 57.9 \text{ dBA}$$

Adding this 64.8 dBA measured along Maple Street yields a combined ambient noise level of 65.4 dBA. Adding 5 dB to this establishes the threshold of significance at the Textile Building Lofts at sidewalk level as 70.4 dBA.

Extending this calculation to include the vertical distance to each of the 12 floors of the Textile Building results in the applicable threshold of significance for each floor. A summary of these calculations is presented in the table below.

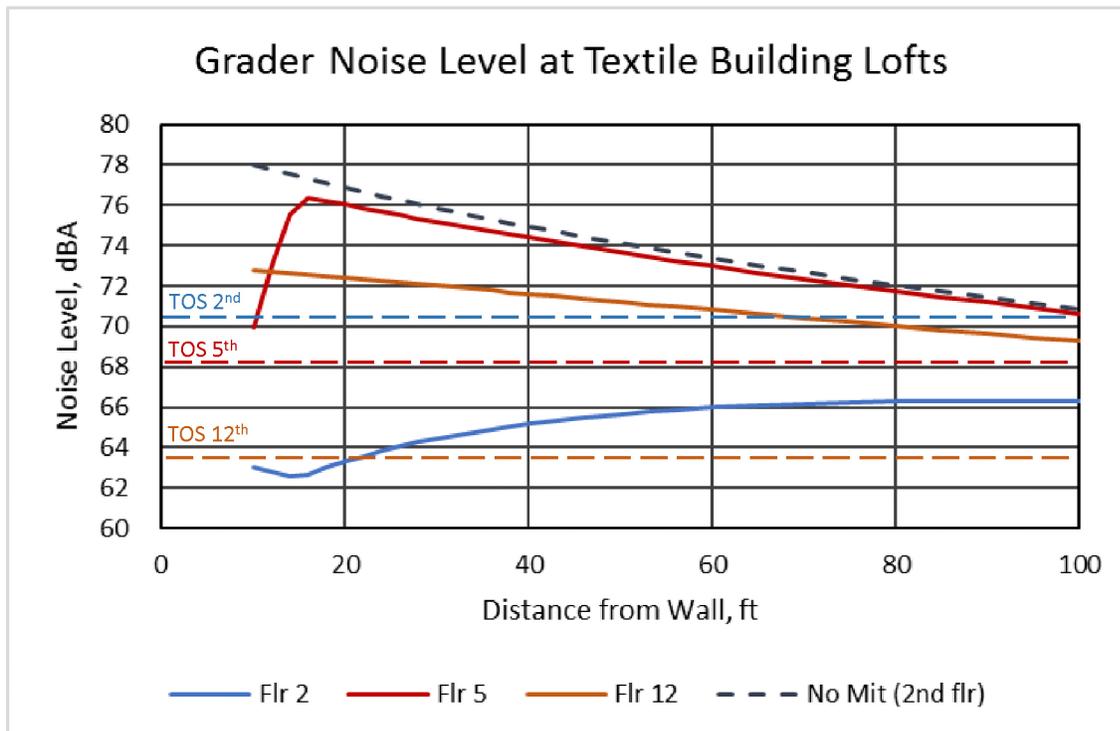
⁵ Regarding construction noise, a significant impact occurs “if activities lasting more than 10 days in a three month period would exceed existing ambient exterior noise levels by 5 dBA or more.” [DEIR at p. 4.1-8]

⁶ This is the mean distance between a spot in the middle of the sidewalk and the geometric middles of the four lanes of traffic.

Determination of Construction Noise TOS by Floor – Textile Bldg

Floor	Height	E. 8th St. Noise		Maple St. Noise		Total Ambient Exposure	Construction Noise TOS
		Slant to 8th CL	Ambient Exposure	Slant to Maple CL	Ambient Exposure		
	(ft)	(ft)	(dBA)	(ft)	(dBA)	(dBA)	(dBA)
2	15	126	57.9	41	64.5	65.4	70.4
3	25	128	57.8	45	63.8	64.8	69.8
4	35	130	57.7	50	62.9	64.0	69.0
5	45	132	57.5	57	61.8	63.2	68.2
6	55	136	57.3	64	60.7	62.3	67.3
7	65	140	57.0	72	59.7	61.6	66.6
8	75	144	56.8	81	58.7	60.9	65.9
9	85	149	56.5	89	57.8	60.2	65.2
10	95	155	56.1	98	57.0	59.6	64.6
11	105	161	55.8	108	56.2	59.0	64.0
12	115	167	55.5	117	55.5	58.5	63.5

The following figure presents the grader noise analysis for the 2nd, 5th, and 12th floors of the Textile Building Lofts along with the relevant thresholds of significance.



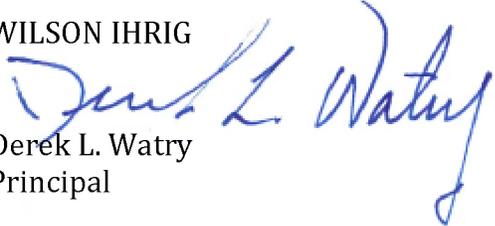
In conclusion, while the City is correct in asserting that the existing ambient noise levels at the Textile Building Lofts are higher than at Santee Court Apartments, they failed to analyze the situation using the data in the DEIR. Having done that here, it is clear that existing ambient noise levels are not so high as to render the construction noise less than significant per the DEIR's threshold of significance. As the figure above demonstrates, for the 5th to 12th floors (and, to a lesser extent, the 3rd and 4th floors, not shown) the construction noise will be above the threshold for much, if not all, of the time. The proposed mitigation measure sound barrier wall only mitigates the lowest residential floor (the 2nd floor) of the Textile Building Lofts.

* * * * *

Please let us know if you have any questions about our analysis or comments.

Very truly yours,

WILSON IHRIG


Derek L. Watry
Principal